Lending on Native American Lands

A Guide for Rural Development Staff

USDA Rural Development

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LENDING ON NATIVE AMERICAN LANDS:

A GUIDE FOR RURAL DEVELOPMENT STAFF

June 2006

Prepared under contract with Rural Development, USDA, by the

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This guide was prepared by the Housing Assistance Council (HAC) under Contract No. 4331ME30054 with Rural Development, U.S. Department of Agriculture. The principal author is Susan Peck, HAC's Western Regional Director, working in close collaboration with David Saffert, National Native American Coordinator, Rural Development, USDA. Since this guide is an update of one published in 1996, it was important to assess what should be retained and what new types of information would be useful. An informal advisory committee was assembled, composed of Rural Development State Office and field office staff with experience in working with Native American communities on housing issues, as well as National Office Single Family Housing Processing Division staff. This committee met many times by conference call and provided input in many areas. From time to time, other National Office staff were called upon to help resolve certain issues, particularly with regard to the flow charts and notes. There are many people who made this publication possible. Rather than risk leaving out anyone's name, we offer thanks to all of you. In addition, Leslie R. Strauss, HAC's Communications Director, and Janice Clark, HAC's Communications Associate, provided invaluable assistance in editing and formatting the guide. Technology advice provided by RHS staff is also appreciated.

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An online version of this guide may be found at http://www.rurdev.usda.gov. Persons not employed by Rural Development who are interested in obtaining additional hard copies of this guide should contact the nearest Rural Development office for ordering information. Rural Development offices may be located at http://www.rurdev.usda.gov/recd_map.html.

United States Department of Agriculture
Rural Development

June 2006

TO: Rural Development Staff

It is my pleasure to provide this "update" of a guide entitled *Lending on Native American Lands: A Guide for Rural Development Staff*, first published in 1996. What began as an update of Instruction citations and some links to programs and documents that now complement our own, then grew in purpose and, I believe, usefulness. Our contractor, the Housing Assistance Council (HAC), working closely with the National Native American Coordinator, David Saffert, engaged an advisory committee of National Office and field staff with considerable experience in lending on Native American lands, and their goal became to create a *process* – actually several – that reflects the unique issues arising in extending our loan and grant authority to restricted lands and how these issues may be addressed.

In 1996, a limited number of field staff had experience in lending on Native American lands, so the *Guide* provided an historical and legal context from which to gain better understanding of the many differences encountered when approaching lending on these lands versus fee simple lands. It also provided guidance on working with tribes, providing outreach, and gaining sensitivity to the often unique conditions founds in Indian country. The updated *Guide* continues in this vein, but has added chapters that specifically address issues that were less resolved in 1996. Many of these chapters reflect policy considerations and collaborations with many new partners in which we take great pride. Rural Development has become a *player* in addressing the considerable housing, infrastructure and community facility needs of Indian country, and we are committed to expanding this effort and our impact.

This *Guide* does not constitute an official "instruction," but it does incorporate the best thinking to date on making our lending in Indian country effective and timely. It is recognized that there will be some differences in how Rural Development staff in their States need to proceed, and that many of the *process* steps are not linear, but concurrent – and they may even work better when reversed in order. Moreover, many of the suggestions in the text are just that, suggestions for gaining understanding, providing outreach, making lasting contacts. They're not mandatory, but they do reflect considerable thinking and experience that may benefit each of you.

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For those of you new to lending in Indian country, it is my intention that this *Guide* will ease your initiation. For those of you with experience, thank you for your many contributions to understanding the differences and encouraging our Agency to adapt and change in so many positive ways. Rural Development is committed to making our programs work on Native American lands where the need is substantial, , and is clearly an important part of our Five Star Commitment to Expand Rural Minority Homeownership. As was said in 1996, this *Guide* is an "evolving document." In our efforts to expand our service to Native Americans, we will continue to learn how to do our work better and what we learn will be reflected in our instructions, handbooks and guidance. I am asking each of you to read this publication carefully and to make suggestions for improving our service to Indian country.

Russell T. Davis

Russell T. Davis
Administrator
Housing & Community Facilities Programs

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INTRODUCTION

In September 1996, the Rural Development (RD) Office of the U.S. Department of Agriculture (USDA) published *Lending on Native American Lands: A Guide for Rural Development Staff*, which was prepared by the Housing Assistance Council (HAC), with assistance from the National American Indian Housing Council (NAIHC). The *Guide* was intended to help field staff to "expand [the Agency's] role in financing of needed housing on Native American lands." The 1996 *Guide* provided basic knowledge of Native American history and laws, guided users on working with the over 560 federally recognized tribes in culturally respectful ways, and cited RHS policy and approaches to addressing the complexity of Native American land tenure and related issues. Additionally, the *Guide* related the culmination of months of internal Agency "task force" discussions on "actions" that might improve USDA's housing assistance efforts with its Native American customers.

Much has changed since the *Guide* was written and published, both internally at USDA Rural Housing Service and Rural Development, and in Indian country, and these changes are key to this update. Important, too, is the Agency's intention that the updated *Guide* serve as a "how-to" resource for field staff. Finally, it is hoped that this publication stimulates discussion among all staff on how USDA can better serve Native Americans.

This version of the *Guide* provides live links from the text to items in the Appendices and the Attachments, requiring just a click on the highlighted blue link. The reader can return to the text from the linked appendix or attachment item simply by clicking on the "back" button on the "navigation" toolbar in Adobe Acrobat, available on most current versions.

Then and Now …

Data on Native American populations, including housing needs, is often hard to track due to the diversity and remoteness of tribal lands and communities, a recognized undercounting of the Native American population, and a "homeless" population that often defies counting. Families often take in temporarily or long-term homeless relatives and non-relatives, often in already overcrowded housing. According to 2000 Census data, the rate of overcrowding on Native American lands is three times the national rate. The rate of inadequate plumbing is 10 times the national level, and more than 18 percent of homeowners and nearly 32 percent of renters on Native American lands are cost burdened – that is, they pay more than the national standard of 30 percent of their household income for housing.

Though these housing conditions have improved since earlier censuses, the needs are still great. Rural Development has steadily improved its service to Native Americans, making 1,213 direct Section 502 loans and 1,396 Section 504 loans and grants from Fiscal Years 2000 through 2004. (This five-year period was used since it is the time in which the Agency was able to distinguish loans made to Native Americans on trust or allotted lands from those made on fee simple lands.) Of the loans made, just 196, or 16 percent, of the Section 502 loans were made to Native Americans living on restricted lands, and 484, or 34 percent, of the Section 504 loans and grants were for properties on restricted lands. Clearly there is work to be done to improve loan making in these challenging areas.

Agency outreach and several changes in program administration have contributed to the overall improvement of service to Native Americans, and new external resources are contributing to a brighter outlook for housing improvement for families and individuals on Native American lands. Probably the most significant advance in Native American housing delivery has been the implementation of the Indian Housing Block Grant resulting from passage of the Native American Housing Assistance and Self-Determination Act of 1996, or NAHASDA (see chapter on History and Law for more information). This legislation changed the way Department of Housing and Urban Development (HUD) funds were allocated to tribes and broadened the way tribes and their *tribally designated housing entities* (TDHEs) could use the funds. Though the legislation required that these funds be used to maintain existing HUD-financed housing, it also opened the door to such new uses as down payment and closing cost assistance, which are being applied to Section 502 loans in a number of tribal communities.

NAHASDA also created a program, referred to as Title VI, that enables TDHEs to use their block grant award to leverage additional funds. Moreover, the HUD Section 184 loan guarantee program, enacted earlier, is making an impact on Native American homeownership on both fee simple land and restricted lands. (Appendix 1 contains a chart comparing Section 502 loans to other mortgage loans.)

In addition to the HUD resources, there have been several other external contributors to changes in housing delivery on Native American lands. Fannie Mae, in particular, has endeavored to make its products accessible to Native Americans on restricted lands, further opening conventional financing where it had not existed before. Many more tribes now have casino revenues that, in some instances, have been applied to housing loan and grant funds. Community Development Financial Institutions (CDFIs) have been created by some tribal entities, and a few are providing direct mortgage assistance. And there is an emerging Native American nonprofit housing development industry to complement the work of the more traditional Indian housing authorities; in fact, some of these nonprofits are subsidiaries or otherwise outgrowths of their Indian housing authorities.

One more contributor to the improved outlook for Native American housing is the growing focus on credit counseling, financial literacy, and homebuyer education. Poor credit (along with low incomes and rampant predatory lending) presents a significant barrier to housing improvement, particularly in the purchase of new or existing housing. Native American organizations and housing industry supporters have joined forces to develop culturally appropriate curricula, and many tribal housing entities now require families to participate in homebuyer education or related programs prior to obtaining housing assistance. This emphasis on preparing families for mortgage assistance and for the responsibilities of homeownership , in the long run, will bring to RD and other lenders borrowers who not only are in need of housing assistance, but ready to meet the obligations of that assistance.

USDA's Programmatic and Policy Makeover

In 1996, much of the Agency's thinking about improving Native American access to its housing programs was incorporated in Administrative Notices and less formal correspondence. With the revisions to the single-family housing programs now found in the 3550 regulations and accompanying handbooks, many of these earlier statements or

interpretations impacting loans and grants on Native American lands are now incorporated into the Agency's formal regulatory processes. They have become part of Rural Development's guidance and character. The agency's interaction with other major federal players in Indian housing assistance – HUD, the Bureau of Indian Affairs, the Department of Veterans Affairs – also has been incorporated in this guidance.

Official recognition of the differences in addressing Native American housing needs has become the norm. This certainly does not mean that all the questions have been answered, all problems are resolved, and everyone is following the same path. This updated *Guide*, in fact, will highlight different approaches, and issues that still need thought and resolution. But for field staff there is a degree of certainty that did not exist in 1996. Elevating the comfort level of field staff working in Indian country is a goal of this update. Seeking creative input from staff on addressing unresolved issues or uncovering better practices is another important goal.

In discussions about what the update should include and how it should be presented, one of the many questions addressed was whether it should include multi-family housing. Another key question was whether certain populations should be addressed, such as the indigenous village governments and Native Corporations of Alaska, several of the Native American communities in Oklahoma, and some areas of the East Coast and the Northeast, which either do not share the same forms of land tenure and, therefore, protections that most of the more than 560 federally recognized tribes do, or whose formal relationship was developed with the colonial government prior to the founding of the United States. As USDA Rural Development activity continues to evolve in these states and communities, the *Guide* may revisit their inclusion. For this version, it was decided that the *Guide* should remain focused on *single-family* housing, and on *restricted Native American lands* where most of the lending issues arise.

What's Covered

This updated *Guide* includes much of the background information provided in the original *Guide*, and takes a giant step forward by introducing processing flow charts that attempt to capture the experiences of field staff, as well as the regulatory imperatives of the agency. Each of the four mortgage loan processing charts – for *direct loans, guaranteed loans, loan closing, and servicing* – is accompanied by narrative notes. Finally, there are many appendices containing information that supports both the background and the narrative and flow chart sections of the *Guide*.

Recognizing current technology, the *Guide* can be accessed electronically on the USDA Rural Development website, http://www.rurdev.usda.gov/rd/aian. This is a new page titled "American Indian and Alaska Native Program Information." Field staff are encouraged to print the *Guide* on three-holed paper and place in a binder, allowing for the insertion of additional relevant information, such as Administrative Notices, State Office guidelines, checklists, and whatever other materials make the *Guide* both meaningful and useful.

It is hoped that in reading through this *Guide* and in using it weekly, monthly, or periodically, staff will *reflect on and communicate thoughts on* how USDA Rural Development can better serve the many families and individuals on Native American lands who clearly would benefit from federal housing assistance. It would be helpful to

share your thoughts with the appropriate Program Director in your State Office and the Native American Coordinator, if they are different people. Recommendations/comments should then be forwarded to the National Native American Coordinator. (Appendix 2 provides contact information for all State Native American Coordinators and the National Native American Coordinator.)

Taking Advice from the Field

This updated *Guide* is the culmination of work by a considerable number of Rural Development National Office and Rural Development State Office and field staff. An informal advisory committee was assembled and met by conference call over an eighteen-month period, reviewing the initial *Guide* and making recommendations for what would be most useful in an update. Considerable telephone time was devoted to the flow charts and notes, but the committee also focused on the text. In addition, specific issues were reviewed by National Office staff for clarification, consideration of changes, and some general brainstorming. The advisory committee reviewed several drafts and the final draft moved through a National Office clearance process. The contributions of so many people are sincerely appreciated.

HISTORY AND LAW

NOTE: This section is reprinted in much the way it was originally published in the 1996 *Guide*, though the section on "Self-Determination, 1975-present" has been expanded and some of the concluding remarks have been moved to the beginning. Principal author of the 1996 text was Juliet King who, at the time, worked for the National American Indian Housing Council (NAIHC).

Learning about culture, religion, and historic forces that mold a particular group of people can help guide your contacts and outreach activities with that group. More specifically, an understanding and appreciation of a tribe's historical context should lead to more productive ways of working with the tribe.

Perceived tension or distrust on the part of tribal members may have little to do with the Rural Development field staff currently discussing homeownership lending or the extent of repair work needed on a prospective applicant's home. The tension or distrust may have a lot to do with the historical relationship of the tribe to the federal government, and the effect of past governmental policies on the political, economic, and social life of the applicant's tribe.

For example, past policies regarding farm loans have contributed to the loss of Native American lands. Even though current policy with regard to the housing programs should not result in land loss, history is not easily forgotten – or forgiven. Knowing something about the history of Native American people in general, and the particular tribe more specifically, should help Rural Development field staff address potential problems.

With over 560 federally recognized Native American reservations, communities, and Alaskan Native villages throughout the United States, the search for knowledge and understanding of specific Native communities can be a daunting task, but there are resources available that can capture this information in a reasonable format (see Appendix 3 for tribal information resources). As you approach an effective working relationship with tribal communities it is important to recognize that each community has its own political, economic, and social institutions, shaped by the environment, tradition, and history of the tribe.

Tribal Sovereignty and the Federal-Tribal Relationship

The concept of independent tribal nations within the United States is often very hard to comprehend. It is important to understand that tribes are *not* municipal arms of state or federal governments, but are independent sovereigns with the authority to exercise control over their affairs. The federal government has recognized the sovereignty of tribes through treaties, the U.S. Constitution, and many congressional acts, and it has been upheld in United States law. The ability of tribes to exercise their sovereign powers, however, is strictly limited by the actions of Congress. Congress holds absolute (plenary) authority, and has virtually unlimited power to regulate tribal affairs.

The political status of tribes within the United States, and the relationship between tribes and the federal government, was first defined in a series of three landmark legal cases, known as the "Marshall trilogy." In these cases, the U.S. Supreme Court recognized that tribes were distinct political communities with the right to self-government:

> The very fact of repeated treaties with [tribes] recognizes [their title to self government]: and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence – its right to self-government, by associating with a stronger . . . A weak state . . . may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state.
> (*Worcester v. Georgia,* 1832)

The Court also ruled, however, that, once incorporated into the geographical boundaries of the United States, tribes could no longer be considered foreign nations, but were "domestic dependent Nations," dependent upon the United States for their protection:

> [Tribes] are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.
> (*Cherokee Nation v. Georgia,* 1831)

In upholding both the independence of tribal communities and their subordination to the United States, the U.S. Supreme Court defined the principal legal doctrines that govern the status of tribes and their relationship to the federal government today:

> [O]ur cases recognize that the Indian tribes have not given up their full sovereignty . . . The sovereignty that the Indian tribes retain is of a unique and limited character . . . until Congress acts, the tribes retain their existing sovereign powers.
> (*United States v. Wheeler,* 1978)

The Structure and Powers of Tribal Governments

During the late nineteenth century, under the federal government's policy of assimilation, many traditional tribal institutions were destroyed. In many instances, tribes have had to create new government institutions. Today, each tribal community has its own structure of government. Many contemporary tribal governments were first created under the guidelines established in the Indian Reorganization Act of 1934, the Oklahoma Indian Welfare Act of 1936, and the Alaskan Reorganization Act of 1936. Under these acts tribes established a representative form of government through the adoption of tribal constitutions and by-laws. The organization of tribal government may take various forms, however. For example, under a general council system, the decisionmaking authority rests with all members of the tribe. In others, tribal officials may be appointed by traditional leaders, rather than elected.

As sovereign nations, tribes have the authority to control their lands and resources, and to regulate their internal affairs. This authority comes from the inherent rights of sovereignty, and is not granted to tribes by Congress. Included among the powers tribal governments can exercise are the abilities:

a) to define membership – tribes use a variety of methods to determine membership, including blood quantum, descendence, or residency requirements; they also have the authority to expel members;

b) to provide tribal services – tribes provide a variety of social and economic services, such as education, housing, and health care, to those living in their jurisdictions;
c) to make laws, develop codes, and adjudicate legal disputes;
d) to regulate the physical environment – tribes have the authority to control their communities' physical environment through taxation, zoning, and regulation; and
e) to regulate political, social, and economic activities on tribal lands, through taxation, zoning, and regulation.

The provision of housing is a responsibility of the tribal government. In 1961, tribes became able to access and utilize public housing programs run by the Department of Housing and Urban Development (HUD). Through tribal ordinances, tribes established Indian housing authorities (IHAs) to operate and administer these programs. In Oklahoma and Alaska, IHAs were established under state laws (this means that these IHAs serve not only tribal members, but also non-Indians).

IHAs are often the primary tribal housing providers, and the majority of housing units available for purchase or rent in many tribal communities are provided under the HUD-funded programs. There are currently 189 IHAs throughout the United States. Although created by tribes, IHAs are established as independent corporations with separate boards of directors and bylaws. Therefore, while IHAs are under the authority and oversight of the tribal government, they may operate quite independently.

It is important to identify the tribal agencies that are responsible for housing, and to understand their particular roles. In many cases, all housing programs are handled by the IHA; in others, tribes have established other departments.

Many tribes have developed their own codes, ordinances, and regulations governing housing. Rural Development staff need to be familiar with tribal laws concerning priority of liens, foreclosure, and eviction procedures, as well as land issues. Tribal laws and regulations will impact how Rural Development programs are implemented. In general, issues involving tribal trust and individual trust lands will fall under the jurisdiction of the tribal courts.

Variations in Jurisdictional Authority

One of the most complex and confusing issues faced today is the question of who has jurisdictional authority over tribal affairs. Jurisdictional control depends not only upon whether the subject matter is a criminal, civil, or regulatory issue, but on the particular relationship the tribe has with both the relevant state government and the federal government. Until the 1950s, jurisdictional authority over Indian lands was held largely by either a tribe or the federal government. In 1885, for example, the federal government assumed full jurisdiction over criminal offenses occurring in Native American communities under the Major Crimes Act. In 1953, with the passage of Public Law 83-280, Congress relinquished some of its authority over Indian lands to the states. Under this statute, a number of states, including California, Nebraska, and Minnesota, were allowed to impose state laws over tribal affairs. Although the law was rescinded in 1968, and many states returned control to the federal government, some state governments still retain jurisdictional authority.

Developing projects effectively in Native American communities requires a knowledge of the structure and organization of the tribal government, the roles and responsibilities of each institution, and a familiarity with tribal laws, codes, and regulations. In addition, an understanding of jurisdictional control is important.

An "Evolving" Federal Indian Policy

Congress has the plenary power to regulate all aspects of tribal affairs. Over the past two centuries, Congress has used this authority to enact policies that have both reaffirmed the sovereignty of tribes and extinguished it. Federal policy, therefore, has impacted each Native American community dramatically. An understanding of the history of the community is essential to developing an effective working relationship with the tribe.

Historians have identified five major periods in federal Indian policy: (1) removal and the establishment of the reservation system, (2) assimilation, (3) the Indian New Deal, (4) termination and relocation, and (5) self-determination.

Removal and the Establishment of the Reservation System (1830-1880)

One of the earliest pieces of federal legislation was the Indian Removal Act of 1830, which provided that lands held by tribes in the East could be exchanged for lands west of the Mississippi River. Under the Act, many tribal communities were uprooted and relocated to "Indian territory" – the area acquired under the Louisiana Purchase of 1803. The policy of moving Indians westward, however, was short lived, as the United States continued to expand its land base. The annexation of Texas in 1845, the land cessions from Mexico under the Treaty of Guadalupe Hidalgo in 1848, and the acquisition of California and the Northwest by 1850 meant increasing pressures on the area set aside for Native Americans. As settlers moved westward, the demand to open up these lands to homesteading by non-Indian people increased. By the 1860s, the notion of an "Indian territory" had been replaced by a "reservation policy," whereby Native American communities were forcibly relocated to small geographical areas – sometimes hundreds of miles away from their original lands. By 1891, the majority of the Indian population was confined to reservations, villages, or rancherias.

Assimilation and the Reservation Period (1880-1934)

Through the regulation and administration of reservation areas, Congress initiated a series of policies designed to incorporate tribal people into mainstream society. The Secretary of the Interior, Carl Schurz, summarized the direction of federal policy during this period:

> The policy . . . is the following; . . . to acquaint the Indians with the requirements of civilized life by education; to introduce among them various kinds of work . . . ; to inspire them with a sense of responsibility through the ownership of private property . . . ; to dissolve, by gradual steps, their tribal cohesion, and merge them in the body politic . . . (November 1880)

One of the primary means of achieving this goal was the establishment of day and boarding schools whose purpose was to "convert [Indians] into American citizens, and put within their reach the blessings which the rest of us enjoy." New institutions, such as

the Indian agencies, the Indian police, and the Court of Indian Offenses, were established to replace traditional tribal structures. In many cases, the practice of traditions and the use of tribal languages were forbidden. The administrative oversight responsibilities of the BIA increased.

During this period, the federal government also initiated the breakup of tribal land holdings. Under the General Allotment (Dawes) Act of 1887, tribal lands were divided into individual allotments and distributed to tribal members. These allotments were to be held in trust for 25 years, at which time they would revert to the individuals as fee simple lands. Any surplus lands could be sold off to non-Indians. Subsequent revisions of the Act allowed for the leasing of allotted lands by the BIA, the creation of townships, and the conversion to fee simple status of an allotment before the end of the trust period if the individual was deemed "competent." As a result of the allotment process, by 1934 tribes had lost control of 90 million acres, two-thirds of the 1887 level. Sixty million acres of these lands were sold to non-Indians as "surplus."

The Indian New Deal (1934-1953)

The passage of the Indian Reorganization Act (IRA) in 1934 signaled a major reversal in federal Indian policy. Through this Act and subsequent legislation, the federal government attempted to strengthen the role of the tribal institutions that it had previously sought to undermine. Under the IRA, tribes were encouraged to organize tribal governments through the adoption of a constitution and bylaws, and to establish tribal courts. The IRA also repealed the Dawes Act, thereby ending the policy of allotment. Funds were made available for the purchase of lands, to provide educational loans, and to establish a revolving credit fund. Many of the benefits of these programs were never fully realized because, less than 20 years later, federal policy reversed direction once again.

Termination and Relocation (1953-1970)

During the 1950s, a number of federal measures were passed that attempted to reduce the status of tribal governments and extinguish the federal relationship with tribes. In 1953 the House of Representatives passed Resolution 108, the purpose of which was to remove federal responsibility to tribal communities, thereby terminating their legal and political status. Over 100 tribes were targeted for termination. Fortunately, several tribes that were legally terminated have been able to reverse this action. In addition to extinguishing tribal sovereignty, the Congress sought to encourage Native Americans to move off the reservations. In 1952, the BIA established Indian relocation centers in 12 major cities to provide job assistance and training to those who would leave the reservations. During this period, Congress also allowed states, for the first time, the opportunity to exercise criminal and civil jurisdictional control over reservations. As mentioned above, Public Law 83-280 allowed a number of states, including California, Minnesota, and Oregon, to enforce state laws on tribal lands. Although the statute was rescinded in 1968, a number of states still retain some jurisdictional control over tribal affairs.

Self-Determination (1975-present)

By the mid-1970s, federal Indian policy changed direction again. In 1970, President Nixon spoke of "self-determination without termination," where "the goal of any new national policy toward the Indian people" must be "to strengthen the Indian's sense of autonomy without threatening his sense of community."

Since the mid-1970s, a great deal of federal legislation has been passed that attempts to strengthen tribal autonomy and affirm tribal rights. The Indian Self-Determination and Educational Assistance Act (1975), for example, allowed tribes to take over many of the services previously provided by the BIA and the Indian Health Service; the American Indian Religious Freedom Act (1978) reinforced the right of Native Americans to practice traditional religions; the Tribally-Controlled Community College Assistance Act (1978) provided funding for the establishment of tribal colleges.

In 1988, the "Self-Governance Demonstration Project" was initiated, allowing tribes to design and implement their own programs without being subject to government regulations. Each year, the program is expanded to include more tribal communities. Appendix 4 includes a list of tribes (referred to as "638" tribes) currently participating in the "Self-Governance Demonstration Project." Through these actions, Congress has reaffirmed the sovereignty of tribal governments, and reversed many of the destructive policies of the past. Federal Indian policy, however, is not static, and continues to evolve with each new legislative session.

This is particularly true with the passage in 1996 of the Native American Housing Assistance and Self-Determination Act, referred to as NAHASDA. Prior to implementation of this Act, HUD's assistance to Indian housing authorities provided for the development and operation of both rental housing and Mutual Help housing, which enabled a family to make what were basically rental payments until it had paid down the cost of its house, at which time the home would be conveyed, along with a lease on the land, to the new homeowner. Until conveyance, however, the IHA would provide all maintenance, and development and operation of the housing followed HUD rules and regulations. NAHASDA separated Indian housing from the mother program, Public Housing, and provided tribally designated housing entities (TDHEs) with the authority to use an annual formula payment in new and creative ways, while maintaining housing previously developed with HUD funding. The Hawaiian Homelands Homeownership Act of 2000 provided similar authority to Native Hawaiians. These acts provided tribes with new flexibility – and some new tools – to address their housing needs.

Public Law 109-136, the Native American Housing Enhancement Act of 2005, intended to reduce certain barriers to effective use of the Native American Housing Block Grant under the NAHASDA legislation, specifically targeted programs operated by USDA. This legislation clarifies that USDA's housing programs must comply with the Indian Civil Rights Act of 1968 (providing exemptions to prior adherence to the Civil Rights Acts of 1964 and 1968) thereby easing the partnering of NAHASDA funding with Rural Development programs, such as Section 515. The legislation also made tribes directly eligible for HUD's "YouthBuild" program, which enables at risk youth to learn construction skills and actually build homes for sale.

Another indication of the federal government's acceptance of greater "self determination" for Native Americans is Executive Order 13175, "Consultation and Coordination with Indian Tribes," signed by President Clinton on November 6, 2000. This document required each federal agency to adopt a process for input from tribes as it develops policies that have tribal "implications." This Executive Order attempted to provide tribes with "maximum administrative discretion" with regard to federal statutes and regulations, and sought not to impose unnecessary regulatory compliance costs. Agencies were not to transmit proposed regulations to the Office of Management and Budget (OMB) without tribal consultation, and were to certify that proposed legislation transmitted to OMB met the requirements of the Executive Order with regard to tribal consultation. Though adoption and implementation of consultative processes has differed among agencies, the thrust of this presidential proclamation was to further recognize the unique status of tribes.

COORDINATION AND COMMUNICATION

This chapter, based on several chapters in the 1996 *Guide,* will cover the coordination opportunities (several of them new since 1996) among governmental entities including tribal government, as well as the challenges and opportunities for communicating with Native American communities in an attempt to make Rural Development's resources widely accessible.

Beginning With Coordination

Many departments of the federal government provide programs and services to tribal communities. Among them, the Bureau of Indian Affairs (BIA), within the Department of the Interior, is the principal agency responsible for tribal affairs, providing services in the areas of education, social services, economic development, and infrastructure development, as well as maintaining trust responsibility over land and resources. BIA's leasing and mortgage responsibilities are highlighted in the direct and guarantee mortgage loan processing directions provided in this *Guide.* In addition to BIA and USDA, many other federal departments – including Commerce, Education, Health and Human Services, Housing and Urban Development, Justice, Labor, Veterans Affairs, Treasury, and Transportation – offer programs or services, though only a limited number of them have a direct impact on housing development in Indian country. Developing a thorough understanding of specific program guidelines and procedures for relevant agencies and departments, and forging a productive relationship with these agencies, can improve RD's effectiveness in housing Native American communities.

Several Federal Agencies are Key to Housing Development and Rehab

Historically, in the area of Native American housing, the three most important federal agencies have been the Department of Housing and Urban Development (HUD), the BIA, and the Indian Health Service (IHS) of the Department of Health and Human Services. Until federal legislation in 1996 changed HUD's resource allocation and its relationship to its tribal constituency, HUD's primary role was oversight of housing it had funded, often the only housing available in tribal communities. The Native American Housing Assistance and Self-Determination Act of 1996, NAHASDA, created a "block grant" approach to federal Indian housing allocations, expanded the uses of federal funds, required comprehensive planning for housing assistance, and created an additional resource under Title VI of the Act to encourage private investment.

The BIA, as part of its trust responsibilities, has administrative oversight of all tribal and individual trust property and resources. In this capacity, the BIA must review and approve all land leases and sites involving trust lands. In addition to funding the Housing Improvement Program (HIP) for home repairs and some new construction, the BIA has been responsible for funding the construction and maintenance of roads in tribal communities.

The IHS is responsible for the provision and maintenance of sanitation facilities. It is also the primary provider of medical services to tribal populations.

In recent years, as tribes have gained greater control over their affairs, direct involvement in tribal projects by the BIA and IHS has declined. The role these agencies play in any

given housing project may be determined by the tribe, and certainly reflects the level of resources available to the respective agencies at any given time.

Agreements among these three agencies have evolved over time, and are intended to ensure that resources are effectively combined to develop housing projects. In recent years, formal agreements have been actively encouraged by USDA Rural Development and have included the "One Stop Center Mortgage Initiative" and a 2004 Memorandum of Understanding between USDA, HUD, VA and the BIA, both of which will be described later in this chapter.

The better the coordination among the federal agencies involved, the more smoothly a project may progress. It is important to inform the BIA and IHS about any housing that RD may finance, and to include these agencies in any planning meetings. This is as important for one single-family unit as it would be for a subdivision. BIA and IHS funding and technical assistance may be available for the project and, in certain instances, these agencies may perform the work. Since BIA and IHS funds are limited, other high priority projects may be competing for these few resources, so it is important to learn early in the housing planning process what the agencies can or cannot do. Specifically, the BIA will play a critical role in site selection approval, and both agencies may play roles in infrastructure development.

Though much of the BIA's role in the Rural Development process will be covered in other chapters and the flow charts, some summary information may be helpful. As part of its trust responsibility, the BIA has administrative oversight for tribal and individual trust and restricted lands. In this role, the BIA reviews, approves, and records all lease transactions and trust deeds. If the project is located on tribal or individual trust lands, the BIA must approve each lease (leases now generally run for 50 years). For verification of land ownership of tribal or individual trust lands, the BIA will also issue a title status report (TSR). Depending on the history of the site, this process has taken several weeks, months or even years to complete. It is anticipated that these delays will be reduced based on an "interim" policy approach issued as a memorandum to BIA regional offices on September 29, 2005, and covered in more detail in the Flow Charts and Notes following this *Guide's* text. (This Memorandum and the accompanying "Endorsement" are found in Attachment E.)" Private attorneys may be used to perform title searches on trust land, and some tribes perform their own title searches, but the most common approach is through the BIA, which has limited staff. For projects located on fee simple lands, the title search almost always will be completed by a private title company.

Before construction can begin, it is important to check with the tribe and the BIA on whether an environmental review and archaeological survey must be completed. The BIA and IHS may be able to provide funds and technical assistance for conducting these activities. Due to staff shortages, long waiting lists for these services may exist. The tribe, therefore, may decide to use other contractors instead. In the September 29, 2005 BIA Memorandum cited above, the agency reminded staff that another Federal agency's categorical exclusion checklist for a housing related project can be used as the environmental document fulfilling the NEPA requirements. RD staff should keep this in mind when collaborating with the BIA on a specific development.

Historically, too, the BIA and IHS provided much of the basic infrastructure for tribal communities. Today, tribal governments are no longer required to contract with these agencies for the construction of roads and water and sewer lines. If a tribe chooses to use outside contractors for these services, it is important to keep both the BIA and the IHS informed of the progress of the development to ensure that new infrastructure will be incorporated into the existing systems.

During the site approval process, obtaining written commitments from the BIA and IHS can help ensure that roads and water and sewer services will be available upon completion of the project. After construction both agencies, if appropriate, should be included in the final inspection process to ensure that all standards have been met. One obvious benefit of gaining assistance from these agencies in developing necessary infrastructure is the lower cost to the borrower; infrastructure cost savings may make it possible for a Native American borrower to achieve homeownership.

Much of the experience field staff has gained in leveraging the Section 502 program needs to be applied to the development and rehabilitation of housing on trust lands. Since Rural Development generally will not be the only entity financing the housing, it is important to remember that the other players may not be familiar with requirements of RD programs. Coordination and education of all the funding partners is essential. Early coordination and program education can begin as part of a community meeting, as well as scheduled training exchanges between partners. Later, when a specific project is being funded, RD staff may wish to hold a "pre-development" or "pre-rehabilitation" meeting. Bringing all the players to the table early in the development process should help reduce or avoid costly delays.

One Stop Mortgage Center Initiative

In October 2000, HUD and Treasury reported to then President Clinton on the results thus far of their combined effort, the "One Stop Mortgage Center Initiative in Indian Country," a response to an Executive Memorandum issued in 1998 calling for recommendations to "help streamline mortgage lending in Indian Country." Four major recommendations emerged from this joint effort: building national and local capacity to promote homeownership; improving homebuyer education and financial skills programs; streamlining the mortgage process; and increasing private sector involvement. Joining this effort were the Departments of Agriculture, Interior, and Veterans Affairs. Pilot programs were begun at the Navajo Nation (Arizona, New Mexico, and Utah) and the Oglala Sioux (Pine Ridge) Reservation (South Dakota). Some key documents emerged from this initiative:

- Model Tribal Lending Procedures for Lien Priority, Eviction and Foreclosure and Leasing – establishing minimum roles and responsibilities of a tribe with regard to federal agency lending on trust land;
- Model Lease – providing a template for a lease that is acceptable to all four participating federal agencies (HUD, USDA, VA, BIA); and
- Tribal Memorandum of Understanding – establishing a working relationship between a tribe and a federal lending agency and confirming the existence of certain standards and procedures for such items as foreclosures, evictions, and resales.

Fannie Mae joined with the participating federal agencies in accepting the key "model" documents in order to provide a secondary market for loans made on Native American lands that has requirements consistent with the government agencies. The model lease was adopted, with Fannie Mae creating a "Fannie Mae Rider to Residential Lease," which applies the model lease to conventional, non-government loans. It also adopted the model ordinance, and created a "Memorandum of Understanding" for the "purposes of conventional loans." Importantly, Fannie Mae eliminated any reference to a "limited waiver of sovereign immunity" that it had previously required, and provided for "mutual consent to the jurisdiction of specified courts, which normally is [sic] the Tribal courts."

The One Stop Mortgage Center Initiative documents are contained in Appendix 5. They are important in many respects: they represent a deliberate and in depth discussion among tribal governments, the federal government, and private sector bodies on how best to streamline the mortgage process; tools are offered to reduce duplication among funding agencies; they provide focus for tribes in developing or enhancing their mortgage response and legal procedures. Importantly, too, the Initiative and the procedures developed reconfirm tribal sovereignty. Moreover, the relationships developed through the Initiative process continue to address issues not specifically resolved earlier. For example, the Department of Interior has developed a new regulation on residential leases, which is expected to be published in final form with an accompanying handbook.

Other Efforts Key to Working Together

Positive implementation of the One Stop Mortgage Center Initiative has been a focus of the collaborating agencies. In May 2001, after concern was raised with the Bureau of Indian Affairs over inconsistent BIA field acceptance of the model residential lease, a memorandum was sent to all BIA Regional Directors affirming the agency's commitment to the Initiative and, therefore, to the lease. It was made clear that even though the lease is not a standard BIA form lease, as long as the lease provided is identical to the model residential lease, it is to be considered equivalent to the BIA approved lease form.

More recently, in September 2004 USDA, HUD, and Interior signed a Memorandum of Understanding (MOU; also in Appendix 6) to "establish a framework of partnering among the Agencies to improve assistance to American Indians and Alaska Natives in the development and operation of affordable housing on trust or restricted lands, reservations, and in approved service areas." Several of the "understandings" outlined in the MOU highlight the primary focus of moving to comprehensive development: basically, all partners working together through planning, access to data, and demonstration projects. For USDA and HUD, perhaps the most significant "understanding" was with regard to expediting Title Status Reports (TSRs) through the Bureau of Indian Affairs, setting a goal of 30 days for such reports and standardizing the process for timely updates when a tribe has cancelled individual leases for home sites.

Coordinating with the Tribe

No project can be facilitated without tribal government involvement. Coordination begins with the tribe, so this must be the first contact point for Rural Development staff.

Although federal agencies have certain financial and programmatic resources to offer, the allocation of these resources is directed by tribal governments and their agencies. For instance, although the BIA approves lease agreements, the tribal government determines the land assignments.

The 1996 *Guide* noted that most tribes conducted their housing programs generally through one agency, the tribe's housing authority, using one funding source – HUD – almost exclusively. To a far lesser degree, the BIA-financed Housing Improvement Program (HIP) attempted to fill a funding gap, mostly for home repairs for very low-income tribal members. Both resources were experiencing declining revenues at a time when housing needs, particularly reflected in waiting lists, were growing. There was little tribal agency exposure in 1996 to the housing assistance provided by Rural Development, and only a limited number of Native American individuals were directly benefiting from the agency's programs.

Improving Rural Development's record in lending to Native Americans became an important agency pursuit, and staff began addressing national and regional Native American conferences and other less formal gatherings, explaining program resources and developing important contacts with Native American organizations and other federal and private resource providers. This effort certainly spread recognition of agency resources underused in Indian country, and eventually led to participation in federal inter-agency working groups that resulted in the One Stop Mortgage Center Initiative. It is at the Rural Development local and state level, however, where *communicating with the Native American community* has resulted both in key relationships with tribal leaders and departments and in direct service to the individuals and families who most need Rural Development's housing resources.

Many of the "action items" under outreach and communication in the 1996 *Guide* spoke to the growing need for homebuyer education, and much will be said about this topic later, but several items addressed outreach and communication more directly, calling for:

- gathering specific information about each tribe in an RD office's service area;
- tracking outreach efforts as well as loan and grant making activity specifically on reservation land; and
- including reservation land housing as a "goal and/or target area" in each state's strategic plan.

Many of the recommended strategies for reaching out to tribes and communicating successfully with them and their individual members are still relevant today and are included once again to stimulate both action and discussion.

Some Ideas for Developing a Successful Outreach Program in Indian Country

Achieving a successful working relationship with any tribal organization requires an understanding and knowledge of that organization, as well as the people it represents. The reader will need to approach each tribe with the intention of learning as much about that particular tribe as possible. Learning, understanding, and communicating are cornerstones of achieving a relationship of mutual trust and respect. Many Rural Development local and state offices have collected information on the tribes in their

service areas, but where this information has not been obtained, there is a form in Appendix 7 that can be used to begin the research into governmental structures, culture, and religion. Though gathering this information is certainly not mandatory, having it will certainly help demystify the process of working with specific tribes.

Since every tribe and its institutions may be very different from every other, it is critically important that Rural Development staff learn how a specific tribe's government is structured. Prepare by doing some research. In addition to the structure, find out what the leaders' titles are, and what is the protocol for contact. Does the tribe have a newspaper or newsletter? If so, it would be helpful to obtain a subscription. Many tribes have their own websites that may provide a wealth of information including history, culture, geography, government structure, economic opportunities, housing, health, education, and a calendar of events.

The first stop for any Rural Development staff member seeking to establish contact with a particular tribe is the tribal government office. If you do not have the appropriate tribal contact names, a call to the tribal office will inform you about who is in charge and which tribal entities should be approached to explain Agency resources, as well as to learn more about the tribe, its requirements and procedures for development, and what resources might be coordinated (infrastructure, roads, etc.).

Tribal governments, of course, have no authority over Rural Development loan or grant making, yet if something goes wrong in the process, and if the tribal member applicant is unhappy, it is not uncommon for redress to be sought in the Tribal Council chambers. Knowing this, Rural Development staff should make every effort to explain program requirements and procedures to the tribe's leadership. This may not avoid being called before the Tribal Council regarding a tribal member's complaint, but at least the appropriate contacts will have been made.

Establishing contact with the tribe's housing authority and Housing Improvement Program (HIP) office are ways to learn about housing needs and what currently is being done to address those needs. Under the NAHASDA legislation, each participating tribe must prepare a housing plan that not only will provide key housing information to RD staff, but *should include mention of RD programs as a resource to the tribe*. There may also be a tribal housing office, separate from these other entities, which should be contacted, and a growing number of Native American communities now receive assistance from a housing nonprofit development entity, including some that have been spun off by housing authorities themselves. Any of these entities might refer prospective applicants, or might have newsletters in which to advertise the Agency's programs. The tribe itself, or one or more of these entities, may be able to designate someone to act as liaison to prospective applicants. Finding a tribal liaison might aid in minimizing cultural or language barriers that could hinder the provision of appropriate RD housing assistance.

The most effective outreach is done in person. Tribes may hold regular or sporadic meetings in various districts of their reservations, and a request could be made to be a guest speaker. Some Rural Development staff have set up booths at tribal events, thereby meeting many people at once. It might be useful to ask a tribal member to sit with you at the booth. Asking the tribe or one of its entities for space in which to hold on-reservation office hours is especially effective. Such placement of RD staff is encouraged in section 2501(g) of the Food, Agriculture, Conservation and Trade Act of 1990, implemented in Departmental Regulation 1340-2. For people living in remote areas, with limited or no experience in obtaining housing assistance through the federal government, travel to the distant Rural Development office may be both a financial and an emotional burden. Help relieve those burdens by coming to Native American communities.

Good communication leads to collaboration. The New Mexico Tribal Homeownership Coalition was founded in 1999 in response to the new opportunities presented by the NAHASDA Indian Housing Block Grant, and the challenges of making this new approach to funding and development work effectively. In an article in the Spring 2004 issue of *Rural Voices*, the quarterly magazine of the Housing Assistance Council, Eric Schmeider (USDA State Office, New Mexico) and Deborah Webster (Enterprise Foundation) explain how the Coalition came about and, as importantly, how it functions on an ad hoc basis to streamline the mortgage process and to address other barriers to homeownership. Different members host monthly meetings, and technical assistance and training is offered by member volunteers.[1]

More recently, in South Dakota, the Sisseton-Wahpeton Oyate tribe, USDA Rural Development, Dacotah Bank, and Fannie Mae celebrated the signing of a Memorandum of Understanding allowing for the purchase of homes on the Lake Traverse Reservation under the Section 502 guarantee program, and the provision of home buyer education and credit counseling through a nonprofit partner, Homes Are Possible, Inc. The 502 guarantee program has suffered a slow start in Indian country, but this collaboration in South Dakota seeks to reduce barriers experienced elsewhere, and has brought the tribe in as a full partner.

Native American newspapers are an important resource for on-reservation people. They should be read by Rural Development staff and used as a vehicle for advertising the RD programs, informational meetings, and office hours. Requesting time on a local Native American radio station is another useful form of outreach, particularly if a tribal member participates in the presentation.

[1] This issue of *Rural Voices* magazine is available on HAC's website at http://www.ruralhome.org/manager/uploads/VoicesSpring2004.pdf. Other notable examples of coalitions, working groups, and collaborations include the Wabanaki Working Group, Maine; the Montana Native American Lenders Task Force; the Rural Housing Loan Partnership Initiative, Utah; and the North Dakota Partnership, among others. For more information about any of these, contact the RD State Native American Coordinator (see Appendix 2).

Some Common Barriers to Communication

For some Native Americans, language may be a barrier to good communication between agency staff and the consumer. Not all Native Americans, particularly the elderly, are comfortable relying on English language skills. For many years, Native Americans attending BIA-sponsored or religious schools were forbidden to speak their traditional languages. There is a resurgence in the learning of these languages and, consequently, there are Native Americans fluent in their traditional language as well as in English. Agency staff may want to seek their assistance in conducting interviews with applicants who feel more comfortable with their traditional language. This would enhance the government's ability to assess the needs of the RD customer and to convey clearly program requirements and responsibilities.

Mistrust is a common barrier, too. Misrepresentations and broken promises represent much of the history of United States government dealings with Native Americans. Since these dealings have had a profound effect on the cultural and economic well being of Native American peoples, they are not easily forgotten even when a well-meaning Rural Development staff member shows up on a reservation offering possible housing finance opportunities. Keeping this in mind might help agency staff keep in perspective what may seem like reluctance on the part of prospective Native American applicants to follow the process through to completion.

Another barrier may be the perceived conflict between the extremes of poverty and the poor housing found in Indian country, and federal program requirements that require homes to be "brought up to code." For example, many Native Americans seeking Rural Development assistance live in housing of excessively poor quality. Their limited personal finances and the minimal housing assistance available in Indian country have contributed to dilapidated housing and health and safety hazards that may not be common in other parts of rural America. Nevertheless, these housing units are "home" to their occupants.

Personal views may also come into play when reviewing credit information. For example, some lower-income Native American households may purchase a new vehicle rather than a used one. For Rural Development staff, this may seem like an extravagance, and not a

Rural Development initially addressed health and safety hazards in the Section 504 home repair program through AN 2935, which provided guidance on the definition of "major" health and safety hazards, noting that assistance should not be denied "just because all of the health and safety hazards cannot be removed." It also said that implementation of FmHA Instruction 1944-J, specifically 1944.453(b), often varies among county and State offices, and is "influenced by one's own background and training." The intention of the AN was to provide consistency in the determination of what is "major." HB-1-3550, paragraph 12.5 (C) continues in this vein, noting that Section 504 loans or grant funds do not require that the property be "brought to Agency development standards or thermal performance standards, nor must all of the existing hazards be removed, provided the property does not continue to have major health or safety hazards after the planned repairs are made." This issue is highlighted here as its resolution was a direct response by the Agency to rejections of Section 504 loan and grant applications in Indian country, and recognition that with or without the much needed repair work, these units would remain home to Native American families.

good economic decision for a family in need of improving its housing situation, particularly if repayment exceeds the allowable debt ratio. Yet new vehicles may be the most reliable in remote areas with poor road conditions, and with no local car dealers or mechanics carrying necessary parts. Using common sense is a requirement of any lender, but foisting personal biases on borrowers clearly is not.

Some Tips for Overcoming Communication Barriers

There are no simple answers, but attempting to learn as much as possible about tribal history and customs is a good beginning. For example, it is important to recognize that mortgage financing is a relatively new concept to many tribes. In the recent past, unless a Native American family built with its own personal resources, or had a home passed down from a relative, "homeownership" was sought mainly under the HUD-financed "Mutual Help" program. This program continues to operate like a rental program until all payments are made. This is a very different concept than conventional or government-sponsored mortgage financing, and may not be readily understood. Moreover, many Native Americans in rural communities when seeking homeownership are not looking for a tax break, appreciation, or a way to build equity. In this instance, housing is viewed not as a commodity, but as shelter and a place within which to carry on tribal traditions. Therefore, it may be challenging to find a culturally appropriate way in which to convey the intricacies of mortgage finance.[2]

Finding a tribal liaison to help in this effort can be beneficial. Keeping the liaison well informed of actions affecting applicants is important, too. Native American loan and grant packagers may use a release form signed by each applicant that requests copies of all correspondence and documents relating to the Rural Development application through loan closing be provided to the packager. An example of such a form used by Oti Kaga, Inc., a nonprofit housing development corporation serving the Cheyenne River Sioux Tribe, S.D., is found in Appendix 8. In this way, should a family receive a letter of rejection, or a request for further information, the packager or other tribal liaison is ready to suggest options and help the family move forward. Some Rural Development offices send copies by fax to speed packager assistance to applicant families.

A tribal liaison may be particularly helpful in preparing Rural Development staff for a presentation before a Tribal Council, or in other discussions or negotiations. The liaison might instruct the Rural Development staff that in discussing business matters with a specific tribe's leadership, the business matter may appear to be an indirect part of the conversation rather than its focus. This way of conducting business should not be taken as a sign of disinterest or unimportance, but may be a customary approach for that particular tribe. In other instances, business discussions may proceed in much the same way as in other rural communities. This guide cannot provide generalizations that would fully prepare Rural Development staff for working with Native American individuals or their governments. The best approach is to seek information about the specific tribe with which you will be working and to maintain an open mind.

[2] "Designing and Operating Homeownership Programs on Tribal Lands," a publication of the New Mexico Tribal Homeownership Coalition, 2003, explores the roles of various entities in understanding and truly explaining the mortgage process to Native Americans who may never have had experience in this process, and cannot rely on the experiences of family and friends. Contact Deborah Webster, Enterprise Foundation, dwebster@enterprisefoundation.org, for more information about this publication.

USDA's Natural Resources and Conservation Service provides a cultural sensitivity training program called "Working Effectively with American Indians." RD staff may participate in these sessions. For information on their scheduling, go to http://www.nedc.nrcs.usda.gov/catalog/workwithamerind.html. Tribes in your state may also offer "trainers" for small or large meetings of RD staff.

Strategic Planning and Consultation

The Federal Agriculture Improvement and Reform Act of 1996 (the Farm Bill) established requirements for each Rural Development State Director to take the lead in developing a strategic rural development plan, which would include a plan for each federally recognized Indian tribe within each state. Each plan would be the result of "extensive consultation, coordination, and collaboration" with both public and private partners. Though the initial five-year plans expired in 2001, the legal requirement continues, and there is a "Long Range Plan 2000-2005" for the Rural Development Mission Area that states in general terms the role of RD and the nature of its "partnerships and coordination." Some RD State Offices have continued to develop their own plans, while others await direction from the National Office. The "extensive consultation, coordination, and collaboration" that many states pursued with tribes to develop these plans has paid off in many areas, where needs were identified, resources applied, and partnerships formed with tribes and with other public and private entities. Absent such planning, State RD offices may not have the critical information that will enable them to serve their Native American populations appropriately.

In a November 2000 Executive Order, "Consultation and Coordination with Indian Tribal Governments," then President Clinton sought to strengthen "government to government" relationships with Indian tribes by establishing "regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications." While implementation of this Executive Order is the responsibility of each federal agency, the thrust of the Order is to reaffirm tribal sovereignty and to grant "maximum administrative discretion" in administering federal statutes and regulations. The implication of this might be to create a mindset that permeates each agency in its dealings with tribes.

Though no formal policy was created within USDA or its various agencies, a September 2004 Presidential "Memorandum" on "Government-to-Government Relationship with Tribal Governments," signed by President Bush, appears to reaffirm tribal sovereignty and self-determination, and exhorts federal agencies to adhere to principles that promote mutual respect and foster greater understanding.

Developing Local Capacity

The 1996 team assembled to make recommendations on Native American lending concluded that when a tribal member assists in the application process, there is greater willingness for the Native American customer to ask questions and raise concerns. Native American participation in the process was considered an important ingredient in closing the "trust" gap. The team noted that a tribal member liaison generally is someone already known to the consumer (through family or community ties), and "a trusting relationship already exists."

Beyond this substantial benefit, there are several others of worth: a tribal member generally will be able to explain to the Rural Development staff issues regarding credit and source of income, family living arrangements, local resources that may assist in housing development (infrastructure, for example), and tribal legal issues, including land tenure and lease provisions. A local person also can hunt for information that may take the Rural Development staff person, often located many miles from the Native American area, a considerably longer time to obtain. The tribal member should assist greatly in promoting Rural Development's program resources, attending tribal meetings in various districts, advertising in the local newspapers and on the local radio, and generally spreading the word through family and other networks.

This type of local Native American assistance needs to be cultivated – and trained. The 1996 team recommended several options, including the hiring within Rural Development of part-time personnel – tribal members living within the community – to assist tribal consumers with the application process. Budget considerations certainly may limit this in-house option. Another option was the designation by a tribe of a "contact" person to work with the Rural Development staff, perhaps someone from the tribe's housing authority or another housing entity that is already working to create new housing opportunities for tribal member families. These entities may have basic skills and, possibly, some financial ability to begin packaging applications for Rural Development funding. Many tribes, however, may not have the financial ability to support staff performing this work.

To a limited extent, the Housing Application Packaging Grant (HAPG) program, funded under Section 525/509, may assist tribes in packaging Rural Development loans and grants. RD Instruction 1940-L provides the list of states and numbers of counties annually funded under this authority. (At the time this *Guide* was drafted, AN 4064 updated and superseded the list in 1940-L, but had not yet been incorporated into 1940-L.) Many of these states have significant Native American populations. The packaging grants provide $500 for each completed SFH application. In past years, some State Offices have designated a set-aside of HAPG funds for specific tribes. The packager must be certified by the Agency, which means that the packager has attended training by Rural Development staff. Most packagers work for nonprofits or public agencies.

Although the HAPG funding can be an important resource for tribes and their housing entities to assist RD in reaching out to Native Americans, the grants may be useful only to those tribes that can otherwise support all the preparation that goes into submitting an application, including working with the many families for whom completed applications may never be submitted, and continuing to work with families through loan closing and construction or repair.

Another capacity building resource is the "targeted reserve" for many of Rural Development's housing programs. Targeted areas must be identified in each State Office's annual performance goals, which may include, among other classifications, underserved counties, nonmetro counties with persistent poverty, and tribal governments. It is important that Rural Development staff specifically note Native American areas within their respective states so that funds are targeted for their use. These funds remove the competition, in terms of program knowledge and ability to access funds, between low capacity areas and other parts of the states. It should be remembered, however, that

targeted areas may still make use of the regular pool of funds once the targeted funds are consumed. The targeted fund level does not constitute a ceiling.

Tribal members who are trained in packaging Rural Development applications, and who have some experience, may be of assistance in helping the agency market its program to other Native American areas. Ask a Native American packager if he or she might assist in training others, or speak at workshops and other events where tribes are represented. These people are resources who might also assist in in-house training of Rural Development staff. They can speak about potential and real barriers and how they and the agency approached them together.

LAND: LEASES, SECURITY, AND APPRAISAL ISSUES

Rural Development and its predecessor, the Farmers Home Administration (FmHA), has had authority for many years to make loans on a leasehold interest in land. Yet prior to 1990, very few loans were made on Native American restricted lands, which may be leased or assigned to a tribal member for specific uses. Many tribes were concerned that if there were a default or foreclosure on trust land assigned or leased to a particular individual, that land could end up in the hands of a non-tribal member. Having lost much of the land originally designated to tribes through treaties and other actions, many tribes today are intent on preserving in trust status, and for tribal member use, that which remains, as well as retrieving lands previously lost.

In 1990, Congress enacted a provision intended to assure tribal governments that making restricted land available for the purpose of a Rural Development mortgage would pose no threat to the continued restricted status of that land. Since the 1996 *Guide* was published, there have been changes in both public and private mortgage lending on Native American lands, and Rural Development has embraced many of these changes. This chapter will explore land ownership in Indian country, and how the Agency is able to accommodate the many differences that restricted lands present in the lending arena. Much of what is discussed here is also captured in the loan making, closing, and servicing processes and notes that follow the narrative *Guide* chapters. Action items found in the 1996 *Guide* are incorporated throughout this current chapter.

Land Ownership Structures

The land tenure system within many Native American communities is very complex. Land may be owned by the tribe, individual Indians, non-Indians, and the federal, state, and local governments. In addition, land may be held in trust or fee simple status. The pattern of land ownership within a community is determined in large part by the history of the tribe.

There are three major types of land ownership found in many tribal communities.

a) Tribal trust lands are held by the federal government in trust for the tribe. The tribe can lease or assign rights to use these lands. Tribal trust lands cannot be alienated or encumbered without Bureau of Indian Affairs (BIA) approval.
b) Individual trust/restricted lands (allotted lands) are held in trust by the federal government for individual members (see History and Law for information about how this type of land ownership came about). Due to the complex inheritance and succession rules involving individual trust lands, many individuals may have an ownership interest in the land. Individual trust lands cannot be alienated or encumbered without BIA approval.
c) Fee simple lands are held by the owner without restrictions.

Other land arrangements are found in specific geographical areas, such as a) New Mexico Pueblo lands held by the tribe as fee simple lands; and b) Alaskan Native lands held by the Alaskan village corporation, and subject to corporation by-laws.

Different types of land structure are interspersed in many communities, creating a highly fractionated or "checkerboard" pattern of land ownership. In many instances this intermixing has created administrative and jurisdictional problems, as each type of land is subject to different laws. For instance, tribal trust lands are under the jurisdiction and control of the tribe, while fee simple lands may fall under the laws of the state.

Rural Development's Approach to the Ultimate Disposition of Native American Restricted Land

Section 708 of the National Affordable Housing Act of 1990 amended Section 509 of the Housing Act of 1949 to include the following subsection (d):

> In the event of default involving a security interest in tribal allotted or trust land, the Secretary shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe or tribes. If the Secretary subsequently proceeds to liquidate the account, the Secretary shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

RHS regulations, Section 3550.311(b), Tribal allotted or trust land, and HB-1-3550 Section 6.5(2) both provide guidance to ensure that Section 708 is appropriately implemented.

Appropriate Security on Native American Restricted Land

RHS regulation, Section 3550.59, Security requirements, lists the requirements that must be met to secure a mortgage adequately, including in 3550.59(1) that "RHS obtains at closing a mortgage on all ownership interests in the security property or the requirements of Section 3550.58 are satisfied." Section 3550.58 provides authority for securing a loan with a leasehold interest in the land. Individually owned, but restricted lands may be mortgaged with the permission of the Bureau of Indian Affairs. Tribal trust lands that have been leased or assigned by the tribe to an individual may also be mortgaged, with the lease acting as security for the loan. HB-1-3550 Section 5.11 provides guidance to RD staff.

The BIA also will fully underwrite a loan on allotted land to ensure to its satisfaction that the borrower will not default on the loan and risk losing land held by a tribal member. BIA must also approve all leases and mortgages, and is adopting new residential leasing provisions that when published in final form will be accompanied by a handbook for greater guidance.

Using the Section 504 loan program in Indian country where the property to be rehabbed is Mutual Help housing presents a separate set of issues on security, and these have been debated for over 10 years. Section 3550.107(b) states that "a leasehold for mutual help housing financed by U.S. Department of Housing and Urban Development (HUD) on Indian lands requires no minimum lease period and constitutes acceptable ownership." Still, concerns have been raised whether specific leasing documents between the tenant and the IHA provides adequate protection for a mortgage loan. When this concern cannot be satisfied, the approach has been to limit the loan to below $7,500, the threshold for requiring the property as security.

Leasing of Native American Lands

There is no such thing as a standard lease, but the One Stop Mortgage Center Initiative resulted in a "model" lease that is acceptable to federal mortgage lending agencies (USDA, HUD, Veterans Affairs), as well as the BIA. (See Appendix 5.) Though this lease has been adopted by many tribes, it cannot and should not be presented to a tribe as *the* lease that the tribe *must* adopt in order to do business with RD. Rural Development staff must work with each tribe and the BIA to develop the appropriate lease documents. If the tribe chooses to make changes in the "model," the lease must be reviewed by OGC to ensure that the Agency is fully protected. A legislative change in the 1990s enables tribes to provide 50-year leases (prior to passage of this legislation, most were for 25 years, with the opportunity to renew); the longer term accommodates the RD lease requirement that the unexpired term be at least 150 percent of the term of the mortgage.

Pursuing Foreclosure

In the past, private lenders in particular were reluctant to pursue foreclosure in tribal courts. The One Stop Mortgage Center Initiative resulted in model foreclosure and eviction ordinances that are acceptable to the federal mortgage lenders, and would allow these lenders (and private lenders that also accept them) to pursue foreclosure in tribal court, should the specific tribe require that tribal court be used. The tribe's lease will indicate whether this is required. As indicated in the mortgage loan flow chart/notes that follow, Rural Development staff in some part of the country are finding that Department of Justice (DOJ) attorneys are not willing to represent the Agency in tribal court, but an agreement with the Executive Office for United States Attorneys (EOUSA) allows RD to use a private attorney to represent the Agency in tribal court. *It is important to remember that RD direct mortgage lending on Native American lands can proceed regardless whether there exists a tribal court to handle foreclosures.*

Title Insurance on Native American Restricted Lands

Until recently, title insurance generally could not be obtained on Native American lands. Though RD instructions require title insurance, exceptions can be made for loans for which it is determined that title insurance is not available or is not economically feasible. At least one title company has agreed to provide title insurance on Native American lands in all parts of the country where this company has reviewed and approved the leasing documents and foreclosure ordinances; There are other title companies that will provide title insurance in more limited geographic areas. It is important to have these policies reviewed by OGC to ensure that they adequately protect the government; a few have notable exceptions that may render the policies useless. The National Native American Coordinator can provide information on title companies that provide adequate policies. In the absence of title insurance, a private attorney's opinion is acceptable. See the loan closing flow chart for further guidance.

BIA's Title Search

In most instances, particularly when there is no title insurance available, a title search is performed by the Bureau of Indian Affairs, although there may be some tribes to which the BIA will relinquish this responsibility. Unfortunately, BIA staffing is limited, and though the BIA's national office is striving to make home mortgage lending a priority,

there are current limitations to this happening. Shutdown of Department of Interior computer service as a result of litigation has hindered BIA's work for many years, and the work backlog is only slowly being addressed. Gradually, the Bureau is converting from its current Land Records Information System (LRIS) to what is called the Trust Asset and Accounting Management System (TAAMS), and pilot testing of this new system is ongoing. It is expected that once this system is fully in place, electronic research and filing will move swiftly.

Given this backlog, when beginning to do mortgage lending in Indian country it is always important to meet with tribal and BIA staff to develop some process and contact points for lease approval, title search, and mortgage approval. Knowing the appropriate people to call *or visit* could help move the process along. Some tribal members involved in housing development have noted that they will hand carry papers to the BIA area office and sit in the office while the needed work is done. This requires travel, including overnight stays, but it may eliminate weeks from the approval process. Others indicate that the real bottleneck is at the local BIA office. Either way, both patience and perseverance may be required when working with BIA staff to obtain necessary documents to move a customer's loan application forward.

Unique Characteristics of Native American Lands That May Have an Impact on Appraisals

Much of Indian country is remote from population centers and is sparsely settled. This affects the cost of building and the provision of infrastructure, as well as the ability of the appraiser to find comparable housing. Prior to implementation of the NAHASDA block grant program, much of the housing built in Indian country was HUD-financed rental or Mutual Help housing that may or may not be comparable to the type of housing that Rural Development will finance. Giving value to land, which often may be leased from the tribe at no or little cost, is another challenge that appraisers in different areas have approached without any level of consistency.

Guidance Exists for Making Appraisals on Native American Lands

Tribally designated packagers in North and South Dakota (under a capacity building program administered by the Housing Assistance Council) were finding in the early to mid 1990s that restricted lands generally did not achieve appraisals that covered the actual cost of new construction in Indian country; therefore, applicants could not obtain loans at levels sufficient to obtain new housing. To address this problem and to spur new housing development, the South Dakota FmHA (now Rural Development) State Office requested an exception to the use of "locational and economic obsolescence" when appraising single-family houses in reservation areas. This office also requested a 10 percent allowance for remote locations in the Marshall & Swift Cost Handbook. Both exceptions were granted at the time, and to address other similarly impacted areas the Agency issued AN 3267 (1922-C, July 25, 1996). This AN authorized the use of a cost approach appraisal in designated areas, while removing with certain exceptions the major constraint to cost appraisals: consideration of external depreciation. (See Section 5.20, 1-HB-3550). This change in applying the cost approach has been similarly applied to the Section 502 guarantee program.

In further response to South Dakota's request for exceptions, the National Office noted that there may be "necessary and reasonable costs" associated with doing business in a reservation area. One of these "costs" may be what is often referred to as a "TERO" tax. TERO refers to a Tribal Employment Rights Ordinance enacted by tribal government that may provide for a tax on the operations of subcontractors and subgrantees performing work under grants or contracts benefiting the tribe or tribal members. The ordinance may also provide for Native American preference in bidding on tribal work, and the TERO office can be a good source of referrals on contractors or other workers. Rural Development accepts the imposition of a TERO tax.[3]

Specific Factors to be Considered in Making Appraisals on Native American Restricted Lands

Three items are particularly important in performing appraisals on Native American lands: infrastructure, land, and construction costs. On Native American lands, the IHS and the BIA have certain responsibilities for providing infrastructure for housing, but the timing may be unpredictable and the availability of their services limited (see chapter on Site Selection). Therefore, it is important that the costs of water, sewer, and required roads be incorporated in the appraisal so that when these agencies cannot assist, the appraised value is high enough to cover these expenses.

Giving value to restricted land may provide for an appraisal that will cover contingencies not anticipated in the construction costs. There is no direction for assigning value. The Housing Assistance Council performed a limited survey of appraisals made on trust lands in the 1990s and found the value assigned to land varied from zero to $13,000. A discussion with the tribe's land or realty staff, and with the local BIA staff, might provide guidance.

Finally, appraisal regulations require that the Marshall & Swift Cost Handbook be used. It should be understood, however, that this handbook may not take into consideration the real cost of construction on a reservation that may be far from the contractor's labor pool, and far from material suppliers.

[3] A June 26, 2001 Memorandum to Heads of USDA Agencies from James Michael Kelly, Acting General Counsel, concludes that relevant federal law "*requires* agencies, to the extent feasible, to implement (1) preferences and opportunities for training and employment for Indians under contract and grant awards, and (2) preferences for Indian organizations and Indian-owned economic development enterprises …."

SITE SELECTION

The 1996 *Guide* did not include a separate chapter on site selection issues specifically pertaining to Native American lands. Such items as infrastructure, surveys, and related site issues either were found in other chapters, or were not addressed at the time because the Agency lacked sufficient experience with them to provide adequate guidance. The complexities involved in choosing, funding, and developing adequate sites for housing on Native American lands is somewhat better understood now, and the primary agencies with responsibilities and resources have recognized the critical importance of communicating and working together to make sites feasible for building in a timely manner.

Recognizing the Native American Experience

In January and February 2003, the National American Indian Housing Council (NAIHC) conducted 22 on-site and 42 telephone interviews with tribes to learn more about tribal infrastructure development, including the impact of "the tribe or community's existing infrastructure on their ability to provide needed housing."[4] Among NAIHC's findings were that the lack of adequate funding had a negative impact on infrastructure development, that the primary sources of funding had conflicting regulations, and that using "other" sources of funding, including USDA, was "difficult." Moreover, the condition of infrastructure among the tribes interviewed presented considerable challenges, with roads "primarily poor to fair," sewer systems or facilities "generally poor," and a small percentage having no infrastructure in place. Only utilities were rated "fair to good." Importantly, upgrading current systems was particularly troublesome, having a "negative impact … on the tribe's ability to provide housing."

Making Accommodations

Site selection requirements for the Section 502 program are found in HB-1-3550, Chapter 5, covering water and wastewater systems, standards for both existing and new construction, survey requirements, and environmental requirements. While these pertain to all rural sites, there are both challenges to their application on Native American lands, and some resources to address these challenges.

The Agency team assembled to make recommendations on lending on Native American lands in 1996 considered requesting waivers of many of the infrastructure standards that were considered a barrier to development in remote Native American lands, but concluded that wholesale waivers might significantly increase the Agency's liability risks. Instead, a waiver of the requirement for all-weather roads was requested, responding to the finding that many land tracts within reservations and other Native American areas were without gravel or paved roads. Instruction 1924.104 does allow for other than hard surface roads, including such all-weather roads that "with a minimum of maintenance, including the use of a grader, can be maintained by a public body or some other entity." The road needs to be "acceptable and suitable to the local public body for use with local climate, soil, gradient, and volume and character of traffic."

[4] National American Indian Housing Council, "Building the Framework: Housing Infrastructure Development in Indian Country" (Washington, D.C.: NAIHC, 2003).

Also in 1996, the team noted that many Native American lands are situated near or on lakes, or along rivers, where housing traditionally is located. At the time, some Rural Development staff were negative to Native Americans seeking waterfront home sites, expressing concern that they might prove costly when compared to non-waterfront sites. The team concluded that there probably is no real difference in costs, and noted that there is no restriction on the Agency financing waterfront properties. RD staff was encouraged to use the cost appraisal approach, which would determine whether the applicant could afford the cost of waterfront development.

RD field staff later raised a concern noted by several Native American packagers regarding the cost of surveys on restricted lands. At the time, BIA staff would provide a survey *when* there was adequate staff time, but this service was unpredictable and time consuming; the alternative for families hoping to move their loan application forward was to hire a private surveyor, but this was proving costly. South Dakota RD was granted a waiver of surveys for sites located on tribal trust and allotted land if there was BIA "certification" that the "existing and proposed property improvements are totally on the site and do not encroach on adjoining properties." This waiver applied in cases where title insurance was not available and, if the loan involved new construction, a recertification would be needed once the foundation was in place.[5] Chapter 5, Section 5.7C, of 1-HB-3550 states that the loan originator "must review a survey to ensure that all existing and proposed structures are or will be located on the site"; this language appears to accommodate the BIA certification.

In 2001, the Arizona RD State Office raised issues about guaranteeing a loan on the Navajo Nation that would use a cistern system, unconventional for the Section 502 program. HUD was contacted to see how this might be handled in the 184 loan guarantee program and the Indian Health Service, responsible for safe drinking water on Native American lands, was contacted for its expertise. HUD's response was that some cistern systems had been funded where they were considered both *typical* and the only financially feasible solution. Indian Health Service staff recommended that the local RD office do a "site survey" to determine if the cistern system was the most financially feasible approach; if this was the case, then the cistern system could certainly be used. RD also obtained a letter from IHS stating that this agency approved such systems on the Navajo Nation and that IHS would be the responsible party for maintenance of such systems.

These examples show not only that the regulations are not a barrier to financing housing on Native American lands, but that accommodations can be made based on sound research.

Collaborating to Make Sites Available

A loan and grant packager at Navajo Partnership for Housing once remarked that he needed 10 or 11 different signatures from Navajo Nation agencies to ensure the cultural, historical, and environmental appropriateness of a particular site. Fortunately, a system evolved that consolidated the signature gathering in the Navajo Nation Housing Authority, thus refocusing the packager's time and energy on other parts of the

[5] February 16, 2000, letter from William M. Toney, Director, SFH, Direct Loan Division, RHS, to Susan Peck, Housing Assistance Council. The letter further noted that a handbook revision would include the cited language.

application process. Yet concerns for these elements of site selection remain and RD, like any other lender, must be aware of not only its own requirements, but those of each tribe where loan making is progressing. There are resources that can be brought to the table to move the site selection process forward, but planning in advance is key.

Historically, the BIA was responsible for public roads on Native American lands, and the Indian Health Service provided much of the water and sanitation facilities, though it could not provide hook-ups to HUD-funded homes. It could, however, provide hook-ups to Rural Development funded housing where a "letter of commitment" was obtained. The services and the players have changed and are more widespread now. For an Infrastructure Development Workshop held in June 2003, the National American Indian Housing Council prepared a *Guidebook for Funding Tribal Water and Sewer Infrastructure Projects* that gives brief descriptions of the many resources provided by four federal agencies: HUD, IHS, USDA, and the Environmental Protection Agency (EPA).[6] In addition, the Guidebook included case studies on combining resources to benefit tribes in four geographically different areas. HUD's NAHASDA block grant program, as well as the Indian Community Development Block Grant (ICBDG) program, can be used for a range of site and infrastructure uses, including site grading, utilities, water, sewer, roads, water and sewer systems, storm sewers, and waste disposal, for example.[7] USDA's Rural Utilities Service (RUS) provides water and waste water disposal direct and guaranteed loans/grants. There is an earmark of grant funds to benefit federally recognized tribal members, which in 2005 provides up to $1 million per project. Even the community facilities loan/grant program may include some infrastructure assistance, in addition to public facilities.

On October 20, 2000, a Memorandum of Understanding (MOU) was signed between USDA's Rural Utilities Service and Health and Human Services' Indian Health Service to "establish a framework of partnering between the RUS and the IHS in providing assistance to American Indians and Alaska Natives in the development and operation of water, waste water, and solid waste facilities." The MOU establishes operational procedures/standard practices for both agencies, as well as "understandings" regarding their joint planning and service delivery. Some of the case studies in the NAIHC *Guidebook* are good examples of the cooperative efforts made as a result of the MOU.

Also in 2000, within the Environmental Protection Agency's (EPA) geographic Region 8, which serves six states and 27 tribal nations, an MOU was signed to increase "coordination, cooperation and collaboration" among the EPA, the BIA, the IHS, and HUD to "enable more integrated and comprehensive approaches to environmental protection, pollution prevention, and compliance with tribal and federal environmental requirements." The goal of the MOU was not only to identify programs and projects needed to enhance environmental quality, including tribal infrastructure, but also to link federal agencies with the region's tribes.

[6] National American Indian Housing Council, *Guidebook for Funding Tribal Water and Sewer Infrastructure Projects*, Infrastructure Development Workshop, June 24, 2003.

[7] The ICDBG program is competitive and the purposes for which program funds will be used must be contained in the application; to use NAHASDA block grant funds for site and infrastructure purposes, these must be contained in the Indian Housing Plan (IHP) submitted by the TDHE to HUD.

Collaborating on Requirements

As mentioned earlier in this chapter, Rural Development's site selection requirements for the Section 502 program are found in HB-1-3550, Chapter 5, but since most developments will involve oversight and/or funding from other agencies, including tribal requirements, some flexibility in applying RD's requirements may be needed. For most 502 properties, RD employs Form RD 1940-22, Environmental Checklist for Categorical Exclusions. The BIA generally has required a Category 1 Assessment, but field staff have been reminded that another Federal agency's Checklist for Categorical Exclusions can be used in lieu of the agency's environmental document. This authority is found in a Department of the Interior Manual, dated May 27, 2004, 516 DM 10.5 M. (3). Attachment E of this *Guide* includes this document. Note that the term "Bureau" is interpreted by the DOI as another Federal agency.

Early collaboration with the prospective funders will also establish any inconsistencies among these agencies on site requirements. General advice is to explore which funder has the most restrictive requirements and agree to use those, so those requirements do not become an impediment to loan making later in the process. As importantly, recognizing a particular tribe's requirements and resources is critical. For example, while RD instructions take into consideration historical and archeological clearance, if a specific tribe has its own Tribal Historic Preservation Office (THPO), seeking clearance from this office would take precedence over seeking clearance from a State Historic Preservation Office (SHPO). Many tribes have not adopted their own building codes, but RD is expected to accept tribal codes if they are equal to or more restrictive than state or national "model codes." RD staff may want to request the Agency's State Architect to review a tribal building code for its adequacy – again, as early in the development process as possible.

A Word about the Section 504 Program

The Section 504 program is intended for repairs and improvements that remove health and safety hazards, or to repair or remodel dwellings to make them accessible and useable for household members with disabilities. In response to concerns initially raised by Native American loan and grant packagers in the 1990s, and first addressed in AN 2935 (December 15, 1993), Chapter 12, Section 12.5 of HB-1-3550 notes that 504 funds do not require that the property be "brought to Agency development standards or thermal performance standards, nor must all of the existing hazards be removed, provided the property does not continue to have major health or safety hazards after the planned repairs are made." Chapter 12 describes both a *hazard* and a *major hazard*, the former being a property condition that does not make the property unfit for habitation, while the latter does make the property unfit for habitation. There will be instances when the distinction may be a close call, but RD staff has the opportunity to make a significant difference in an applicant's quality of life. Efforts to find supplemental funds (tribal, including NAHASDA, weatherization, volunteer work groups, Housing Improvement Program, etc.) to bridge the difference may mean that a family will be able to remain in its home under safer conditions.

BUILDERS AND BUILDING

The 1996 *Guide* contained only one action item in this section, noting that outreach should be made to Native American communities on what was then new guidance on housing plan approvals. Several references in this section have been updated, but the basic messages still pertain.

Much of the (1996 version) guide thus far has focused on the consumer of housing or the political, legal, and cultural context in which housing is provided in Indian country. There are other factors unique to Indian country that have an impact on how housing development and improvement take place and where people want to live. "How" building takes place has much to do with location and economics; "where" housing is built not only takes into consideration location and economics, but also includes cultural preference.

Some Building Issues That Have an Impact on Development on Native American Lands

In traveling through Indian country, one may see a cluster of HUD-financed housing units in a seemingly remote area or several clusters within towns. Cluster style housing may be a preference for some tribal groups, but for many others there is no tradition for this type of housing. The tradition, in many instances, is for living on scattered sites, often on land that has been used by particular families for generations. The clusters may be more economical to build, but the location may be distant from the families' livelihoods. Some Native American people also express concern that cluster style housing may breed confrontations and even criminal activity. Cultural preference may prove too costly for the Native American consumer if infrastructure development is hindered by the location, but such preference(s) need to be respected and considered.

Religious beliefs may also come into play when designing a new home, or even repairing an existing home. For example, for some tribes it is expected that the front door face in a certain direction. This may not be the most logical direction from a building perspective, but has significance for the Native American consumer and, generally, may easily be accommodated.

The remote location of many Native American lands, far from services and suppliers, has a direct bearing on the cost of housing development and the availability of builders to perform the needed work. In many Native American areas, the primary housing developer is the tribe's housing authority, which more often than not will use a builder from outside the area who may import some labor, as well as hire tribal members. Builders often will set up manufacturing or assembly plants on the reservation or tribal area. These relatively large scale builders generally monopolize home building and, sometimes, home repair in a Native American area because they have trained workforces, upfront capital, and access to supplies.

Native American packagers working with the Rural Development programs have noted that it can be difficult to get bids, particularly on home repairs, since the large scale builders generally are too busy, and the local, Native American builders rarely have the funds to front housing development or repair. Suppliers rarely are local – few Native American communities even have a hardware store, let alone a lumberyard – so it can be challenging for a small scale builder to establish credit with suppliers in distant locations.

As is the case with many federal and state programs, some builders complain that the agency is difficult to work with: that there is considerable paperwork, payments are made slowly, and inspections are not always timely. Some builders have said that they have simply given up after being courted by Native American packagers anxious to find housing plans and builders for their clients.

Accommodating Native American Consumer Preferences

Rural Development staff has latitude in accommodating the cultural and religious concerns of the Native American consumer. Housing plans approved by HUD are considered acceptable by the USDA for its housing programs. Many tribes have built housing using HUD financing including modifications that respect the cultural and religious identity of the respective tribes. RD Instruction 1924-A, specifically 1924.5(f)(1)(C), provides guidance. It enables the Agency to accept drawings and specifications that have been certified by, among others, builders and contractors approved by HUD for self-certification.

Encouraging More Builders into the Native American Housing Arena

Rural Development staff outreach, both on and off the reservation or other tribal areas, certainly is a first step. Planning get-togethers with potential builders to explain the Rural Development programs, builder certification process, building requirements, and alternative payment plans is a helpful approach to alleviating the concerns that builders may have. Many tribes have a tribal employment rights office (TERO), economic development office, or other agency that might help identify potential builders. There is no reason to discourage outside builders, but the goals of the tribe in enhancing tribal employment should be understood.

More tribes are exploring alternative building systems, including factory built systems and new, energy-efficient building materials that may mean shorter building time, less labor on site, and long-term savings to the consumer. Moreover, self-help housing development is now being pursued by several tribes, some having to break new ground for this program by building either on scattered sites or building in a construction yard and then moving homes on site. There are some important success stories to explore, and some considerable challenges these Native American self-helpers have endured, but this approach has enabled some Native American families that otherwise might not have qualified for RD assistance to achieve homeownership. Current Native American self-help technical assistance grantees (Section 523) include the North Carolina Indian Housing Authority, Comanche Nation Housing Authority, Cherokee Nation, Oglala Sioux Tribe Partnership for Housing (Pine Ridge Reservation), and Little Dixie. Though not a Native American organization, Little Dixie is both a TA contractor for the self-help program and a self-help developer for the Choctaw Nation, Oklahoma.

CREDIT HISTORY AND HOME BUYER EDUCATION

Publication of the 1996 *Guide* preceded by months the publication of new Single-Family Housing regulations and the Field Handbook; further changes were made final in July 2004. These regulations represented a new direction toward private lending underwriting, and a tightening of credit history criteria. In many parts of rural America the changes took time to absorb and adjust to, but in Indian country the impact was acute and immediate. There remain concerns today that in the area of "credit history," as well as debt ratios, many Native Americans seeking housing assistance continue to find the agency's requirements formidable.

> It is important to recognize that there are differing definitions of "income" within the NAHASDA program and RD's programs, which can cause some confusion when working with tribes. NAHASDA defines median income with respect to an "Indian area" as the greater of (A) the median income for the Indian area, which the Secretary (of HUD) determines; or (B) the median income for the United States.

On a positive note, while homebuyer education and credit counseling were slowly emerging activities in Indian country in 1996, new opportunities in public, private, and tribal mortgage lending have encouraged, even demanded, that homebuyer education and credit counseling become an essential part of the mortgage lending effort. Few culturally sensitive homebuyer or financial literacy programs existed in 1996 (the Minnesota Housing Finance Authority was an early leader in this movement), but today such programs have proliferated, recognizing not only the new "market" that Native Americans provide, but the unique conditions in Indian country that affect credit and budgeting. In preparing this *Guide* update, it became apparent that much said about credit and income issues in 1996 remains relevant, so much of this information is included, with certain updates and the incorporation of several of the "action items."

The Rural Development application process continues to require that an applicant show a good record of debt payment (including paying off bad debts), and have sufficient income to pay the mortgage, taxes, and insurance, as well as other outstanding debts. Issues of income, credit, and debt often take on different characteristics in Indian country that require understanding on the part of the Rural Development staff. Without that understanding, potentially good applicants may be eliminated from the process and denied the ability to improve their housing conditions. Action items in the 1996 *Guide* encouraged field staff to familiarize themselves with the different forms of credit available on a reservation, allowing staff to more effectively evaluate an individual's personal credit history, as well as to develop a list of compensating factors unique to Native American borrowers. In addition, staff was encouraged to familiarize themselves with the use of "waivers," recognizing that a responsible homebuyer is not a stereotype, but an individual committed to obtaining and keeping improved housing for his or her family over the long term. The thinking then was to pursue exceptions, when they could be made, on behalf of a potential homebuyer. This thinking continues to be relevant to encouraging more Native American borrowers.

Some Circumstances Affecting Income Eligibility and Credit History

These are some of the circumstances in Indian country that may have an impact on income eligibility and credit history:

- Incomes generally are very low, seasonal employment is common, and unemployment is exceptionally high.
- Family members often take on the debts of other family members.
- Children care for their elders within their household, and grandparents often care for their grandchildren without formal custody arrangements.
- Families often double up to prevent homelessness.
- Most Native American applicants will not have an "after rejection" plan – alternative mortgage financing for very low-income people living on restricted lands either does not exist, or often comes in the form of a predatory lender.
- The remoteness of many Native American areas may necessitate purchases – such as a new and reliable vehicle for lengthy drives over difficult terrain and in bad weather conditions – that may seem frivolous given the applicant's income.
- A "per capita" payment may distort the applicant's income.

All these circumstances may lend themselves to frequent and sometimes unconventional debts, and fluctuating household incomes.

Learn What Credit and Income Issues Exist Among the Tribes with Which You Work

Talk to staff of tribal entities such as a tribal credit office/credit union or the Indian housing authority. These types of institutions are familiar both with local credit issues and cultural arrangements. Use the profile credit report as a tool to help illustrate the types of credit extended in Indian country and the intermingling of debt within a household. The infile credit report also is intended to initiate budget/credit counseling with an applicant *prior* to the completion of an application that otherwise might be rejected for credit reasons. The 3550 handbook was revised in FY 2004 (see Chapter 4, 4.13A) to implement an advanced notice of November 2003 intended to allow RD loan originators to favorably consider a minimum credit score of 660 when underwriting a loan. This notice did three things, but the key point was that applicants with a credit score of 660 or above could be classified as having "acceptable credit histories" (where no significant adverse credit information from other sources is shown, Exhibit 4-3 and Form RD 1944-61 need not be used); in addition, it stated that no adverse decision could be made based on a credit score. While such credit scores may not be readily seen in Indian country, this is one possible tool in showing creditworthiness among Native American applicants.

Field office staff should also read one or more homebuyer education curricula used in Indian country to become more familiar with the unique issues raised that may differ from other communities being served by Rural Development. (Appendix 9 provides a list of some of these now available.) Initiating and/or participating in homebuyer education or financial literacy programs being offered to tribes in your service area will help in gaining an understanding of credit issues common to potential Native American customers. Some RD staff will run profile credit reports at these sessions to begin a discussion of issues that need to be resolved; some also do pre-qualification forms to begin the application process.

On March 6, 2006, USDA issued a proposed rule in the Federal Register to add an homeownership education requirement to better prepare new homeowners for success. It would require successful completion of a course provided by a counselor certified by

HUD, NeighborWorks, or the National Federation of Housing Counselors. Comments were due on May 5, 2006, so the final rule is not yet effective. Should this proposed rule be made final, it is important that culturally relevant homebuyer education courses be identified and provided locally.

The introduction of Individual Development Account (IDA) programs in Indian country is still recent, but there is developing experience that indicates families committed to an IDA program will work on credit repair and will develop good savings habits. A family commits to a savings program that is matched by other resources – federal, state, private – and the sum total of the savings account can be applied to the family's goal. For some families on the Pine Ridge Reservation, an IDA program created by The Lakota Fund is helping families interested in participating in the Oglala Sioux Tribe Partnership for Housing (OSTPH) self-help housing development program to save for their housing costs, and to repair their credit, if needed. One of those families is featured in a *Rural Voices* article about "innovative asset-building."[8]

Since conventional forms of credit still are not widespread in Native American areas, the findings in a profile or a full credit report may be a surprise to applicants. Some of the items may be mistakes that can be remedied with the appropriate advice from Rural Development staff on how to contact the credit reporting agency and what documentation is needed. Some debts may be misunderstood. For example, a faulty vehicle may have been returned and the applicant may have assumed that the return canceled the debt, or there may be a hospital bill that actually is the responsibility of the Indian Health Service, but has not been paid.

Among many Native American peoples, the most respected person is not the one who owns a lot of property and has a lot of money but, rather, the person who gives of his or her time and possessions ("giveaways" to celebrate the birth of a child, for example, are relatively common among Native Americans). Following this tradition, it is not uncommon for a family member or friend to co-sign for another person without being fully aware that, should the debt not be paid, the co-signer will not only have to repay the debt, but his or her credit rating and debt to income ratio will be affected, possibly making the debt co-signer ineligible for his or her own mortgage loan. Until a copy of a credit report is given to a person who co-signed another person's loan, he or she may be totally unaware that the bad debt situation exists.

Finding Exceptions to Unacceptable Credit

The Field Office Handbook for Direct Single Family Housing Programs (HB-1-3550) encourages staff to counsel applicants on how to correct adverse credit and how to improve their chances of obtaining assistance in the future. Exhibit 4-3, Indicators of Unacceptable Credit, makes clear the limitations of past performance on a future borrower. These "indicators" are intended to ensure that, to the extent feasible, RD borrowers have the ability and commitment to repay their loans, but if viewed as

[8] Leslie Newman and Cindy Martin-Laiwa, "Innovative Asset-Building Programs on the Pine Ridge Reservation," *Rural Voices*, 2004, 9:1. The Housing Assistance Council will soon publish a report on *Designing and Implementing Rural Individual Development Account Programs* that includes a chapter on the Confederated Tribes of the Umatilla Reservation (Oregon) IDA program. All HAC publications may be found at www.ruralhome.org or ordered from HAC, 202-842-8600.

conclusive evidence of bad credit they may have significant impact on Native American applicants. Where indicators of unacceptable credit appear to weigh against Native American applicants, RD staff should consider alternatives that will help to cultivate acceptable applicants.

Perhaps the most important tool available for addressing the unique characteristics in Indian country is the loan approval official's *authority to make exceptions*. Exceptions to insufficient income, or compensating factors, can be used to justify increasing debt carrying capacity (4.25A in HB-1-3550). These include payment history, savings history, improved job prospects, and overtime pay – but all of these must be clearly documented. In fact, the only exception that cannot be made is that of "an outstanding judgment obtained by the United States in a Federal court, other than the United States Tax Court." Exceptions also may be made to *reduce shelter costs*, thereby improving debt repayment ability; when the circumstances that caused the credit problem *are of a temporary nature and beyond the applicant's control*; or where there will be a *benefit to the government* by allowing the applicant to cure a federal debt (4.14, HB-1-3550). The introduction of "payment shock" (4.25C, HB-1-3550), representing an applicant's projected increase in housing expenses, should this be the case, might be tempered by a showing of excellent credit history or a credit score of 660 or above.

Evaluating Income

An "action item" in the 1996 *Guide* urged RD staff to obtain listings from the local or regional HUD office of per capita payments that HUD includes in its own calculation of income, since these payments can unnecessarily distort an applicant's income. The Omnibus Budget Reconciliation Act (1993) added a new phrase to existing statutory exclusions of income based on tribal membership, stating that "up to $2,000 per year of income received by individual Indians that is derived from such interests shall not be considered as income." Such payments to individuals are the result of the wrongful taking of Native American lands and may include income derived from trust or restricted lands (grazing, resource extraction, etc.). This income is held in trust and distributed to individual tribal members. It should be noted that the $2,000 exclusion applies to each household member who receives the payment. This exclusion is recognized by Rural Development and is found in Attachment 4-C, HB-1-3550. It does not appear that gaming income may be excluded, since this type of income is not held in trust for an individual tribal member. Yet it might be considered of a "temporary" nature and unstable. The loan originator should use judgment in looking at gaming income, perhaps evaluating it as one would income for a self-employed person, looking at past years and averaging the income over time.

Currently, Rural Development includes the income of all adult members of the household when calculating income for eligibility (employment income earned by a child under the age of 18, unless this person is a party to the note or a spouse, is excluded). This has an impact on prospective Native American applicants who may be providing temporary housing to other adult members of the family. Such assistance is common, and is traditional, but may artificially raise the applicant's family income. While not addressing this issue directly, Attachment 4-C, HB-1-3550, "Sources of Income Excluded from Annual Income," does allow for income of a "temporary, nonrecurring, or sporadic" nature to be excluded. In 1996, some RD staff recommended that only the income of adults who co-sign the loan be counted, but no new direction on this issue developed.

Certain payments specific to Native Americans, other than per capita income, are excludable, however, such as those under the Alaska Native Claims Settlement Act or the Maine Indian Claims Settlement Act, income "derived from certain submarginal land of the United States that is held in trust for certain American Indian tribes," and other specific payments or income to members of certain tribes (see Attachment 4-C, HB-1-3550).

BRIEF NOTES

Various types of insurance, other than title insurance, are prerequisites to developing housing, and owning housing, but on Native American lands there are limited sources. AMERIND Risk Management Corporation, headquartered in Albuquerque, N.M., was formed in 1986 to "indemnify and financially protect against risk of loss by use of pooling of funds" among its member agencies and tribes. HUD has allowed Indian housing authorities benefiting from HUD funding to participate in AMERIND's insurance pool regardless of the state in which the tribe is located. On March 7, 2006, HUD issued a proposed rule in the Federal Register to establish standards for recipients under the Indian Housing Block Grant Program to purchase insurance through non profit insurance entities owned and controlled by Indian tribes and tribally designated housing entities. Basically, the proposed rule provides for self-insurance plans for all types of property insurance except for flood insurance, preempting state and local laws. This approach may influence USDA's thinking with regard to such insurance.

RD Instruction 426.1 and departmental regulation 7 CFR 1806.2, as quoted in a 2001 RD memorandum, state that it is desirable for a company to be "licensed to do business in the particular State or other jurisdiction where the property is located, or that (the company) otherwise (be) authorized by law to transact business within such State or jurisdiction". This instruction has opened an avenue for a State Director's exception, thereby potentially allowing Amerind to insure RD projects in States other than where it is licensed. RD accepts Amerind's argument that states cannot regulate transactions on Indian lands not subject to state jurisdiction, opening the possibility for state-by-state exceptions The HUD proposed rule may provide the Agency the level of comfort needed to grant a National Office exception, rather than the state-by-state exceptions now being pursued, but such a change has not yet been proposed in either Agency instructions or regulations.

In a 2003 letter to AMERIND, Fannie Mae's Vice President for Community Lending agreed to purchase first mortgage loans where the hazard insurance carrier is AMERIND Risk Management Corporation. The letter recognized that the insurance provider was not at the time meeting all of Fannie Mae's rating-agency criteria, but accepted AMERIND under conditions relating to member equity and reserves.[9]

[9] Letter of August 11, 2003, from Julie Gould, Vice President for Community Lending, Fannie Mae, to Kent E. Paul, CEO, AMERIND Risk Management Corporation.

FOLLOWING THE PROCESS

The *Guide* update advisory committee carefully weighed the advisability of developing processing flow charts, and concluded that there were enough unique circumstances in processing both direct and guaranteed Section 502 loans, and in the closing and servicing of loans on Native American lands, that guidance in this area would be useful. The main concern raised was that State Office and field staff recognize that the charts and notes are guidance, and that although the charts are formatted in what looks like a linear process, most steps are pursued simultaneously. The result is a three-part process – loan making, loan closing, and loan servicing – with two variations in the loan making process: direct and guaranteed loans. Each process is followed by individual notes for each step that follow each flow chart and may be reached electronically (see box for instructions).

> The PDF version of this guide provides "live" links among the various parts of the document. These links appear in blue underlined text, much like the links on a website. Use the links the way you use web links: click on one and you will be taken to the appropriate place in the document.

The direct and guarantee "flow charts" for these respective programs show steps that contain the letter **"a"** after the step number. All boxes with the letter "a" and highlighted in **bold** reflect Bureau of Indian Affairs (BIA) requirements, and should be pursued simultaneously with the unlettered box.

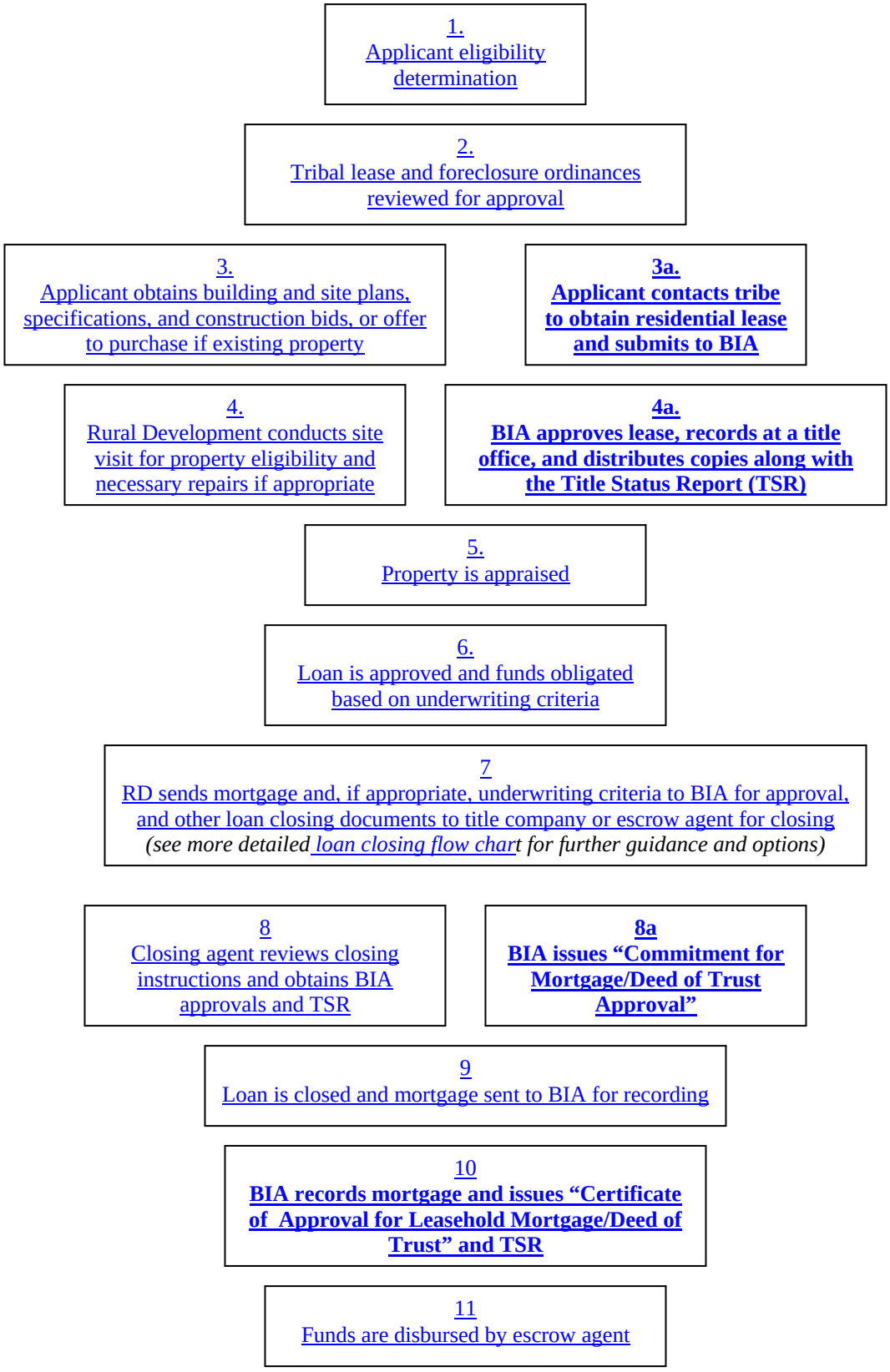
Each of the flow charts is electronically presented in such a way that the boxes can be rearranged, and different or complementary steps may be added (see box for guidance). At one point, the advisory committee considered reversing steps 2 and 3 in the mortgage flow charts, but agreed instead that the *Guide* would encourage field staff to pursue steps simultaneously, using the knowledge and experience staff has in assessing when to proceed. The important consideration, however, is that staff *not wait* for one step to be completed before proceeding to the next. There are many opportunities for delays in processing loans or grants on Native American lands, many of which are completely out of the control of the applicant, so that waiting for one task to be completed before moving ahead with the next will result in unnecessary delays for the customer. Perhaps one comment by an advisory committee member best sums up this approach: staff need to have the *faith* (or, at least, reasonable information) that the approvals, certifications, etc. needed will happen.

> USDA Rural Development State Office staff may rearrange the boxes in each flow chart to address common, consistent practice within that State. Field office staff should contact their respective State Offices with recommendations for any changes. Upon request from a State Office, the National Office will provide a WORD document to enable the changes to be made.

In presenting these charts and notes, it is well recognized that there may be variations in the steps based on requirements of a specific tribe, policies of the local BIA, other overriding state or local laws or practices, or common sense. Again, these variations may be inserted electronically. Regardless of local variations, however, there are certain basic requirements and laws unique to the leasing and mortgaging of trust lands that need to be emphasized, including:

- The BIA has exclusive responsibility for approving leases of tribal trust and allotted lands.
- The BIA has exclusive responsibility to approve encumbrances on tribal leases.
- The BIA is the only mechanism for the filing and recording of liens on tribal trust and allotted lands, unless this responsibility has been expressly delegated back to a tribe.

Mortgage Loan Flow Chart
For Direct Loans on Indian Trust Lands



Direct Loan Flow Chart

1.
Applicant eligibility determination

The goal of the RD loan originator is to help the customer become an eligible applicant and, eventually, a successful homeowner. Therefore, it is important that in analyzing applicant eligibility RD staff understand and respect the often unique circumstances of American Indians and Alaskan Natives who reside on restricted lands. Some of these unique circumstances are reviewed in the History and Law chapter. Issues that the loan originator may need to address are: seasonal or sporadic employment histories most often related to poor economic conditions; household income that may be difficult to assess due to varying numbers of extended family members living in a property at any given time; per capita payments that may vary from year to year based upon gaming revenues – or may even be exempt from inclusion of family income due to the source of the income; credit issues including unpaid medical bills that are actually the responsibility of the Indian Health Service; co-signed third party consumer loans that have gone into default; and a high percentage of predatory lending terms that affect debt ratio.

Many historic, economic, and discriminatory reasons contribute to the low level of homeownership on Indian lands, and to the phenomenon in this century that most of the Native Americans who do own homes are actually "first generation homeowners." Implementation of both the Native American Housing Assistance and Self-Determination Act (NAHASDA, 1996) and the HUD 184 program has opened opportunities for Native Americans to gain homeownership, and for agencies such as Rural Development to extend its reach to a largely underserved population. It is important to understand that programs assisting Native Americans in the past have been largely operated as rental housing, even when there was the opportunity to purchase at some later date. True ownership – and the responsibilities, opportunities, and burdens that accompany it – is a relatively new concept that requires time to digest and accept. It is noteworthy that culturally appropriate home buyer education, financial literacy, and credit counseling programs have emerged in recent years providing potential Native American borrowers with considerable information and assistance. RD loan originators can review these and, importantly, should participate in the implementation of these home buyer resources at the tribal level.

Finally, it is important that the RD loan originator make every effort to help *keep* an applicant eligible as the loan approval process unfolds. Since this can be a time consuming process, the family should be counseled to maintain its good credit, refraining from purchases that may change the debt ratio or otherwise affect the applicant's credit worthiness.

Return to flow chart.

Direct Loan Flow Chart

2.
Tribal lease and foreclosure ordinances reviewed for approval

Mortgages on tribal trust and allotted lands may be secured by a leasehold interest in the land when certain conditions are met. These conditions or terms are generally defined in 7 CFR 3550. For 504 loans, see 3550.107(b) and for 502 loans, see 3550.58(b).

For 504 loans, RD provides special consideration to Mutual Help housing financed by HUD and sponsored by an Indian housing authority. This housing is offered as ownership though it is operated as a rental until the purchase price is paid off and the property is "conveyed" to the family. How this property is conveyed may vary among Indian housing authorities. Section 3550.107(b) states that "a leasehold for mutual help housing financed by U.S. Department of Housing and Urban Development (HUD) on Indian lands requires no minimum lease period and constitutes acceptable ownership." Still, further review of the leasing agreement may be required to ensure that the leasing document between the tenant and the IHA provides adequate protection for a mortgage loan; otherwise, the loan may need to be limited to a "note only" loan of $7,500 or less.

Residential leases of tribal trust lands must be reviewed and approved by the Office of General Counsel (OGC). Leases in accordance with the model lease in the One Stop Mortgage Initiative documents are always acceptable to RD. RD Instruction 2000-NNN provides guidance on which OGC (regional or national) should review a lease and, if appropriate, a tribal foreclosure and eviction ordinance. See Appendix 5 for a copy of this Instruction. It is strongly recommended that, as a part of developing a mortgage program with a tribe, these documents be developed and reviewed by all of the appropriate parties prior to receiving loan applications. Tribes often have residential leasing documents that were previously developed by the Bureau of Indian Affairs and may have been accepted by other lenders, but may not meet RD requirements.

It is Rural Development's policy to use tribal courts for mortgage loan foreclosures on tribal lands as long as the tribal foreclosure and eviction ordinances have been approved by OGC. If a tribe does not have a tribal court, or approved foreclosure and eviction ordinances, this does not preclude RD's ability to provide mortgage financing secured on tribal lands as long as the leasehold document has been approved. In this instance, RD may still protect its interest in the federal or state court of jurisdiction.

Once a generic lease has been approved, further approvals by OGC are not necessary as long as modifications have not been made to the originally approved document. The loan approval official should still review each individual lease for conformity to the originally approved lease, as well as for the legal description and lease terms. Most lease problems to date are the result of improper or inaccurate legal descriptions.

A Memorandum of Understanding (MOU; see Appendix 5) with each tribe is not required for the 502 direct program, but it may be beneficial as a tool to clarify any unique loan making and/or servicing issues between the agency and the tribe.

Return to flow chart.

3.
Applicant obtains building and site plans, specifications, and construction bids, or offer to purchase if existing property

Applicants building on more remote Indian lands often have few options available for new construction. Home builders and construction material suppliers are limited and/or located at a considerable distance from the building site, creating additional construction costs and difficult construction coordination. Necessary infrastructure, including water, electricity, and roads, may not be available or may be supplied in ways not typically found in more developed communities. Building codes may not exist. (See chapters on Builders and Building and on Site Selection for more discussion.) For these reasons, it is critical to work closely with the customer and the tribe during this phase of application development. There are programs and funding sources that could be applied in more remote areas to adequately develop the site and home. These include, but are not limited to, the Indian Health Service for water and sewer, the Bureau of Indian Affairs for roads, tribal NAHASDA funds for project leveraging, and state or local building codes acceptable to the tribe.

Construction projects on tribal lands may be subject to tribal employment preferences mandated by subsection 7(b) of the Indian Self Determination and Education Assistance Act, 25 U.S.C. 450e(b), which requires "to the greatest extent feasible" that

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given Indians; and
(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in 25 U.S.C. 1452.m

This preference for Indians or Indian-owned enterprises in subsection 7(b) applies to any contract, subcontract, grant, or subgrant awarded "for the benefit of Indians because of their status as Indians."

Note: During phases 3, 4, and 5 of the direct loan process, it is critical to keep in regular communication with the applicant while he/she is working on obtaining lease approval, and in order to best coordinate with the tribe and BIA. Ideally, lease approval is completed by the time step 5 is finished, so that the loan can be timely approved. One cause of delay in obtaining lease approval is adherence to BIA's environmental requirements. In most one- to four-unit dwelling developments, RD may use an environmental Categorical Exclusion. The BIA may accept any Federal agency's Categorical Exclusion Checklist, including Rural Development's. See Attachment E for BIA authority.

Return to flow chart.

3a.
Applicant contacts tribe to obtain residential lease and submits to BIA

Lease of Tribally Owned Trust Land for New Construction

The applicant contacts the tribe to get a homesite lease. Most tribes will have either a lease administrator or a realty department that will assist the customer in obtaining tribal council lease approval, as well as processing the lease through the BIA. This office will also coordinate with the BIA and the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) for necessary NEPA requirements, and may coordinate with the Indian Health Service for sanitation permits and/or applications for IHS water and sewer grant program assistance. It is recommended that RD work closely with the appropriate tribal office to facilitate Agency environmental program requirements. Delays in obtaining BIA lease approval often are related to environmental and NEPA requirements. Coordinating with this office early in the application process will likely improve the timeliness of obtaining lease approval.

Lease Transfer for Existing Property

To purchase an existing dwelling on a leasehold interest, the applicant must obtain a "resolution" from the tribe either to transfer the seller's existing lease (if adequate terms exist) or to cancel the existing lease and approve a new lease. The resolution should contain a *contingency* that tribal and BIA approvals are subject to the purchaser obtaining the necessary financing. (Attachment A is a sample "Cancellation" document.)

Lease of Allotted Land

In the case of allotted land, the lease process is initiated directly with the BIA. The tribe generally would not have an interest in the property, except in maintaining ownership by a tribal member.

Lease of Land Assignment

There are tribes that have historically distributed land use rights to individual tribal members through land assignments. To create a mortgageable interest, the tribe would need to enter into a leasehold interest to perfect mortgage financing on previously assigned lands. Some private lenders presently are looking on a case by case basis at obtaining appropriate modifications to the land assignment rather than the applicant obtaining a leasehold interest. RD will monitor this activity and provide more information to the field.

Return to flow chart.

4.
Rural Development conducts site visit to determine property eligibility and any necessary repairs

Rural Development conducts a site visit for 502 loans as defined in 3550.56 and .57, HB-1-3550, Chapter 5, Sections 1 and 2. Housing sites on tribal lands often are located in more remote and scattered areas than is typical in non-tribal communities. This is generally more prevalent with tribes in the western states due to the size of the reservations, the extent of allotments given by the federal government to tribal families, and the "checkerboard" pattern of tribal lands that has developed throughout the years. These properties may lack what is typically considered adequate infrastructure: hard surface roads, electric power, dependable water supplies, telecommunications, etc. When considering the available housing infrastructure on remote tribal lands as it relates to RD program requirements, consideration should be given to what is *typical and acceptable* in the area for the respective tribal government, other federal agencies, and mortgage lenders.

Rural Development conducts a site visit for 504 loans and grants as defined in 3550.105 and .106, HB-1-3550, Chapter 12, Section 12.2.

Return to flow chart.

4a.
BIA approves lease, records at its title office, and distributes copies along with the Title Status Report (TSR)

The BIA is responsible for the approval and recordation of all leases on all trust lands. Consequently, any lease that RD reviews for a tribe must be approved by the BIA. Leases are approved for the Secretary of the Interior by the BIA Area Directors and sent to the title office for recordation and a certified Title Status Report. A certified TSR is an official record containing the history of the property up to and including recordation of the new lease.

As mentioned in step 3, it is important to maintain communication with the applicant, the tribal realty office, and the BIA as the lease goes through the various approval processes and recordation. Actions and documents required here pass through several parties; for this reason, the importance of good working relationships with all players cannot be overemphasized. We have found that when a positive relationship exists with mutual understanding of each party's responsibilities, these processes can be expedited or, at least, more effectively timed.

Though it is the goal of the BIA to process titles and leases for home mortgages within 30 days, this may not always happen. (See Attachment E for a statement of this goal.) It is possible to obtain what is called a "Title Report" from the local BIA Realty Office. All records must be routed through, reviewed, and approved by the BIA Area Director, resulting in an unofficial record of all transactions recorded on a particular piece of trust property. This report is considered adequate documentation to keep the mortgage process moving forward with reasonable assurances that the necessary lien position will be obtained and eventually recorded. (Attachment B is an example of a "Title Report.")

Note: It is recommended that RD field offices attach to this page a directory of relevant tribal offices and BIA offices. Some tribes have their own local BIA office. The presence of a local BIA office adds another layer of review that could lead to delays.

Return to flow chart.

Direct Loan Flow Chart

5. Property is appraised

Appraisal for market value is one factor in determining the maximum loan amount. HB-1-3550, 5.20, Appraisals in Remote Rural Areas or Tribal Lands, provides guidance in completing appraisals, including when the sales comparison approach is not required. Instead, the cost approach, using *Form 1007, Marshall and Swift Square Foot Appraisal* documentation, is acceptable. The instruction also gives authority for the appraisal to be conducted by Agency staff having appraisal authority, or by a contract appraiser. When a market is established, the Agency will require complete appraisals including sales of comparable Agency-financed properties. (See chapter on Land: Leases, Security and Appraisal Issues.) Since the process to approve and fund an application may take considerably longer on Native American lands than elsewhere, it may be necessary to obtain a second appraisal if the first one is more than one year old.

Instruction HB-1-3550, 5.2 notes that "the lack of comparables can make it difficult to appraise a new construction property," implying that the cost approach authority is for new construction only. Until either this instruction is amended, or a resale market is established, a National Office case by case waiver will be needed to allow a cost approach appraisal on an existing property.

Return to flow chart.

Direct Loan Flow Chart

6-7
Loan is approved, funds obligated, mortgage and underwriting criteria, if appropriate, sent to BIA for approval and other loan closing documents to the title company or escrow agent for closing
(See loan closing flow chart for further guidance and options)

BIA Responsibilities

BIA regulations require that all encumbrances on Indian trust lands have the Secretary of Interior's approval, which generally means the signature of the BIA Area Director or the Area Superintendent. The BIA also is the official recording office for all records that impact title of trust lands, and is required to review all mortgage or deed of trust documents for acceptability prior to approving the final instruments. For individual trust/allotted lands, the BIA also reviews the underwriting criteria as further protection against the possibility that these lands may be alienated through default and foreclosure. It is recommended that RD staff request that the BIA review RD's mortgage documents well before any loans are approved so that subsequent reviews of specific documents can be expedited or, possibly, waived.

RD Responsibilities

Per RD Instructions 1927-B and HB-1-3550 Section 2, 8.4, title insurance is required to close 502 and 504 mortgage loans. The State Director may determine that the use of title insurance is not possible, is not economically feasible for the type of loan involved, or is not available in the area of the state where the loan will be made. In these cases, an attorney's opinion is acceptable. Title insurance does not pertain to loans where the total outstanding balance is less than $7,500.

Several title companies are willing to provide title insurance on tribal trust and allotted lands. Concerns have been raised, however, that in some cases the extent of the title policy exceptions provide RD with inadequate protection. For this reason, it is recommended that these policies be reviewed by OGC for acceptability. Presently, there is at least one title company providing adequate title insurance on *any* tribal lands where the company has reviewed and approved the leasing documents and the foreclosure ordinances. As other title companies expand their Native American trust land coverage, the field will be informed, and it is requested that field staff inform the National Native American Coordinator of companies and policies that they find acceptable.

Review by the Office of General Counsel

7 CFR 1927, Subpart B, section 1927.51(c) states: "When required by the applicable program regulations, such as for Multi-Family Housing (MFH) organizations or other complex cases as determined by the State Office, the State Office will request OGC to review the docket and issue closing instructions." In consultation with the National

Office OGC, it has been determined that based upon the history of lending on tribal trust lands by RD, HUD, and other private lenders, SFH loans on tribal trust lands generally are not of such a complex nature as to require OGC guidance. Where leasing documents have been pre-approved by the OGC, it is both *acceptable and encouraged* to use only the services of a title insurance company or an attorney approved to close these loans. One exception to this policy may be the mortgaging of interest on allotted land where there are multiple owners resulting in fractionated interest.

Note: RD State Offices may want to insert here any additional loan approval conditions unique to their states.

Return to flow chart.

8-9
Closing agent reviews closing instructions, obtains approvals and TSR from the BIA, and closes loan, forwarding signed mortgage to BIA for recording

Upon obtaining from the BIA a "Commitment for Mortgage/Deed of Trust Approval" and the TSR, reviewing closing instructions, and checking other necessary county records, the loan is closed. BIA's memorandum, dated September 29, 2005, provides an interim policy allowing for a signed "endorsement" rather than a subsequent certified TSR in order to record a mortgage loan. This endorsement (see Attachment E for the interim policy and the endorsement) certifies, according to the interim policy, "that from the date of the last certified TSR these recorded title documents have been applied to title as shown by the official Federal system of record for land title ownership and encumbrance of Indian trust and restricted lands and there have been no intervening liens or encumbrances".

Return to flow chart.

8a.
BIA issues "Commitment for Mortgage/ Deed of Trust Approval"

This document may or may not be used by the BIA for a specific loan if there exists blanket approval of the RD mortgage/deed of trust form. To expedite the loan closing process and the timely disbursal of funds, it is advantageous to get all parties to agree upfront on the appropriate forms to be used.

(Attachment C is a sample "Commitment for Mortgage/Deed of Trust Approval.")

Return to flow chart.

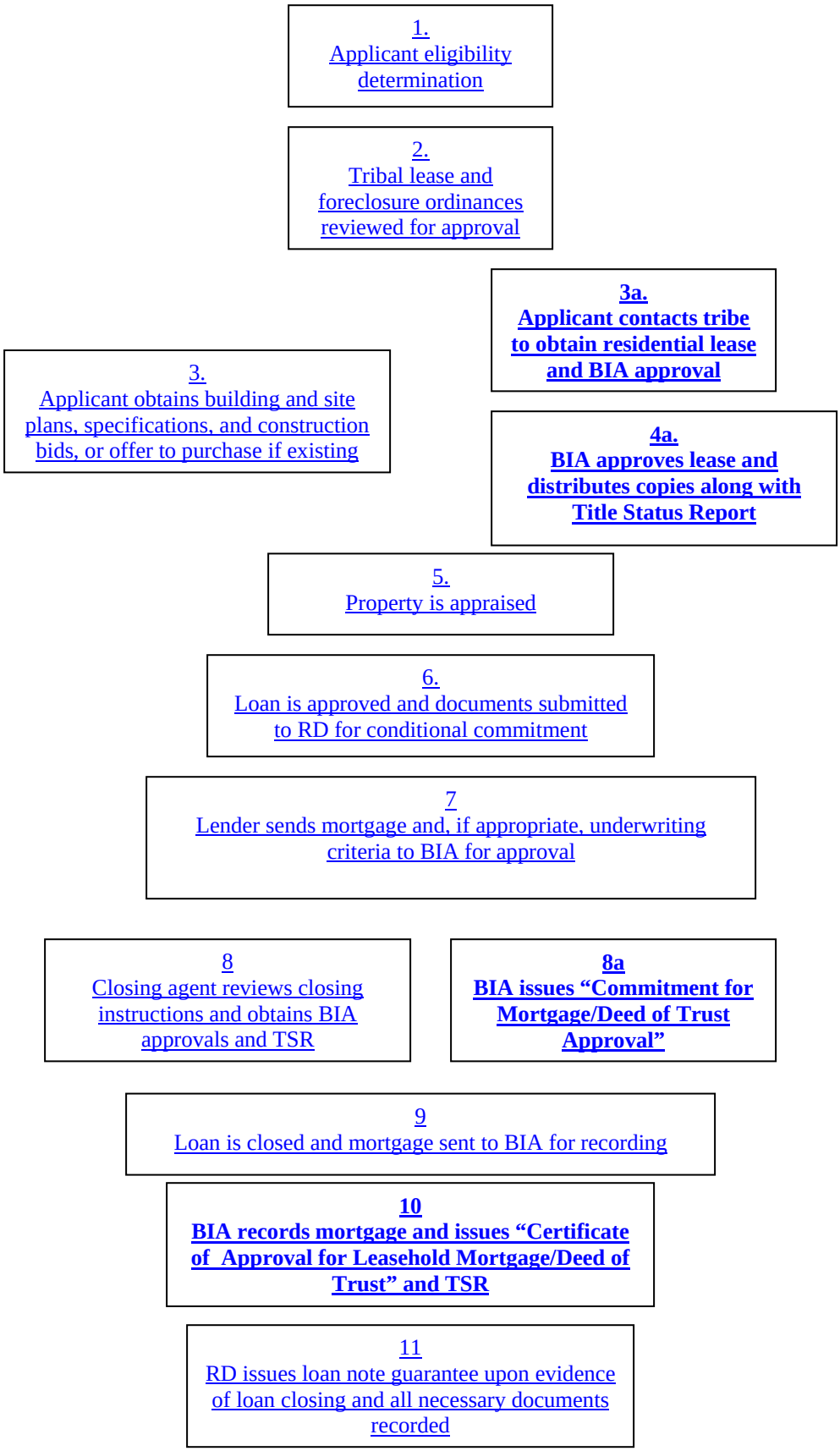
10-11
BIA records mortgage and issues "Certificate of Approval for Leasehold Mortgage/Deed of Trust" and TSR

Upon receiving evidence that the mortgage or deed of trust has been satisfactorily completed, the BIA issues and distributes its "Certificate of Approval for Leasehold Mortgage/Deed of Trust," which is signed by the Area Director or Superintendent. The BIA title plant then records the original mortgage or deed of trust and completes the TSR evidencing the appropriate filing and RD's lien position. Loan proceeds may be disbursed when the title policy has been obtained evidencing recordation and showing no conditions limiting insurability.

(Attachment D is a sample "Certificate of Approval for Leasehold Mortgage/Deed of Trust.")

Return to flow chart.

Mortgage Loan Flow Chart
For Guaranteed Loans on Indian Trust Lands



Guaranteed Loan Flow Chart

1.
Applicant eligibility determination

The goal of the loan originator (the private lender, in this case) is to help the customer become an eligible applicant and, eventually, a successful homeowner. Therefore, it is important that RD staff help the lender to understand and respect the often unique circumstances of American Indians and Alaskan Natives who reside on restricted lands. Some of these unique circumstances are reviewed in the Land: Leases, Security and Appraisal Issues chapter. Issues that the lender may need to address are: seasonal or sporadic employment histories, most often related to poor economic conditions; household income that is difficult to assess due to varying numbers of extended family members living in a property at any given time; per capita payments that may vary from year to year based upon gaming revenues – or payments that may be exempt from inclusion of family income due to the source of the income; credit issues including unpaid medical bills that are actually the responsibility of the Indian Health Service; co-signed third party consumer loans that have gone into default; and a high percentage of predatory lending terms that affect debt ratio.

There are many historic, economic, and discriminatory reasons contributing to the low level of homeownership on Indian lands, and to the phenomenon in this century that most of the Native Americans who do own homes are actually "first generation homeowners." Implementation of both the Native American Housing Assistance and Self-Determination Act (NAHASDA, 1996) and the HUD 184 program has opened opportunities for Native Americans to gain homeownership, and many private lenders are participating in these programs, helping to move people from a largely rental situation (the Mutual Help program is operated as a rental until the home is paid off) to ownership. Though many lenders provide budget/credit counseling, and will participate in home buyer education classes, RD can assist the lender in exploring culturally appropriate home buyer education, financial literacy, and credit counseling programs that have emerged in recent years providing potential Native American borrowers with considerable information and assistance.

Return to flow chart.

2.
Tribal lease and foreclosure ordinances reviewed for approval

It is the lender's responsibility to make certain certifications to RD, as specified in RD Instruction 1980-D, 1980.360(a), prior to issuance of the loan note guarantee. One of these certifications, found in 1980.360(a) (7), states that "the borrower has marketable (clean and defensible) title to the property then owned by the borrower, subject to the instrument securing the loan to be guaranteed, and any other exceptions approved in writing by RD." To make this certification, it is necessary that the lender review both the lease document and the tribal foreclosure and eviction ordinances to ensure that the lender's interests are protected. The lender may request RD's review of the documents as well, but this is not a necessary requirement to obtain the loan note guarantee.

If the lender is interested in selling the loan to the secondary market, a check for additional requirements may be needed. For example, Fannie Mae has agreed to accept the "One Stop Mortgage Initiative" documents, but also requires an "addendum" containing certain conditions, including the use of a two-party agreement between the tribe and Fannie Mae. This addendum is found in Appendix 5.

RD requires that the unexpired lease term run for 40 years from the date of approval (see 1980.314 and 1980.314(b)). It is not necessary that the initial term of the lease be 40 years as long as there is a provision for automatic renewals during the mortgage term that total 40 years.

Return to flow chart.

Guaranteed Loan Flow Chart

3. Applicant obtains building and site plans, specifications, and construction bids, or offer to purchase if existing property

It is important for the lender to understand at what point delays may occur in the mortgage process that can affect the interest "lock in" period for the loan. Therefore, the information provided in step 3 of the direct mortgage loan process is repeated here. Though delays in obtaining a lease can delay the process, so can building issues.

Applicants building on more remote Indian lands often have few options available for new construction. Home builders and construction material suppliers are limited and/or located at a considerable distance from the building site, creating additional construction costs and difficult construction coordination. Necessary infrastructure, including water, electricity, and roads may not be available or may be supplied in ways not typically found in more developed communities. Building codes may not exist. (See chapters on Builders and Building and on Site Selection for more discussion.) For these reasons, it is critical to work closely with the customer and the tribe during this phase of application development. There are programs and funding sources that could be applied in more remote areas to adequately develop the site and home. These include, but are not limited to, the Indian Health Service for water and sewer, the Bureau of Indian Affairs for roads, tribal NAHASDA funds for project leveraging, and state or local building codes acceptable to the tribe.

Construction projects on tribal lands may be subject to tribal employment preferences mandated by subsection 7(b) of the Indian Self Determination and Education Assistance Act, 25 U.S.C. 450e(b), which requires "to the greatest extent feasible" that

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given Indians; and
(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in 25 U.S.C. 1452.m

This preference for Indians or Indian-owned enterprises in subsection 7(b) applies to any contract, subcontract, grant, or subgrant awarded "for the benefit of Indians because of their status as Indians."

Note: During phases 3, 4, and 5 of the direct loan process, it critical for the lender to keep in regular communication with the applicant while he/she is working on obtaining lease approval, and in order to best coordinate with the tribe and BIA. Ideally, lease approval is completed by the time step 5 is finished, so that the loan can be timely approved. One cause of delay in obtaining lease approval is adherence to BIA's environmental requirements. In most one- to four-unit dwelling developments, RD may use an environmental Categorical Exclusion. The BIA may accept any Federal agency's

Categorical Exclusion Checklist, including Rural Development's. See Attachment E for BIA authority.

Return to flow chart.

3a.
Applicant contacts tribe to obtain residential lease and submits to BIA

Lease of Tribally Owned Trust Land for New Construction

The applicant contacts the tribe to get a homesite lease. Most tribes will have either a lease administrator or a realty department that will assist the customer in obtaining tribal council lease approval, as well as processing the lease through the BIA. This office will also coordinate with the BIA and the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) for necessary NEPA requirements, and may coordinate with the Indian Health Service for sanitation permits and/or applications for IHS water and sewer grant program assistance. It is recommended that the lender work closely with this tribal office to facilitate Agency environmental program requirements. Delays in obtaining BIA lease approval often are related to environmental and NEPA requirements. Coordinating with this office early in the application process will likely improve the timeliness of obtaining lease approval.

Lease Transfer for Existing Property

To purchase an existing dwelling on a leasehold interest, the applicant must obtain a "resolution" from the tribe to either transfer the seller's existing lease (if adequate terms exist) or to cancel the existing lease and approve a new lease. The resolution should contain a contingency that tribal and BIA approvals are subject to the purchaser obtaining the necessary financing. (Attachment A is a sample of a BIA "Cancellation" document.)

Lease of Allotted Land

In the case of allotted land, the lease process is initiated directly with the BIA. The tribe generally would not have an interest in the property, except in maintaining ownership by a tribal member.

Lease of Land Assignment

There are tribes that have historically distributed land use rights to individual tribal members through "land assignments." To create a mortgageable interest, the tribe generally would need to enter into a leasehold interest to perfect mortgage financing on previously assigned lands; however, some lenders are presently looking on a case by case basis at obtaining appropriate modifications to the land assignment rather than the applicant obtaining a leasehold interest.

Return to flow chart.

4a.
BIA approves lease, records at their title office, and distributes copies along with the Title Status Report (TSR)

The BIA is responsible for the approval and recordation of all leases on all trust lands. Consequently, any lease that the lender reviews for a tribe must also be approved by the BIA. Leases are approved for the Secretary of the Interior by BIA Area Directors and sent to the title office for recordation and a TSR. This TSR is the official record containing history of the property up to and including recordation of the new lease. As mentioned in step 3, it is important for the lender to maintain continued communication with the applicant, the tribal realty office, and the BIA as the lease goes through the various approval processes and recordation. Actions and documents required here pass through several parties; for this reason, the importance of good working relationships with all players cannot be overemphasized. RD has found that when a positive relationship exists with mutual understanding of each party's responsibilities, these processes can be expedited or, at least, more effectively timed. This certainly applies to the lender, as well.

Though it is the goal of the BIA to process titles and leases for home mortgages within 30 days, RD should inform the lender that in cases where it is taking an excessive amount of time to obtain a TSR, it is possible to obtain what it called a "Title Report" from the local BIA Realty Office. All records must be routed through, reviewed, and approved by the BIA Area Director, resulting in an unofficial record of all transactions recorded on a particular piece of trust property. This report is considered adequate documentation to keep the mortgage process moving forward with reasonable assurances that the necessary lien position will be obtained and eventually recorded. (See Attachment B for a sample "Title Report.")

Note: It is recommended that the lender keep a directory of relevant tribal offices and BIA offices. Some tribes have their own local BIA office. The presence of a local BIA office adds another layer of review that could lead to delays.

Return to flow chart.

5.
Property is appraised

1980.334 Appraisal of property servicing as collateral covers lender requirements for the appraisal report and appraiser qualifications. Section (b)(ii) states that "appraisals will be completed using the sales comparison (market) and cost approach to market value" and further discusses the use of comparables, including when comparables are not available in the area. The regulation is silent on the use of other than "cost to market value," but AN 4078 (1980-D), issued May 6, 2005, makes "Appraisals in Remote Rural Areas or Tribal Areas" (1-HB-3550, 5.20) applicable to the guarantee program (several identical ANs preceded 4078). This AN will expire on May 31, 2006, after which it will be important to check for a new AN reauthorizing this approach. It is also important to keep the lender apprised of the ability to use the cost approach.

As with the direct program, the remote rural area cost approach implies its application to new construction. If the lender intends to loan on an existing property, RD will need to obtain an exception from the National Office.

Return to flow chart.

6 - 7
Loan is approved, documents submitted to RD for conditional commitment, and mortgage and underwriting criteria, if appropriate, are sent to BIA for approval

BIA Responsibilities

BIA regulations require that all encumbrances on Indian trust lands have the Secretary of Interior's approval. Generally, it will be the responsibility of the BIA Area Director or the Area Superintendent to sign on behalf of the Secretary. The BIA is also the only recognized recording office for all official records that impact title of trust lands. This agency is required to review all mortgage or deed of trust documents for acceptability prior to approving the final instrument. For individual trust/allotted lands, BIA also needs to review all underwriting criteria as further protection against the possibility of the lands being "alienated." It is recommended that the BIA office review the lender's mortgage documents well before any loans are approved so that subsequent reviews can be expedited or, possibly, even waived.

RD Responsibilities

RD Instruction 1980-D, 1980.354 (a)(1)(ii) discusses the preparation and issuance of Form RD 1980-18, Conditional Commitment. It states that "Form RD 1980-18 shall be valid for a period of 90 days with an option by Rural Development to renew for an additional 90 days." There may be instances where closing delays on tribal lands resulting from the BIA TSR recordation process exceed these time constraints. When this happens, and the customer otherwise continues to meet all program eligibility criteria, Rural Development may extend the Conditional Commitment to close the loan beyond the total 180-day limitation as defined on Form 1980-18. The case file needs to be thoroughly documented by the lender, indicating communication with the BIA office and the expected time extension that will be required to close the loan.

Note: A State Office may want to insert here any additional loan approval conditions unique to its state.

Return to flow chart.

8-9
Closing agent reviews closing instructions, obtains approvals and TSR from the BIA, and closes loan, forwarding signed mortgage to BIA for recording

After obtaining the "Commitment for Mortgage/Deed of Trust Approval" and the TSR from the BIA, as well as reviewing the closing instructions and checking any other necessary county records, the loan is closed. At this point the original mortgage is forwarded to the BIA for the "Certificate of Approval for Leasehold Mortgage/Deed of Trust" and the TSR showing lien priority and filing documentation.

RD Instruction 1980.360 (a) (6), Conditions precedent to the issuance of the loan note guarantee, states that "the loan has been properly closed by a party skilled and experienced in conducting loan closings and the required security instruments, including any required shared equity instruments, have been obtained and recorded in the appropriate office in a timely and accurate manner." Should it be learned that the closing agent did not have the necessary skills and experience, RD could cancel the guarantee loan note.

Note: There may also be specific closing requirements for the secondary market.

Return to flow chart.

8a.
BIA issues "Commitment for Mortgage /Deed of Trust Approval"

The document described here may or may not be used by the BIA for each loan if the BIA has provided an up front, blanket approval of the lender's mortgage/deed of trust forms. It is always advantageous to get as much as possible approved ahead of time between all of the parties, to expedite the process of closing the loans and getting the funds timely disbursed.

(Attachment C is a sample "Commitment for Mortgage/Deed of Trust Approval.")

Return to flow chart.

10
BIA records mortgage and issues "Certificate of Approval for Leasehold Mortgage/Deed of Trust" and TSR

Upon receiving evidence that the Mortgage or Deed of Trust has been satisfactorily completed, the BIA issues and distributes a "Certificate of Approval for Leasehold Mortgage/Deed of Trust," signed by the Area Director or Superintendent. The BIA title plant then records the original mortgage or deed of trust and completes the TSR evidencing the appropriate filing and lien position to the lender. (Attachment D is a sample "Certificate of Approval for Leasehold Mortgage/Deed of Trust.")

RD Instruction 1980.360(a)(6) Conditions precedent to the issuance of the loan note guarantee states that "the required security instruments, including any required shared equity instruments, have been obtained and recorded in the appropriate office in a timely and accurate manner."

The issue of "timely" manner can be challenging given processing delays in the BIA mortgage recordation process. The lender should thoroughly document any communication with the BIA office regarding timeframes expected for mortgage recordation and receipt of the TSR, or what the historical timeframes have been at the particular BIA title plant office. Timeframes could run from two weeks to six months, or much longer. To address these delays, the Bureau sent a memorandum to its Regional Directors and Realty Officers on September 29, 2005, reaffirming the "priority" of processing titles and leases for home ownership purposes, and establishing an interim process with regard to preparing a certified TSR, and allowing for an "endorsement" in lieu of a subsequent TSR to hasten loan closing and disbursal of funds. The memorandum and endorsement may be found in Attachment E.

NOTE: RD staff should advise the lender to thoroughly document its discussions with the BIA with regard to processing titles and leases.

Return to flow chart.

11.
RD issues loan note guarantee upon evidence of loan closing and all necessary documents recorded

Considering the various responsibilities of each stakeholder, the timing of each step, and the necessary coordination that must take place between all parties, it is critical that communication take place through all phases of the loan process. One of the biggest challenges for the lender will be timing of the interest rate lock and the procedural requirement to complete loan closing in a timely manner. Taking all of this into consideration, for the guaranteed 502 program to be successful on tribal lands, it is important that Rural Development work closely with the lender and be as flexible as possible in granting timeframe extensions when feasible and reasonable. If Rural Development has a historical relationship with the local BIA or the tribe, it may be necessary for Agency staff to assist the lender directly with coordination of any of these processes until the lender gains the necessary experience.

Return to flow chart.

Mortgage Loan Closing Flow Chart
Trust Lands

1
RD sends mortgage and, if appropriate, underwriting criteria to BIA for approval, and other loan closing documents to title company or escrow agent for closing

2
BIA issues "Commitment for Mortgage/Deed of Trust" and TSR

Title Insurance

TI-1 Review TSR and, if appropriate, local county records and provide title commitment to RD/lender

TI-2 Upon review of title commitment, RD/lender submits closing instructions to title company's escrow agent for closing

TI-3 Title company closes loan and submits signed original mortgage to BIA for recording. Title policy is provided and funds are disbursed

TI-4 BIA records mortgage and provides "Certificate of Approval for Mortgage/Deed of Trust" and TSR back to title company

(Title Insurance not available)
Attorney/Escrow Agent

ATT-1 Attorney reviews TSR and, if appropriate, local county records, and provides preliminary title opinion to RD/lender

ATT-2 Upon review of preliminary title opinion, RD/lender submits closing instructions to attorney/escrow agent for closing

ATT-3 Attorney closes loan and submits signed original mortgage to BIA for recording

ATT-4 Upon receipt of the TSR and "Certificate of Approval for Mortgage/Deed of Trust," final title opinion is provided and funds are disbursed

Loan Closing Flow Chart

Attorney/Escrow Agent

ATT-1
Attorney reviews TSR and, if appropriate, local county records, and provides preliminary title opinion to RD/lender

HB-1-3550 Section 2, 8.4 A and RD Instruction 1927-B, 1927.54, discuss the conditions when an attorney's opinion can be accepted in lieu of title insurance: basically, when title insurance is not available or is not economically feasible.

The attorney reviews the TSR for proper lease recordation and intervening liens, and checks local county records for personal judgments or other liens that may affect borrower eligibility or may cloud title to the property. BIA regulations require that the Secretary of the Interior approve and record encumbrances on tribal trust lands; consequently, in most cases, liens filed only at the local county records office, and not with the BIA, are valueless. There may be exceptions to this rule, however. For example, there are tribes that experienced "termination" and then had their federal status restored (see chapter on History and Law). Intervening liens may have been placed on properties during the period of termination and overlooked by the BIA in the approval and recordation process. Thus, there are some cases that necessitate the review of local county records for a thorough examination of title.

Return to flow chart.

Loan Closing Flow Chart

Attorney/Escrow Agent

ATT-2 Upon review of preliminary title opinion, RD/lender submits closing instructions to attorney/escrow agent for closing

A Preliminary Title Opinion developed from a TSR is similar to one developed from an Abstract of Title and is discussed in HB-1-3550 Section 2, 8.4 and in RD Instruction 1927-B 1927.55 (b, f).

The legal description needs to be reviewed for accuracy, and to ensure that the dwelling unit is found within the property's legal boundaries, and that only the parcel to be mortgaged is included.

HB-1-3550 Attachment 5-C, "Amendments to Mortgages with Leasehold Interests," requires the following paragraphs to be inserted in the mortgage. The first paragraph should be placed directly before the legal description of the real estate.

> "All Borrower's right, title, and interest in and to the leasehold estate for a term of ____ years beginning on _____, 20__, created, executed and established by certain Lease dated _____, 20__, by _____, Page _____ of _____ Records of said County and State or Department of Interior's Bureau of Indian Affairs, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate."
>
> "Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of Borrower's right, title, or interest in or to said leasehold estate or under said Lease while this instrument remains in effect."

Special note: A waiver of surveys for sites located on tribal trust and allotted land administered by the BIA was granted to South Dakota by the National Office based on BIA's certification that the "existing and proposed property improvements are totally on the site and do not encroach on adjoining properties." The certification must be obtained on all cases where a title insurance policy is not obtained and, if the loan involves new construction, a recertification must be obtained once the foundation is in place.

Return to flow chart.

Loan Closing Flow Chart

Attorney/Escrow Agent

ATT-3
Attorney closes loan and submits signed original mortgage to BIA for recording

The attorney may also record the mortgage at the local county records office, if this is deemed necessary. In most cases, this will not have any effect on the lien position, but will provide a notice to the public that a lien has been filed.

Return to flow chart.

Loan Closing Flow Chart

Attorney/Escrow Agent

ATT-4 Upon receipt of the TSR and "Certificate of Approval for Mortgage/Deed of Trust," a final title opinion is provided and funds are disbursed

It can take the BIA title plant from two weeks to six months and longer to record a mortgage and issue a TSR, yet RD Instruction 1927.58(a) Disbursement of loan funds states that "loan funds will not be disbursed prior to filing of the mortgage for record." To better serve the customer, there are other BIA assurances that can be obtained providing the necessary documentation for loan funds to be disbursed. BIA's memorandum, dated September 29, 2005 (see Attachment E), provides an interim policy allowing for a signed "endorsement" rather than a subsequent certified TSR in order to record a mortgage loan. This document is sufficient to close the loan. Attachment F is a list of BIA regional offices with authority to sign the endorsement.

Attachment B is an example of a "Title Report" indicating the unofficial record of the property.

Note to State Office: Include here an attachment of unique servicing requirements that the Agency has approved as part of the tribal foreclosure and eviction ordinances. This will provide guidance to field staff should there be a default and/or foreclosure.

Return to flow chart.

Loan Closing Flow Chart

Title Insurance

TI-1
Review TSR and, if appropriate, local county records, and provide title commitment to RD/lender

Title companies generally review local courthouse records in addition to the TSR. Though only the BIA has authority for approval and recordation of liens against tribal lands, lenders may still want their liens filed at the local county records office. There may also be personal judgments or other liens of record locally that are not maintained by the BIA.

Return to flow chart.

Loan Closing Flow Chart

Title Insurance

TI-2
Upon review of title commitment, RD/lender submits closing instructions to title company's escrow agent for closing

It is important to review the title commitment to ensure that there are no exceptions limiting coverage that would not be found in similar policies pertaining to fee simple lands.

Return to flow chart.

Loan Closing Flow Chart

Title Insurance

TI-3
Title company closes loan and submits signed original mortgage to BIA for recording. Title policy is provided and funds are disbursed

Upon obtaining the title policy, loan funds can be disbursed. It is the title company's responsibility to ensure that liens are properly recorded.

Note to State Office: Include here an attachment of unique servicing requirements that the Agency has approved as part of the tribal foreclosure and eviction ordinances that may provide guidance should there be a default and/or foreclosure.

Return to flow chart.

Loan Closing Flow Chart

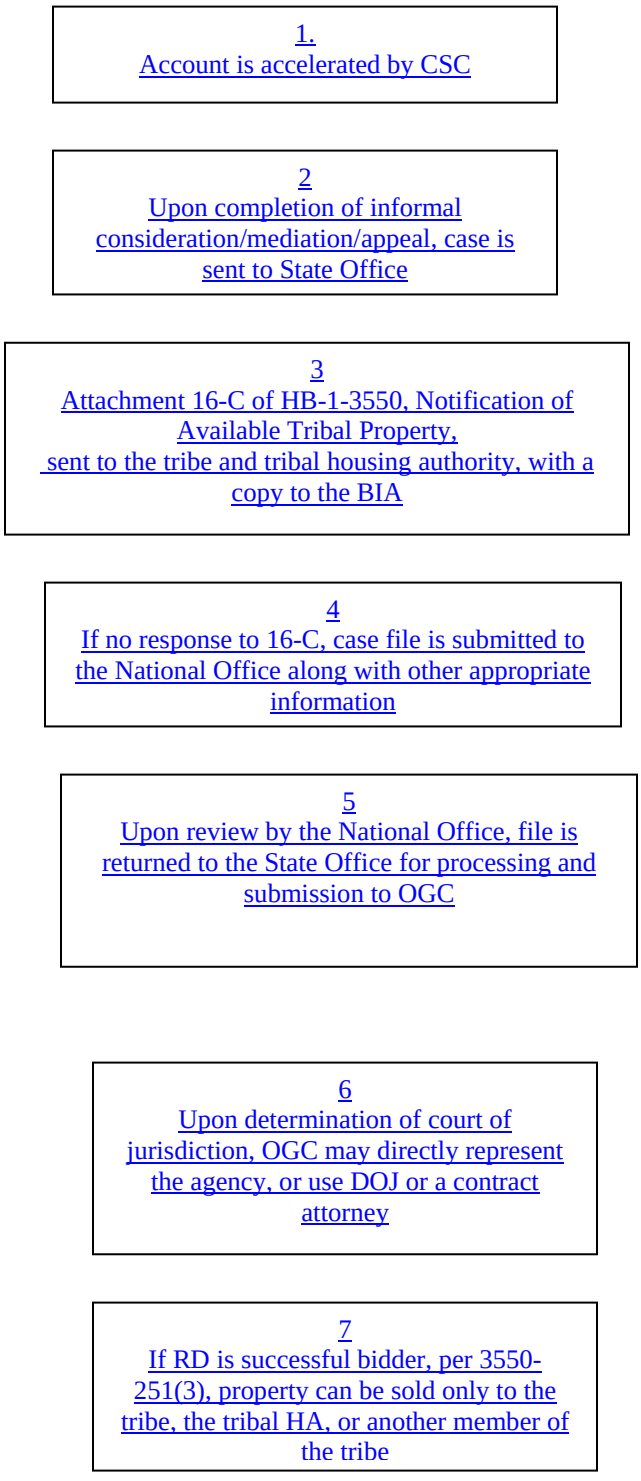
Title Insurance

TI-4
BIA records mortgage and provides "Certificate of Approval for Mortgage/Deed of Trust" and sends TSR to the title company

The title company provides the local RD office with copies of the Certificate of Approval for Mortgage/Deed of Trust and the TSR or Endorsement (see Attachment E), indicating the lien recordation. These documents are placed in the borrower's file.

Return to flow chart.

Mortgage Loan Servicing Flow Chart



Servicing Flow Chart

1-2 Account is accelerated by CSC; upon completion of informal consideration/mediation/appeal, forwarded for foreclosure

CSC is able to accelerate SFH accounts after the conditions specified in Chapter 5 of HB-2-3550 (7 CFR 3550.201) are met. Upon completion of the informal consideration/mediation/appeal, CSC submits the case file to the State Office or the local office for handling of the foreclosure. It is at this point that consideration should be given to special or unique servicing requirements identified in the tribal foreclosure and eviction procedures that have been approved by the Agency. For example, a tribal foreclosure ordinance may require extra steps be taken prior to liquidation action, such as a certified letter to the borrower and/or a posting, a face-to-face meeting with the borrower, the use of an interpreter, a third party intervention, or exercise of the right of first refusal. In most cases, these additional requirements are designed to help the customer be successful, and/or to get the tribe involved in delinquency servicing early in the process.

Return to flow chart.

Servicing Flow Chart

3. Attachment 16-C of HB-1-3550, Notification of Availability of Tribal Property, is sent to the tribe and tribal housing authority, with a copy to the BIA

Per 3550.211(b) and Handbook 6.5 (2), the following actions must take place before foreclosure can proceed:

- A review is undertaken of unique servicing conditions required in the tribal foreclosure/eviction ordinances that need to be addressed before RD can pursue forced liquidation; these may have been missed by CSC.

- The State Director makes an offer to the tribe, the tribal housing authority, and others as appropriate before proceeding with foreclosure using 3550 Attachment 16-C. This attachment requires a reasonable time frame for response, such as 30 or 60 days. Ideally, this time frame should be negotiated up front with the tribe to accommodate any tribal council/court scheduling issues. *(It is recommended to check with the local BIA realty office about its need for a copy of the 16-C.)*

  RD is authorized to transfer the account on program terms to an eligible member of the tribe who meets the program requirements, or on non-program terms to an eligible member of the tribe, the tribe, or the Indian housing authority serving the tribe.

- The State Director makes the determination that it is in the best interest of the federal government to foreclose, and that all necessary servicing actions have been afforded the customer and the tribe. The case file, containing all servicing actions and relevant tribal ordinances, is then forwarded to the National Office, Attention: Native American Coordinator, for review before final foreclosure action is taken.

Note: It is critical that all federal and tribal laws are met before acceleration. For instance, HB-2-3550, 6.5(5) discusses offers to cure defaults after the account has been accelerated, stating that "Field Offices will refer offers to cure the default to CSC. The borrower is permitted to cure the default and retain the loan under the following conditions:

- The Agency is required by State law to reinstate the loan; or
- The Agency is required by a decision from the National Appeals Division (NAD) to reinstate the loan; or
- The borrower has not cured the account within the last two years to prevent foreclosure."

Where RD has approved tribal foreclosure law, this law will be followed in any servicing action, and will have precedence over state law. Servicing steps should be reviewed periodically with the tribe and, possibly, included in an MOU between the tribe and the Agency. It will be through a cooperative working relationship with the tribe that the most beneficial servicing results can be achieved for all parties.

Return to flow chart.

Servicing Flow Chart

4
If no response to 16-C, case file is submitted to National Office along with other appropriate information

If there is no response to 16-C, or if RD is unable to work out a mutually agreeable solution with the tribe or customer, then foreclosure will proceed with the file sent to National Office accompanied by information regarding the tribal court of jurisdiction, if one exists, and a copy of relevant approved ordinances.

Return to flow chart.

Servicing Flow Chart

5 Upon review by the National Office, file is returned to the State Office for processing and submission to OGC

Upon receipt of the file back from the National Office certifying that all required servicing actions have taken place, then foreclosure will proceed with the file being sent to OGC accompanied by information regarding the tribal court of jurisdiction, if one exists, and a copy of relevant approved ordinances.

Return to flow chart.

Servicing Flow Chart

6 Upon determination of court of jurisdiction, OGC may directly represent the agency or use DOJ or a contract attorney

Certain Department of Justice (DOJ) offices have objected to representing the Agency in tribal courts when litigating a SFH loan foreclosure. Though there was Agency direction given to servicing staff on foreclosure action being brought in tribal courts, this AN (3152, dated April 19, 1995) expired and was not been replaced in the RD Instructions. To clarify this issue and how the Agency would be represented, the National Office OGC has been in consultation with the Executive Office for United States Attorneys (EOUSA), which has agreed that there would be no objection to RD hiring private attorneys to foreclose in tribal courts. Such authority to hire private attorneys exists in 42 U.S.C. 1480(d). National Office OGC has provided guidance to the Regional OGCs indicating that "if and when RHS determines that it wants to foreclose a security interest in a section 502 house in tribal court, that the OGC must be involved in the RHS hiring process for private attorneys."

Return to flow chart.

7
If RD is successful bidder, per 3550-251(3), property can be sold only to the tribe, the tribal HA, or another member of the tribe

7 CFR 3550.251(3), Property on Indian tribal allotted or trust land, establishes that REO property located on Indian tribal allotted or trust land will be sold or otherwise disposed of *only to a member of the particular tribe* having jurisdiction over the land, to the tribe, or to an Indian housing authority servicing the tribe *on a first-come, first served basis***.** Some agreements in other federal and private mortgage programs imply an order of sales priority, but this is not the case for the 502 direct program.

Return to flow chart.

Guaranteed Lender Servicing Issues
Unique to Lending on Indian Lands

1980.376 (a) (1) (ii) states that "if, at liquidation, title to the property is conveyed to the lender, then the lender must prepare and submit a property disposition plan to RD for RD's concurrence. The plan will address the lender's proposed method for sale of the property, the estimated value and minimum sale price, itemized estimated costs of sale, and any other information that could impact the amount of loss on the loan. The lender is allowed up to 6 months from the date the property is acquired to sell the property. Upon the lender's written request, RD will authorize one extension period not to exceed 30 days to close the sale of a purchase offer accepted near the end of the 6-month period. If no sale offer is accepted within the 6-month period, then the RD approval official will obtain and use a liquidation value appraisal of the property. When an appraisal is obtained, the amount of the net proceeds from the security is then determined by subtracting a cost factor, which is found in exhibit D of RD Instruction 1980-D (available in any RD office), from the current market value."

Note: In a previous initiative with Fannie Mae, entitled the Rural Housing Native American Pilot (RHNAP), RD mitigated this servicing time frame and allowed a 12-month holding period before loss settlement was completed. This was done to acknowledge the limited market that often exists on tribal lands, and the additional time it may take to close the transaction through the BIA. Until the National Office provides further guidance on this matter, it is recommended that in the property disposition plan submitted to RD the lender should address the need for a longer sales period. RD may grant a longer initial holding period or extensions based upon previous experience with properties on the specific reservation involved, as well as anticipated time needed to close the transaction through the BIA. If the RD State Office has any questions as to what may be considered "reasonable," the National Office should be consulted for further guidance.

HUD's 184 program history indicates success in early delinquency intervention between the tribe and the lender. In most of these cases, the tribe has either assisted with a transfer of the property or paid the lender a fair market value prior to a foreclosure sale. If the lender does not have a prior working relationship with a specific tribe where delinquency intervention is needed, the RD local office or the state's Native American Coordinator may provide assistance and guidance in resolving the issue short of foreclosure.

APPENDICES

APPENDIX 1

APPENDIX 1
MORTGAGE LOAN COMPARISON CHARTS
RURAL DEVELOPMENT Section 502 Guarantee Program
Vs.
OFFICE OF NATIVE AMERICAN PROGRAMS Section 184 Guarantee Program
(Prepared by Greg Stevens, Rural Development, Traverse City, MI)

PROGRAM BENEFITS

	502 Guarantee	**184 Guarantee**
Guarantee Fee	2% of loan amount, fee can be added to total mortgage	1% of loan amount, fee can be added to total mortgage
Financing	100% financing based on appraised value	The lowest of: 1. 150% of area's FHA mortgage limit or 2. 97.75% (or 98.75% if less than $50,000) of the appraised value excluding closing costs or 3. 97.75% of the acquisition cost (if acquisition cost is $50,000 or less)
Terms and Rates	30-year fixed rate at market average	10, 15, 20 or 30-year fixed rates at market average
Refinance Option	Yes, for rate reduction only, no borrower cash back, reduced guarantee fee of .5%, existing RD loans only	Yes, for rate reduction, cash-out, debt consolidation; guarantee fee of 1%
Mortgage Insurance	None	None
Loan Purposes	Single Family primary residence + necessary repairs, appliances, energy saving measures, alterations/equipment for disabled	Single Family primary residence containing one to four family dwelling units + essential repairs & improvements, energy-related weatherization items
Down Payment	None	1.25 – 2.25%
First-Time Homebuyer	No first-time homebuyer requirement	No first-time homebuyer requirement
Seller Concessions	No maximum	Up to 6% of sales price allowed, thereafter a dollar-for-dollar reduction of the mortgage amount is required

INCOME AND RATIOS

	502 Guarantee	184 Guarantee
Ratios	29 PITI / 41 TDR – exceptions encouraged with compensating factors and RD concurrence	41 TDR – can be exceeded with compensating factors
Non-occupant co-borrowers	Not permitted	Permitted; non-relative co-borrowers/co-signors result in reduction of maximum financing to 75% of appraised value
Installment Debt	Include all installment debt with six months or more of payments remaining	Include all installment debt with 10 months or more of payments remaining
Primary Income	Written Verification of Employment plus most recent pay stub to project next 12 months' income	Verification of most recent two full years of employment + analysis to determine if income can be expected to continue through first three years of the mortgage
Self-employment	Two most recent years individual and business tax returns, profit & loss statement and current balance sheet	Two most recent years individual and business tax returns, profit & loss statement and current balance sheet
Alimony/Child Support	12 month history	Copy of Divorce decree + 12 month history
Part-time income	12 month history	12 month history (24 month history if part-time income is in addition to a full-time job)
Over-time & Bonus income	12 month history	24 month history (12 month accepted with compensating factors)
Disability Benefits / SSI Benefits	Benefits letter, three years continuance, and gross up by 115%	Verification from the source or through federal tax returns, three years continuance, and gross up by applicable tax rate
Maximum Income	RD Moderate Income Limits	No income limits

CREDIT

	502 Guarantee	184 Guarantee
Credit Score	No minimum	No minimum
Late Payments	One 30 day late payment permitted w/in last 12 mos. w/ explanations, exceptions if borrower has 660 or higher credit score	Occasional late payment over several years may not need explanation if borrower has otherwise good credit history
Bankruptcy/Foreclosure	Bankruptcy must be discharged for 3 years; Foreclosures must be completed three years ago; Exceptions for borrowers with scores over 660	Bankruptcy must be discharged for 2 years (12 months if extraordinary circumstances caused bankruptcy); Foreclosures must be completed three years ago (unless the result of extenuating circumstances beyond borrower's control)
Collections	Accounts cannot have been placed for collection within the last 12 months absent extenuating circumstances or a 660 or higher credit score	All collection accounts must be paid off as a condition for loan approval except under unusual circumstances
Judgments	Must be paid-off for at least 12 months unless borrower has 660 or higher credit score	Must be paid-in-full before closing, borrower must furnish ltr. of explanation and reestablish good credit
Non-Traditional Credit	Acceptable if no credit available	Acceptable if no credit available
Credit Report	Residential Mortgage Credit Report or a Three Repository Merged Credit Report (Tri-Merged)	Three Repository Merged Credit Report (Tri-Merged)

FUNDS FOR CLOSING

	502 Guarantee	184 Guarantee
Closing Costs	All closing costs may be financed (except discount points unless borrower is below RD low income limit)	All closing costs may be financed (discount points and prepaids (i.e. Hazard insurance/taxes) are not included in closing cost – borrower must pay them at closing)
Seller Concessions	All closing costs and prepaids (i.e. Hazard insurance/taxes) may be paid by seller concessions	Seller may pay the borrower's closing costs (and prepaid items), however any amount over 6% of the sales price will be subtracted dollar-for-dollar in determining the maximum mortgage amount
Gifting	100% gifting acceptable from disinterested third party	Gift funds permitted

PROPERTY REQUIREMENTS

	502 Guarantee	184 Guarantee
Eligible Areas	Property must be in a rural area (see http://www.rurdev.usda.gov/mi/mapsmain.htm)	Property must be on tribal trust, individual allotted trust or fee simple land in an Indian operating area
Other Real Estate Owned	Borrower must not own adequate housing	No restriction
Occupancy	Primary residence only	Primary residence, and development of rental housing permitted
Property Type	Single family or RD eligible condo/planned unit development	Single family, eligible condo/planned unit development; structure may contain 1-4 family dwelling units
Manufactured Homes	Must be new and RD approved	Must not have been installed or occupied at any other previous site or location
Thermal Certification	RD thermal standards at 7 CFR Sec. 1980.313(f) apply	Heating system must be able to maintain minimum 65°F & conform to tribal/local code
Home Inspection	Property to be appraised by licensed appraiser using Market Data Approach; RD Existing Home Certificate to be completed by appraiser or home inspector	Property to be appraised by licensed appraiser using Market Data Approach (Reproduction Cost Approach if comparables are not available)
Well/Septic Systems	Private systems must be inspected by state licensed inspector	Must meet requirements of local health authority
Repairs	100% of repairs necessary to make the property decent, safe, and sanitary or accessible to disabled resident may be financed based upon as improved value of property	Lenders may add to the sale price the value of repairs/improvements appraiser deems essential to make the property decent, safe and sanitary

Native American Mortgage Loan Comparisons
June 1, 2004
THIS COMPARISON CHART IS REPRINTED FROM "DESIGNING AND OPERATING HOMEOWNERSHIP PROGRAMS ON TRIBAL LANDS: A Guide for New Mexico's Tribal Leaders," Copyright 2003, The Enterprise Foundation

	Guaranteed Rural Housing	**Veterans Administration Direct**	**Rural Development 502**	**Federal Housing Administration 248**	**HUD Office of Native American Prog 184**	**Conventional**
Income Restrictions	115% of National Median	No	80% of Median	No	No	No
Max Loan Amount	None	$80,000	Cost Based on 1500 SF Home	FHA Limit $154,896 Base	1.5 X FHA Limit $232,344 Base	$333,700
Downpayment	0	0	0	3% of first $25K+ 5% of additional	2.25% of Acquisition Cost	5%
Construction/perm	No	Yes	Yes	Yes	Yes	Yes
Rehab	No	Yes	Yes	Yes	Yes	Yes**
Refinance	No	No	No*	Yes including cash-outs	Yes, including cash-outs	Yes**
Manufactured Hsg	New Approved Dealer/Contractor	New w Engineered Found	New Approved Dealer/Contractor	New or Existing w Engineered Found	New or Existing w Engineered Found	New or Existing w Engineered Found
Housing and Debt Ratios	29/41	Residual (29/41)	29/41 to 33/41	29/41 or 31/43 on New Construction	41	33/38
Guarantee Fee Private Mortgage Insurance	1.75 % of Mort Guar Fee	1.25% of Base Loan Guar Fee	None	.5% per year mortgage Insurance	1% of Base Loan Guar Fee	.75% per year private mort ins
Can Closing Costs be Financed	Yes	Yes	Yes	Yes	Yes	No
ARMs allowed ?	No	No	No	Yes	No	No
Downpayment/Closing Cost Assistance	Allowable	Allowable	Allowable	Allowable	Allowable	Allowable
Gift Restrictions	None	None	None	None	None	Allowed to 1%
Assumable	Yes subject to eligibility	Yes subject to eligibility	Yes subject to eligibility	Yes subject to eligibility	Yes subject to eligibility	Yes subject to eligibility
Reserve Requirements	None	None	None	None except for construction/perm	None except for construction/perm	2 months
Credit Standards	Good Credit	Good Credit	Good Credit	Good Credit	Good Credit	Good Credit
Buydowns	2/1 paid by seller or with gift	No	No	Yes	Yes	No
Homebuyer ED Recommended or Required	Yes	Yes	Yes	Yes	Yes	Yes
Foreclosure Prevention	Intervention	Intervention	Intervention	Intervention	Intervention	Delinquency

						Counseling
Title Insurance	Investor Decision	No	No	No	No	Yes
Limited Waiver of Sovereign Immunity	No	No	No	No	No	No
Legal Documents	One Stop Docs or Negotiated	One Stop Docs or Negotiated	One Stop Docs or Negotiated	One Stop Docs or Negotiated	One Stop Docs or Negotiated	One Stop Docs or Negotiated
Agreement Documents	RHS/Tribe & Investor	MOU VA/Tribe	RHS/Tribe	FHA/Tribe	ONAP/Tribe	Fannie/Freddie w Tribe

*502 refi limited to loan in default due to income loss or major rehab .

**Negotiated. The conventional parameters can be expanded through individual negotiations between the tribe and the investor (Fannie Mae or Freddie Mac).

APPENDIX 2

APPENDIX 2
USDA RD NATIVE AMERICAN COORDINATORS

STATE	# of FED TRIBES	NAME, TITLE	E-MAIL	PHONE #
Arizona	21	Don Irby, Area Director	don.irby@az.usda.gov	928-759-9301 ext. 103
Arkansas		LaWanna Duvall	lawanna.duvall@ar.usda.gov	479-646-8300
Alabama	1	Ricky Dawson, Area Director	Ricky.Dawson@al.usda.gov	251-937-7350
Alaska	235	Debby Retherford, Rural Utilities Specialist	deborah.retherford@ak.usda.gov	907-761-7726
California	95	Sue Ladner, Program Outreach Coordinator	sue.ladner@ca.usda.gov	916-799-5143
Colorado	2	Jaki Polich, Rural Development Manager	jaki.polich@co.usda.gov	970-565-8416 x127
Delaware/ Maryland				
Florida	7	Luis Carrero, Community Development Specialist	luis.carrero@fl.usda.gov	813-752-1474
Georgia	^2	Carol Whitmire, Secretary to the State Director	Carol.Whitmire@ga.usda.gov	706-546-2162
Hawaii		Alvin Okamoto, Appraiser/SCRC/ Housing Specialist	Alvin.Okamoto@hi.usda.gov	808-933-8314
Idaho	4	Roni Atkins, Director, Rural Housing Programs	Roni.Atkins@id.usda.gov	208-378-5627
Iowa	1	Teresa Bomhoff, Assistant to the State Director	Teresa.Bomhoff@ia.usda.gov	515-284-4447
Illinois		David Baggott	David.Baggott@il.usda.gov	217-398-5412 x290
Indiana				
Kansas	^4	Richard Boyles, Rural Development Manager	richard.boyles@ks.usda.gov	785.863.2221 x 4
Kentucky				
Louisiana	3	Cathy Beales, State Civil Rights Manager	Cathy.Beales@la.usda.gov	318-255-2826 ext 4
Maine	4	Richard Ireland, Area Director	Richard.Ireland@me.usda.gov	207-764-4157
Michigan	12	Wendy Sexton, Guaranteed Housing Specialist	wendy.sexton@mi.usda.gov	906-497-4447
Massachusetts/ Connecticut/ Rhode Island	9	Richard Burke, Director, Program Support	Dick.Burke@ma.usda.gov	413-253-4319
Minnesota	11	Pamelia Wiltsey, SCRM / Minority Outreach Specialist	Pamelia.Wiltsey@mn.usda.gov	218-829-5965 x156

Missouri		Martha Newsom, Program Outreach Coordinator	Martha.Newsom@mo.usda.gov	573-876-0986
Mississippi	1	Betty Price, Civil Rights Manager	Betty Price@ms.usda.gov	601-965-4316
Montana	7	Bob Parsley, American Indian Community Programs Specialist	Bob.Parsley@mt.usda.gov	406-585-2588
Nebraska	4	Dale Wemhoff, Rural Development Manager	Dale.Wemhoff@ne.usda.gov	402-371-5350
Nevada	26	Kelli Colyer, Area Specialist	kelli.colyer@nv.usda.gov	775-738-8468 x109
New Jersey	^3	Howard Henderson, Area Director	Howard.Henderson@nj.usda.gov	856-205-1225 x127
New Mexico	24	Walter Taylor, Rural Housing Program Director	walter.taylor@nm.usda.gov	505-761-4973
New York	10	David Miller, Community Programs Director	David.Miller@ny.usda.gov	315-477-6427
North Carolina	1	Debra Hammonds, Rural Development Technician	debra.hammonds@nc.usda.gov	910-739-3349 x121
North Dakota	5	Bill Davis, Outreach Coordinator	Bill.Davis@nd.usda.gov	701-530-2042
Ohio		Christie Hooks	christie.hooks@oh.usda.gov	614-255-2397
Oklahoma	37	David M. Moore, American Indian Coordinator	David.Moore@ok.usda.gov	918-423-7602
Oregon	10	Barrie Lasure, SFH Specialist	barrie.lasure@or.usda.gov	541-923-4358 x130
Pennsylvania				
South Carolina	1	Cathy Seawright, Civil Rights Manager	Cathy.Seawright@sc.usda.gov	803-253-3093
South Dakota	8	Tammi Schone, Public Affairs Specialist	Tammi.Schone@sd.usda.gov	605-352-1102
Tennessee		Robert Connely, Assistant to the State Director	bob.connelly@tn.usda.gov	615-783-1300
Texas	3	Anita Sprankle, Rural Development Manager	Anita.Sprankle@tx.usda.gov	915-855-1229
Utah	4	Perry Mathews, Area Specialist	perry.mathews@ut.usda.gov	801-377-5580 x18
Vermont/ New Hampshire		Gregg Macpherson	gregg.macpherson@nh.usda.gov	603-223-6054
Virginia	^7	Cynthia Bomar, Area Specialist	cindy.bomar@va.usda.gov	434-239–3473 x103
Washington	26	Paul Johnson, Program Planning Specialist	paul.johnson@wa.usda.gov	360-704-7761
West Virginia		Leland Kesner	Leland.Kesner@wv.usda.gov	304-269-8431
Wisconsin	11	Justine Rufus, Rural Development Specialist	justine.rufus@wi.usda.gov	715-284-4515

Wisconsin	11	David Schwobe, Area Director	dave.schwobe@wi.usda.gov	715-524-8522
Wyoming	2	Yvette Wilson, Rural Development Specialist	yvette.wilson@wy.usda.gov	307-856-7524 x4

^ STATE RECOGNIZED ONLY

APPENDIX 3

APPENDIX 3
TRIBAL INFORMATION RESOURCES

Many tribes now have their own websites that contain a wealth of information on the history, culture, economics, geography, government, events, and related subjects. Using your favorite search engine, type in the name of the tribe and look for the tribe's home page.

The National Native American Coordinator often uses *Tiller's Guide to Indian Country* for background information about tribes. Edited by Veronica E. Velarde Tiller (Jicarilla Apache Tribe) and published in 1996 by Bow Arrow Publishing Co., the guide by provides economic profiles of over 500 tribes. The author has prepared an update of this guide. For more information, call 888-336-8207.

Several other websites will provide some basic information about tribes, including:

National Congress of American Indians (NCAI)
http://www.ncai.org
The "Tribal Directory" provides a listing of tribes, their current leader, mailing address, telephone and fax numbers. In addition, there are links to about 40 websites for specific tribes.

Housing and Urban Development (HUD)
The Codetalk website provides a listing of tribes by regions and, when available on the internet, information on specific tribes:
http://www.hud.gov/offices/pih/ih/codetalk/onap/map/nationalmap.cfm
Note that the Memorandum of Understanding among USDA, HUD, and VA (Appendix 5 in this guide) contains an outdated web address for the Codetalk site.

APPENDIX 4

APPENDIX 4
638 SELF GOVERNANCE TRIBES

Compacts (71) Funding Agreements (91)
As of 01/04/06

Fiscal Year *Calendar Year CY* Multi-Year Funding Agreements (MYFA) NEW

AREA: ALASKA (21)

	YEAR ENTERED	TRIBE / ORGANIZATION	# of Tribes w/in a F.A.
1.	1999	**Alaska Native Tribal Health Consortium**	0
2.	1995	**Aleutian/Pribilof Islands Association, Inc.**	6
3.	1998	**Arctic Slope Native Association, Ltd.**	6
4.	1995	**Bristol Bay Area Health Corporation**	32
5.	1995	***Chugachmiut***	*6*
6.	1995	**Copper River Native Association**	5
7.	2000	**Council of Athabascan Tribal Governments**	0
8.	1997	**Eastern Aleutian Tribes, Inc.**	6
9.	1998	**Ketchikan Indian Corporation**	1
10.	1995	**Kodiak Area Native Association**	9
11.	1995	**Maniilaq Association**	12
12.	1997	**Metlakatla Indian Community**	1
13.	2000	**Mount Sanford Tribal Consortium**	2
14.	1995	**Native Village of Eklutna**	1
15.	1995	**Norton Sound Health Corporation**	20
16.	1995	**Seldovia Village Tribe**	1
17.	1995	**Southcentral Foundation**	1
18.	1995	**Southeast Alaska Regional Health Consortium**	16
19.	1995	**Tanana Chiefs Conference, Inc.**	33
20.	2003	**Yakutat Tlingit Tribe**	1
21.	1995	**Yukon-Kuskokwim Health Corporation**	58

AREA: BEMIDJI (9)

	YEAR ENTERED	TRIBE / ORGANIZATION	# of Tribes w/in a F.A
22.	1999	***Bois Forte Band of Chippewa Indians***	1
23.	1995	*Fond Du Lac Band of Lake Superior Chippewa CY*	1
24.	2005	**Forest County Potawatomi Community MYFA**	1
25.	1993	**Grand Traverse Band of Ottawa & Chippewa Indians of Michigan**	1
26.	2002	*Keweenaw Bay Indian Community MYFA*	**1**
27.	1993	**Mille Lacs Band of Ojibwe Indians MYFA**	1
28.	1997	***Oneida Tribe of Indians of Wisconsin***	1
29.	1995	***Sault Ste. Marie Tribe of Chippewa Indians MYFA***	1
30.	2004	***Shakopee Mdewakanton Sioux***	1

AREA: BILLINGS (2)

YEAR ENTERED	TRIBE / ORGANIZATION	# of Tribes w/in a F.A
31. 1995	**Chippewa Cree Tribe of the Rocky Boy's Reservation**	1
32. 1993	**Confederated Salish & Kootenai Tribes of the Flathead Nation**	1

AREA:CALIFORNIA (5)

YEAR ENTERED	TRIBE / ORGANIZATION	# of Tribes w/in a F.A
33. 2006	*Consolidated Tribal Health Project, Inc CY.*	8
34. 1993	***Hoopa Valley Tribe***	1
35. 1998	***Karuk Tribe of California***	1
36. 2004	**Northern Valley Indian Health, Inc.**	3
37. 1997	*Redding Rancheria Tribe CY*	1
38. 2005	**Riverside San-Bernardino County Indian Health, Inc.**	8

AREA: NASHVILLE (9)

YEAR ENTERED	TRIBE / ORGANIZATION	# of Tribes w/in a F.A
39. 1998	**Chitimacha Tribe of Louisiana**	1
40. 2002	*Eastern Band of Cherokee Indians CY*	1
41. 1995	***Mississippi Band of Choctaw Indians***	1
42. 2001	*Mohegan Tribe of Indians of Connecticut CY*	1
43. 1995	***Penobscot Indian Nation***	1
44. 1999	*Poarch Band of Creek Indians CY - MYFA*	1
45. 2001	***Seminole Tribe of Florida***	1
46. 2003	St. Regis Mohawk Tribe CY	1
47. 2001	**Wampanoag Tribe of Gay Head (AQUINNAH)**	1

AREA: OKLAHOMA (14)

YEAR ENTERED	TRIBE / ORGANIZATION	# of Tribes w/in a F.A
48. 1994	*Absentee Shawnee Tribe CY*	1
49. 1993	**Cherokee Nation**	1
50. 1995	***Chickasaw Nation***	1
51. 1995	**Choctaw Nation**	1
52. 1998	***Citizen Potawatomi Nation***	1
53. 1995	*Kaw Nation CY*	1
54. 1997	**Kickapoo Tribe of Oklahoma**	2
55. 2000	**Modoc Tribe of Oklahoma**	1
56. 2003	**Muscogee (Creek) Nation**	1
57. 2002	*Northeastern Tribal Health System*	**7**
58. 2000	*Ponca Tribe of Oklahoma CY*	1
59. 2004	**Prairie Band Potawatomi Nation**	2
60. 1993	**Sac & Fox Nation**	1
61. 1995	***Wyandotte Nation***	2

AREA: PHOENIX (7)

YEAR ENTERED	TRIBE / ORGANIZATION	# of Tribes w/in a F.A
62. 1995	**Duck Valley Shoshone-Paiute Tribe**	1
63. 1994	*Duckwater Shoshone Tribe CY*	1
64. 1994	*Ely Shoshone Tribe CY*	1
65. 2003	**Gila River Indian Community**	2
66. 2001	***Las Vegas Paiute Tribe***	2
67. 2003	***Washoe Tribe of Nevada and California MYFA***	1
68. 2001	*Yerington Paiute Tribe*	**1**

AREA: PORTLAND (22)

YEAR ENTERED	TRIBE / ORGANIZATION	# of Tribes w/in a F.A
69. 1995	***Coeur D' Alene Tribe***	1
70. 2005	*Confederated Tribes of Coos, Lower Umpqua & Siuslaw CY*	1
71. 1995	*Confederated Tribes of the Grand Ronde Community of Oregon CY*	1
72. 1994	*Confederated Tribe of Siletz Indians of Oregon CY*	1
73. 1998	*Coquille Indian Tribe CY*	1
74. 1994	**Jamestown S'Klallam Indian Tribe MYFA**	1
75. 2006	*Kalispel Tribe of Indians CY*	1
76. 2001	**Kootenai Tribe of Idaho**	1
77. 2002	*Lower Elwha Klallam Tribe MYFA*	**1**
78. 1994	**Lummi Indian Nation**	1
79. 1994	*Makah Indian Tribe CY*	1
80. 2003	*Muckleshoot Tribe CY*	1
81. 2001	**Nez Perce Tribe MYFA**	1
82. 1997	*Nisqually Indian Tribe* **MYFA** *CY*	1
83. 1994	*Port Gamble S'Klallam Tribe CY*	1
84. 1995	**Quinault Indian Nation**	1
85. 1999	**Shoalwater Bay Indian Tribe**	1
86. 2002	**Skokomish Indian Tribe**	1
87. 1995	**Squaxin Island Indian Tribe MYFA**	1
88. 1998	***Suquamish Tribe CY***	1
89. 1997	*Swinomish Indian Tribal Community MYFA CY*	1
90. 2002	*Tulalip Tribes of Washington CY*	1
91. 2005	The Confederated Tribes of the Umatilla Indian Reservation	1

APPENDIX 5

APPENDIX 5

MEMORANDUM OF UNDERSTANDING TO ENHANCE MORTGAGE LENDING ON AMERICAN INDIAN LANDS

This Memorandum of Understanding (MOU) is effective on January 9, 2001 among the U.S. Department of Agriculture (USDA), U.S. Department of Housing and Urban Development (HUD) and U.S. Department of Veterans Affairs (VA) (Agencies). The purpose of this MOU is to set forth the procedures which will be utilized by the Agencies in reviewing the applications for Alaska Native and American Indian Tribes (Tribes) wishing to participate in loan programs sponsored by the Agencies, when such Tribal approval is required by the Agencies.

The Agencies sponsor the following loan programs for Tribes:

USDA: Section 502 Direct and Guaranteed Loan Programs sponsored by Rural Development

HUD: Section 184 Indian Loan Guarantee Program sponsored by the Office of Native American Programs (ONAP)

Section 248 Indian Reservation Mortgage Insurance sponsored by the Federal Housing Administration (FHA)

VA: Chapter 38 Direct or Guaranty Programs sponsored by the Loan Guaranty Service of the Veterans Benefits Administration (VBA)

While the statutory and regulatory provisions authorizing the above loan programs vary in their specific requirements, each Agency is required to conduct a review and approval process before a Tribe or its members are eligible to participate in these loan programs. In August 1998, President William Clinton directed the Agencies to work together to streamline mortgage lending in Indian country. In response to that request, staff from USDA, HUD and VA worked together and developed a streamlined approval process for Tribes.

Therefore, these Agencies agree to the following procedures:

1. Any federally recognized American Indian or Alaska Native Tribe seeking to participate in any or all of the loan programs noted above may submit the required documentation noted below to any one of the Agencies.

2. If the applicant Tribe has adopted and submits the Model Tribal Lending Procedures for Lien Priority, Eviction and Foreclosure and Leasing (Attachment 1) and the Model Lease (Attachment 2), (the Model Documents), its application may be

reviewed under this streamlined approval process (paragraph 3 below). If the Tribe has chosen to establish Tribal Lending Procedures for Lien Priority, Eviction and Foreclosure and Leasing or a Lease which varies in content from the Model Documents, then the reviewing agency will not follow the streamlined procedures, but rather will proceed as noted in 4 below.

3. Under the streamlined approval process, if the reviewing Agency finds that the Tribe has adopted the Model Documents, the Agency and the Tribe will execute the Tribal Memorandum of Understanding (Appendix 5). The Agency will provide the Tribe with a copy of the MOU containing both signatures.

   A copy of the Tribe's Lending Procedures, Lease and executed Tribal Memorandum of Understanding will then be forwarded to the other Agencies. For purposes of this MOU, these documents will be mailed to the following addresses:

   US Department of Housing and Urban Development
   Office of Native American Programs
   Office of Loan Guarantee
   1999 Broadway Suite 3390 Box 90
   Denver, CO 80127

   US Department of Housing and Urban Development
   FHA, Office of Single Family Housing
   451 Seventh St., SW
   Room 9266
   Washington, DC 20410

   US Department of Agriculture
   Rural Development
   Stop 0701
   1400 Independence Ave., SW
   Washington, DC 20250

   US Department of Veterans Affairs
   Loan Guaranty Service
   810 Vermont Ave., NW
   Washington, DC 20420

4. A Tribe which chooses to adopt Lending Procedures or a Lease which differs from the Model Documents will be not be eligible for the streamlined approval process. The Agency receiving the Tribe's documents will forward copies of all documents to the other Agencies with a note that each Agency is responsible for reviewing the documents and making its own determination for acceptability. The initial Agency will also inform the Tribe that it has forwarded the documentation to the above addresses.

Under this process, the Tribal Memorandum of Understanding (Attachment 3) will not be signed by any of the Agencies. Rather, each Agency will provide the Tribe with its own memorandum of understanding or other form of approval or disapproval notification.

5. HUD's ONAP will maintain the listing of approved Tribes on the website, www.codetalk.fed.us. Under either approval method, the Tribe will be added to the www.codetalk.fed.us website. In cases where one or two Agencies grant approval, the Tribe's name will be listed with a notation that the approval is only for certain loan programs.

Administrator, Rural Housing Service (USDA) — Date 1/3/01

Deputy Assistant Secretary, Native American Programs (HUD) — Date 1/8/01

Deputy Assistant Secretary, Office of Single Family Housing (HUD) — Date 1/8/01

Director, Loan Guaranty Service (VA) — Date 1-4-01

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE _____NATION

AND

{fill in the name of the reviewing/approving Agency}

Whereas, the Secretaries of Housing and Urban Development (HUD), Veterans Affairs (VA) and Agriculture (USDA) are authorized to make, insure and/or guarantee loans to American Indian borrowers for the purchase of one-to-four family residences located on certain Indian lands (as defined in each Federal Agency's authorizing statute), and

Whereas the Federal Agencies require, as a condition of making, insuring or guaranteeing these mortgages, that the tribal organization which has jurisdiction over the borrower enter into a Memorandum of Understanding with the Departments with respect to such loans, and

Whereas, the signature on this Memorandum of Understanding of any one of the Secretaries for the Department of HUD, VA, or USDA, is deemed to be acceptable to each of the other Departments per the Memorandum of Understanding between those Federal Agencies dated _____.

Now therefore, in consideration of the premises and other good and valuable consideration, the parties hereto do agree and establish as follows:

1. DEFINITIONS

American Indian or Native American shall refer to the borrower/mortgagor or Lessee as defined within each Agency's authorizing statute. Depending upon the authorizing statute, this may mean a member of a federally recognized tribe (Native American, Indian, Alaska Native individual or family), the tribe, a Tribally Designated Housing Entity (TDHE) or Indian Housing Authority (IHA).

Borrower shall mean a federally recognized Tribe, Tribally Designated Housing Entity (TDHE), Indian Housing Authorities (IHA) or any American Indian, Native American(s), Indian or Alaska Native who has executed a Mortgage as defined in this document, or any heir(s) successor(s), executor(s), administrator(s) or assign(s) of the Tribe, TDHE, IHA or such American Indian, Native American(s), Indian or Alaska Native as may be eligible to participate in a federally sponsored loan program as defined in each Federal Agency's authorizing statute.

Eviction the legal process by which lessees in violation of their lease are removed from occupancy of a given residence.

Federal Agency shall refer to the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Veterans Affairs (VA) and the U.S. Department of Agriculture (USDA).

Federally sponsored loan program refers to the loan programs, sponsored by HUD, VA and USDA whose purpose is to provide homeownership opportunities to Native Americans, American Indians or Alaska Natives on certain Indian lands as defined within each of those Federal Agency's authorizing statutes.

Leasehold interest is the name given to the interest conveyed by the tribe to the borrower under the lease. It consists of the right to the quiet enjoyment of the leased premises for the term of the lease, subject to the requirements of the lease.

Lender shall refer to any institution that the specific Federal Agency has approved to originate or service Mortgages made, insured or guaranteed under its programs. The term "lender" also includes any of the lender's successors or assigns of the lender's right, title to, or interest in, the Mortgage, including any subsequent noteholder and mortgagee and, without the consent from the tribe, any secondary mortgage market investor. In some cases, the lender may be the appropriate Federal Agency which is sponsoring a direct loan program.

Mortgage shall mean a mortgage loan made to an eligible borrower for the purchase or refinance of the borrower's real property interest (which may be a leasehold interest) in the trust land, restricted land or fee simple land, as applicable, and made in accordance with a Federally sponsored loan program and complying with the terms and conditions of the lender's mortgage program. The mortgage loan shall be either a first lien or a second lien, in accordance with the Federally sponsored loan program requirements.

Secretary shall mean the Secretary of the U. S. Department of Housing and Urban Development (HUD) or the Secretary of the Department of Veterans Affairs (VA) or the Secretary of the U.S. Department of Agriculture (USDA).

Tribe shall refer to any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975. For the purpose of this specific Memorandum of Understanding, Tribe refers to the _____ Indian Nation, a federally recognized tribe, of the _____ Indian Reservation as defined in the Tribal constitution, ordinance or other enabling document.

2. AGREEMENT

(a) That the Department of HUD, VA and/or USDA, will make, insure and/or guarantee mortgages available to qualified American Indian borrowers for the purchase, construction or rehabilitation of homes on Indian lands or refinances of such mortgages to the extent funds are available and subject to such terms and conditions as may be established by the Secretary of the applicable Federal Agency.

(b) That the _____ Tribe has established standards and procedures that apply to the conveyance of a leasehold interest in real property by an American Indian borrower/mortgagor to a lender, Federal Agency or their assignee as security for the loan, including procedures for foreclosing the interest, eviction and procedures for resale of the lot or the dwelling (or both) purchased, constructed, rehabilitated or refinanced using the proceeds of the loan. It is agreed that for the purpose of foreclosure and eviction actions, the court of jurisdiction is (__) the State of _____, or (__) the Tribal court , or (___) the Federal Court.

(c) That each American Indian who is under the jurisdiction of the Indian tribe and to whom a lender and/or Federal Agency makes direct, insures or guarantees a loan, holds, possesses or will obtain a leasehold or other acceptable interest in a lot that is located on Indian land and will purchase, construct, rehabilitate or refinance a dwelling on that lot with the proceeds of the loan.

(d) That each such American Indian will convey the above described interest to the lender and its assignees as specified in the borrower/mortgagor's loan documents, by an appropriate instrument, as security for the loan made pursuant to that Federal Agency's authorizing statute.

(e) That the tribe and each borrower/mortgagor who obtains a loan from a lender or Federal Agency under this agreement will permit the lender and/or the Federal Agency, its agents and employees to enter upon the land of the tribe and the borrower/mortgagor for the purpose of carrying out such actions as the lender and/or Secretary determines are necessary to evaluate the advisability of the proposed uses of the proceeds of the loan and to service the mortgage according to the applicable Agency's requirements.

(f) With respect to any leasehold estate financed by a loan, the tribe, as lessor, agrees that it shall not attempt to cancel, modify, amend, terminate, surrender or forfeit such a leasehold estate without the prior written consent by the Lender and the Secretary of the Federal Agency that has made direct, insured or guaranteed the loan, as long as such a loan remains outstanding. With regard to any loan submitted to HUD, VA or USDA for guarantee or insurance, the authorizing Federal Agency shall have the same rights as the lender with regard to that loan

and the security. No action with regard to the loan or security that requires consent of the lender shall be taken unless the Federal Agency also consents, so long as the guarantee or insurance remains in effect or the Federal Agency has an interest in the security.

(g) The tribe will to the maximum extent possible, assist the lender and the Federal Agency in its efforts to manage this program in a prudent and cost-effective manner. This will include assisting the lender or Federal Agency in finding qualified substitute purchasers if the initial borrower/mortgagor is unable to fulfill his or her obligations under the law. This may include carrying out evictions, assuring that mortgages and other legal instruments can be properly recorded and otherwise assuring that the program is operated in a responsible and prudent manner.

In Witness whereof, the parties hereto have signed this agreement as follows.

_____ DATE _____

{fill in name of the reviewing/approving Agency)

_____ DATE _____

XXXXXXXXXXXXXXX
XXXXXXX Tribe

Does the above named Tribe have constitutional authority to sign this Memorandum of Understanding without approval of the US Department of the Interior's Bureau of Indian Affairs?

____ Yes ____ No

If no, below is the approval of the Bureau of Indian Affairs.

_____ DATE _____

BIA Approving Official

PART 2000 - GENERAL

Subpart NNN - Memorandum of Understanding (MOU) to Enhance Mortgage Lending on American Indian Lands.

§ 2000.3251 Purpose.

An Executive Memorandum dated August 6, 1998, directed the Secretaries of the U.S. Departments of Housing and Urban Development (HUD) and the Treasury to development recommendations to help streamline mortgage lending in Indian Country. These recommendations have been developed into a report entitled "One-Stop Mortgage Center Initiative in Indian Country". This report in its entirety can be obtained on the HUD Web Page at [http://www.hud.gov/offices/pih/ih/homeownership/onestop/]. Historically, Federal agencies have required tribal governments to adopt different lease documents and mortgage codes for participation in each Federal single-family loan program. As a result of the "One Stop Mortgage Center Initiative in Indian Country" report, a model interagency lease, mortgage codes (foreclosure and eviction codes and priority-of-lien procedures), and a tribal application approval process, were developed that are acceptable to Housing and Urban Development (HUD), United States Department of Agriculture-Rural Development (USDA-RD), Veterans Affairs (VA), and the Bureau of Indian Affairs (BIA). The purpose of this Instruction is to define the role of USDA, acting through Rural Development (hereinafter referred to as the "USDA") for the implementation of this initiative in accordance with the MOU attached as Exhibit A. This Instruction will provide guidance for the review, approval, and recordation of Tribes wishing to participate in the "One Stop Mortgage Center Initiative in Indian Country".

§ 2000.3252 Implementation.

Any federally recognized American Indian or Alaska Native Tribe seeking to participate in any of the Agency's single family loan programs may submit the required documentation noted below to any one of the Agencies listed in the MOU (Exhibit A).

(a) USDA's responsibility. Please make all of the documents available to the Tribes, Tribal Organizations, private lenders, as well as other parties interested in single family mortgage financing on Tribal lands.

(1) When an applicant Tribe has adopted the Model Tribal Lending Procedures for Lien Priority, Eviction and Foreclosure and Leasing (Exhibit A, Attachment 1) and the Model Lease (Exhibit A, Attachment 2), and submits the Model Documents along with the required information contained in the checklist (Exhibit A, Attachment 4) to a Rural Development State or Local Office, they are to be immediately forwarded to the National Office per the MOU (Exhibit A). The National Office will review, approve, and process the Model Documents, per Exhibit A, paragraph 3 or 4, depending on whether they are submitted as

drafted or whether they contain modifications or an addendum. Upon approval by the National Office, the State Director will be authorized to enter into the Memorandum of Understanding Between the Tribe and the Agency (Exhibit A, Attachment 3). The National Office will be responsible for the distribution of the executed Model Documents per the MOU (Exhibit A).

(2) Copies of any Leases and MOU's that are approved between a Rural Development Office and a Tribe for mortgage financing, be it prior to or after the date of this instruction, should be forwarded to the National Office of Rural Development, Attn. Native American Coordinator, 1400 Independence Ave. SW, STOP 0701, Washington DC 20250. All Tribes who have an approved Lease and MOU for single family mortgage financing, whether for the "One Stop Initiative" or individually by a Federal agency, will be maintained on the HUD Web site at [http://www.hud.gov/offices/pih/ih/codetalk/index.cfm].

(b) HUD, FHA, VA Responsibilities: Model Documents that are received and approved by another signatory agency of the MOU, will be distributed to the other participating agencies. If the Model Documents were approved with no modifications or addenda, they will be accepted by the Rural Development National Office and distributed to the respective State Office having SFH loan jurisdiction with the Tribe. If a Tribe has made modifications to the Model Documents, each agency will make its own review of the Model Documents for acceptability and approval.

§ 2000.3253 Handling of Tribal Leases other than "One Stop Mortgage Initiative" Model Documents

This instruction is not intended to preclude a Tribe from using lease forms other than the "One Stop Mortgage Initiative" Model Documents. When a Rural Development State or Field Office is working with a Tribe who is utilizing a lease and related documents that are other than the basic "One Stop Initiative" Model Documents, they should work with their local Office of General Counsel for review and acceptance of the conditions. The National Office of Rural Development will be conducting the approvals and processing of only the "One Stop Mortgage Initiative" Model Documents.

§ 2000.3254 – 2000.3300 [Reserved]

Attachments:

Exhibit A - Memorandum of Understanding to Enhance Mortgage Lending on American Indian Lands

ONE STOP MORTGAGE INITIATIVE DOCUMENTS
MODEL TRIBAL LENDING PROCEDURES FOR:
LIEN PRIORITY, EVICTION AND FORECLOSURE
AND LEASING

I. OVERVIEW

This document highlights roles and responsibilities of the Indian tribe for the participation in mortgage loan guarantee and insurance programs sponsored by the U. S. Department of Housing and Urban Development (HUD), U. S. Department of Agriculture's Rural Development Office and U. S. Department of Veterans Affairs (VA). The Federal Agencies noted have prepared this document as a guide to aide Indian tribes in obtaining the approval of the Agencies for participation in each of their programs.

a. **General.** Due to the unique legal status of Indian trust land and restricted land, it has been difficult for Native Americans to achieve homeownership utilizing financing provided by private lending institutions. In general, trust land means land in which the title is held in trust by the United States for the benefit of an Indian or Indian tribe, and it is inalienable. Trust lands also include lands to which the title is held by an Indian tribe subject to a restriction against alienation imposed by the United States. Because of the difficulty in obtaining a security interest in individual plots, conventional mortgage lending practices have not traditionally operated in this forum. This has resulted in a reluctance of financial institutions to offer their mortgage loan products where Indian trust land is involved. This same reluctance has also applied to restricted land where the title is held by an individual Indian or tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior.

b. **Legal and Administrative Framework.** For tribal members to participate in the federal government sponsored mortgage loan programs, the tribe must demonstrate that a legal and administrative framework exists that is sufficient to protect the interests of the borrower, the lender, and the federal agency which will guarantee or insure the mortgage loan. To establish this legal and administrative framework, tribes must have adopted foreclosure, eviction, and priority of lien procedures that will apply to these loans whenever the tribal court has legal jurisdiction.

The legal and administrative framework addresses four key procedures: (1) foreclosures, (2) evictions, (3) priority of lien procedures, and (4) leasing procedures for tribal trust land. Attachment 1 provides model tribal mortgage lending ordinances which may be utilized by a tribe or may serve as a guide. Use of this model will be deemed acceptable for program compliance by all of the federal agencies noted above. If a tribe adopts a legal and administrative framework which differs from these model documents, it will be necessary for the tribe to seek approval, in a separate process, from each of the Federal agencies noted.

c. Tribal Commitment to Enforcement. A tribe with tribal court jurisdiction must also demonstrate its support of one (or more) of these programs by notifying at least one of these federal agencies, that the tribe has enacted the required legal procedures and that it will enforce these procedures. (See Paragraph II.a. below.)

II. FORECLOSURE AND EVICTION PROCEDURES

Foreclosures and evictions will be processed through the legal system having jurisdiction over the mortgage loans. This may include federal, state, local, or tribal courts.

a. Enactment of Tribal Procedures. A tribe may enact foreclosure and eviction procedures via tribal council resolution or any other recognized legislative action. To be considered valid, these procedures must be legally enforceable.

b. Required Provisions. To preserve tribal autonomy in the governing process, the federal agencies noted above will not prescribe a format or specific wording for foreclosure and eviction procedures. However, all foreclosure procedures must enable the lender and/or the Federal agency which has made, insured or guaranteed the mortgage loan, to take possession of the property in the event that three or more complete monthly mortgage installments are due and unpaid, or the Borrower has failed to perform any obligation under the Mortgage. All eviction procedures must allow for expedited removal of the delinquent household residents from occupancy.

c. Sample Documents. A tribe that does not currently have foreclosure and eviction procedures may utilize the model

language which is attached, or may contact other tribes to obtain procedural options.

d. **Failure to Enforce.** Each of the Federal Agencies noted above has different authority to take action in the case of a Tribe which does not enforce its established eviction and foreclosure requirements. For information on the action to be taken, contact the appropriate Federal Agency directly.

III. LIEN PROCEDURES

Mortgages guaranteed under the following programs must have a first lien position on the property. Those programs are: HUD Section 184, HUD Section 248, and USDA Section 502 Guaranteed. Under the USDA Section 502 Direct program, the loan may be subordinated under certain circumstances (contact the USDA's Rural Housing representative for further information.) enforcement will be processed through the appropriate federal, state, local or tribal system. The lender responsibility is only to verify that the Tribe has adopted the model procedures and is approved by the Federal Agency guaranteeing or insuring the mortgage.

a. **Enactment of Tribal Lien Procedures.** To ensure that each direct, guaranteed or insured mortgage holds a first lien position, each tribal government must enact a law that provides either:

(1) For the satisfaction of HUD , VA, or USDA direct, guaranteed or insured mortgages before other obligations (except tribal leasehold taxes assessed after the property is mortgaged); or

(2) That state law shall determine the priority of liens against the property. If a reservation spans two or more states, the state in which the property is located is the applicable state law.

b. **Format.** The federal agencies noted above will not prescribe a specific format for adopting lien requirements.

c. **Failure to Enforce.** If any of the Federal Agencies issuing loans, guarantees or insurance within the jurisdiction of an approved tribes determines that the tribe does not enforce adopted lien enforcement or eviction procedures, that Agency will notify the other Federal Agencies of such non-enforcement. Each Federal Agency will take appropriate action in accordance with paragraph II.d., above.

d. **Recordation.** On tribal trust or other federally restricted land, liens shall be recorded by filing with the Land Titles and Records Office at the BIA and may also be recorded with the tribe in accordance with local ordinances/resolutions if appropriate. Section 248 requires recording with the State (if available). On fee simple land, liens shall be filed with the State or County recording system having jurisdiction over the property.

IV. LEASING TRIBAL TRUST LAND

To receive a loan guarantee/insurance on tribal trust lands, the borrower must establish a leasehold interest in the land on which the home will be located.

a. **Leasehold Documents.** Appendix 2 provides a standard lease form that has been approved by the BIA, HUD, USDA and VA for use on tribal trust land. This sample lease form contains certain provisions that are required to be included in leases for trust and restricted land used as collateral for the loan programs administered by these agencies.

b. **Lease Modifications.** The standard lease form may be modified by the mutual consent of the tribe and the borrower. Modifications to the standard lease form are made by rider and require the approval of BIA and the federal agency which is proposed to make, guarantee, or insure the loan. No lease modification may serve to obstruct the right of any of the Federal Agencies or the lender to evict the borrower or foreclose on or sell the property in the event of default.

c. **Parties to the Lease.** The lease must be executed by the tribe (Lessor) and borrower (Lessee) and approved by the Secretary of the Interior prior to issuance of a firm commitment/lender approval.

d. **Leasehold Payments.** The amount of the lease rental is negotiable between the Indian tribe (Lessor) and borrower (Lessee) subject to the approval of the Secretary of the Interior.

(1) The lease rental and provisions for increases in the rent will be a consideration of the lender in determining the mortgage amount for which the borrower qualifies.
(2) The tribe must notify the lender of lease rental payments and/or taxes. Except for mortgages insured under 248, the lender may require that the lease payments be made through the lender, as is typically done with local property taxes. If the tribe wishes, tribal tax liens resulting from that portion of the unpaid leasehold payments applicable to tribal taxes may be recorded in the state recording system. The tribe may also intervene in any foreclosure proceeding to ask that the taxes be paid.

e. Lease Transfers and Assignments. The tribe must approve all transfers or assignments of the leasehold interest, except at foreclosure and as otherwise provided in the lease.

f. Lease Status at Foreclosure. The Federal Agency which made, insured or guaranteed the mortgage loan, or the lender may assume title to the leasehold interest without tribal approval of such transfer. However, anyone who subsequently purchases or rents the leasehold property must be approved by the tribe except as otherwise provided in the lease.

g. Termination. The lease may not be terminated while the federal loan, guarantee or insurance is in effect without the approval of the applicable Federal Agency**.** Likewise, in the event of foreclosure, the lease will not be subject to any forfeiture or reversion and will not be otherwise subject to termination.

V. MORTGAGING ALLOTTED TRUST LANDS

a. General. Unless otherwise approved by the applicable Federal Agency, owners of undivided interests cannot mortgage trust property.

b. Mortgages on Allotted Trust Land. The allottee or owner of the individual trust may choose to mortgage the land and consequently risk permanent loss of the land in the case of default and subsequent foreclosure. Allottees or owners of an individual trust are permitted to mortgage properties with the approval of BIA. If foreclosure occurs on mortgaged allotted trust land, the title to the land is removed from trust

status. In general, Deeds of Trust must be approved by the BIA, and should include a 483b rider. The HUD Section 248 program is not available on allotted trust lands.

c. Fractionated Ownership. It is common for allotted trust lands to be owned by several individuals. If a prospective borrower proposes to use trust or restricted land in which he or she owns an interest, he or she must acquire a lease from all of the co-owners (this action may require the individual to pay a rental to the co-owners) and approval of the lease by the Secretary of the Interior.

VI. TRIBAL APPLICATION AND APPROVAL

Before a lender may process a mortgage loan application where a guarantee/insurance is proposed under a program sponsored by either HUD, USDA or VA, or a Federal Agency may process a direct loan application, a tribe with tribal court jurisdiction over that property must provide the applicable Federal Agency with a copy of its foreclosure, eviction and priority of lien ordinances and its lease. If an Agency approves the tribe's ordinances and lease, it will execute a Memorandum of Understanding (MOU) with the tribe (Attachment 3). A copy of this MOU will be furnished to the other agencies. If a tribe's documents do not follow the basic intent and requirements of the model documents which are attached to this guide, the tribe will need to seek approval of HUD, VA and USDA individually, in order to participate in each of their mortgage loan programs.

a. Notice Content. Appendix 4 includes a checklist of those items necessary in order to receive Agency approval. To obtain approval, the tribe's submission must provide evidence that it:

(1) Will ensure that the Federal Agencies and private lenders have access to tribal lands for the purpose of servicing and evaluating properties securing direct, guaranteed or insured mortgages.

(2) Has enacted foreclosure procedures.

(3) Has enacted eviction procedures.

(4) Understands that if eviction and foreclosure procedures are not enforced, all of the Departments noted may cease making, guaranteeing or insuring new loans within their area of jurisdiction pursuant to paragraph II.d.

(5) Has adopted procedures giving the Federal Agency first lien priority (where applicable) or otherwise ensuring that the direct, guaranteed, or insured loan will be satisfied before all other property debts (excepting tribal taxes); or has adopted legislation stating that it will abide by applicable state or local laws with respect to lien priority.

b. Notification Process:

(1) Tribe sends to either HUD, USDA or VA, the items noted in the checklist at Appendix 4.

(2) It is not necessary for a tribe to obtain approval from the applicable Federal Agency for each new direct, guaranteed or insured loan once a tribe has executed a Memorandum of Understanding (MOU) with that Federal Agency. Any Federal Agency initially approving a tribe will provide copies of the executed MOU to the other Federal Agencies. The tribe's executed MOU will be kept on file by each of the Agencies.

(3) Upon receipt of a borrower application, lenders may call the appropriate Federal Agency to determine whether a given tribe is ready to participate in the loan program(s). The lender may also ask the borrower to submit a land status form which will provide the lender and Department with confirmation of the land status (tribal trust, allotted trust or fee simple within the tribe's jurisdiction).

Attachment 1

Model Tribal Mortgage Lending Code

Commentary: This Attachment sets forth general procedures for mortgages and foreclosures. It is designed to meet the needs of mortgage loan guarantee, insurance and direct loan programs sponsored by the U. S. Departments of Housing and Urban Development, Agriculture (Rural Housing) and Veterans Affairs. These Federal Agencies offer various mortgage loan programs which are designed to provide homeownership opportunities to Native Americans wishing to live on an Indian reservation or within an Indian area (as defined within each Agency's program requirements).

A. Lien Priority

All mortgage loans recorded in accordance with the recording procedures set forth in this Attachment, including Leasehold Mortgages, and including loans made, guaranteed, insured or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. (In those cases where the government direct, guaranteed or insured mortgage is created as a second mortgage, the loan shall assume that position.)

B. Recording of Mortgage Loan Documents

(1) The Tribal Recording Clerk shall maintain in the Tribal Real Estate program a system for the recording of mortgage loans and such other documents as the Tribe may designate by laws or resolution.
(2) The Tribal Recording Clerk shall endorse upon any mortgage loan or other document received for recording:
    (a) The date and time of receipt of the mortgage or other document;
    (b) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received and;
    (c) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

Upon completion of the above-cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

_____ Tribe)
)ss.
Indian Reservation)
I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____.

(SEAL) _____
(Signature)

_____
(Date)

The Tribal Recording clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage loan or other document to the person or entity that presented the same for recording.

(3) The Tribal Recording Clerk shall also maintain a log of each mortgage loan or other document recorded in which there shall be entered:
   (a) The name(s) of the Borrower/Mortgagor of each mortgage loan, identified as such;
   (b) The name(s) of the Lender/Mortgagee of each mortgage loan, identified as such;
   (c) The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents filed or recorded;
   (d) The date and time of the receipt;
   (e) The filing number assigned by the Tribal Recording Clerk; and
   (f) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

(4) The certified copies of the mortgage loan and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Tribal Recording Clerk.
(5) All mortgages will be recorded with the BIA in addition to any Tribal recording provisions.

Commentary: The federal agencies noted above recognize that Indian tribes are required to have mortgages filed with the Bureau of Indian Affairs (BIA). It is optional whether or not the tribe houses its Recording department within a "Tribal Real Estate" program. The tribe is free to place the Recording function in any tribal department it wishes.

C. Foreclosure Procedures

(1) A Borrower/Mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s)or is in violation of any covenant under the mortgage for more than 30 days to the Lender/Mortgagee (i.e. the 31st day from the payment due date).

(2) When a Borrower/Mortgagor is thirty days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:
    (a) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.
    (b) Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designed by the Borrower/Mortgagor, able to receive and relay messages to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.
(3) Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.
(4) When the Borrower/Mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:
    (a) Advise the Borrower/Mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.
    (b) Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.
    (c) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.
    (d) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements (i) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains past due on three installment payments, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is an option of the governmental program; (ii) notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and (iii) provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.
(5) If a Borrower/Mortgagor is past due on three or more installment payments and the Lender/Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in Section D. of this Code.

Commentary: The proceeding Section C sets forth foreclosure procedures designed to meet all of the foreclosure procedure requirements currently established under the mortgage loan programs sponsored by the U.S. Departments of Housing and Urban Development, Agriculture and Veterans Affairs (collectively referred to as Federal Agency). However, under HUD's Section 248 mortgage insurance program, lenders have the option of assigning the mortgage to HUD rather than initiating foreclosure. If the lender exercises

its option to assign the mortgage to HUD, it must comply with the requirements of the regulations at 24 CFR part 203.

D. Foreclosure Complaint and Summons

(1) The verified complaint in a mortgage foreclosure proceeding shall contain the following:
   (a) The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage loan, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;
   (b) A description of the property subject to the mortgage loan;
   (c) A concise statement of the facts concerning the execution of the mortgage loan and in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the mortgage loan or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrowers/Mortgagor; and such other facts as may be necessary to constitute a cause of action;
   (d) True and correct copies of each promissory note, mortgage, deed of trust or other recorded real property security instrument (each a "security instrument") and any other documents relating to the property and if a Leasehold Mortgage, a copy of the lease and any assignment of any of these documents; and
   (e) Any applicable allegations concerning relevant requirements and conditions prescribed in (i) federal statutes and regulations (ii) tribal codes, ordinances and regulations; and/or (iii) provisions of the promissory note, security instrument and if a Leasehold Mortgage, the lease.

(2) The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

E. Service of Process and Procedures. Any foreclosure complaint must be in writing, and must be delivered to the Borrower/Mortgagor in the following manner:

(1) Delivery must be made by an adult person and is effective when it is:
   (a) Personally delivered to a Borrower/Mortgagor with a copy sent by mail, or
   (b) Personally delivered to an adult living in the property with a copy sent by mail, or
   (c) Personally delivered to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.

(2) If the notice cannot be given by means of personal delivery, or the Borrower/Mortgagor cannot be found, the notice may be delivered by means of:
   (a) Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor, or
   (b) Securely taping a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away, and by

posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises.

(3) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

F. Cure of Default

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. Any subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage Foreclosure proceeding.

Commentary: This Section F. does not allow for a "right of redemption." The "right of redemption" if provided in a Foreclosure Code allows a Borrower/Mortgagor to redeem (purchase) his/her foreclosed property after it has been sold at a foreclosure sale. Most state foreclosure laws have very strict time limits on how long a Borrower/Mortgagor has to redeem his/her property after a foreclosure sale, when the right to redeem will be allowed, and notice requirements that must be given the Borrower/Mortgagor following the sale of his/her foreclosed property. Because the right of redemption can be very specialized the drafters of this model Code will leave to the discretion of the tribe whether or not to incorporate a "right of redemption" and under what terms. If a "right of redemption" is included, it will be necessary for the tribe to seek approval in a separate process from each of the Federal Agencies noted.

G. Judgment and Remedy

This matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender/Mortgagee, the Tribal Court shall enter judgment:

(1) Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the mortgaged property and

(2) Granting title to the property to the Lender/Mortgagee or the Lender's Designated Assignee; in the case of a Leasehold Mortgage, the Lease and the Leasehold Estate will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions

(a) The lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease and the Lessee's leasehold interest in the property described in the lease which

is subsequently obtained by the Lender or Lender's Designated Assignee.

(b) The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and Lessee's leasehold interest in the property described in the Lease to a Tribal member, the Tribe, or the Tribal Housing Authority;

(c) The mortgagee has the right to convey the leasehold interest to the Secretary of HUD without providing the right of first refusal to the Tribe for Section 248.

H. Foreclosure Evictions

Foreclosure evictions shall be handled according to the general eviction process set forth below.

(1) Jurisdiction. The provisions of this section H. shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution, Tribal Code, or applicable federal law.

(2) Unlawful Detainer. A Lessee, Sublessee, or other occupant of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such Leasehold Estate without the requirement of any notice by the Lessor, after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage foreclosure proceeding in the Tribal Court;

(3) Complaint and Summons. The lender or Federal Agency (which made, guaranteed or insured the mortgage loan) as appropriate, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

(a) A complaint, signed by the lender or Federal Agency, or an agent or attorney on their behalf:

(i) Citing facts alleging jurisdiction of the Tribal Court;

(ii) Naming as defendants the mortgagors and any other record owner (including Sublessees and subordinate lienholders), of which the complainant has record notice (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage);

(iii) Describing the Leasehold Estate subject to the Leasehold Mortgage;

(iv) Stating the facts concerning (1) the execution of the lease and the Leasehold Mortgage; (2) the recording of the Leasehold Mortgage; and (3) the facts upon which he or she seeks to recover;

(v) Stating any claim for damages or compensation due from the persons to be evicted; and

(vi) Otherwise satisfying the requirements of the Tribal Court.

(b) A copy of the summons, issued in accordance with established Tribal Court rules and procedures, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be no less than 6 nor more than 30 days from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the court by the date specified in the summons.

(4) Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the following two methods.

(5) Procedures for Service of Notice. Notices required or authorized in the immediately preceding section shall be given in writing either by:

(a) delivering a copy personally to the Borrower/ Mortgagor or to any other occupant under color of law, or to any adult residing on the Leasehold Estate and, if applicable, to any Sublessee; or

(b) posting said notice in a conspicuous place near the entrance to said Leasehold Estate, and sending an additional copy to the Lessee or to any other occupant under color of law, and, if applicable, to the Sublessee, by certified mail, return receipt requested, properly addressed, postage paid.

Proof of service may be made by affidavit of any adult person stating the he has complied with the requirements of one of the above methods of service.

(6) Power of the Tribal Court. The Tribal Court shall enter an Order of Repossession if:

(a) Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and

(b) The Tribal Court shall find during pre-trial proceedings or at trial that the Lessee, Sublessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage is guilty of an act of unlawful detainer.

Upon issuance of an Order of Repossession, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate: (1) back rent, unpaid utilities, and any charges due the Tribe, Tribal Housing Authority, other public Housing Authority, or Sublessor under any sublease or other written agreement (except for a Leasehold Mortgage); (2) any and all amounts secured by the Leasehold Mortgage that are due the lender (or Federal Agency); and (3) damages to the property caused by the defendants, other

than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing suit.

(7) Enforcement. Upon issuance of an Order of Repossession by the Tribal Court, Tribal law enforcement officers shall help plaintiffs enforce same by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases involving the lender or Federal Agency, the Order of Repossession shall be enforced no later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to Paragraph H7 below, and provided, that no party exercised the right to cure a default or right of first refusal as described in Paragraphs F and G above.

(8) Continuances in Cases Involving the Lender or Federal Agency (which originally made, insured or guaranteed) the mortgage loan. Except by agreement of all parties, there shall be no continuances in cases involving the lender or Federal Agency that will interfere with the requirement that the Order of Repossession be enforced not later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to the sound discretion of the Court.

I. No Merger of Estates

There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

J. Certified Mailing to Tribe

In any foreclosure proceedings on a Leasehold Mortgage where the Tribe is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the lessor is not the tribe, this notice will also be mailed to the lessor at the same time the notice is mailed to the tribe. If the location of the lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

K. Intervention

The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

L. Appeals

Appeals under this Code shall be handled in accordance with the general tribal appellate provisions.

CERTIFICATION

The foregoing _____ (name of Tribe) Leasehold Mortgaging Code was enacted by the Tribal Council of the _____Tribe on the ____ day of _____, 2000, by a vote of ___ for, ___ opposed, and ____ abstaining, at a dully called meeting at which a quorum of the Tribal Council was present.

_____
Tribal President

ATTEST:

_____
Tribal Secretary

CERTIFICATION

_____ Tribe)
) ss.
)

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this ____ day of _____.

(SEAL)

_____
Signature

_____
Title

Attachment 4

Checklist for Tribal Approval for Participation in Mortgage Loan Programs Sponsored by the U.S. Departments of Housing and Urban Development, Agriculture and Veterans Affairs.

1. Evidence that the tribe has enacted legally binding and effective foreclosure procedures and will enforce those procedures upon notice of default from a lender and/or Agency noted above.

2. Evidence that the tribe has enacted legally binding and effective eviction procedures and will enforce those procedures upon notice of default from a lender and/or an Agency noted above.

3. Evidence that the tribe has adopted procedures ensuring that the Federally guaranteed or insured loan will always have first lien priority (if applicable) and will be satisfied before all other property debts (excepting tribal taxes) OR has adopted legislation requiring the tribe to follow state or local priority of lien procedures.

4. A copy of the tribe's lease for use on residential land.

5. Submission of an affirmation signed by the tribe stating that the tribe understands the importance of maintaining and enforcing these procedures.

6. Submission of an affirmation signed by the tribe stating that the tribe agrees that it will permit HUD, USDA and VA and/or the lender or their agents to access mortgaged properties for the purpose of evaluating and servicing loan-related items.

RESIDENTIAL LEASE OF TRIBAL OWNED LAND

Lease No._____
Contract No. _____

THIS Lease is made and entered into by and between _____ for and on behalf of _____Tribe of Indians, hereinafter designated as "Lessor," and _____, members of the _____ Tribe and residing upon the _____ Indian Reservation, hereinafter designated as "Lessee."

WITNESSETH

1. SECRETARIAL APPROVAL; FEDERAL AGENCY APPROVAL; DEFINITIONS OF FEDERAL AGENCY, TRIBE, and LENDER. As used in this Lease, the term "Secretary" means the Secretary of the Interior or his or her duly authorized representative. This Lease is subject to the approval of the Secretary pursuant to the Act of August 9, 1955, 69 Stat. 539, as amended, 25 U.S.C. § 415, as implemented by Title 25, Code of Federal Regulations, Part 162. The form of this Lease has been accepted by the Secretary of Housing and Urban Development (HUD) pursuant to 24 C.F.R. § 203.43h(c), which implements Section 248 of the National Housing Act, 12 U.S.C. § 1715z-13, for use in connection with Federal Housing Administration (FHA) insurance of a mortgage on the interest created by this Lease, and pursuant to 24 C.F.R. § 1005.107, which implements Section 184 of the Housing and Community Development Act of 1992 (Pub. L.102-550) for use in connection with HUD's issuance of a loan guarantee of a mortgage on the interest created by this Lease. The form of this Lease has also been accepted by the Secretary of the United States Department of Agriculture (USDA) for use in connection with the issuance by USDA or Rural Development (RD) of a direct or guaranteed loan pursuant to section 502 of the Housing Act of 1949 as amended, 42 U.S.C. § 1472, and accepted by the Secretary of the Veterans Affairs (VA) for use in connection with the issuance by VA of a direct or guaranteed loan pursuant to chapter 37 of Title 38, United States Code, secured by the interest created by this Lease. As used in the context of this Lease, the term “Tribe or Tribal” refers to the respective Tribe who enters into this Lease as the “Lessor”. For future reference, “Federal Agency refers to HUD, VA, and USDA. When used in this Lease, the “lender” is any mortgagee that a Federal Agency has approved or a Federal Agency which makes a direct loan. With respect to mortgages which are insured under Section 248 of the National Housing Act, the lender must be approved by the Federal Housing Administration. The term “lender” also includes any of the lender’s successors or assigns of the lender’s right, title to, or interest in, the Mortgage and any subsequent noteholder secured by the Mortgage. The assignment of the mortgage or any interest therein does not require the consent of the Tribe.

2. PREMISES. Lessor hereby Leases to the Lessee all that tract or parcel of land situated on the _____ Indian Reservation, County of _____, State of _____, and described as follows (the Leased Premises):

[description], _____ County, _____ Indian Reservation, _____, approximately _____ acres.

3. USE OF PREMISES. The purpose of this Lease is to enable the Lessee to construct, improve, and maintain a dwelling and related structures on the Leased Premises, and otherwise to use said premises as a principal residence. The Lessee agrees not to use any part of the Leased Premises for any unlawful conduct or purposes and will comply with all applicable Federal Laws.

4. TERM. Lessee shall have and hold the Leased Premises for a term of ____ years beginning on the effective date of this Lease. This Lease may not be terminated by either or both parties during its term if, and as long as, the Lease and/or any improvements on the

premises, or any interest therein, is mortgaged or otherwise pledged as security for any loan in accordance with the provisions hereof, unless consent in writing to such termination is given by the lender and, if the loan is guaranteed, insured, or made by a Federal Agency, a written consent of that agency is also required. This Lease shall not be subject to any forfeiture or reversion and shall not be otherwise terminable, if such event would adversely affect any interest in the Leased Premises, including improvements thereon, acquired in accordance with the provisions hereof by the holder of any mortgage or other lien, or of any purchaser at a foreclosure sale under such mortgage (or lien) or under any conveyance given in lieu of foreclosure, or of any holder subsequent to such purchase. In the event a Federal Agency acquires a mortgage on the interest created by this Lease by assignment from a lender, the Lessor shall not terminate the Lease without the written consent of the respective Federal Agency, as long as the mortgage is in force.

5. RENT. The improvement of housing for Tribal families is a public purpose of the Lessor. The consideration for this Lease is (1) the obligation of Lessee to further said purpose, (2) the promise hereby given by Lessee to pay the Lessor rent at the rate of $_____per _____, (3) the extinguishment, hereby agreed to by Lessee, of any and all use rights heretofore held by Lessee in the Leased Premises, so that Lessee shall hereafter hold rights only by virtue of this Lease, and (4) other good and valuable considerations, the receipt of which is hereby acknowledged by Lessor. Rent may be subject to adjustment pursuant to 25 CFR 162.

6. IMPROVEMENTS. All buildings or other improvements now existing or hereafter constructed on the Leased Premises shall be the leasehold property of the Lessee during the term of this Lease, including any extension or renewal thereof. During the term of this Lease, Lessee shall obtain any necessary governmental permits, approvals or authorization required for the construction and use of all improvements he or she (they) places or cause(s) to be placed on the Leased Premises, and shall comply with all laws applicable to the construction and use of improvements.

7. USE RIGHT. Upon expiration of this Lease, or upon its termination in accordance with the terms hereof, unless such termination is due to default upon the part of Lessee, Lessee or any successors in interest shall be entitled to use rights in the Leased Premises if qualified under the laws of the Tribe. If not so eligible, Lessee, his or her (their) subLessee and any successors in interest shall, upon demand, surrender to Lessor upon expiration or other termination of this Lease complete and peaceable possession of the Leased Premises and all improvements thereon which have not been relocated as permitted under Paragraph 23 of this Lease, which shall be the property of the Tribe.

8. FEDERAL SUPERVISION.

(a) Nothing contained in this Lease shall operate to delay or prevent a termination of Federal responsibilities with respect to the Leased Premises by the issuance of a fee patent, the lifting of restrictions on alienation, or otherwise during the term of the Lease; such termination, however, shall not serve to abrogate the Lease.

(b) No member of Congress or any delegate thereto or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom.

9. QUIET ENJOYMENT. Lessor agrees to defend the title to the Leased Premises and also agrees that Lessee and any successors in interest shall peaceably and quietly hold, enjoy and occupy the Leased Premises for the duration of this Lease without any hindrance, interruption, ejection or molestation by Lessor or by any other persons whomsoever, except if the requirements of any part of this Lease are not kept by the Lessee. Notwithstanding the foregoing, Lessee and his or her (their) assigns is (are) subject to all the laws of the Tribe to the same extent as any other Tribal member or resident.

10. ASSIGNMENT AND SUBLEASE. (a) Except as otherwise provided herein, Lessee shall not assign or sublet this Lease without the prior written consent of the Lessor and sureties (as found in 25 CFR 162), and approval of the Secretary of the Interior. If this Lease and/or any improvements on the Leased Premises are mortgaged or pledged as security for a loan, Lessee shall not assign or sublet this Lease without the written approval of the lender and the respective Federal Agency. Lessee may assign the Lease and deliver possession of the Leased Premises, including any improvements thereon, to the lender or its successors, or Federal Agency guaranteeing or insuring the loan, if Lessee default(s) in any mortgage or other loan agreement for which the Lease and/or improvements on the Leased Premises are pledged as security, and, in such event, the lender or its successors in interest may transfer this Lease or possession of the Leased Premises to a successor Lessee; provided, however, that the Lease may only be transferred to another member of the Tribe or tribal entity. Nothing in this Lease shall prevent the Lessee, with the approval of the Secretary of the Interior and the Secretary of HUD (for Section 248 insured loans), from executing and recording a mortgage, declaration of trust and/or other security instrument as may be necessary to obtain financing for the purchase of a dwelling, refinancing of an existing mortgage, construction and/or improvement of a dwelling and related structures, or shall prevent the mortgagee or other lender from foreclosing or instituting other appropriate proceedings under law in the event of default of any mortgage or other loan agreement by the Lessee, or assigns. Except in cases involving loans for home construction or home improvement by a bank, recognized lending institution, or a lending agency of the United States Government, where no such consent or approval of Lessor shall be required, Lessee may not execute a mortgage, declaration of trust or other security instrument pledging their interest in this Lease or any improvements on the Leased Premises without the prior written consent of Lessor and the approval of the Secretary.

Notwithstanding the provisions contained above, the following additional requirements shall be applicable to a Lease which secures a mortgage insured, guaranteed or held by a Federal Agency:

(b) Notwithstanding that the term sublease is used herein, the Lessee shall not sublease the premises if the Lease is the security for a mortgage insured under Section 248. The lessee may assign the lease in accordance with the terms hereunder.

In the event a Federal Agency is the lender or acquires the mortgage secured by this Lease, and subsequently acquires said Lease by foreclosure, or by the assignment of said Lease by Lessee, his or her (their) Lessees or assigns (for which the approval of the Tribe is not required), then:

(1) The appropriate Federal Agency, (the Agency involved in this transaction) will notify the Tribe of the availability of the Lease for sale, the sales price of the home and other terms of sale.

(2) The Lease may only be assigned to another tribal member or tribal entity, except that the appropriate Federal Agency may lease the Leased Premises to a non-member under the conditions specified herein. Any such sublease or assignment shall be executed consistent with tribal law and Federal law.

(3) If a purchaser is found, the Lease will be transferred by the Federal Agency, to the purchaser, with the prior written consent of the appropriate Tribe.

(4) If a purchaser cannot be found, the appropriate Federal Agency, shall be entitled to sublease the Leased Premises and improvements without the

prior written approval of the Tribe. Such sublease shall be to a member of the Tribe, unless a tribal member Lessee cannot be found, in which case the Federal Agency may sub-Lease to any individual. The term of the initial Lease period and any succeeding period shall not exceed one year each. Any purchase of the Lease shall be subject to any sublease by the Federal Agency pursuant to this subsection.

(5) No mortgagee (except a Federal Agency as mortgagee or assignee of a mortgagee) may obtain title to the interest created by this Lease without the prior written consent of the Tribe.

In the event that the lender is the entity responsible for acquiring the Lease and the leasehold estate by foreclosure, the lender shall have the rights of the Federal Agency who had insured or guaranteed the foreclosed mortgage under subparagraphs (1) through (5) above, provided this sentence does not apply to loans insured under HUD/FHA's Section 248 program.

11. OPTION. Subsequent to Lessee's breach of any covenant or agreement under a mortgage or other security instrument for which the Lease or any improvements on the Leased Premises are pledged as security, and upon the expiration of any applicable cure period, the Lessor shall have an option (the "option" herein) to acquire the Lessee's Leasehold interest, (subject to all valid liens and encumbrances) upon either payment in full of all sums secured by the mortgage or assumption of the loan with the approval of the lender or the applicable Federal Agency as evidenced by the note and mortgage and execution of an assumption agreement acceptable in all respects to the Lender. Such option is subject to the following conditions:

(a) If the Lessee or any assignee of Lessee fails to cure the default, The lender shall give written notice to the Lessor and any applicable Tribal housing authority of Lessee's of its assignee's failure,

(b) If the Lessee fails to cure the default, and said notice shall be given before the lender or successor invokes any other remedies provided under the mortgage or by law. Thereafter, the lender may issue an acceleration notice to the Lessee, its Lessees or assigns, under the mortgage or other security instrument, requiring the Lessee, its Lessees or assigns to pay all sums secured by the mortgage or other security instrument. If the Lessee, its Lessees or assigns fail to cure the default in accordance with the terms of the lender's acceleration notice, the lender shall give the Lessor written notice of said failure to cure. The Lessor may exercise its option at any time within thirty (30) days of the date of the lender's written notice to the Tribe of said failure to cure. This option shall be exercised by notice in writing from the Lessor to the Lessee and the lender.

(c) Notwithstanding the Lessor's option to acquire the Lessee's interest in the Leased Premises, such option shall be subject to any right the Lessee may have under the mortgage or by law to reinstatement after the acceleration, and the right to bring appropriate court action to assert the non-existence of a default or any other defense to acceleration and sale or foreclosure.

(d) The estate acquired by the Lessor through the exercise of the option shall not merge with any other estate or title held by the Lessor as long as the leasehold interest or any improvements on the Leased Premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and the leasehold interest shall remain subject to any valid and subsisting mortgage or other security instrument.

12. RESERVATIONS: Lessee shall use the premises exclusively for residential purposes, except as otherwise agreed to by the parties. Any rights not expressly provided are reserved by the Lessor.

Minerals: The Lessor reserves all rights, as owned by the Lessor, to all mineral rights, including but not limited to oil, gas, or hydrocarbon substances. The Lessor shall not exercise surface entry in connection with reserved mineral rights without prior consent of the Lessee and sureties (as found in 25 CFR 162).

Timber: The Lessor reserves all rights, as owned by the Lessor to timber and forest products on the premises.

Water: The Lessor reserves all rights, as owned by the Lessor, to water on the premises, except that which is needed for residential purposes.

13. EFFECTIVE DATE. This Lease and all its terms and provisions shall be binding upon the successors, and assigns of the Lessee and any successor in interest to the Lessor, and shall take effect on the _____ day of _____, _____, or upon the date of approval by the Secretary, whichever is later.

14. OBLIGATION TO THE UNITED STATES. It is understood and agreed that while the Leased Premises are in trust or restricted status, all of the Lessee's obligations under this Lease, and the obligation of his, hers (theirs) sureties, are to the United States as well as to the owner of the land.

15. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS. No assent, express or implied, to any breach of any of the Lessee's covenants, shall be deemed to be a waiver of any succeeding breach of any covenants.

16. VIOLATIONS OF Lease. It is understood and agreed that violations of this Lease shall be acted upon in accordance with the regulations in 25 C.F.R. Part 162.

17. CARE OF PREMISES. It is understood and agreed that the Lessee is to keep the premises covered by this lease in good repair. Lessee shall not commit or permit to be committed any waste whatever on said premises and shall not remove or tear down any building or other improvements thereto, but shall keep the same in good repair. Lessee shall not destroy or permit to be destroyed any trees, except with the consent of the Lessor and the approval of the Secretary, and shall not permit the premises to become unsightly. The Lessee will be held financially responsible for all unrepaired damages to buildings, fences, improvements or appearance, except for the usual wear and decay.

18. FORCE MAJEURE. Whenever under this instrument a time is stated within which or by which original construction, repairs or re-construction of said improvements shall be completed, and if during such period any cause reasonably beyond the Lessee's power to control occurs, the period of delay so caused shall be added to the period allowed herein for the completion of such work.

19. INSPECTION OF THE PREMISES. The Secretary, lender, applicable Federal Agency, and the Lessor and their authorized representative shall have the rights, at any reasonable times during the term of this lease, and with reasonable notice, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

20. INDEMNIFICATION. Neither the Lessor nor the United States, nor their officers, agents, and employees shall be liable for any loss, damage, or injury of any kind

whatsoever to the person or property of the Lessee or sublessees or any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on said premises or from any other cause whatsoever; and Lessee, as a material part of the consideration for this lease, hereby waives on Lessee's behalf all claims against Lessor and/or the United States and agrees to hold Lessor and/or the United States free and harmless from liability for all claims for any loss, damage, or injury arising from the use for the premises by Lessee, together with all costs and expenses in connection therewith.

21. UTILITIES. Neither the Lessor nor the United States shall have any obligation to provide utilities as of the commencement of this Lease. In the event that the Lessee requires utilities, the installation and maintenance thereof shall be the Lessee's sole obligation, provided that such installation shall be subject to the written consent of the Lessor, which the Lessor will not unreasonably withhold. The Lessee shall pay, as they become due, all bills for electricity and other utilities that are furnished to the leased premises.

22. LATE PAYMENT INTEREST. It is understood and agreed between the parties hereto that, if any installment of rental is not paid within 30 days after becoming due, interest will be assessed at the existing prime rate, plus three (3) percent, times the amount owned for the period during which payments are delinquent. Interest will become due and payable from the date such rental becomes due and will run until said rental is paid. The interest rate formula is Interest = (Prime rate + 3%) times (x) amount due.

23. RIGHT OF REMOVAL. Upon the termination of the lease, the Lessee of a one-unit single family
dwelling shall be entitled, within _____ days, to remove the dwelling and related structures from the leased premises and relocate such improvements to an alternative site, not located on the leased premises. Any Lessee who exercises such a right shall be required to pay all costs related to the relocation of the dwelling unit. Lessee shall leave the land in good order and condition. All other improvements shall become the property of the Lessor at the expiration of this lease. This paragraph does not apply to Section 248 insured mortgage loans

24. INSURANCE. The Lessee agrees, so long as this lease is in effect, to keep buildings and improvements on the leased premises insured against loss or damage by fire with extended coverage endorsements in an amount equal to the full insurable value of the buildings and improvements insured. Said policy is to be made payable to the Bureau of Indian Affairs for the benefit of the Lessor. Said policy or policies shall be deposited with the Secretary and Lessee shall pay all premiums and other charges payable in respect to such insurance and shall deposit with the Secretary the receipt for each premium or other charge as paid or satisfactory evidence thereof. Except, during such time that a mortgage is in effect against this Leasehold interest, that said policy is to be made jointly payable to the Lessee and the Lender, and premium payments provided for per specific requirements of the Lender.

25. ADDITIONS. Prior to execution of this Lease, provision (s) number (s)
_____
has (have) been added hereto and by reference is (are) made a part hereof.

WITNESS: _____, Lessor

_____

WITNESS:

_____

_____, Lessee

_____

APPROVED:

SECRETARY OF THE INTERIOR

_____ _____

BY: Date

This lease is approved pursuant to the authority delegated by

_____

_____

Approving Official

_____

Date

FANNIE MAE RIDER
TO RESIDENTIAL LEASE OF TRIBAL OWNED LAND

THIS FANNIE MAE RIDER TO RESIDENTIAL LEASE OF TRIBAL OWNED LAND ("Rider") is made this ____day of _____, _____, and is incorporated into and shall be deemed to amend and supplement the Residential Lease of Tribal Owned Land ("Lease") between _____for and on behalf of _____Tribe of Indians ("Tribe"), as "Lessor," and _____, members of the Tribe and residing upon the _____Indian Reservation, as "Lessee."

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Lease, Lessor and Lessee further covenant and agree as follows:

1. **Definition of Lender.** The term "lender" as defined in the Lease shall also mean any conventional mortgage lender, whether or not approved by a Federal Agency, that is approved by the Federal National Mortgage Association ("Fannie Mae") to sell mortgage loans to Fannie Mae and that has secured a lien against the Leased Premises, whether by mortgage, deed of trust, security deed or otherwise, as collateral for the repayment of a conventional mortgage loan (i.e., a loan not made, insured or guaranteed by a Federal Agency), to finance the purchase or refinancing of a leasehold interest and related improvements on the Leased Premises ("Mortgage"). Lender also shall include any of lender's successors or assigns, including any note holder or mortgagee in possession of the Leased Premises, and shall also mean "mortgagee," as such term is used in the Lease.

2. **Federal Supervision**. Upon the occurrence of any such termination of federal responsibilities with respect to the Leased Premises by the issuance of a fee patent, the lifting of restrictions on alienation, or otherwise, during the term of the Lease as provided in Section 8 of the Lease, the Lessee, including any successors or assigns of Lessee, and lender shall be notified of any such termination.

3. **Assignment and Sublease.**

   (a) Notwithstanding anything to the contrary in Section 10(a) of the Lease, Lessee shall not be required to obtain Lessor's consent, or the consent of any Federal Agency, other than the Secretary of Interior, in connection with any pledge of the Leased Premises by Lessee to Lender as collateral for a Mortgage from Lender.
   (b) Notwithstanding anything to the contrary in Section 10 of the Lease, lender's acquisition of the Leased Premises by foreclosure or assignment in lieu of foreclosure shall not require consent of the Lessor or Tribe, and lender shall be entitled to all rights and privileges of a Federal Agency under Section 10.

4. **Indemnification.** Lender shall be entitled to all rights of indemnification by Lessee to Lessor as provided in Section 20 of the Lease.

5. **Utilities.** Lender shall be entitled to all rights of Lessor as provided in Section 21 of the Lease.

6. **Modification/Forfeiture of Lease.** There shall be no modification, amendment, surrender or forfeiture of the Lease or Leased Premises without the prior written consent of lender and Secretary.

BY SIGNING BELOW, the Lessor and Lessee accept and agree to the terms and provisions contained in this Rider to Residential Lease of Tribal Owned Land.

WITNESS: _____, Lessor

WITNESS: _____, Lessee

WITNESS: _____, Lessee

APPROVED:

SECRETARY OF THE INTERIOR

By:_____ Date:_____

This Lease is approved pursuant to the authority delegated by

_____ Date:_____
Approving Official

APPENDIX 6

MEMORANDUM OF UNDERSTANDING

AMONG

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF PUBLIC AND INDIAN HOUSING

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

This Memorandum of Understanding (MOU) is entered into by Rural Development, herinafter referred to as RD, of the United States Department of Agriculture, the Office of Public and Indian Housing, hereinafter referred to PIH, of the United States Department of Housing and Urban Development, and the Bureau of Indian Affairs, hereinafter referred to as BIA, of the United States Department of the Interior (collectively the Agencies).

I. PURPOSE

Because the rate of home ownership on Indian reservations is the lowest in the nation, the purpose of this MOU is to develop a partnership among Federal agencies to increase home ownership in Indian country.

Currently, there are thousands of American Indian and Alaska Native families living in poverty because of the lack of jobs and economic development in Indian country. Many of these Americans reside in substandard housing or have no housing at all, and many live with relatives in overcrowded, substandard homes.

These Americans are composed of elderly, disabled, and young unskilled adults, many with children, who have never left their reservations or Indian Communities and who are dependent upon their extended families and Tribes for financial support to meet basic essential needs.

In some cases, poverty conditions leave individuals without the ability to qualify for private or government financing that would allow them to purchase homes.

Pride of ownership will enhance the quality of life for these American families. School age children and young adults will readily accept their educational, economic, and social challenges because they will have a safe and stable environment in which to live.

This MOU establishes the framework of partnering among the Agencies to improve assistance to American Indians and Alaska Natives in the development and operation of affordable housing on trust or restricted lands, reservations, and in approved service areas. American Indian and Alaska Native communities have significant needs for housing that cannot be financed with their own resources. The Agencies share a common goal to assist tribes in improving their living environment through the delivery of quality housing.

This goal can be achieved through the efficient and effective utilization of all available resources, particularly in the use of federally guaranteed home mortgage loans that are available to qualified Native American individuals, Indian tribes and their tribally designated housing entities (TDHEs). Making such loans more readily available requires the timely approval of leasehold interests and other encumbrances within Indian country.

This MOU establishes a foundation for this cooperative effort. This MOU may be supplemented, as necessary, by individual Memorandums of Agreement (MOA) developed between local decision-makers and the specific Federal agencies assisting in other aspects of the development of the affordable housing.

Any subsequent funds transfer or obligation of work must be confirmed by a formal Interagency Agreement or by other appropriate funding agreement executed by appropriate officials from the participating Agencies.

II. AUTHORITY

This MOU is entered into pursuant to the authority of the Housing Act of 1949, as amended (42 U.S.C. 1471 et seq.) the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1926), Native American Housing Assistance and Self-Determination Act of 1996, as amended (25 U.S.C. 4101 et seq.), and the Snyder Act of November 2, 1921 (25 U.S.C. 13).

III. MISSION STATEMENTS

The mission of RD is to increase economic opportunity and improve the quality of life for all rural Americans. RD's financial programs support essential public facilities and services such as water and sewer systems, housing, health clinics, emergency service facilities and electric and telephone services. RD's Rural Utilities Service administers drinking water and waste disposal (including solid waste and storm drainage) programs through public bodies, not-for-profit corporations, cooperatives and Indian Tribes. RD's Rural Housing Service provides direct and guaranteed housing loans for low and moderate-income persons, as well as a wide variety housing options through organizations that apply for RHS funds, including Federally recognized Native American groups.

The mission of PIH is to use Federal resources to aid Native American families and individuals seeking affordable homes in safe and healthy environments and in particular, assisting responsible citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control. The need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Alaska Native Villages is acute. Providing affordable homes is an essential element in the special role of the United States in helping tribes and their members to improve their housing conditions and socioeconomic status. The Department of Housing and Urban Development strives to provide Federal assistance in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribe or its TDHE.

The mission of the BIA is to improve the quality of life of needy Indians by eliminating homelessness on reservations and approved service areas. The BIA Housing program targets those eligible Indians and families who are designated as most in need of housing assistance because they lack sufficient income to be served by private lenders.

IV. UNDERSTANDINGS

- The Agencies will work together, and with tribes and their TDHEs, to provide housing development and related housing assistance to all sectors of the Indian communities, including those at the lowest income level. Assistance shall be provided within the authorities and resources available to each Agency.

- The Agencies will work together to assist tribes and their TDHEs to identify and address the comprehensive needs of the entire community for affordable housing.

- A goal of the interactions between the Agencies, in conjunction with tribal development of comprehensive affordable housing plans, is to cover all proposed phases of the entire project while minimizing duplication of effort and increasing the efficiency of project planning throughout the entire process.

- The availability of buildable land within the boundaries of a reservation or in an approved service area, on individual trust or allotted lands, and in the areas of Alaska is limited by many factors, including the requirement that the BIA, as trustee, provide its approval to the tribe or TDHE that such land be encumbered, and then record the resultant encumbrance in its Land Title and Records Office. Title Status Reports (TSR) are the operational documents through which such information is conveyed to the beneficial owners, who then may, in turn, provide it to other interested or necessary parties.

- In order to expedite the production of TSRs, the Agencies agree to cooperate fully. The BIA agrees, subject to existing statutory, regulatory and administrative requirements and policies, to exert its best efforts to produce a TSR within 30 days of a request for such a report, and to establish standardized review criteria for such encumbrances. The BIA is in the process of implementing an automated system, which will expedite TSRs. This automated system is scheduled to be operational by fiscal year (FY) 2006. The BIA will also standardize the process for timely updates for TSRs for tribal leases where the tribe has cancelled individual leases that are available for home sites.

- To facilitate and ensure improved communications between the Agencies, meetings should be held at the national, regional and local levels at least annually to discuss programs, budgets, priorities, concerns, policies and relevant experiences that may affect this MOU.

- To further enhance the partnership between the Agencies, each will provide the other access to data as mutually agreed upon. The sharing of this data will assist the Agencies to meet the needs of the tribes more effectively and efficiently.

- Subject to statutory, regulatory, and administrative requirements and policies, the BIA, PIH, and RD will agree to share or transfer financial resources when it is convenient and productive. Where feasible, the Agencies will initiate demonstration projects designed to increase housing on reservations and in approved service areas. The focus of these demonstration projects will be for families at the lowest income level and the projects will be coordinated with the tribes and TDHEs. This is to insure that maintenance and quality control is maintained. HUD's section 184 and Title VI programs will be used to the greatest extent feasible as the vehicles to implement any demonstration projects.

- The BIA agrees, in cooperation with PIH, to provide training to staff of the Agencies, tribes, lenders, and other interested entities on the leasing, mortgage approval and recordation processes, including the necessity for timely review, approval and recordation, and the effect on the homebuyer when timely actions do not occur.

V. EFFECT

- This MOU is an internal government agreement designed to improve the efficiency of government and does not confer any rights on any other parties or private persons.

- This MOU shall not be interpreted as limiting, superseding or otherwise affecting the Agencies' normal operations or decisions in administering its statutory or regulatory duties.

VI. DURATION AND MODIFICATION OF AGREEMENT

This MOU, or any revision hereto, becomes effective when signed by the Agencies. This MOU shall remain in effect unless terminated by any party after 60-days prior written notice to the other parties.

APPROVED BY:

UNITED STATES DEPARTMENT OF AGRICULTURE - RURAL DEVELOPMENT

9-28-04

GILBERT G. GONZALES, JR.
Acting Under Secretary

Date

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF PUBLIC AND INDIAN HOUSING

9-29-04

MICHAEL L. LIU
Assistant Secretary

Date

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

SEP 28 2004

DAVID W. ANDERSON
Assistant Secretary

Date

APPENDIX 7

APPENDIX 7
KEY INFORMATION FOR THE _____ TRIBE

The following suggests information highlights to be gathered for each tribe within the jurisdiction of specific field staff, or within a specific state. Field staff may wish to add items not in this document. The more information gathered, the more informed staff will be. Please consider this list as a *guide* only.

___ Proper name of tribe; official address/telephone/fax numbers/website address/business hours

___ Geographic description of tribe's boundaries, land tenure

___ Economic and housing needs analysis/description of current housing opportunities (attach NAHASDA plan)

___ Historical description (significant events, treaties or other actions, key legal challenges)

___ Name(s) of key elected/appointed officials and their proper titles

___ Governmental structure/terms of office/frequency of elections/meeting schedule/opportunities for placement on agenda; official holidays

___ Governmental committees and/or tribal agencies with responsibility for land assignments/leases, infrastructure approval, development and maintenance, job referrals, taxation, housing improvement and development; key contacts and business hours

___ BIA, IHS, HUD field staff relating to this tribe; key contacts, responsibilities, business hours

___ If some tribal members communicate in native language, identification of translator(s)

___ Liaison to tribe, if identified; person's role/responsibilities

___ Newspaper(s)/newsletter(s)/radio availability and opportunities for publicizing Rural Development programs/key contacts

___ Judicial structure and responsibilities with regard to evictions/foreclosures (copy of relevant ordinances)

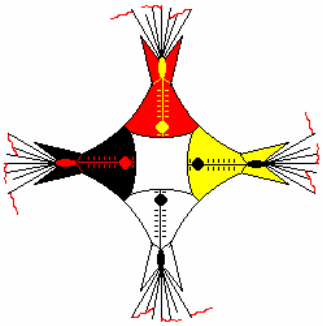
___ Contractor availability/capacity; availability of local workforce

___ Current and past housing activity and public/private participants involved; technical assistance resources

___ Prior/current Rural Development activity with tribe/individuals; achievements/problems

___ MOU with tribe?

APPENDIX 8



OTI KAGA, INC.

PO Box 751, Eagle Butte, SD 57625

APPENDIX 8
AUTHORIZATION TO RELEASE INFORMATION TO THIRD PARTY

I authorize Rural Development, United States Department of Agriculture personnel to release requested information from my file to **Jessica R. Haskell, Housing Technician**, for the purpose of providing me supervisory and technical assistance during the processing of my loan application, including the closing of my loan and construction of my home.

I give my permission for release of information relating to my loan application, closing of my loan and construction of my home including, but not limited to, all records and information, if necessary.

This authorization for release of information to the named party shall remain in effect for a period of twelve (12) months from the date I occupy my home, unless earlier revoked by me in writing. I acknowledge that I have received a copy of this authorization. Photocopies of this authorization shall have the same force and effect as an original of this authorization.

_____ _____

Applicant Date

_____ _____

Co-Applicant Date

_____ _____

Witness **Date**

APPENDIX 9

APPENDIX 9
HOME BUYER EDUCATION AND FINANCIAL LITERACY CURRICULA

The First Nations Institute has several useful publications:

- *Building Native Communities: Financial Skills for Families - Instructor Guide*
- *Building Native Communities: Financial Skills for Families - Participants Workbook*
- *Financial Education Resource Guide*

These guides can be downloaded from First Nations' website at http://www.firstnations.org/publications.asp.
First Nations can be reached at 540-371-5615 or info@firstnations.org.

"Pathways Home"

A curriculum developed through the Pathways Home Partnership, a collaboration between the National Congress of American Indians, the National American Indian Housing Council, the Enterprise Foundation, and the Neighborhood Reinvestment Corporation (recently renamed NeighborWorks America), with participation from federal agencies, private lenders, and consultants familiar with credit and related issues in Indian country.

NAIHC provides training to certify instructors, and trainings have been incorporated into NeighborWorks America training conferences.

Contact NAIHC at http://naihc.net or 202-789-1754 for a training schedule.

Several tribes, IHAs, and other TDHEs have created or modified curricula, in an effort to serve their tribal families with the most culturally relevant materials. Rural Development staff may want to ask each tribe with which they work whether such a tribe-specific curriculum exists, and to request a copy for review.

ATTACHMENTS

ATTACHMENT A

Tract No. 431TT662
Lease No . RL-12XX(98)

SAMPLE

Terminates Seller's Lease

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Great Lakes Agency

CANCELLATION

It is hereby agreed by and between Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Lessor, and Johnny Q Bullfrog, Lessee, that Lease No. RL-12XX(98), a parcel of tribal land described as follows:

A parcel of land located within NE¼NW¼ Section 1, Twp. 39 North, Rge. 7 West, Fourth Principal Meridian, Sawyer County, Wisconsin, containing 2.50 acres, more or less,

be Cancelled for the following reasons: **By mutual consent. Contingent upon successful financing to be obtained by Name of Buyer.**

Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin

Chairman	Lessor	Johnny Q. Bullfrog	Lessee
Secretary	Lessor		

The within Cancellation is hereby approved in accordance with authority delegated at 209 DM 8, 230 DM 1, 3 IAM 4, and Release F00 03-01 dated May 2, 2003.

Recommended for approval:

Realty Officer

APPROVED:

Superintendent, Great Lakes Agency Date

(Dave, a tribal council resolution is attached to authorize this action, and BIA must be advised the contingency is met before supt will sign. New lease to buyer usually has same date as cancellation)

ATTACHMENT B

Title Report Letter

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
615 Main West
Ashland, Wisconsin 54806-0273

IN REPLY REFER TO:

March 31, 2003

4618 Mohican
Doxtator, M.
RL-3809(03)

USDA Rural Development
603-B Lakeland Road
Shawano, WI 54166

This letter will verify that title to the following parcel of land is held by the United States of America in trust for the Stockbridge-Munsee Band of Mohican Indians of Wisconsin pursuant to documents of record retained in the Bureau of Indian Affairs and approved by the Secretary of the Interior.

A parcel of land located within the W¼SW½NW½SW¼ Section 15, Township 28 North, Range 13 East, 4th P.M., Shawano County, Wisconsin, more particularly described on the attachment, containing .92 acres, more or less, subject to all valid existing rights-of-way of record.

The above parcel of land is presently subject to a residential lease, Lease RL-3809(03) between the Stockbridge-Munsee Community, Lessor, and Mildred Doxtator, Lessee. The lease was approved by delegated authority of the Secretary of the Interior on March 3, 2003. It is recorded in the Indian Land Titles and Records Office as Document 438 158 and was recorded on March 10, 2003, at 2:11 p.m.

In accordance with Provision 2 of the lease agreement, the lease shall bear an effective date commencing on the same date as a proposed Promissory Note associated with mortgaging of the leasehold. As of the date of this letter, March 31, 2003, the date of the Promissory Note has not been determined. Provision 2 further contains a contingency that if a loan is not completed within one year from March 3, 2003, the lease is null and void.

There are no liens, debts or other encumbrances of record on the land or the leasehold interest. All such encumbrances must be approved in writing by the Secretary of the Interior in order to be recognized as valid and would appear as a part of the case file for the lease and recorded in the Bureau's Titles and Records Office. None appear.

Questions concerning title to this land or the processing of this action should be directed to this office, 715-682-4527.

Sincerely,

Realty Officer

Enclosure

APR 02 2003

ATTACHMENT C

SAMPLE
Allows Lender to have its closing.

Lease No. RL-43XX(00)
Lessee: Doe, J.

COMMITMENT FOR APPROVAL OF MORTGAGE

Mortgage of leasehold interest between

Anybody's Bank
Box 5
Winter, WI 54896

and

John Q. Doe

In accordance with 25 CFR §162.12(c) and authority delegated to the Assistant Secretary, Indian Affairs, by the Secretary of the Interior in accordance with authority delegated at 209 DM 8, 230 DM 1, 3 IAM 4, and Release F00 03-01 dated May 2, 2003, the undersigned hereby agrees, on behalf of the Secretary of the Interior, to approve a mortgage of leasehold interest offered by the Lessee named above, provided no cause for not approving the mortgage occurs subsequent to the date of this Commitment.

APPROVED:

Superintendent, Great Lakes Agency
Bureau of Indian Affairs
Ashland, Wisconsin 54806-0273

January 26, 2004
Date

(3)

COMMITMENT OF APPROVAL FOR MORTGAGE

This is to certify that the proposed Real Estate Mortgage between Dale R. Schwab and USDA Rural Development, 603B Lakeland Road, Shawano, Wisconsin 54166 is in conformance with existing laws and federal regulations. All realty records have been examined as to description, ownership, and identification of Mortgagor and Mortgagee. Conformity extends to and includes all supporting documents and other material as may be specified and required by the Code of Federal Regulations.

In accordance with 25 CFR §152.34 and authority delegated at 209 DM 8, 230 DM 1, 3 IAM 4, and 10 BIAM Bulletin 13, as amended, the undersigned hereby agrees, on behalf of the Secretary of the Interior, to approve a Real Estate Mortgage on the trust land owned and offered by Dale R. Schwab as security for a loan to be made by USDA Rural Development in the amount of $20,000.00 (Twenty Thousand and No/100 Dollars), for a period of time ending November 15, 2002, provided no cause for not approving the Mortgage occurs subsequent to the date of this Commitment.

Recommended:

Diane K. Remer
Acting Superintendent, Great Lakes Agency
Bureau of Indian Affairs
Ashland, Wisconsin 54806-0273

October 8, 2002
Date

APPROVED:

Clarice Smith
Acting Midwest Regional Director
Bureau of Indian Affairs

12.03.2003
Date

Appeared before me the above named Clarice Smith, known by me to be the person who executed this instrument.

Ravonna Roberts
Notary Public
My Commission expires: 1-31-05

RAVONNA ROBERTS
Notary Public
Minnesota
My Commission Expires Jan. 31, 2005

ATTACHMENT D

438 163

CERTIFICATE OF APPROVAL FOR MORTGAGE

438-15-03291-03

This is to certify that the attached Real Estate Mortgage dated June 9, 2003, between [redacted] and USDA Rural Housing Service, 603B Lakeland Road, Shawano, Wisconsin 54166 is in conformance with existing laws and federal regulations. All realty records have been examined as to description, ownership, and identification of Mortgagor and Mortgagee. Conformity extends to and includes all supporting documents and other material as may be specified and required by the Code of Federal Regulations.

Pursuant to 25 CFR §152.34 and authority delegated to the Assistant Secretary, Indian Affairs, by the Secretary of the Interior in Departmental Release #2364 dated November 17, 1981, 209 DM 8, 230 DM 1, 3 IAM 4, and Release F00 03-01 dated May 2, 2003, the foregoing Real Estate Mortgage is hereby approved on behalf of the Secretary of the Interior.

Recommended:

Diane K. Rosen — November 4, 2003

Superintendent, Great Lakes Agency

APPROVED:

Clarice Smith — 11-6-2003

Acting Minneapolis Regional Director — Date

RECORDED - BIA
LAND TITLES &
RECORDS OFFICE
2003 NOV 13 AM 10 05
GREAT PLAINS
REGIONAL OFFICE

Appeared before me the above named Clarice Smith, known by me to be the person who executed this instrument.

Rosalind J. Thunder

Notary Public, State of Minnesota

My Commission expires 1-31-05

ROSALIND J. THUNDER
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2005

440 1477

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Midwest Regional Office
Bishop Henry Whipple Federal Building
One Federal Drive, Room 550
Ft. Snelling, MN 55111

IN REPLY REFER TO:

150 1849-1999

CERTIFICATE OF APPROVAL LEASEHOLD MORTGAGE

In accordance with the 230 DM 1.1 and redelegated to me by 3 IAM 4 the undersigned hereby agrees, on behalf of the Secretary of the Interior, to approve a **LEASEHOLD** mortgage on the trust or restricted land owned by the Menominee Indian Tribe of Wisconsin, and leased by **Anthony W. James, a single man,** as security for a **Fifty-one Thousand One Hundred Thirty-nine and no/100s dollars ($ 51,139.00)** loan to be made by the **Rural Housing Service, United States Department of Agriculture.** Should foreclosure be necessary, the mortgagee shall give written notice to the **Bureau of Indian Affairs, Midwest Regional Office** prior to initiation of such proceedings.

2-26-02
Date

Regional Director

REGISTERED-BIA
LAND TITLES &
RECORDS OFFICE
2002 AUG 19 P 12:06
GREAT PLAINS
REGIONAL OFFICE

ACKNOWLEDGMENT

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

On this 26th day of February, 2002, appeared before me Larry Morrin, known to me to be the Regional Director, Midwest Regional Office, Bureau of Indian Affairs, and the person who executed the foregoing instrument, and he acknowledged to me that he executed the same as the free act and deed of the United States of America, as trustee, for the uses and purposes therein.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Ft. Snelling, 2/26/02, day and year aforesaid.

(SEAL)

Notary Public

JUN 23 2003

438 161

Lease No. RL-3809(03)
Lessee [redacted]
438-15-03033-03

CERTIFICATE OF APPROVAL FOR MORTGAGE

Mortgage of leasehold interest between

USDA Rural Housing Service
603B Lakeland Road, Shawano, WI 54166

and

[redacted]

Dated May 30, 2003.

Pursuant to 25 CFR §162.12 and authority delegated to the Assistant Secretary, Indian Affairs, by the Secretary of the Interior in Departmental Release #2364 dated November 17, 1981, 209 DM 8, 230 DM 1, 3 IAM 4 and Release F00 03-01 dated May 2, 2003, the foregoing Mortgage of leasehold interest is hereby approved on behalf of the Secretary of the Interior upon the condition that the Mortgage is subject to the terms and provisions of the lease described therein and the regulations of the Secretary of the Interior relating to the leasing of tribal trust or restricted lands and upon the condition that the Mortgage relates only to the leasehold estate and is not to be construed as an encumbrance or lien against the Stockbridge-Munsee Community's title to the land involved.

In the event of foreclosure, the Mortgagee shall give notice to the Bureau of Indian Affairs, Great Lakes Agency, prior to initiation of such proceedings.

RECORDED-BIA
LAND TITLES &
RECORDS OFFICE
2003 NOV 7 PM 12 56
GREAT PLAINS
REGIONAL OFFICE

Recommended for approval:

Realty Officer, Great Lakes Agency

APPROVED:

Diane B. Rosen
Acting Superintendent, Great Lakes Agency

November 4, 2003
Date

ATTACHMENT E

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

SEP 2 9 2005

Memorandum

To: All Regional Directors
Attention: Regional Realty Officers

From: Director, Bureau of Indian Affairs

Subject: Certified Title Status Reports

The purpose of this memorandum is to issue the following interim policy on Certified Title Status Reports (TSR). The existing policy requires a certified title status report to be issued for each pending realty transaction that is requested by the Superintendents or Regional Directors who have jurisdiction over the lands. The duration of this policy is dependent upon the elimination of backlogs and the cleanup and validation of data in TAAMS at each LTRO.

As a result of the conversion from the Land Records Information System (LRIS) to the Trust Asset and Accounting Management System (TAAMS) and the validation and correction of converted data, many of the Land Title and Records Offices (LTROs) are experiencing backlogs in various land title functions and in the issuance of certain title reports, including the issuance of Title Status Reports (TSRs). The purpose of this memorandum is to amend the existing policy in a manner that would reduce the workloads and backlogs at the LTROs with minimal impact on the agency and regional offices' Real Estate and other trust programs.

Effective immediately, Real Estate Services staff must only obtain a certified TSR to approve the following types of transactions:

1. Mortgage of lands and leaseholds
2. Land sales where there are more than two landowners

You do not have to obtain a certified TSR to approve all other types of real estate and other transactions. The staff should use title status reports or any other reports or records that verify the ownership and encumbrance of the lands subject to the transaction prior to the Federal approval of the transaction. If there is any discrepancy between agency records and LTRO records or there are title report errors, the staff should request a certified TSR or contact the LTRO Manager. This policy includes processing oil and gas leases, gift deeds, easements, permits, farm/pasture leases, etc. These transactions may be approved without a new certified TSR.

A policy memorandum was issued on February 23, 1999, (see attachment) reaffirming the Bureau's policy that processing titles and leases for home ownership purposes should be the number one priority of all realty transactions and that to the greatest extent possible, processing these transactions should not exceed 30 days. Also, in the approved memorandum of understanding (MOU) signed September of 2004 between BIA, HUD and USDA, (see attachment) the Bureau agrees to extend its best efforts to produce a TSR within 30 days of a request for such a report. In order to streamline the mortgaging process and assure the Bureau meets the agreed upon requirements, the following procedures will be adhered to:

1. The Land Titles and Records Offices (LTRO) will prepare a certified title status report upon request for the mortgage of trust lands.
2. The LTRO will send the certified TSR to the originating requestor.
3. The agency/regional office will prepare the leasehold document and all other documents required to clear the title such as lease cancellations and collect mortgage satisfactions.
4. The agency/regional office will submit all documents along with the approved mortgage to the LTRO's for recording.
5. The LTRO will return the recorded documents to the originating office.
6. In lieu of a subsequent certified TSR, the agency/regional realty officer will provide a signed endorsement (see attached) which certifies that from the date of the last certified TSR these recorded title documents have been applied to title as shown by the official Federal system of record for land title ownership and encumbrance of Indian trust and restricted lands and there have been no intervening liens or encumbrances.

You are also reminded when a Federal agency (e.g. HUD, IHS, USDA) prepares a categorical exclusion checklist for a housing related project the BIA can use this categorical exclusion for the environmental document. This categorical exclusion can be used in lieu of an environmental assessment to fulfill the NEPA requirements (516 DM 10.5 M.(3)).

This interim policy affects your obligation to obtain a certified Title Status Reports (TSR) before approving conveyances and encumbrances of Indian trust and restricted lands. This policy is effective as of the date of this memorandum.

If you have any questions, please call Ben Burshia, Chief, Division of Real Estate Services, at (202) 219-1195.

Attachment

ENDORSEMENT
To that Certified Title Status Report
Dated _____
On Tract No.

This endorsement confirms with respect to that certified title status report issued on _____ (date) on Tract Number _____ (Title Status Report) that:

1. The Bureau of Indian Affairs has approved the documents prepared by the Lender or the Bureau of Indian Affairs and recorded such documents in the official records for land title ownership and encumbrances for Indian trust and restricted lands for the Federal Government; and
2. The Bureau of Indian Affairs have recorded such documents in accordance with Lender instructions; and
3. The Bureau of Indian Affairs has not approved any other liens or encumbrances or recorded documents evidencing any such liens or encumbrances from the date of the herein referenced Title Status Report and this endorsement.

This endorsement does not cover encroachments, or questions of location, boundary and area, which an accurate survey may disclose; rights or claims of parties in possession, or claiming to be in possession; easements, liens, rights or encumbrances, including but not limited to irrigation charges, unpaid claims, leases and permits, which are not filed for record in this office; any other rights which might be disclosed from a physical inspection of the premises. This endorsement is issued on [date] at [time].

_____ [signature line for Realty Officer]

Department of the Interior
Departmental Manual

Effective Date: 5/27/04
Series: Environmental Quality Programs
Part 516: National Environmental Policy Act of 1969
Chapter 10: Managing the NEPA Process--Bureau of Indian Affairs

Originating Office: Bureau of Indian Affairs

516 DM 10

10.1 **Purpose**. This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department=s Bureau of Indian Affairs (BIA). This Chapter is referenced in 516 DM 6.5.

10.2 **NEPA Responsibility**.

A. Deputy Commissioner of Indian Affairs is responsible for NEPA compliance of BIA activities and programs.

B. Director, Office of Trust Responsibilities (OTR) is responsible for oversight of the BIA program for achieving compliance with NEPA, program direction, and leadership for BIA environmental policy, coordination and procedures.

C. Environmental Services Staff, reports to the Director (OTR). This office is the Bureau-wide focal point for overall NEPA policy and guidance and is responsible for advising and assisting Area Offices, Agency Superintendents, and other field support personnel in their environmental activities. The office also provides training and acts as the Central Office's liaison with Indian tribal governments on NEPA and other environmental compliance matters. Information about BIA NEPA documents or the NEPA process can be obtained by contacting the Environmental Services Staff.

D. Other Central Office Directors and Division Chiefs are responsible for ensuring that the programs and activities within their jurisdiction comply with NEPA.

E. Area Directors and Project Officers are responsible for assuring NEPA compliance with all activities under their jurisdiction and providing advice and assistance to Agency Superintendents and consulting with the Indian tribes on environmental matters related to NEPA. Area Directors and Project Officers are also responsible for assigning sufficient trained staff to ensure NEPA compliance is carried out. An Environmental Coordinator is located at each Area Office.

F. Agency Superintendents and Field Unit Supervisors are responsible for NEPA compliance and enforcement at the Agency or field unit level.

10.3 **Guidance to Applicants and Tribal Governments.**

A. Relationship with Applicants and Tribal Governments.

(1) Guidance to Applicants.

(a) An "applicant" is an entity which proposes to undertake any activity which will at some point require BIA action. These may include tribal governments, private entities, state and local governments or other Federal agencies. BIA compliance with NEPA is Congressionally mandated. Compliance is initiated when a BIA action is necessary in order to implement a proposal.

(b) Applicants should contact the BIA official at the appropriate level for assistance. This will be the Agency Superintendent, Area Director or the Director, Office of Trust Responsibilities.

(c) If the applicant's proposed action will affect or involve more than one tribal government, one government agency, one BIA Agency, or where the action may be of State-wide or regional significance, the applicant should contact the respective Area Director(s). The Area Director(s), using sole discretion, may assign the lead NEPA compliance responsibilities to one Area Office or, as appropriate, to one Agency Superintendent. From that point, the Applicant will deal with the designated lead office.

(d) Since much of the applicant's planning may take place outside the BIA system, it is the applicant's responsibility to prepare a milestone chart for BIA use at the earliest possible stage in order to coordinate the efforts of both parties. Early communication with the responsible BIA office will expedite determination of the appropriate type of NEPA documentation required. Other matters such as the scope, depth and sources of data for an environmental document will also be expedited and will help lead to a more efficient and more timely NEPA compliance process.

(2) Guidance to Tribal Governments.

(a) Tribal governments may be applicants, and/or be affected by a proposed action of BIA or another Federal agency. Tribal governments affected by a proposed action shall be consulted during the preparation of environmental documents and, at their option, may cooperate in the review or preparation of such documents. Notwithstanding the above, the BIA retains sole responsibility and discretion in all NEPA compliance matters.

(b) Any proposed tribal actions that do not require BIA or other Federal approval, funding or "actions" are not subject to the NEPA process.

B. Prepared Program Guidance. BIA has implemented regulations for environmental guidance for surface mining in 25 CFR Part 216 (Surface Exploration, Mining and Reclamation of Lands.) Environmental guidance for Forestry activities is found in 25 CFR 163.27 and 53 BIAM Supplements 2 and 3.

C. Other Guidance. Programs under 25 CFR for which BIA has not yet issued regulations or directives for environmental information for applicants are listed below. These programs may or may not require environmental documents and could involve submission of applicant information to determine NEPA applicability. Applicants for these types of programs should contact the appropriate BIA office for information and assistance:

(1) Partial payment construction charges on Indian irrigation projects (25 CFR Part 134).

(2) Construction assessments, Crow Indian irrigation project (25 CFR Part 135).

(3) Fort Hall Indian irrigation project, Idaho (25 CFR Part 136).

(4) Reimbursement of construction costs, San Carlos Indian irrigation project, Arizona (25 CFR Part 137).

(5) Reimbursement of construction costs, Ahtanum Unit, Wapato Indian irrigation project, Washington CFR Part 138).

(6) Reimbursement of construction costs, Wapato-Satus Unit, Wapato Indian Irrigation project, Washington (25 CFR Part 139).

(7) Land acquisitions (25 CFR Part 151).

(8) Leasing and permitting (Lands) (25 CFR Part 162).

(9) Sale of lumber and other forest products produced by Indian enterprises from the forests on Indian reservation (25 CFR Part 164).

(10) Sale of forest products, Red Lake Indian Reservation, Minn. (25 CFR Part 165).

(11) General grazing regulations (25 CFR Part 166).

(12) Navajo grazing regulations (25 CFR Part 167).

(13) Grazing regulations for the Hopi partitioned lands (25 CFR Part 168).

(14) Rights-of-way over Indian lands (25 CFR Part 169).

(15) Roads of the Bureau of Indian Affairs (25 CFR Part 170).

(16) Concessions, permits and leases on lands withdrawn or acquired in connection with Indian irrigation projects (25 CFR Part 173).

(17) Indian Electric Power Utilities (25 CFR Part 175).

(18) Resale of lands within the badlands Air Force Gunnery Range (Pine Ridge Aerial Gunnery Range) (25 CFR Part 178).

(19) Leasing of tribal lands for mining (25 CFR Part 211).

(20) Leasing of allotted lands for mining (25 CFR Part 212).

(21) Leasing of restricted lands of members of Five Civilized Tribes, Oklahoma, for mining (25 CFR Part 213).

(22) Leasing of Osage Reservation lands, Oklahoma, for mining, except oil and gas (25 CFR Part 214).

(23) Lead and zinc mining operations and leases, Quapaw Agency (25 CFR Part 215).

(24) Leasing of Osage Reservation lands for oil and gas mining (25 CFR Part 226).

(25) Leasing of certain lands in Wind River Indian Reservation, Wyoming, for oil and gas mining (25 CFR Part 227).

(26) Indian fishing in Alaska (25 CFR Part 241).

(27) Commercial fishing on Red Lake Indian Reservation (25 CFR 242).

(28) Use of Columbia River in-lieu fishing sites (25 CFR Part 248).

(29) Off-reservation treaty fishing (25 CFR Part 249).

(30) Indian fishing - Hoopa Valley Indian Reservation (25 CFR Part 150).

(31) Housing Improvement Program (25 CFR Part 256).

(32) Contracts under Indian Self-Determination Act (25 CFR Part 271).

(33) Grants under Indian Self-Determination Act 25 CFR Part 272).

(34) School construction or services for tribally operated previously private schools

(25 CFR Part 274).

(35) Uniform administration requirements for grants (25 CFR 276).

(36) School construction contracts for public schools (25 CFR Part 277).

10.4 **Major Actions Normally Requiring an EIS**.

A. The following BIA actions normally require the preparation of an Environmental Impact Statement (EIS):

(1) Proposed mining contracts (for other than oil and gas), or the combination of a number of smaller contracts comprising a mining unit for:

(a) New mines of 640 acres or more, other than surface coal mines.

(b) New surface coal mines of 1,280 acres or more, or having an annual full production level of 5 million tons or more.

(2) Proposed water development projects which would, for example, inundate more than 1,000 acres, or store more than 30,000 acre-feet, or irrigate more than 5,000 acres of undeveloped land.

(3) Construction of a treatment, storage or disposal facility for hazardous waste or toxic substances.

(4) Construction of a solid waste facility for commercial purposes.

B. If, for any of these actions, it is proposed not to prepare an EIS, an Environmental Assessment (EA) will be developed in accordance with 40 CFR 1501.4(a)(2).

10.5 **Categorical Exclusions**. In addition to the actions listed in the Department's categorical exclusions in Appendix 1 of 516 DM 2, many of which the BIA also performs, the following BIA actions are hereby designated as categorical exclusions unless the action qualifies as an exception under Appendix 2 of 516 DM 2. These activities are single, independent actions not associated with a larger, existing or proposed, complex or facility. If cases occur that involve larger complexes or facilities, an EA or supplement should be accomplished.

A. Operation, Maintenance, and Replacement of Existing Facilities. Examples are normal renovation of buildings, road maintenance and limited rehabilitation of irrigation structures.

B. Transfer of Existing Federal Facilities to Other Entities. Transfer of existing operation and maintenance activities of Federal facilities to tribal groups, water user organizations, or other entities where the anticipated operation and maintenance activities are

agreed to in a contract, follow BIA policy, and no change in operations or maintenance is anticipated.

C. Human Resources Programs. Examples are social services, education services, employment assistance, tribal operations, law enforcement and credit and financing activities not related to development.

D. Administrative Actions and Other Activities Relating to Trust Resources. Examples are: Management of trust funds (collection and distribution), budget, finance, estate planning, wills and appraisals.

E. Self-Determination and Self-Governance.

(1) Self-Determination Act contracts and grants for BIA programs listed as categorical exclusions, or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.

(2) Self-Governance compacts for BIA programs which are listed as categorical exclusions or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.

F. Rights-of-Way.

(1) Rights-of-Way inside another right-of-way, or amendments to rights-of-way where no deviations from or additions to the original right-of-way are involved and where there is an existing NEPA analysis covering the same or similar impacts in the right-of-way area.

(2) Service line agreements to an individual residence, building or well from an existing facility where installation will involve no clearance of vegetation from the right-of-way other than for placement of poles, signs (including highway signs), or buried power/cable lines.

(3) Renewals, assignments and conversions of existing rights-of-way where there would be essentially no change in use and continuation would not lead to environmental degradation.

G. Minerals.

(1) Approval of permits for geologic mapping, inventory, reconnaissance and surface sample collecting.

(2) Approval of unitization agreements, pooling or communitization agreements.

(3) Approval of mineral lease adjustments and transfers, including assignments and subleases.

(4) Approval of royalty determinations such as royalty rate adjustments of an existing lease or contract agreement.

H. Forestry.

(1) Approval of free-use cutting, without permit, to Indian owners for on-reservation personal use of forest products, not to exceed 2,500 feet board measure when cutting will not adversely affect associated resources such as riparian zones, areas of special significance, etc.

(2) Approval and issuance of cutting permits for forest products not to exceed $5,000 in value.

(3) Approval and issuance of paid timber cutting permits or contracts for products valued at less than $25,000 when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(4) Approval of annual logging plans when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(5) Approval of Fire Management Planning Analysis detailing emergency fire suppression activities.

(6) Approval of emergency forest and range rehabilitation plans when limited to environmental stabilization on less than 10,000 acres and not including approval of salvage sales of damaged timber.

(7) Approval of forest stand improvement projects of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(8) Approval of timber management access skid trail and logging road construction when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(9) Approval of prescribed burning plans of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(10) Approval of forestation projects with native species and associated protection and site preparation activities on less than 2000 acres when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

I. Land Conveyance and Other Transfers. Approvals or grants of conveyances and other transfers of interests in land where no change in land use is planned.

J. Reservation Proclamations. Lands established as or added to a reservation pursuant to 25 U.S.C. 467, where no change in land use is planned.

K. Waste Management.

(1) Closure operations for solid waste facilities when done in compliance with other federal laws and regulations and where cover material is taken from locations which have been approved for use by earlier NEPA analysis.

(2) Activities involving remediation of hazardous waste sites if done in compliance with applicable federal laws such as the Resource Conservation and Recovery Act (P.L. 94-580), Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-516) or Toxic Substances Control Act (P.L. 94-469).

L. Roads and Transportation.

(1) Approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way.

(2) Construction of bicycle and pedestrian lanes and paths adjacent to existing highways and within the existing rights-of-way.

(3) Activities included in a "highway safety plan" under 23 CFR 402.

(4) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(5) Emergency repairs under 23 U.S.C. 125.

(6) Acquisition of scenic easements.

(7) Alterations to facilities to make them accessible for the elderly or handicapped.

(8) Resurfacing a highway without adding to the existing width.

(9) Rehabilitation, reconstruction or replacement of an existing bridge structure on essentially the same alignment or location (e.g., widening, adding shoulders or safety lanes, walkways, bikeways or guardrails).

(10) Approvals for changes in access control within existing right-of-ways.

(11) Road construction within an existing right-of-way which has already been acquired for a HUD housing project and for which earlier NEPA analysis has already been

prepared.

M. Other.

(1) Data gathering activities such as inventories, soil and range surveys, timber cruising, geological, geophysical, archeological, paleontological and cadastral surveys.

(2) Establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing services.

(3) Actions where BIA has concurrence or co-approval with another Bureau and the action is categorically excluded for that Bureau.

(4) Approval of an Application for Permit to Drill for a new water source or observation well.

(5) Approval of conversion of an abandoned oil well to a water well if water facilities are established only near the well site.

(6) Approval and issuance of permits under the Archaeological Resources Protection Act (16 U.S.C. 470aa-ll) when the permitted activity is being done as a part of an action for which a NEPA analysis has been, or is being prepared.

5/27/04 #3620
Replaces 3/18/80 #3511

ATTACHMENT F

1	**Alaska Region**		907.586.7177
	1	*West-Central Alaska Field Office*	907.271.4088
	2	*Fairbanks Field Office*	907.456.0229
2	**Eastern Region**		615.467.1700
	1	*Cherokee Agency*	828.497.9131
	2	*The Seminole Agency*	954.983.1537
	3	*The Choctaw Field Agency*	601.656.1521
3	**Eastern Oklahoma Region**		918.781.4600
	1	*Chickasaw Agency*	580.436.0784
	2	*Miami Agency*	918.542.3396
	3	*Oklmulgee Agency*	918.756.3950
	4	*Osage Agency*	918.287.5700
	5	*Talihina Agency*	918.567.2207
	6	*Weoka Agency*	405.257.6259
4	**Great Plains Region**		605.226.7343
	1	*Cheyenne River Agency*	605.964.6611
	2	*Crow Creek Agency*	605.245.2311
	3	*Fort Berthold Agency*	701.627.4707
	4	*Fort Totten Agency*	701.766.4545
	5	*Lower Brule Agency*	
	6	*Pine Ridge Agency*	605.867.5125
	7	*Rosebud Agency*	605.747.2224
	8	*Sisseton Agency*	605.698.3001
	9	*Standing Rock Agency*	701.854.3433
	10	*Turtle Mountain Agency*	701.477.3191
	11	*Winnebago Agency*	402.878.2502
	12	*Yankton Agency*	605.384.3651
5	**Midwest Region**		612.713.4400
	1	*Great Lakes Agency*	715.682.4527
	2	*Minnesota Agency*	218.751.2011
	3	*Michigan Agency*	906.632.6809
	4	*Red Lake Field Office*	218.679.3361
6	**Navajo Region**		505.863.8314
	1	*Shiprock Agency*	505.368.3373
	2	*Western Navajo Agency*	928.283.2229
	3	*Eastern Navajo Agency*	505.786.6121
	4	*Chinle Agency*	928.674.5140
	5	*Ft. Defiance Agency*	928.729.7211
7	**Northwest Region**		503.231.6702
	1	*Colville Agency*	509.634.2316
	2	*Flathead Agency*	406.675.2700
	3	*Fort Hall Agency*	208.238.2301
	4	*Makah Field Office*	360.645.3198
	5	*Metlakatla Field Station*	907.886.3791
	6	*Northern Idaho Agency*	208.843.2300
	7	*Coeur d' Alene Tribe BIA Field Office*	208.686.1887
	8	*Olympic Peninsula Agency*	360.533.9100
	9	*Puget Sound Agency*	425.258.2651
	10	*Siletz Field Office*	541.444.2679
	11	*Spokane Agency*	509.258.4561
	12	*Taholah Field Office*	360.276.4850

13	*Umatilla Agency*	547.278.3786
14	*Warm Spings Agency*	541.553.2411
15	*Yakama Agency*	509.865.2255
16	*Wapato Irrigation Progject*	509.877.3155

8	**Pacific Region**	916.978.6000
1	*Northern California Agency*	530.246.5141
2	*California Agency*	916.930.3680
3	*Southern California Agency*	909.276.6624
4	*Palm Springs Agency*	

9	**Rocky Mountain Region**	406.247.7943
1	*Blackfeet Agency*	406.338.7544
2	*Crow Agency*	406.638.2672
3	*Fort Belknap Agency*	406.353.2901
4	*Fort Peck Agency*	406.768.5312
5	*Northern Cheyenne Agency*	406.477.8242
6	*Wind River Agency*	307.332.7810
7	*Rocy Boy's Field Station*	406.395.4476

10	**Southern Plains Region**	405.247.6673
1	*Anadarko Agency*	405.247.6677
2	*Concho Field Office*	405.262.7481
3	*Horton Field Office*	
4	*Pawnee Agency*	918.762.2585
5	*Kickapoo Field Office*	405.273.0317

11	**Southwest Region**	505.346.7590
1	*Southern Ute Agency*	970.563.4511
2	*Ute Mountain Ute Agency*	970.565.8474
3	*Jicarilla Agency*	505.759.3951
4	*Mescalero Agency*	505.464.4423
5	*Zuni Agency*	505.782.7271
6	*Ramah Navajo Agency*	505.775.3235
7	*Laguna Agency*	505.552.6001
8	*Southern Peublos Agency*	505.346.2424
9	*Northern Pueblos Agency*	505.753.1400

12	**Western Region**	602.379.6600
1	*Colorado River Agency*	928.669.7111
2	*Eastern Nevada Field Office*	775.738.0568
3	*Fort Apache Agency*	928.338.5353
4	*Fort Yuma Field Office*	928.782.1202
5	*Hopi Agency*	928.738.2228
6	*Papago Agency*	520.383.3286
7	*Pima Agency*	520.562.3326
8	*Salt River Field Office*	480.421.0807
9	*San Carlos Agency*	928.475.2321
10	*San Carlos Irrigation Project*	520.723.6212
11	*Southern Paiute Field Office*	435.674.9720
12	*Truxton Canon Field Office*	928.769.2286
13	*Uintah & Ouray Agency*	435.722.4300
14	*Western Nevada Agency*	775.887.3500