Housing Assistance Council

CASE STUDIES ON LENDING IN INDIAN COUNTRY

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Housing Assistance Council
1025 Vermont Avenue, N.W.
Suite 606
Washington, DC 20005
202-842-8600 (voice)
202-347-3441 (fax)
hac@ruralhome.org (e-mail)
http://www.ruralhome.org (world wide web)

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The Housing Assistance Council (HAC), founded in 1971, is a nonprofit corporation that supports the development of housing for rural, low-income people nationwide. HAC provides technical housing services, seed money loans, housing program and policy analysis, research and demonstration projects, and training and information services to public, nonprofit and private organizations. HAC is an equal opportunity lender.

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This paper was prepared by Susan Peck at HAC. Many people contributed considerable interview time either in person or by telephone, including the following: Lac du Flambeau Tribe/Firstar Bank - Minocqua case study - Roxanne Poupart, Fern St. Germaine, Irene Messinger; Washington Mutual case study - Barb Scott Hancock, Jill Jones; Oneida Tribe of Indians of Wisconsin/Associated Bank (Green Bay) - Chris Doxtator, Phyllis Johnson, Bernice Elm, Loretta Skyler, Linda Hosking, John Kroner. Craig Dougall and Kathleen Britton, Sound Development Association (WA), Judy Chaney Daley, Federal Home Loan Bank, Seattle, Tom Lattimore, LISC, Terry Snyder, Centennial Bank, Ken Goosens and Robert Cheadle, Fannie Mae, Jerry Leslie, HUD ONAP, Seattle, Mark Ramsey, 184 Processing Center, James Berg of the Navajo Nation, and Alan Stoddard, Zions Mortgage Co., all provided important information and insights. I'd also like to thank Cheryl Red Bear, Cheyenne River Sioux Tribe, Tonya White Mountain, Standing Rock Housing Authority, Jolene Spang and Reginald Killsnight Sr., Northern Cheyenne Tribe, and Dani Not Help Him, The Lakota Fund (Oglala Sioux Tribe) for the extraordinary work they have performed in helping to make the Rural Housing Service (RHS) programs a reality in Indian Country.

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INTRODUCTION

In its 1993 "Supplemental Report," the National Commission on American Indian, Alaska Native and Native Hawaiian Housing stated that "little, if any, conventional lending is available to Native people seeking to buy or construct homes on trust lands or other restricted areas. Consequently, many 'financially able' individuals have no choice but to utilize the federal housing programs designed for low-income applicants."[1] The report concluded, "these conditions must change." Indeed, there is evidence that some change is occurring in some scattered outposts of Indian Country, buoyed by implementation of the FHA 248 insured and the HUD 184 loan guarantee programs, Fannie Mae's decision to provide a secondary market for private loans on trust lands, and an improved dialogue between private lenders and Tribes over issues that traditionally have excluded mortgage loans on trust land from the private lending portfolio.

Faced with diminishing federal resources -- House/Senate conference report figures indicate more than a 40 percent cut in funding for fiscal year 1996 for the HUD Indian housing program -- there is powerful impetus to find new housing finance resources to address the needs of Native Americans living in Indian Country.[2] The current federal resources generally are targeted to low- and very low-income households. The lack of private mortgage credit on Indian lands, however, puts Native American households with income probably sufficient to afford conventional lending, were it available, in competition with more income needy households for federally subsidized housing. Some of the lending initiatives now being pursued actually are intended to move current residents of subsidized housing into privately financed housing, thereby opening up the scarce subsidized housing inventory to more income needy households.

The report that follows is intended to describe some of the partnerships now being pursued between Tribes or their agents and primarily private lending institutions to increase the supply of housing loan funds on Indian lands, and to comment on the appropriateness of these partnerships as models for other areas of Indian Country. In looking at these examples, the report also will discuss any barriers to private lending that they may illustrate, as well as other barriers revealed in the Housing Assistance Council's (HAC) nearly four-year-old project to improve the use of Rural Housing Service (RHS, formerly the Farmers Home Administration or FmHA) programs on trust lands, including the lender-dependent Rural Housing Guarantee Program.

Most of the information gathered for this report came from on-site and telephone interviews with key players for each of the case studies identified, as well as federal agency and Fannie Mae staff in offices relating to the case studies. A formal literature search was not attempted since the *Assessment of American Indian Housing Needs and Programs Final Report* prepared by the Urban Institute under contract to HUD, which identified some of the initial and final case studies, contains literature references. Although the main thrust of the *Assessment* is on the evaluation of housing needs and an analysis of existing federal housing programs in meeting those needs, the report also briefly addresses some alternatives to HUD's Native American housing programs, the predominate form of housing assistance found in most of Indian Country. It is in the context of alternative housing resources that the report summarizes the "barriers" to expanding housing resources, among them dependence on HUD housing programs; lack of local financial institutions; lack of Tribal government understanding of the private market; lack of a real estate industry, fee simple title, title insurance, and equity build up; inadequate infrastructure for housing development.[3] HAC's project, "Building Indian Housing in Underserved Areas," has encountered most, if not all, of these "barriers" in its nearly four years of attempting to bring federal (RHS/FmHA) mortgage lending to the trust land setting, as well as the more personal barriers of distrust and stereotyping.

Only one of the case studies in Section 1 probably has enough experience from which to draw comfortable conclusions, but the others provide varied approaches to assisting similar populations and, therefore, offer some direction to readers interested in pursuing supplements to their current housing assistance schemes. Following the case studies, Section 2 will briefly describe some other approaches and will contrast these to the case studies. Section 3 will address the barriers that the case studies and other examples have faced, and what obstacles still remain in the effort to bring private mortgage lending to Indian Country. Finally, Section 4 will attempt to draw some early conclusions.

Each case study follows the same general outline:

- The Community - providing a brief description of the Indian community being served, including the natural environment and the economy, as well as the internal and external factors providing impetus for the lending program;
- The Program - providing details of the lending program and noting the key players;
- The Results - providing information available on the program beneficiaries, on whether the program is meeting expectations, and on any anticipated changes.

I. CASE STUDIES

Lac du Flambeau Tribe -- Firstar Bank-Minocqua (Wisconsin)

The Community

The Lac du Flambeau Indian Reservation, home to the Lac du Flambeau Band of Lake Superior Chippewa Indians, is a land of water and forests, interlaced with cranberry bogs and wild rice fields. In the several county "lakeland" area, where tourism is the economic core, Tribal members and their neighbors live on or near some 2,500 lakes. Boat docks are more evident than parking spaces in this area where lakefront property sells for about $175,000 per 100 feet of shoreline. With water sports in the summer, changing colors in the fall, and snowmobile adventures in the winter, the Lac du Flambeau Reservation and surrounding area are a magnet for second home buyers, retirees, and more seasonal visitors.

Within the reservation boundaries, land is controlled in a checkerboard fashion: Tribal and individual trust land, as well as fee simple land. In 1992, the Tribe embarked on a policy to consolidate its land holdings. No new leases of lakefront property are being issued to non-Tribal members, and leases currently held by non-Tribal members are not being renewed at their termination date. In addition, the Tribe is seeking fee simple land within the reservation boundaries for purchase in order to re-establish trust status. As the Tribe's economic strength is enhanced with the operation of a new casino, as well as a pizza making enterprise (wild rice harvesting and the manufacturing of wooden pallets also bring some revenue), additional land controlled by the Tribe will be needed for housing development primarily for Tribal members returning to work on the reservation. Such land currently is scarce.

A newly arrived banker at Firstar Bank-Minocqua purchased fee simple land within the reservation boundaries prior to her move from Chicago. In the process of building her home and meeting her neighbors and members of the nearby communities, the banker soon recognized the shortage of affordable housing available to members of the Lac du Flambeau Tribe. She learned of the FHA 248 insurance program available for mortgages on Tribal trust land, then attended a workshop on the newer HUD 184 guarantee program, and began marketing the programs on the reservation with Tribal support (for example, a Tribal meeting space has been provided for her marketing sessions, and the Land Development Department processes land assignments critical to the lending procedure). The banker approached the partnership from several angles: the concern of a good neighbor and a clear opportunity for Firstar Bank to expand its market.

Neither the Lac du Flambeau Tribe nor Firstar Bank began this program with any definition of priority participants, such as targeted income levels, current residents of HUD assisted housing, or waiting list households. Increasing the supply of housing appeared to be a shared goal of the "partners," while the Tribe clearly wanted to consolidate its land holdings.

The Program

Firstar Bank - Minocqua is providing market rate mortgages to members of the Lac du Flambeau Tribe for new or existing homes on Tribal trust lands. Two vehicles are being used both to protect the status of these lands should there be a default or foreclosure and to eliminate the lender's risk should foreclosure take place and the lender is unable, due to these protections, to take possession of the property and sell to any buyer to pay off the debt. These are the FHA 248 insurance program, and the HUD 184 guarantee program authorized in 1992. As of the interview time, Firstar had closed on six 248 insured mortgages, of which three were the refinancing of two original loans to take advantage of lower interest rates, and one 184 loan, possibly the first closed nationwide. Six loans nationwide had closed at interview time, of the 100 or so packages that are in the HUD pipeline, either in the pre-qualification or firm commitment stage.[4] Two of the Lac du Flambeau 248s and the 184 were for new construction.

Although more of Firstar's experience, thus far, is with the 248 insurance program, the vehicle it is promoting now is the 184 guarantee program which Bank staff finds more flexible and suitable to the needs of its potential borrower. Unlike the 248 program, there is no defined mortgage limit other than the borrower's ability to pay; the income to debt ratio is more liberal in the 184 program than in the 248 program; improvements to an existing home, as well as closing costs, may be financed; and all or part of the downpayment (3 percent on the first $25,000 borrowed, 5 percent on anything above $25,000) may be a gift from family members, but not from the borrower's Tribe. Financing of improvements is an important issue for one applicant who is purchasing a home inexpensively that will need to be stripped to the shell to remove the effects of 50-60 cats residing there, then completely remodeled inside. Both Fannie Mae and Freddie Mac have agreed to purchase the 184 loans.

The 248 program does skip an approval level required in the 184 program: HUD has a three phase review leading to an endorsement to provide the guarantee. Any lender involved in the 184 program first submits a package to HUD's processing center in Pasadena, California for "income and credit review" and the issuance of a pre-qualification commitment. The second review comes with the lender's submittal for a firm commitment; at this point, an appraisal and a BIA approved lease are submitted. HUD then issues a firm commitment instructing the bank to close the loan. The last phase of HUD participation occurs after the loan closing when the agency completes the endorsement and provides the guarantee. At this point, the bank may sell the loan to Fannie Mae or Freddie Mac. Although the lender does its own underwriting and appraisal, HUD is involved in reviewing the results, an activity that does not occur in the 248 program.

Clear cooperation in marketing the program appears to exist between Tribal staff in the Land Management Department and Firstar Bank staff. In land assignment/lease approval activities, their respective roles are separate and defined. If a new house is desired, the applicant approaches the Tribe for a land assignment; for the purchase of existing housing, the Tribe either is approached for an assignment of the current lease or for its assistance in bringing the land into trust status. There is no prescreening of applicants by the Tribe, nor is homeownership counseling or other mortgage lending related activity provided by the Tribe; these activities are solely within the purview of the bank. Firstar Bank takes the application, runs the credit report, performs any credit counseling that might be required, submits the application to HUD, orders the appraisal, funds the loan and, eventually, sells the paper on the secondary market. The "partnership" is cooperative and cordial, but clearly defined between land use and mortgage lending.

The Results

Thus far, four Lac du Flambeau families have benefitted from implementation of the FHA 248 and HUD 184 programs, and each of these have been two-income households carrying mortgages in the $45,000-$75,000 range. Since there were no income targets established, nor required for implementation of these programs, nor were priorities set for families on certain waiting lists or currently living in subsidized housing, the programs basically work for applicants with adequate income to carry the loan, and with good credit history. From the Tribe's perspective, the goal was to consolidate its land base. At least in one instance, a property previously leased to a non-Indian household was purchased by a member of the Lac du Flambeau Tribe and is now within the long term control of the Tribe.

Firstar Bank's loan officer has numerous applications in the pipeline for eventual 184 guarantees, and intends to begin marketing the program once again during the early fall of 1995 (a morning, afternoon and evening session at Tribal headquarters is planned for October). Slowing the loan making process is the resolution of credit problems identified in a mini-credit report obtained when the application is submitted to the bank. The loan officer provides credit counseling to the applicant, but the payment of old debts may take months or more. In the meantime, the Tribe already has provided a long term lease, but will allow the applicant up to five years to purchase or construct his or her home on that property.

The Tribe anticipates that the private lending program will enable at least some of its members to purchase HUD assisted homes eventually, and to provide needed improvements. Additionally, with Tribal members returning to the reservation as more jobs become available, this program may provide much needed homeownership assistance. At this point, there does not seem to be discussion of any additional role the Tribe might play in the process, and Firstar Bank staff seems comfortable with its current position. The Tribe is moving in the direction, however, of creating some informal or, possibly, formal committee of housing interests within Tribal government to begin mapping housing strategies for the Tribe.

Washington Mutual Savings Bank - Northwest

The Community

Washington Mutual Savings Bank is the largest home lender, and one of the largest banks, in terms of assets, in the Pacific Northwest. Their lending area extends through the states of Washington, Oregon and Idaho where numerous, mostly small Tribes are located. Several years ago, bank staff began to recognize both the critical housing needs of primarily reservation based Native Americans, and the integral nature of this population in the bank's regional community. The Community Reinvestment Coordinator embarked on a Native American needs assessment for the bank's service area, employing the assistance of the National Commission on Native American, Alaska Native and Native Hawaiian Housing in making contacts with Tribes within the region and identifying data. Contacts made within task forces established to address issues in both the FHA 248 and the HUD 184 programs helped the bank to further its research. The key conclusion to this assessment was that Native Americans were looking for housing "choices."

The three state area served by the bank presents diverse environments and economies; many of the Tribes are small in terms of population and land base; some are geographically isolated. Most have some form of housing assistance entity, including the presence of intertribal housing entities. To address the diversity of housing need, Washington Mutual Savings Bank's approach has been to offer diversified products.

The Program

Washington Mutual Savings Bank currently is pursuing two programs specifically targeted to Native Americans. The first is the FHA 248 insurance program, which is available to six Tribes in the Northwest. Of these, one of the Tribes already has a relationship with another bank and will direct 248 business to that bank, another is outside of the bank's lending area, and some of the others are dealing with basic infrastructure issues that presently supplant housing finance considerations. Consequently, the bank's market for 248 insured lending is somewhat limited, but Washington Mutual views its involvement over the long term. Its expectation is that volume -- when interviewed, barely nine months after starting the 248 program, one loan had closed and nine were pending -- will improve over a five-year period, depending on the resolution of some infrastructure issues and some vigorous homeownership/credit counseling to better prepare potential applicants for the financial challenge of homeownership.

In contrast to Firstar Bank-Minocqua's assessment of the 248 insured versus the HUD 184 guarantee programs, Washington Mutual Savings Bank has a more positive view of the 248 program. It notes that this program offers the bank more in-house control over the approval or denial of loans. As earlier outlined, the HUD 184 guarantee program requires HUD review in three phases; this process is not employed in the 248 program. Instead, a bank branch office originates the loan, then sends the paperwork to Washington Mutual's Seattle headquarters for processing and underwriting. Once approved, the loan then is sold within the Government National Mortgage Association (GNMA) pool. Although recognizing certain limitations on borrower participation in the 248 program -- the statutory loan limits, for example, may be too low in some of the Indian areas, and the program is applicable only to Tribal, not individual trust land -- the bank prefers the more prominent role of the lender in this program. Notwithstanding the fact that FHA loan limitations pertain to the 248 insured program, all of the applications currently in the pipeline are for new construction.

Washington Mutual's other product specifically for Native Americans is a pilot program with two Tribes located in the State of Washington: the Tulalip, located about 40 miles north of Seattle, and the Suquamish on the Olympic Peninsula. All homeownership loans -- for new construction or existing housing -- made by Washington Mutual will be held in the bank's portfolio, which is not uncommon for this lender. The bank uses its established underwriting criteria, and the two Tribes involved in the pilot are providing some level of financial assistance to the borrowers. If the Tribe's participation results in a second mortgage on the home, then the Bank asks for the Tribe's criteria in making the loan; but if the participation is in the form of a grant, no review of criteria is necessary. New and existing homes are eligible, and the loans may be made on Tribal or individual trust lands. Of the six loans closed through mid-1995, and of the many pending applications, all are for homes on individual trust lands. The bank does not set its own loan or income limits, although Tribal financial participation may establish such limits; any bank imposed loan limit results from an assessment of the applicant's ability to pay.

At the end of November 1995, Washington Mutual converted its pilot program into a full blown mortgage product for Native Americans on *individual* trust lands in the bank's lending area. It is reserving $25 million to be made available for an undetermined period of time. This would continue as a portfolio program, meaning that the bank will retain these loans in its own name rather than selling them. There are no pre-existing notions of what the volume would or should be; rather, the bank recognizes that the population base is small and has relatively little experience with homeownership, so outreach and homeownership/credit counseling will be key factors in developing volume. It will be up to the participating Tribes to decide whether they will offer additional financial assistance to enable their lower-income members to afford market rate loans.

There are no income or loan limits in this new program. Loans will be written at the current fixed or adjustable rate mortgage level. The loans may be used to construct or purchase a home, including manufactured housing, and may also be used for a single unit or for the purchase of up to a fourplex. At least one unit will have to be owner-occupied. Unlike the Associated Bank program (see following case study), the participating Tribes will not have a first right of refusal to purchase a borrower's home should there be a foreclosure; instead, according to the Bank, the property will change to fee simple title enabling the Bank to sell it. This bank product is too new to evaluate since discussions about its implementation with various Tribes began a short time ago.

The Results

Each of Washington Mutual Savings Bank's Native American targeted efforts is yielding results (one 248 loan closed, nine pending; six portfolio loans closed, many pending), encouraging the bank to continue its marketing efforts for the 248 program, and to convert its pilot portfolio lending program into a full blown product for Native American borrowers on trust land. The bank did not set any volume expectations for either pursuit, but expects an increase in current volume over a long period of time (five years for the 248 program). Both programs seem to satisfy the bank's desire to retain control over both the underwriting and approval processes.

Activity in the 248 program may be hindered somewhat by the statutory loan limitations, which appear to be low for some Indian areas, and both programs' successes may ultimately be measured by the extent to which Native American households, often with low incomes and with mostly limited exposure to homeownership, can be brought into a private lending system that relies heavily on exemplary credit, consistent repayment ability, and savings for repairs. Tribal involvement in screening, homeownership counseling and, possibly, financial assistance, may be key ingredients in this private lending initiative.

Oneida Tribe of Indians of Wisconsin - Associated Bank (Wisconsin)

The Community

The Oneida Tribe of Indians of Wisconsin, part of the Oneida Nation (Iroquois) that was mostly forced out of New York over 200 years ago, now inhabit an area of more than 65,000 acres in two counties of eastern Wisconsin, Brown and Outgamie counties. Brown County is the more populous area. Its largest city is Green Bay, parts of which are owned by the Tribe. It is in Brown County that the Oneida Tribe reigns as the largest employer (some 3,500 jobs). The Tribe is focused on community and economic development that will benefit its members through the "seventh generation," therefore investing its resources in enterprises and services that will provide benefits over the long term. Economic stability appears to be the result of a diversified economy. Tribal members who moved away from the area in search of jobs are now returning to participate in new opportunities. Central to the Tribe's economic strength is a large and attractive hotel-convention center-casino complex directly across from the Green Bay airport. Numerous Tribal businesses abound, including a printing plant, gas station/mini-mart style complexes, and day care, as well as non-governmental employment in local paper mills and in agriculture.

Although the Tribe's boundaries encompass signficant land holdings, as recently as 1980 the Tribe controlled only 10 percent of the 65,000 acres within the reservation. It is a priority of the Tribe to increase its land base by restoring formerly held land to Tribal or individual trust status. This priority pervades its business decisions, as well as its housing programs. The "mission statement" of the Department of Land Management is clear: "to reacquire all land located within the original 1838 Oneida

Indian Reservation boundaries of Wisconsin, and to preserve, maintain, and distribute such lands according to the needs of our People.'[6]

Associated Bank of Green Bay first became involved with the Oneida Tribe in the early 1980s when plans were framed for the development of the Radisson Hotel, which now includes the largest Native American owned casino complex in the United States. It became clear to bank staff that even as economic enterprises were pursued and became successful, the housing needs of Tribal members were not being fully satisfied. The bank began to explore how it could help further housing assistance, abide by the Tribe's mission to reacquire former Tribal lands, and be useful without compromising its own lending guidelines. An important factor for the bank in developing its lending program was the economic leadership of the Tribe within Brown County.

The Program

The Oneida Tribe's Department of Land Management operates four loan programs to assist in new and existing housing purchase and in rehabilitation. Since 1982, when its first program was begun, the Department has processed 192 loans, of which 25 are paid in full.[6] A list of interested Tribal members is maintained and "open houses" are held periodically to explain the programs and encourage participation. Known as "TLC," "DREAM," "THRIL" and the less colorful title of "Oneida Veterans Indian Loan Program," the programs attempt to provide for a variety of needs not currently assisted through the Tribe's HUD- and BIA-funded housing programs. Whenever housing is purchased through TLC, DREAM or the Veteran's program (THRIL strictly is for home repairs and the Veteran's program may also be used for this purpose), the housing must be on property within the reservation boundaries that can be taken into trust status.

Associated Bank's mortgage lending is tied to TLC, which stands for Tribal Loan Credit program. The program was created in 1986 to provide low interest downpayment assistance loans to Tribal members who had sufficient income to make mortgage payments but lacked savings for a downpayment. Initially, the Tribe loaned about $15,000, providing a 20 percent downpayment on a $75,000 home. Housing prices have risen in the Green Bay area particularly and the loan level has increased to $50,000. The actual amount is intended to reduce the bank's mortgage level to 80 percent of the purchase or total development cost of housing on fee simple land. The TLC loan may also cover closing costs. This loan is written as a second mortgage at a below market financing rate over a ten-year period.

Associated Bank's participation in the TLC program began in 1990. Tribal members first apply to the Department of Land Management where staff use mostly the same guidelines provided by the bank. If the Tribal loan officer approves the application, the applicant is sent to Associated Bank with an approval certificate and the bank loan officer does the underwriting. Associated Bank closes the loan and services both loan payments. The Tribe's portion is deposited in a revolving loan fund account which, it is intended, will some day fully fund the TLC program (currently, the Tribe makes an annual appropriation to the program). In the case of a default or foreclosure -- or if the owner wants to sell the property -- the Tribe has the first option to purchase. There have been two foreclosures, out of 102 loans made through July 1995, and in each instance the Tribe purchased the properties and put them in their DREAM program that allows a family to rent with an option to purchase. When a property is purchased by the Tribe for the DREAM program, it is put into trust status. At the time Associated Bank's mortgage is paid in full, the owner is required to put the land into individual trust status, thereby fulfilling the Tribe's goal of restoring and protecting prior Tribal lands. The Tribe's apparent commitment to purchase properties has provided the Bank with the level of comfort it feels it needs to make these loans.

Loans from Associated Bank are "adjustable rate mortgages," figured at market rate (2 percent annual cap, with a 6 percent lifetime cap) with a term of up to 30 years. This is the bank's standard ARM, no different than what is offered to non-Native American borrowers. It would like to offer fixed rate mortgages but, thus far, has not found a purchaser for such loans so it continues to retain them in its own portfolio. A representative from Fannie Mae reviewed the bank's product a year ago, but no commitment was made at the time.

Neither the Oneida Tribe nor Associated Bank established any guidelines for household incomes to be served, or maximum mortgage limits (although the $50,000, 20 percent downpayment cap provides guidance here). Housing need throughout the Tribe, and for returning Tribal members, is considerable, and local rents are considered high by Tribal staff, so most of the TLC applicants have been on some housing waiting list. Their incomes cover a wide range, according to Tribal and bank staff.

The Results

The TLC program has about 100 loans with Associated Bank, which the bank views positively as a "performing asset." Each of these loans were made on fee simple land that eventually will be converted to trust status, fulfilling an important goal of the Oneida Tribe. The requirement that the properties must be within the reservation boundaries, and not currently in trust status, does limit the participants' options, but there continues to be a steady stream of applicants anyway. As more Tribal members return to the area, increased pressure on the program may develop.

Associated Bank also views its working relationship with the Tribe as positive and productive. There appears to be a good exchange of information and ideas, particularly since each party has a considerable stake in both the loan approval and loan repayment parts of the process. Some current drawbacks are the considerable time it takes to record the loans with the Bureau of Indian Affairs -- a process that may in the future come under the Tribal government's jurisdiction -- and the need for aggressive credit counseling to ready applicants for potential homeownership. Associated Bank was able to overcome one obstacle -- title insurance -- through an intensive educational effort with two companies that resulted in a better level of understanding and comfort with Indian land issues.

II. OTHER APPROACHES

In identifying potential case studies for this report, it became apparent that the experience of some of the better publicized lending initiatives was limited, perhaps still in the concept rather than the execution stage. One, Sound Development Association, an offspring of the Southern Puget Sound Inter-Tribal Housing Authority, Washington, has become the first Native American seller/servicer certified by Fannie Mae (formerly the Federal National Mortgage Association), but the lending partnership still faces many challenges. What also became apparent in the research, however, was that there *is* considerable talk between Tribal representatives, private lenders, public and quasi-public agencies on the subject of extending private mortgage credit to Indian Country. The case studies that were selected offered at least some practical experience in testing the goals of the players involved. The Oneida Tribe/Associated Bank partnership and the Washington Mutual Savings Bank pilot program represent relatively homegrown responses to specific housing needs. The Firstar Bank/Lac du Flambeau partnership reflects a more national awakening to the responsibility of non-governmental entities to address the housing needs of people, regardless of income or location.

There has been pressure on banks for years, particularly through Community Reinvestment Act (CRA) mandates, to address affordable housing needs, and other government authorized institutions such as Fannie Mae and Freddie Mac are being closely scrutinized for evidence of increased lower-income mortgage assistance activities. Some of these institutions have been aggressive in defining their niche and seeking a foothold in traditionally "underserved" areas, including Indian Country. Others have opened their doors to proposals from these constituencies prior to creating their own programs. The Oneida Tribe/Associated Bank provides an example of the "somewhere in-between" approach that appears to be working for the parties involved.

Zions Mortgage Company (Salt Lake City, Utah) came up with a lending concept for Native Americans to complement its other affordable housing programs, and entitled it the "Good Neighbor Homebuyer Program." It decided to explore the concept first with the Navajo Nation whose boundaries extend into Utah, as well as Arizona and New Mexico. The model Zions initially proposed created a lease-purchase approach to homeownership, which would enable participating borrowers to lease a new home from their Tribe for about five years. During this time the borrower would make mortgage payments to Zions, and repay a downpayment loan from the Tribe. When the 3 percent downpayment loan (an additional 2 percent would come from the borrower's savings, a gift from a blood relative, a grant, or a lender -- Zions -- contribution) is repaid the borrower could exercise his/her option to purchase the home. Since, according to Zions, the loan could be sold to Fannie Mae under their Community Homebuyer Program, funds would be revolved and Zions would be able to make more mortgage assistance available. Zions would continue to service the loan, and is committed to a comprehensive homeownership counseling program.

Although this approach has elements of several of the case studies -- the lease/option approach clearly is different -- the main difference is that the Navajo Nation has not and probably will not commit to making downpayment assistance available. This part of the program did not emanate from the Tribe, but was presented to its leaders by Zions. A Tribal representative explained that with 200,000 members scattered among 25,000 square miles, and so many of them in need of an array of social services, the Tribe is not financially equipped to provide downpayment assistance. Presently, the Tribe is working with Fannie Mae on a Memorandum of Understanding (MOU) intended to make all of Fannie Mae's products available on Navajo land. Zions could be one among possibly many lenders -- including some banks that have located branches on the reservation -- whose programs could become available to Tribal members on terms agreeable to the Tribe. Fannie Mae has raised the spectre of the Tribe providing "credit enhancements," an unlikely outcome of the MOU negotiations.

Fannie Mae was the first secondary market to agree to purchase loans made under HUD's 184 guarantee program. Although just a handful of loans had been purchased at the time research for this report was completed, many loans were in the pipeline. A variation of this program became effective in Indian Country on December 6, 1995 when the Rural Housing Service announced its "Rural Housing Native American Pilot Program."[7] This program will extend the Section 502 guaranteed loan program to ten Tribes in a partnership with Fannie Mae, who will purchase loans made on trust lands.

Several of the Native American housing packagers trained by the Housing Assistance Council on reservations in South and North Dakota and Montana previously explored this program for applicants whose incomes exceeded the Section 502 direct loan limits.[8] Like the HUD 184 program, the 502 guarantee program is dependent on private lender participation. What the packagers found is that lenders resisted the program on trust land since no secondary market to purchase these loans existed at the time. Discussions between RHS national office staff and Fannie Mae ensued and resulted in the pilot program. RHS currently is making Section 502 direct loans on trust land and accepts Tribal lease restrictions on resale or transfer should a foreclosure be necessary, but had not previously accepted such restrictions under the guarantee program. This agreement will open another opportunity for moderate income Native Americans to purchase or build their own housing on trust land using private mortgage sources.

III. BARRIERS

Extending to Indian Country private credit initiatives for housing is an effort mostly in its infancy, but some of the major barriers are being removed. From the lender's perspective, obtaining comfortable security for a loan on land held in trust has been a major barrier for which various solutions are being applied. For Associated Bank, the Oneida Tribe's financial assistance reduces the amount of funds the lender has at risk, and the Tribe's option to purchase property at foreclosure (which it exercised in both instances that foreclosure became an issue) created the necessary "comfort level" for the bank to extend its credit. The FHA 248 insurance and the HUD 184 guarantee programs each remove lender risk in case of foreclosure even though the property may not be removed from trust status. It is expected that the RHS Section 502 guarantee program soon will offer similar protections both to the prospective lender and to the participating Tribe. In the past, Tribes, too, have been reluctant to encourage private home mortgage activity because of the fear that trust land might lose its protected status in the event of a foreclosure.

Remaining barriers perhaps are not as significant as the "security" issue, but still need to be addressed. A secondary market still is needed to enable interested banks currently holding loans within their own portfolio to revolve them in order to increase their pool of funds, to improve their terms (for example, Associated Bank would like to extend fixed rate mortgages, but cannot afford to hold them in their portfolio), and to allow for greater creativity in designing a program most suitable to the needs of a particular Tribe and/or area. Not every Tribal/lender initiative will necessarily fit, for example, Fannie Mae's underwriting criteria, yet may be appropriately designed for specific local circumstances.

Lender and Tribal knowledge of private lending opportunities is limited. Most Tribes are located in somewhat or exceedingly remote places where few banks are found. Many of the primarily rural banks that do exist in Indian Country are independent and have limited assets for mortgage lending. Moreover, there is such limited experience on the part of Native Americans in private mortgage lending that even asking the appropriate questions may be a daunting task. Education is not widespread on a host of issues that banks, Tribes and Native American borrowers should know about, including lending opportunities, risk, secondary market options, program requirements, fair housing, credit histories, and cultural issues that might have an impact on the traditional lender-borrower relationship.

Tribal capacity to absorb and promote new housing opportunities also is limited in many areas, possibly restricting participation in these resources to areas where a particularly savvy lender may reside, or in the rare instance where a consortium is formed to implement a new program or programs. HAC's "Building Indian Housing in Underserved Areas" project began with the premise that the extension of FmHA (now RHS) housing resources to Indian Country would best be served by developing local, Native American capacity to promote and package loans and grants. Federal agency staff involved in this project continue to remark on the validity of that premise; trust exists between the packager and the applicant based on cultural and community understanding that federal agency staff may lack. Issues of credit, extended family, guardianship, personal loans, all may take on meaning that an outsider might not fully comprehend and, therefore, may decide denotes a potentially risky borrower. Support for capacity building is virtually nonexistent, yet Tribes are encouraged by outside forces, including Fannie Mae and other lenders, to commit to the new "products" now available to Indian Country.

A barrier that must not be overlooked is the ability of potential borrowers to succeed within a system heretofore unavailable to them. The case studies highlighted bad debts and general credit history as delaying or restricting the participation of prospective borrowers in the respective programs. This is similarly reported in HAC's capacity-building project. Some credit problems are errors, some are easily remedied, yet others require credit/budget counseling intervention -- and time. Important, too, is creating a true understanding of the generally rigid rules of mortgage lending in communities where the concept has not been widely experienced. Missed payments for any reason may result in very different consequences than missed payments on a Mutual Help home. Private lenders do not provide the safety net that federally subsidized programs generally do for homebuyers and tenants whose incomes may be vulnerable to downward shifts. In promoting private lender initiatives, it is important not to lose sight of the borrower's need for clear information on roles and responsibilities of all the players in both the short and long term.

IV. CONCLUSIONS

When this study initially was designed, there was interest in proposing a "model" for private lender initiative for Indian Country. Site visits and extensive telephone interviews led to a different point of view: circumstances generally differ from Tribe to Tribe as the case studies reveal. Except for the general need for more housing, housing program goals vary and, consequently, the responses will differ. One Tribe wants to consolidate its land base through housing assistance, while another wants to move higher income families out of subsidized housing. One Tribe has financial resources to assist their members into privately financed housing, while another does not, so the borrowers must be able to qualify for the full house price.

Leaving aside the notion of a model, there are some modest conclusions to be derived from these case studies. Regardless of the data source -- the BIA inventory, the Census, the Urban Institute report -- housing need is considerable in Indian Country, and among all income levels. Federal housing programs generally are targeted to lower income households, although the case studies do show that more moderate income households are living in subsidized housing. Without private mortgage credit, households with incomes sufficient to carry a private mortgage loan are put in competition with lower income households for scarce housing resources. The opportunity for obtaining privately financed loans, therefore, should be an important resource in Indian Country. These loans, however, are written at market rate interest. For this reason alone, private mortgage financing must be considered out of the reach of lower income households, and even beyond the means of more moderate income households in higher housing cost areas unless there is some level of subsidy to reduce the mortgage amount. Private mortgage lending will improve housing opportunities for some, perhaps many Native American families, but it is not a panacea for the extensive housing needs that exist in Indian Country generally.

The programs underway, and featured in this report, represent partnerships of mind and, sometimes, pocketbook. Most of the Tribes involved have some guiding principle -- consolidation of land holdings, for example -- that binds them to the program. The lenders in each case have bought into that principle. Where Tribal financial participation is feasible and considered desireable by the Tribe, it is provided. It was not a condition of doing business, but an agreed upon aspect of the program concept. Lenders, particularly, must be aware that their ability to make private lending available to Native Americans is dependent on their willingness to work *with* the respective Tribes in developing a program or programs that meet Tribal goals and needs.

Something certainly needs to be said about funding and promoting local capacity building. Developing a cadre of persons knowledgeable about the complexities and requirements of private lending -- and people who are capable of communicating this information to members of their own community -- can only benefit the expansion of private lending in Indian Country. There are many forces outside Indian Country now interested in promoting their lending concept or service. At some point, and the sooner the better, these entities need to consider what training and financial support they can provide to ensure that local capacity is developed and sustained.

Finally, these case studies, and even those considered but not included, make it clear that the federal government plays a central role either as a catalyst or a direct contributor. CRA oversight of lending practices is an incentive to banks to assess total community needs and be creative in finding an appropriate niche; Congressional oversight and policy direction to legislatively created, though independently acting, organizations such as Fannie Mae, GNMA, and Freddie Mac, encourages similar assessments and creativity that are beginning to bring service to Native American communities. Direct governmental contributions to these private lending initiatives come in many forms: HUD 184 loan guarantees, FHA 248 insurance, and RHS loan guarantees. These are financial resources that cover private lender risk and protect the status of restricted Indian lands. Private lending in Indian Country has been encouraged by these federal contributions. The positive experiences that have resulted and will result will open new avenues for lending assistance in Indian Country.

V. GLOSSARY

Appraisal - a process designed to establish the value of specific property.

Conventional/Private Lending - financing provided by private lenders, usually banks.

CRA - Community Reinvestment Act.

Equity - the amount of ownership investment in a specific project after liabilities are deducted.

Fee Simple Title - the right of ownership to land without any restrictions.

Fannie Mae - formerly the Federal National Mortgage Association or FNMA, a federal government sponsored entity that purchases loans in the secondary market.

FHA 248 - Federal Housing Administration insured loan program for Native Americans.

Freddie Mac - Federal Home Loan Mortgage Company, also FHLMC, a federal government sponsored entity.

FmHA - Farmers Home Administration, U.S. Department of Agriculture, predecessor agency to RHS.

HAC - Housing Assistance Council.

HUD 184 - Office of Native American Programs, HUD, loan guarantee program for Native Americans.

IHA - Indian Housing Authority.

Individual Trust Land - land once owned by a Tribe, but which was allotted to an individual member of the Tribe; there are restrictions on the use and transferability of the land.

Inter-Tribal Housing Authority - an Indian Housing Authority that serves several Tribes.

Low Income - for federal housing programs, a household income of 80 percent or less of area median by household size; HUD data is used to calculate low income limits.

Market Rate Mortgage - a mortgage at an unsubsidized rate of interest.

Moderate Income - for HUD programs, a household income of 120 percent of area median by household size; for RHS programs, a household income of $5,500 over the low income threshold.

MOU - Memorandum of Understanding.

Portfolio Loan - a loan retained by a lender rather than selling it on the secondary market to raise capital.

RECD - Rural Economic and Community Development, an agency of the U. S. Department of Agriculture; RECD staff in state and local offices administer Rural Housing Service programs.

RHS - Rural Housing Service, successor to FmHA, U.S. Department of Agriculture.

Secondary Market - investors, such as Fannie Mae, the Government National Mortgage Association (GNMA or Ginnie Mae), the Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac), that will purchase loans from the originating lender, thereby providing capital to the lender.

Seller/servicer, Fannie Mae certified - an entity that originates loans and is authorized to sell them to Fannie Mae directly rather than through an intermediary.

Subsidy - a grant or below-market-rate loan from a governmental entity.

Tribal Trust Land - land held in trust by the United States for the use of a specific Tribe; there are restrictions on the use and transferability of the land.

Underwriting - the process by which a lender assesses the risk of making a specific loan.
Very Low Income - for federal housing programs, a household income of 50 percent of area median by household size; HUD data is used to calculate very low income limits.

VI. ENDNOTES

1. National Commission on American Indian, Alaska Native, and Native Hawaiian Housing, "Supplemental Report and Native American Housing Improvements Legislative Initiative," Washington, DC, September 1993.

2. For an in depth view of these needs see Carla Herbig, Nancy Kay, et al., *Assessment of American Indian Housing Needs and Programs: Final Report,* The Urban Institute, forthcoming.

3. Ibid., p. 159.

4. In a November 1995 telephone conversation with HUD Office of Native American Programs staff, it was reported that more than five hundred 184 loan applications were in the pipeline.

5. Department of Land Management Loan Program report, July 1, 1995.

6. Ibid, p. 1.

7. "Rural Housing Native American Pilot Program Interim Agreement," December 6, 1995.

8. "Building Indian Housing in Underserved Areas" is a project of the Housing Assistance Council begun in 1991 and funded by the Northwest Area Foundation. An early report of the project prepared for HUD was published in December 1993, entitled *Demonstration of "Building Indian Housing in Underserved Areas": An Evaluation and Recommendations.*