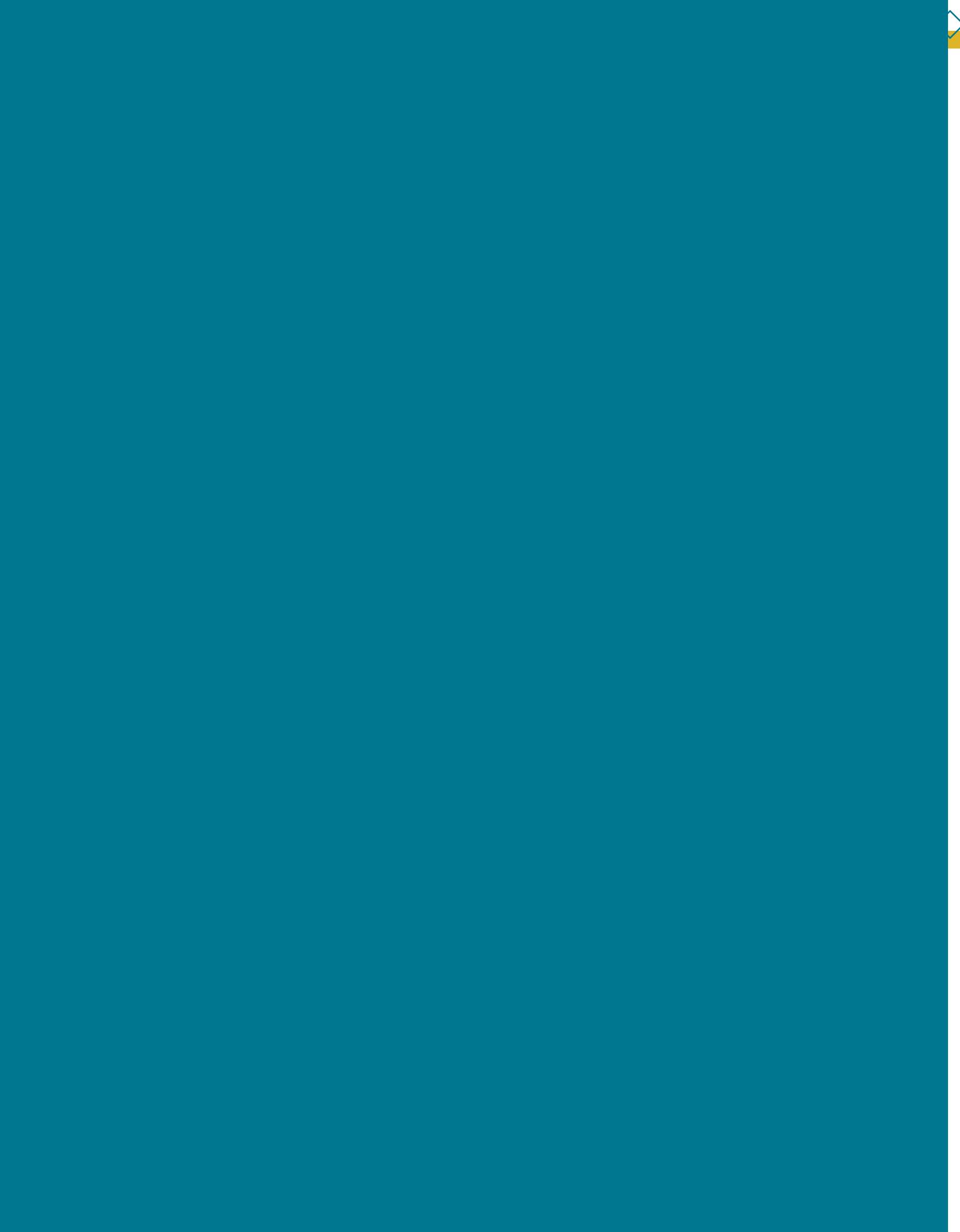




Exploring the
Challenges
and
Opportunities
for Mortgage Finance
in Indian Country

Executive Summary



Executive Summary

This report explores mortgage lending to American Indian and Alaska Natives particularly activity on federally recognized reservation lands (“reservations”).¹ The analysis touches on the historic and social factors that have helped create the constrained mortgage lending environment on reservation lands. In addition to barriers like geographic isolation, economic distress, and mistrust, which are often found in rural areas, these lands have a nonstandard land ownership situation and an extra layer of federal oversight, as well. A review of mortgage lending data for Native American borrowers confirms activity is constrained on reservations. Such activity includes low origination rates, high denial rates, and a high proportion of loans made for manufactured homes.

Federal programs have the potential to encourage mortgage lending on reservations. Despite these federal programs accounting for the majority of the loans made on reservations, they have not significantly increased mortgage lending activity. More specific improvements for widening access to mortgage lending on reservations could be helpful. In addition to better targeted policies and having more complete data available, increasing the capacity and awareness of all involved parties could help resolve the challenges of mortgage lending on reservations.

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1. “Reservation land” refers to land held in trust by the federal government for the 326 federally recognized tribes which have trust lands. The tribes have sovereign control over these lands. This refers to on and off-reservation trust lands, but excludes other census-defined tribal geographies like state recognized reservations or tribal designated statistical areas.

Historical Background

The current state of mortgage lending on tribal lands did not arise in a vacuum. Much of today's constrained mortgage lending activity on reservation lands is a result of the federal-tribal relationship throughout history. The best approach to understanding the current state of mortgage lending on reservation lands is to consider significant Supreme Court decisions and federal policy influencing tribes and land.

- **Marshall Trilogy:** These three landmark cases, *Johnson v. McIntosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832), established the legal foundation for the federal government holding this sovereign land in trust for the benefit of tribes and solidified the federal government's role in regulating aspects of tribal affairs, including mortgage lending.
- **Federal Indian Policy:** Federal policies of forced relocation to isolated rural land held in trust, cultural assimilation, and the undermining of tribal self-determination have led some tribes to face poor economic conditions, land ownership issues, the effects of intergenerational trauma, and a complicated web of bureaucracy.

Lending Challenges on Reservation Lands

The following four factors, stemming directly from history and previous policies, serve to constrain mortgage lending activity on reservation lands.

- **Poverty and Geographic Isolation:** The aggregated poverty rate for reservation lands is 29.2 percent, considerably higher than the 15.5 percent for the nation. Along with economic distress, comes little to no credit history which severely limits the ability to obtain mortgage capital. Also, many Native Americans have never bought a home before and are inexperienced with the process. Besides individuals being poor and not being able to qualify for mortgage loans, being relegated to remote areas makes building more homes and accompanying infrastructure costlier, leading to an inadequate housing stock and overcrowding. Over 70 percent of the counties with at least some reservations lands are found outside of metropolitan areas and 27 percent of these counties have fewer than 10,000 residents.
- **Land Ownership:** Reservation lands cannot be sold or used as collateral for a mortgage loan. This means that lenders making a loan on a reservation land home are at greater risk of losing money if it does not perform, as they cannot seize the property. Instead, a loan on a reservation land home comes with a leasehold interest to the borrower. This does not fit into the standard home loan product and often requires government-backing to limit risk and facilitate lending.

- **Bureaucracy:** In addition to tribal and lender oversight, home loans on reservation lands are under federal oversight, specifically by the Department of Interior's Bureau of Indian Affairs (BIA). The process can be prolonged because multiple entities are involved, each adding their own requirements and government agencies can be understaffed.
- **Mistrust:** Federal policies that sought to assimilate and relocate Native American communities have created mistrust among tribes of not only the federal government, but also other outside entities. Mistrust can limit the creation of agreements between tribes, lenders, and government agencies that could have helped them overcome the nonstandard land ownership and bureaucratic hurdles that exist on reservation lands to facilitate mortgage lending.

Native American Mortgage Lending Activity

A review of Home Mortgage Disclosure Act (HMDA) data finds limited mortgage lending activity² for Native American borrowers, which is largely because of the dearth of activity on reservation lands.³ A large proportion of the reservation land lending involves manufactured homes and denial rates are considerably elevated. Banks, savings, and thrifts originate more reservation land loans than private mortgage companies and credit unions. Small-asset Native American-owned banks play a relatively large role here. A few figures are illustrative:

- **Limited Lending Activity**
 - » About 0.6 percent of HMDA loans in 2015, 43,926 loans out of 7.2 million, went to Native American borrowers who represent 1.6 percent of the U.S. population.
 - » While 9.5 percent of Native Americans live on reservation lands, they receive only a 2 percent share of Native American mortgage loan activity.
 - » About 22.3 loans were originated per 1,000 U.S. residents, compared to 1.9 loans per 1,000 Native American reservation land residents.
- **Low Origination and High Denial Rates**
 - » Over 60 percent of all HMDA applications in 2015 were originated, 49 percent of off-reservation land applications by Native Americans were originated, and just 32 percent of on reservation land applications by Native Americans were originated.

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2. Mortgage lending activity involves home improvement, refinance and first lien home purchase applications.
 3. For this research, reservation land lending reflects activity occurring in census tracts with their center point(centroid) in reservation lands. Census tract and reservation land boundaries do not match, so this means that census tracts with their centroid in reservation lands often contain some non-reservation lands and vice versa for outside reservation land census tracts. The estimates are not perfect counts of reservation land lending – unless citation for the source is provided in the text, but instead represent estimates that reflect the amount of types of activities occurring in these communities. These reservation land estimates generally confirm the findings from other data sources on the dearth of lending in these markets.

- » Almost half of all applications by Native Americans in 2015 on reservation lands – 46 percent, were denied, substantially higher than the 29 percent for all other Native American applicants.

- ***Manufactured Homes***

- » Less than 5 percent of all HMDA applications involved a manufactured home, compared to 7 percent for Native American applicants off-reservation land and 39 percent for Native American applicants on reservation land.
- » Over half of all loans to Native Americans involving a manufactured home are high-cost, meaning they have interest rates and fees considerably higher than a standard prime rate loan, making them costly to the borrower.

- ***Lender Involvement***

- » About one-third of all lenders originated a loan to a Native American applicant – over 2,000 institutions, but only about 165 made a loan on reservation lands.
- » Banks, savings, and thrifts originated two-thirds of the loans to Native Americans on reservation lands compared to slightly less than half for all other loans to Native Americans.
- » Small-asset Native American-owned, Bay Bank and Bank 2, were among the 20 largest-volume lenders serving reservation lands.

Federal Programs

Several federal government programs were created to positively impact mortgage lending to Native Americans and specifically with Native Americans living on reservation lands, including HUD Section 184 program, VA loan programs, USDA Section 502 loan programs, and HUD Indian Housing Block Group program. In each case, these programs have had limited success on reservation lands.

- ***HUD Section 184 Program:*** This program provides a 100 percent loan guarantee to private lender loans to enrolled tribal members. Established

in 1992, the Section 184 program initially guaranteed loans exclusively on reservation lands, but now it reaches select off-reservation lands, including more than 20 entire states.

- » Three-quarters of the lending occurs in six western states: Oklahoma (45%), Alaska, Arizona, New Mexico, California, and Nevada.
 - » More than 90 percent of Section 184 loans occur off reservation lands. Fewer than an average of 200 Section 184 guaranteed loans occurred annually on reservation lands during the 2005 to 2016 period.⁴
 - » Lender involvement declined from 280 in 2006 to 122 in 2017.
- **VA Loan Programs:** The standard VA loan guarantee, starting with the G.I. Bill after World War II, is an important product for Native Americans who live off reservation lands. The standard VA loan does not reach reservation lands though. The VA's Native American Veteran Direct Loan (NAVDL) program seeks to address this need with direct loans to Native American veterans on reservation lands for which the VA has a memorandum of understanding agreement with the tribe. Still, few NAVDL loans have occurred on reservation lands.
 - » The VA loan program guaranteed 12 percent of all loans to Native American borrowers.
 - » The VA originated an annual average, over the 2013-2015 period, of 21 NAVDL loans on reservation lands.⁵
 - » More than 90 percent of NAVDL loans are done in Hawaii and American Samoa.
 - » Efforts at expanding NAVDL lending have been able to increase the number of memorandums of understanding between the VA and tribes, making the product available in more areas.
 - **USDA Section 502 Loan Programs:** The USDA Section 502 direct and loan guarantee programs, while not specifically targeting Native Americans, focus on rural communities, which would include many reservation lands and over 1 million Native American residents. The USDA made approximately 7,000 direct and 116,000 loan guarantees in 2016.⁶



4. Listokin, David, Temkin, Kenneth, Pindus, Nancy, Stanek, David. Urban Institute. Mortgage Lending on Tribal Land: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs. U.S. Department of Housing and Urban Development. January 2017. Accessed July 20, 2017. <https://www.huduser.gov/portal/sites/default/files/pdf/NAHSG-Lending.pdf>
5. Haines, Bill. US Department of Veterans Affairs: Veterans Benefits Administration. 2016. Native American Direct Loan Program. September 2017. https://www.hud.gov/sites/documents/DAY2_BILLHAINES.PDF.

- » The USDA guaranteed 752 loans to Native American borrowers annually during the 2013 to 2015 period. This constitutes less than one percent of all USDA 502 guaranteed activity.
- » An average of 12 USDA Section 502 direct loans were made to Native American borrowers on reservation lands each year between 2013 and 2015.
- **HUD Indian Housing Block Grant Program (IHBG):** The IHBG was created by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). This block grant is the largest single source of housing funding dedicated to tribes for use on reservation land and is awarded to tribes using a needs-based formula.
 - » IHBG increased the supply of quality homes by using funds to to build, acquire, and substantially rehabilitate homes but it is unclear whether there were any associated mortgages.

Efforts to Address the Challenges

There have been many efforts over the years to expand mortgage lending access to reservation lands. Programs like HUD's 184 loan guarantee and the VA's NAVDL direct loan, along with the USDA's one-stop mortgage center initiative have put forth policies to address the unique characteristics that impact many tribal reservation lands. These ideas and approaches are likely positive, but the data suggest they have yet to greatly improve mortgage lending on reservation lands. A more effective approach should include improvements in education and capacity, better targeted financial policies, and increased access to data. In total, these efforts can improve the operation of mortgage markets and widen access. Policies to address finance and housing markets, however, should work in concert with other policies designed to address underlying economic and social problems to maximize impact.

Idea 1:

- **Increase Awareness:** This means making lenders and Native Americans more aware of the government lending programs. It is helpful to instill the idea that homeownership may be possible and teach what one needs to do to qualify and successfully fulfill a mortgage loan commitment. If the proper process and product are involved, loans can work on tribal lands and lenders need not be risk averse. This would include educating involved

6. Housing Assistance Council. 2017. USDA Rural Development Housing Funding Activity: FY 2016 Year-End Report. Accessed 10/5/17 from the following url: [http://www.ruralhome.org/storage/documents/rd_obligations/fy2016/usda-fy16-yo-report.pdf](http://www.ruralhome.org/storage/documents/rd_obligations/fy2016/usda-fy16-<u>yo-report.pdf</u>)

parties about the process that is involved on reservation lands and the different perspectives and customs that shape this process.

Idea 2:

- **Improve Capacity:** Expand the capacity of all parties involved so they can better navigate the mortgage lending markets on reservations. For example, this means expanding tribes' self-governance capacity to be more efficient at mortgage lending efforts; increasing lender capacity, particularly small institutions, to be effective at using existing government programs and navigating the process on reservation lands; and expanding federal regulators capacity so they can perform their oversight duties in a timely manner.

Idea 3:

- **Modify Rules or Expand Incentives:** There is likely room for better targeted policies that could better incentivize mortgage lending. The following are two potential policies.
 - » **Duty to Serve:** The recent "Duty to Serve" requirements mean GSEs must plan to purchase loans originated in reservation lands, among other underserved areas, which could be a powerful incentive for lenders to engage in more lending. The GSEs are developing plans on how they will fulfill these obligations. To do this, there will need to be sound, high-quality mortgage loans to purchase, which requires addressing the current obstacles to reservation land lending. The Duty to Serve requirements then creates an opportunity for tribes, lenders, local non-profits, and CDFIs to come together and find ways to improve mortgage lending on reservation lands.
 - » **Community Reinvestment Act (CRA):** The CRA charges financial regulators with evaluating depository institutions on how well they meet the credit needs of their service area populations. In this process, lenders show they are reaching all parts of their service area by investing in areas most often overlooked by lending. Lenders essentially receive credit for those efforts, given they occur in their service area. Altering the eligibility requirement so all activity in underserved or distressed reservation lands would qualify, regardless of service area, could help. The regulation essentially makes projects and activity slightly more valued in eligible areas since lenders get credit. Additionally, expanding this and other related CRA definitions could possibly mean more lender activity on reservation lands.

Idea 4:

- ***Improve Collection and Access to Data:*** Almost all publicly available mortgage lending data lacks information on whether an activity occurred on reservation lands, or if it involved certain government programs. This makes it difficult to get an accurate picture of what is and is not occurring on reservation lands. Both improved data and closer scrutiny of that data will help with better understanding reservation land mortgage lending markets.

Discussion for Future Action

Native Americans have made great strides in strengthening their right to self-determination and in reestablishing traditional laws and culture, but major challenges remain. Broken treaties, forced relocation and assimilation, and marginalization have resulted in poverty and isolation, land ownership issues, and bureaucracy that all work together to constrain mortgage lending. The review of HMDA data confirms that mortgage lending activity on reservation lands is a rarity. Government programs have stepped in to serve this population, but the current efforts have not been able to overcome the impediments.

Solutions are out there, specifically related to capacity, education, incentives, and data access. Increasing the capacity of the involved parties would help them to navigate the complex process of mortgage lending on reservation lands. Tribal members, banks, and local governments need to be better informed of available products and how to access them. Regulatory changes could incentivize bank and lenders to invest more in Indian Country. Lastly, having more and better available data available would give further insight into the issues. The ideas proposed here could ensure more equitable access to mortgage finance. For Native people, the trust relationship has meant the guarantee of U.S. federal protection of people and lands would be implemented. While the federal government has had a history of not fulfilling its promises to Native people, the continuing responsibility to do so still stands.





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