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February 1998

# NATIVE AMERICAN HOUSING

## Homeownership Opportunities on Trust Lands Are Limited



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United States  
General Accounting Office  
Washington, D.C. 20548

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**Resources, Community, and  
Economic Development Division**

B-276933

February 24, 1998

The Honorable Ben Nighthorse Campbell  
Chairman, Committee on Indian Affairs  
United States Senate

Dear Mr. Chairman:

In 1996, lenders provided single-family mortgages valued at about \$785 billion to families and individuals to buy homes in the United States. While a variety of public and private institutions were involved in supplying credit to these households, private institutions provided help for most of them. For about 86 percent of the \$785 billion in mortgages, private institutions provided help without direct federal assistance. However, for the approximately 1.2 million Native Americans inhabiting trust lands (lands held by the federal government for the benefit of Native Americans), private institutions have rarely supplied conventional home purchase loans.<sup>1</sup> Consequently, federal government assistance is nearly always required to provide homeownership opportunities to Native Americans on trust lands.

Interested in increasing homeownership opportunities for Native Americans on trust lands through private conventional lending, you requested that we assess the barriers to conventional home purchase financing.<sup>2</sup> Specifically, you asked us to determine the following:

- How many conventional home purchase loans have private lenders made to Native Americans on trust lands?
- What are the major barriers to conventional home purchase lending to Native Americans on trust lands?
- What efforts are under way to facilitate conventional home purchase lending to Native Americans on trust lands?
- Will the implementation of the Native American Housing Assistance and Self-Determination Act of 1996 (P.L. 104-330) result in more conventional home purchase loans being made to Native Americans on trust lands?

In addition, you asked us to determine whether the backlog at the Department of the Interior's Bureau of Indian Affairs of requests for certifying documents affecting the legal status of trust lands has been a

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<sup>1</sup>By conventional home purchase loans, we mean mortgage loans made by private lenders without federal assistance, such as federal loan insurance or guarantees.

<sup>2</sup>Our work covered the continental United States.

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deterrent to conventional home purchase lending to Native Americans. Appendix I provides information on the impact of the Bureau's backlog.

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## Results in Brief

Few Native Americans have purchased homes on trust lands by using private, conventional financing. During the 5-year period of calendar year 1992 through 1996, lenders made only 91 conventional home purchase loans to Native Americans on trust lands. Moreover, of the 91 such loans we identified, 80 were made to the members of two tribes—the Tulalips of Marysville, Washington, and the Oneida Tribe of Indians of Wisconsin.

Making conventional home purchase loans on Native American trust lands involves overcoming long-standing barriers. The most significant barriers are that lenders (1) are uncertain about whether they can foreclose on Native American trust lands to recover their loan funds; (2) have difficulty understanding the implications of the different types of land ownership because of the complex status of Native American trust lands; (3) are unfamiliar with the tribal courts in which litigation is conducted in the event of a foreclosure; and (4) are concerned about the absence of housing ordinances governing foreclosures in tribal communities.

Some mortgage lenders, as well as public and private organizations, have initiated efforts to increase Native Americans' opportunities to finance homes on trust lands with conventional home purchase loans. To make the 91 loans we identified, lenders created special programs emphasizing the development of housing ordinances and homeownership counseling services or used long-standing relationships with tribes and tribe members. Other broader public and private efforts begun recently, such as the Federal National Mortgage Association's lending initiatives for Native Americans, may have some potential for increasing the number of conventional home purchase loans on trust lands.<sup>3</sup> Other efforts by the Federal Home Loan Bank System and the Office of the Comptroller of the Currency may have some potential for improving Native Americans' overall access to financing and capital, which may, among other things, encourage more conventional home purchase loans on trust lands.<sup>4</sup>

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<sup>3</sup>The Federal National Mortgage Association is a federally chartered, shareholder-owned company that helps make capital available for mortgage lending.

<sup>4</sup>The Federal Home Loan Bank System is a federally chartered, privately owned system of 12 banks that exist to facilitate the extension of mortgage credit. The Office of the Comptroller of the Currency is a federal financial regulatory body that oversees federally chartered banks.

The extent to which the Native American Housing Assistance and Self-Determination Act of 1996 will increase conventional home purchase lending for Native Americans on trust lands is uncertain. This act, which became effective on October 1, 1997, contains provisions that allow tribes to leverage housing block grant funds and extend land lease terms from 25 to 50 years. However, whether tribes can or will use leveraged funds to encourage conventional home purchase lending is uncertain, and many tribes' land lease terms already exceeded 25 years.

## Background

The federal government holds in trust about 55 million acres of land for tribes and individual Native Americans, most of it on or near reservations. Sixty percent of the 2 million Native Americans live on trust lands or in the surrounding counties. Reservations range in size from the Navajo Reservation, the largest, with about 17 million acres, to California's small reservations, called rancherias, which comprise just a few acres. For a map showing the locations of some of the Indian reservations on which trust lands are located, see appendix II.

There are two major ownership categories for land held in trust by the federal government for Native Americans: (1) tribal trust and (2) individual trust. Tribal trust lands are areas set aside and held in trust by the federal government for the use and benefit of tribes. Individual trust lands are areas set aside by tribes or, in some cases, by the federal government that are held in trust by the federal government for the use and benefit of individual Native Americans. Of the approximately 55 million acres of trust lands, about 45 million are tribal trust lands, and 10 million are individual trust lands. All trust lands are subject to federal restrictions against alienation and encumbrance.<sup>5</sup>

In general, land is privately held without restrictions and can be used as collateral for the repayment of a mortgage loan. However, Native American trust lands generally cannot be transferred to non-Native Americans, which prevents Native Americans from using trust lands as collateral for mortgage loans. Only individual trust lands can be transferred to non-Native Americans and then only with the consent of the Native American landowner and approval by the Secretary of the Interior or an authorized representative. With these approvals, individual Native American trust lands can be used as collateral for mortgage loans.

<sup>5</sup>Alienation of Native American trust lands is the transfer of its ownership to non-Native Americans. Encumbrance is a claim, lien, charge, or liability attached to and binding real property. Moreover, an encumbrance is any right to or interest in land that may be held by someone other than the owner that will not prevent the transfer of the title to the land.

Pervasive joblessness and low wages have led to high poverty rates among Native Americans living on reservations. Half of these Native Americans have incomes below the poverty line. Also, the latest information available shows that in 1991, the average unemployment rate on 30 reservations with populations of 3,000 or more was 46 percent, according to the Bureau of Indian Affairs (BIA). BIA estimated that in 1990 only 25 percent of employed Native Americans living on or near reservations earned \$7,000 or more annually, compared with 75 percent of the general U.S. population. In addition, housing conditions on Native American trust lands are much worse than those in other areas of the country: 40 percent of Native Americans on trust lands live in overcrowded or physically inadequate housing, compared with 6 percent of the overall U.S. population.

Federal agencies provide nearly all of the housing—both owner-occupied and rental—developed on Native American trust lands. Four federal agencies—the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA), BIA, and the Department of Agriculture’s Rural Housing Service (RHS)—provide housing assistance through grants, subsidies, and loan guarantees and insurance. HUD provides the largest amount of assistance. From fiscal year 1986 through fiscal year 1995, HUD provided \$4.3 billion (constant 1995 dollars) for housing and community development in tribal areas. Of this amount, HUD provided \$3.9 billion to approximately 189 Indian housing authorities to develop and maintain affordable housing and to assist low-income renters. The authorities used those funds to construct over 24,000 single-family homes, to operate and maintain existing housing, and to encourage other development.<sup>6</sup> Over the decade, HUD also provided direct block grants totaling more than \$424 million to eligible tribes for community development and mortgage assistance. Appendix III contains a more detailed description of federal programs providing homeownership and rental assistance specifically to Native Americans.

HUD’s Federal Housing Administration (FHA) and VA also operate programs that provide lenders with guarantees and insurance on personal property loans made to Native Americans for manufactured homes.<sup>7</sup> According to the 1990 Census, 14 percent of Native American households on

<sup>6</sup>Sixty-five percent of the 24,000 housing units were Mutual Help units, and the remainder were low-income rental units. Through the Mutual Help Program, HUD provides homeownership opportunities and financial assistance to qualified low-income Native Americans to purchase modest housing after leasing for 15 to 20 years.

<sup>7</sup>A manufactured home is built entirely in a factory, transported to a homesite, and installed.

reservations lived in manufactured homes. The corresponding rate for all households in the United States was 7 percent and for Native American households not on reservations, 12 percent. Manufactured homes are primarily purchased with personal property loans, which may be easier to obtain than home purchase loans, especially for those who live in remote areas, have low incomes, or have inadequate credit histories. According to a 1995 Manufactured Housing Institute survey of lenders making manufactured home loans, about 92 percent of the loans were for the homes only, while 8 percent financed both the home and the land. In addition to the 91 conventional home purchase loans we identified in our work, at least another 22 conventional loans were made to Native Americans for purchasing manufactured homes on trust lands over the 5-year period ending in calendar year 1996.

## Lenders Made Few Conventional Home Purchase Loans to Native Americans on Trust Lands

Few Native Americans have purchased homes on trust lands by using private, conventional financing. During the 5-year period of calendar year 1992 through 1996, lenders made only 91 conventional home purchase loans to Native Americans on trust lands. At our request, BIA surveyed all 83 of its Agency Offices in the continental United States to obtain their best estimates of the number of conventional home purchase loans made by private lenders on tribal and individual trust lands. Eight lenders in five states (Michigan, Montana, North Dakota, Washington, and Wisconsin) made the 91 loans to members of eight tribes. Three lenders in two states, Washington and Wisconsin, made 80 of the 91 loans to members of two tribes—the Tulalips and the Oneidas. All eight lenders have held the loans in their portfolios and have not sold them in the secondary mortgage market.<sup>8</sup> Officials of three of the eight lenders told us they are large or medium-sized regional lenders, while officials from the other five told us they are small community lenders.

Home purchase loans of any type made to Native Americans on trust lands, not just conventional home purchase loans, have been few in number. Even when home purchase loans can be nearly fully guaranteed or insured by HUD against loss, lenders have made few loans to Native Americans on trust lands. For example, HUD operates two mortgage guarantee and insurance programs specifically to foster Native American homeownership; but, as of September 30, 1997, lenders had made only 128

<sup>8</sup>The secondary mortgage market allows lenders to sell mortgages they originate to secondary market entities and, by doing so, to make funds available for additional mortgage lending by banks, mortgage bankers, and other lenders. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are the largest of the secondary market entities that purchase conventional mortgages.

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loans on trust lands since the inception of these programs in 1983 and 1995.<sup>9</sup>

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## Major Barriers Exist to Conventional Home Purchase Lending to Native Americans on Trust Lands

Since the early 1980s, many studies and reports have documented the legal, social, and geographical barriers to financing conventional home purchase loans for Native Americans on trust lands. The bibliography at the end of this report lists these studies and reports. We found that the barriers identified in past studies and reports still exist today. The most significant barriers are that lenders (1) are uncertain about whether they can foreclose on Native American trust lands to recover their loan funds; (2) have difficulty understanding the implications of the different types of land ownership because of the complex status of Native American trust lands; (3) are unfamiliar with the tribal courts in which litigation is conducted in the event of a foreclosure; and (4) are concerned about the absence of housing ordinances governing foreclosures in tribal communities.

While some of these barriers also apply to home purchase loans guaranteed or insured by the federal government, lenders are generally not as concerned about their risk on such loans because the federal government protects them against losses. Appendix IV discusses two other barriers identified in various studies and reports: the low socioeconomic status of Native Americans living on trust lands and the remoteness of those lands.

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## Lenders Are Uncertain About Recovering Funds in the Event of a Foreclosure

The primary barrier identified by the studies and reports we reviewed is the uncertainty lenders have about recovering the outstanding loan balance on a home on trust lands if the borrower defaults and a foreclosure results. This uncertainty is created by the inalienable status of trust lands, which can prevent individuals from using the land for loan collateral. For example, in May 1996, the Urban Institute reported that the primary legal obstacle lenders perceived in making mortgage loans to Native Americans on trust lands is the difficulty in recovering outstanding loan amounts in cases of default.<sup>10</sup> Reports by the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing in 1992 and the Presidential Commission on Indian Reservation Economies in 1984

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<sup>9</sup>Of the 494 loans made under HUD's programs as of September 30, 1997, 128 were for homes on trust lands and 276 were for homes on privately held lands; the agency could not determine the land status for the remaining 90 loans.

<sup>10</sup>In 1993, HUD commissioned a study by the Urban Institute Center for Public Finance and Housing that resulted in a May 1996 report, Assessment of American Indian Housing Needs and Programs.

also stated that lenders are concerned about loan security and their ability to reclaim assets in cases of foreclosure on trust lands.<sup>11</sup> In addition, a 1983 BIA report on the obstacles to economic growth on Indian reservations pointed out lenders' concern that their recourse may be limited in cases of home loan defaults.<sup>12</sup>

## Trust Land Ownership Status Is Complex

Land ownership within many Indian reservations is very complex. Land within the geographic boundaries of a reservation may be owned by the tribe; by individual Native Americans or non-Native Americans; and by the federal, state, or local governments. On many reservations, the different types of land ownership create a "checkerboard" pattern of ownership. As discussed previously, there are two major ownership categories for land held in trust by the federal government for Native Americans: tribal trust and individual trust. In addition, reservations can also include privately held lands, which do not have the same restrictions as trust lands. These types of land ownership create jurisdictional problems as each type is subject to different laws—frequently a significant source of uncertainty to private lenders in encumbering property.

Trust lands' ownership status is further complicated by the differences in the appropriate collateral for mortgages. Generally, lenders secure mortgage loans with ownership interests in real property or leaseholds.<sup>13</sup> The trust lands' ownership status—tribal or individual—determines whether home buyers can secure loans involving these lands by using ownership interests in the property or leaseholds. Loans involving tribal trust lands can be secured by leasehold interests, but federal law generally prohibits a lender from obtaining an ownership interest in such lands. In an attempt to make it easier for Native Americans to finance homes on tribal trust lands, recent legislation increased the leasehold period from 25 to 50 years.<sup>14</sup> For individual trust lands—lands given to individuals by a tribe or the federal government—lenders may secure the individual's ownership interest in the property with the Native American landowner's and BIA's approval. Individual trust lands can lose their trust status in the

<sup>11</sup>National Commission on American Indian, Alaska Native, and Native Hawaiian Housing, *Building the Future: A Blueprint for Change*, "By Our Homes You Will Know Us," final report (Washington, D.C.: 1992), and Presidential Commission on Indian Reservation Economies, *Report and Recommendations to the President of the United States* (Washington, D.C.: Nov. 1984).

<sup>12</sup>Alan Parker and Marguerite Gee, *Survey of Indian Economic Development Issues*, Report to the Assistant Secretary of the Interior for Indian Affairs (Washington, D.C.: Feb. 1983).

<sup>13</sup>A leasehold mortgage is a loan secured by the lessee's interest in the property. Upon default, the lender has the right to exercise control over the land for the remaining term of the underlying lease.

<sup>14</sup>Under the Native American Housing Assistance and Self-Determination Act of 1996, tribes can lease trust lands for up to 50 years.

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event of a foreclosure under these conditions and leave Native American ownership.

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### Lenders Are Unfamiliar With Tribal Court Procedures Associated With Foreclosures

Generally, disputes involving housing foreclosure transactions between tribes and individual Native Americans and non-Native Americans are subject to the jurisdiction of tribal courts. State courts do not have jurisdiction over suits brought by Native and non-Native Americans on matters involving trust lands. Because of their unfamiliarity with tribal courts, lenders are usually reluctant to risk their capital if the only forum for litigation is tribal courts, according to a report by a Native American consulting firm.<sup>15</sup>

Although lenders may specify guidelines for repayment as a condition of mortgage loans, in most cases lenders must use tribal courts to enforce repayment requirements. Most lenders have little or no experience with tribal courts that have jurisdiction over foreclosure proceedings. Also, lenders are reluctant to press their claims in tribal courts for fear that tribal courts will not protect the property rights of non-Native Americans by according them due process of law, according to a report by the Presidential Commission on Indian Reservation Economies.<sup>16</sup>

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### The Absence of Tribal Housing Ordinances Compounds Lenders' Concerns

Few tribes have enacted housing ordinances, and many have not defined foreclosure procedures, factors that make lenders hesitant to make conventional home purchase loans to Native Americans on trust lands, according to a draft report by the National American Indian Housing Council.<sup>17</sup> Moreover, there are, for the most part, no laws or processes operating on trust lands governing how, or whether, lenders can take possession of collateral in the event of a foreclosure.

Officials of one lender in the Northwest told us that formulating the housing ordinances necessary for lending on trust lands is time-consuming and costly. This lender has been working with a tribe to develop a housing ordinance for over a year. This effort was the impetus for the lender's

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<sup>15</sup>Charles Trimble Company Inc., Facilitating Tribal Access to Investment Financing (Omaha, Neb.: 1993).

<sup>16</sup>Presidential Commission on Indian Reservation Economies, Report and Recommendations to the President of the United States (Washington, D.C.: Nov. 1984).

<sup>17</sup>National American Indian Housing Council, Expanding Home Ownership Opportunities in Native American Communities: The Role of Private Sector Housing Finance, draft report (Washington, D.C.: July 1997).

writing a model housing ordinance that includes provisions for foreclosures, evictions, and land access, among other provisions. Even with a model tribal housing ordinance, the officials expect the negotiations with other tribes to take considerable time because each tribe will want different provisions in its housing ordinance. Moreover, the officials stated that because each tribe's interests and circumstances are different, a lending agreement formulated at one tribe is not necessarily transferable to another tribe.

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## Some Private Lenders Have Overcome Barriers, and Broader Initiatives Are Under Way That May Have Some Potential to Increase Lending

Although the barriers to conventional home purchase lending to Native Americans on trust lands are formidable, some lenders have found ways to overcome them. We found that the lenders that made the 91 conventional home purchase loans to Native Americans on trust lands during the 5-year period of calendar years 1992 through 1996 did so by creating special programs or using long-standing relationships with tribes and their members to facilitate lending. The special programs emphasized homeownership counseling and the negotiation of housing ordinances. In addition, some public and private organizations are developing initiatives that could simplify and may have some potential to increase conventional home purchase lending to Native Americans on trust lands.

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## Some Lenders Created Special Programs or Used Long-Standing Relationships to Facilitate Lending

The eight lenders that made the 91 conventional home purchase loans to Native Americans on trust lands either created special lending programs or relied on long-standing relationships with tribes and tribe members as their assurance against potential foreclosures. These lenders told us that they initiated the activities that led to these loans because they recognized the critical housing needs of Native Americans or had a long history of providing many types of financial services to the tribes and their members. All eight lenders reported that they had not lowered their underwriting standards in making the 91 loans and that counseling borrowers on homeownership responsibilities was invaluable. Some lenders negotiated tribal housing ordinances addressing foreclosures, but others did not.

### Washington Mutual Bank

Washington Mutual Bank, a large regional lender located in Seattle, Washington, is the largest home mortgage lender and one of the largest banks, in terms of assets, in the Pacific Northwest. Twenty tribes are located within the bank's service areas in Washington, Oregon, and Idaho. While additional tribes are located within the bank's service areas in Montana and Utah, bank officials told us that they are not providing services to these tribes because their locations are so remote.

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During the 5-year period ending in calendar year 1996, Washington Mutual Bank made nine conventional home purchase loans to Tulalip Tribe members on individual trust lands. Bank officials told us they initiated the lending program because they recognized the critical housing needs of the reservation-based Native Americans in their service areas.

According to bank officials, Tulalip Tribe members did not understand that establishing a history of financial relationships and the prudent use of credit was required to qualify for a home purchase loan. Moreover, bank officials found that the tribe's members were often more comfortable obtaining this kind of information from other tribe members than from the bank's representatives. The Tulalip Housing Authority has played an important role in educating tribe members on the bank's home purchase loan requirements. For example, the authority has identified and counseled tribe members who potentially meet Washington Mutual Bank's underwriting standards for conventional home purchase loans. According to bank officials, such assistance is invaluable because it acquaints the tribe's members with homeownership requirements and responsibilities, prequalifies potential borrowers, and provides lenders with contact points in formulating agreements for conventional home purchase lending.

Under the bank's conventional home purchase lending program, tribes must establish housing ordinances that cover tribal foreclosure procedures, evictions, and land access rights. In addition, the housing ordinances must contain provisions for the bank to have the first opportunity to recover assets in cases of foreclosure. Moreover, the bank requires that housing ordinances contain no land sale restrictions should foreclosures occur on individual trust lands. The bank and Tulalip Tribe officials negotiated a housing ordinance that contains these provisions for the conventional loans the bank has made. While no foreclosures have occurred on the nine loans made to Tulalip Tribe members, Washington Mutual Bank officials told us they would make a concerted effort to provide the tribe with the first right of purchase before instituting a foreclosure.

For the nine loans made to Tulalip Tribe members, the bank used its standard underwriting criteria and made the loans at the current fixed or adjustable interest rates. The bank provided loans for 90 percent of the value of each home, and the tribe members obtaining the loans made down payments of 10 percent. The process for approving and closing conventional home purchase loans involves not only bank officials and the individual borrowers, but also tribal and federal government officials. A

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flow chart detailing Washington Mutual Bank's process for making conventional home purchase loans on Native American trust lands is in appendix V. Bank officials told us that this process is much more time-consuming than that for conventional home purchase loans involving privately held lands and substantially reduces loan volume.

Nevertheless, Washington Mutual Bank is preparing to offer conventional home purchase loans to the members of a second tribe, the Lummi. According to bank officials, Lummi Tribe members are interested in passing housing ordinances that will enable them to use the bank's home loan programs on individual trust lands.

#### Associated Bank of Green Bay

Associated Bank of Green Bay is a large regional lender located in Green Bay, Wisconsin. The bank's service area consists of five counties in northeastern Wisconsin. The Oneidas are the only tribe in the bank's service area. Associated Bank made 56 conventional home purchase loans on tribal and individual trust lands to members of the Oneida Tribe during the 5-year period ending in calendar year 1996. Bank officials told us they initiated conventional home purchase lending for the Oneida Tribe because the bank had a long history of providing many types of services to the tribe and its members. Moreover, the officials stated that they were aware that a market for conventional home purchase loans existed among the Oneidas. The Oneida Tribe has provided homeownership and credit counseling for its members that, according to bank officials, was very beneficial for both the tribe's members and for the bank because it prepared the borrowers well for homeownership responsibilities.

The 56 conventional home purchase loans made to Oneida Tribe members on tribal and individual trust lands were 1-, 3-, 5-, or 7-year adjustable rate mortgages. Associated Bank provided financing for 80 percent of the value of the homes. To help with down payments, the Oneida Tribe provided borrowers with low-interest loans of up to 20 percent of the value of the homes. Associated Bank officials said they did not modify their underwriting standards in making the home purchase loans to the Oneida Tribe members. Before initiating any conventional home purchase lending, Associated Bank officials reviewed the Oneidas' tribal housing ordinance and found it acceptable for lending. Bank officials told us the Oneida Tribe has the first option to purchase property should foreclosures occur.

#### First Heritage Bank

First Heritage Bank is a small community bank located in Marysville, Washington. The bank's lending area consists of Snohomish County,

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Washington. Two tribes, the Tulalip and the Stillaguamish, are located in the bank's service area.

During the 5-year period ending in calendar year 1996, First Heritage Bank made 16 conventional home purchase loans on individual trust lands to Tulalip Tribe members. Because of the bank's long-standing personal and business relationships with the tribe and its members, it made these loans without negotiating a housing ordinance. Bank officials told us that they have provided many types of banking services, such as savings and checking accounts and business and consumer loans to the Tulalip Tribe and its members for many years. Should a foreclosure occur, the land, since it is individual trust land, would transfer out of trust and would then be sold to any qualified buyer, according to bank officials.

First Heritage Bank's 16 conventional home purchase loans were for 75 percent of the value of the homes. Bank officials told us that the borrowers usually provided down payments of 25 percent. Moreover, the bank accepted the tribe member's equity in individual trust land when a borrower could not provide a down payment. The bank did not modify its underwriting standards in making home purchase loans to Tulalip Tribe members, according to officials.

#### Other Lenders

Each of the remaining five small or medium-sized community lenders made four or fewer conventional home purchase loans to Native Americans on individual trust lands during the 5-year period ending in calendar year 1996. Four of the five lenders made the loans because of long-standing relationships with the tribes and their members. For example, First State Bank of Rolla, a small community bank located in Rolla, North Dakota, made four conventional home purchase loans to members of the Turtle Mountain Chippewa Tribe on individual trust lands. An official told us that the bank has provided a variety of services to members of the tribe over many years. This official also said that because of this long-standing relationship, the bank made the loans in spite of the lack of foreclosure provisions in the tribal housing ordinance. Bank officials are, however, negotiating foreclosure provisions with the tribe. Currently, bank and tribe officials have an understanding that should a foreclosure occur, another Turtle Mountain Chippewa Tribe member would be likely to have the first option to purchase the property, according to a bank official.

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## Initiatives Are Under Way to Facilitate Conventional Home Purchase Lending on Trust Lands

Some federal agencies, public and private institutions, and nonprofit organizations are beginning to direct some of their financial resources and housing expertise to expanding opportunities for Native Americans to buy homes. While some of these efforts address the broader issue of Native Americans' access to credit of all kinds, officials from these organizations share a common belief that improving access to credit will enhance the ability of Native Americans to purchase homes without government assistance. They also believe that privately owned housing is a likely source of economic growth for Native Americans living on reservations.

### Fannie Mae's Lending Initiatives for Native Americans

The Federal National Mortgage Association's (Fannie Mae) Native American lending initiatives are part of the organization's commitment to invest \$1 trillion in affordable and decent housing for low- and moderate-income American families.<sup>18</sup> Fannie Mae has not set a specific funding level for its investments on Native American trust lands. Under its initiatives, Fannie Mae accepts tribes' resale restrictions and tribal jurisdiction over mortgage lending that helps to preserve the trust status of Native American lands.

Fannie Mae's lending initiatives for Native Americans involve both conventional and federally supported mortgage loans. The conventional loan effort for Native Americans began in 1994 when Fannie Mae formed a task force to assess the business and legal risks associated with conventional lending on trust lands. Fannie Mae developed standard loan documents and agreements for conventional lending on trust lands and negotiated special transactions with tribes. In 1996, Fannie Mae began approving tribes for conventional lending under agreements with private mortgage and title insurers to provide their services on trust lands. The Navajos were the first tribe approved under Fannie Mae's conventional lending initiative and the first tribe to be approved for all of Fannie Mae's Native American initiatives. While no conventional loans had closed for members of the Navajo Tribe as of November 17, 1997, Fannie Mae was working on loans with its lender partners. Fannie Mae also had approved the Cochiti Pueblo and the Fort Mojave Tribe for conventional lending on trust lands and was reviewing requests from other tribes interested in making conventional lending available to their members.

Fannie Mae's lending initiatives for Native Americans involving federally supported mortgage loans began in 1995 when it approved loans for purchase made under HUD's guarantee and insurance programs on trust

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<sup>18</sup>Fannie Mae is a government-sponsored enterprise that, among other things, purchases residential mortgages from lenders in the secondary mortgage market.

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lands. Fannie Mae also entered into a partnership with the U.S. Department of Agriculture's Rural Housing Service (RHS) to create a pilot program under which RHS guarantees mortgage loans on Indian reservations and tribal trust lands. Also, in 1997 Fannie Mae issued the first mortgage-backed security to be backed 100 percent by loans to Native Americans and approved its first product for Native Hawaiian homelands. A more detailed description of RHS' and Fannie Mae's efforts is in appendix III.

#### Navajo Partnership for Housing, Inc.

The Navajo Partnership for Housing, Inc., is a partnership of residents, tribal and nontribal government representatives, and the business community that, among other things, creates opportunities for working Navajo families with moderate to high incomes to own their homes. According to the Executive Director of the partnership, the Navajos will need about 20,000 additional housing units by the year 2000. The Director also told us that Navajo Tribe members need conventional home purchase lending because traditional HUD housing programs are not fully addressing their needs. The Director added that conventional home purchase lending is important for tribal economic development because equity in homes can provide a source of capital for business and job creation on the reservation.

The partnership's initial goals are to (1) develop a guide that describes the home purchase lending process and homeownership responsibilities, (2) counsel 300 families in preparation for homeownership, (3) assist in the development of 150 housing units, and (4) attract over \$10 million in private capital for homeownership. The guide will describe the processes required for approving and closing home purchase loans, including credit reviews, and leasehold and title clearances.

In addition, the partnership plans to identify potential borrowers for conventional home purchase loans and to provide home buyer and credit counseling to all interested Navajo families. The partnership's Executive Director told us that counseling is very important because many Navajos have no experience with getting home loans or dealing with private lenders and will be first-generation home buyers. The importance of counseling for Navajo Tribe members became evident in 1996 when the partnership counseled 800 families to determine their eligibility for and interest in obtaining conventional home purchase loans. Of these 800 families, the partnership has been working with 70 families interested in homeownership, but only 1 of the families could be financially prequalified for a conventional home purchase loan. The partnership is counseling the

other families to help them resolve financial and other problems so that they can obtain home purchase loans.

To address lenders' concerns about potential loan defaults, the partnership has arranged for lenders to contact the partnership before borrowers become significantly delinquent. The partnership plans to counsel delinquent borrowers in an effort to make the loans current and avoid foreclosure. According to the partnership's Executive Director, the lenders are pleased with this arrangement because it will save them money in servicing the loans. Also, he told us many tribe members are more satisfied with being counseled by the partnership than by a lender's representative.

#### Other Lending Initiatives for Native Americans on Trust Lands

The Office of the Comptroller of the Currency (OCC)<sup>19</sup> and the Federal Home Loan Bank (FHLBank) System<sup>20</sup> have efforts under way to address the broader issue of Native Americans' access to financing and capital. These efforts, if successful, could expand conventional home purchase lending for Native Americans on trust lands.

In 1994, OCC launched a three-part strategy to improve financial services for Native Americans on trust lands that encompasses

- vigorous enforcement of the federal fair lending and community reinvestment statutes to eliminate discrimination and promote opportunities for Native Americans;
- the creation of partnerships among lenders, tribal governments, and community organizations to promote information-sharing and the development of innovative solutions to the financial services problems of Native Americans; and
- educational efforts to help lenders and Native Americans understand and address the unique set of legal and culture complexities that make lending on trust lands more challenging than lending in other low- and moderate-income communities.

<sup>19</sup>The Office of the Comptroller of the Currency (OCC) is an independent bureau of the Department of the Treasury. As a financial regulatory body, OCC oversees about 2,800 federally chartered banks. OCC promotes a stable financial system by supervising and regulating national banks to ensure they adhere to sound management principles and comply with the law.

<sup>20</sup>The FHLBank System is a government-sponsored enterprise, a federally chartered, privately owned system of 12 district banks. Its purpose is to facilitate the extension of mortgage credit. It does this by lending (in the system's terminology "making advances") to its stockholders/members, which in turn make mortgage loans to home buyers.

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OCC, along with the other federal financial supervisory agencies,<sup>21</sup> revised the Community Reinvestment Act (CRA) regulations to specifically inform banks that lending, investing, and providing banking services to Native Americans on trust lands will receive favorable regulatory consideration. The act was designed to encourage banks to provide credit to their entire market areas, including low- and moderate-income areas. It requires federal bank and thrift regulators to evaluate, during periodic examinations, the extent to which banks are fulfilling their lending, investment, and service responsibilities in their areas. On the basis of these assessments, the regulators assign the banks overall ratings, ranging from outstanding to substantial noncompliance. An institution's CRA rating may affect approval by the regulators of certain types of applications and the public's perception of the institution. The regulators are required to take a depository institution's CRA rating into account when considering applications for expansions, such as mergers and acquisitions.

Through its Affordable Housing Program and its Community Investment Program, the FHLBank System can help support a variety of low-income housing initiatives, including those on Native American trust lands. The Affordable Housing Program provides direct subsidies or reduced-rate loans to financial institutions to help them support the development of owner-occupied or rental housing that is affordable to households with incomes below 80 percent of the area median. Lenders pass on the subsidies to developers of affordable housing, such as Indian housing authorities, tribal councils, or community development corporations. The Community Investment Program provides long-term mortgage funds essentially at cost to lenders to facilitate homeownership for households with incomes below 115 percent of the area median. Both programs, which are paid for by the FHLBank System's earnings, can be used with federal guarantee or insurance programs to support a private lender's home purchase lending. In addition, a tribal housing corporation, Indian housing authority, or tribally designated housing entity may become a nonmember mortgagee of the particular FHLBank serving the area and become eligible for advances (loans) directly from the FHLBank. In 1996, approximately \$777,000 in funds from the Affordable Housing Program were made available to benefit Native Americans.

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<sup>21</sup>The other federal financial supervisory agencies are the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

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## New Law's Effect on Conventional Home Purchase Lending on Trust Lands Is Uncertain

The extent to which the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) will increase conventional home purchase lending for Native Americans on trust lands is uncertain. The act contains provisions that allow tribes to leverage grant funds and to extend land lease terms from 25 to 50 years. However, whether tribes can or will use leveraged funds to encourage conventional home purchase lending on trust lands is uncertain, and many tribes' land lease terms already exceeded 25 years.

A major objective of NAHASDA, which became effective October 1, 1997, is to promote the development of private capital markets and to allow those markets to operate and grow. To accomplish this objective, NAHASDA authorizes HUD to make block grants to tribes that submit housing plans that comply with the program's requirements. Tribes that receive block grant funds will be able to leverage some of the funds by creating partnerships with private lenders for the acquisition, new construction, reconstruction, or rehabilitation of affordable housing. However, NAHASDA does not require tribes to use leveraged grant funds to encourage conventional home purchase lending on trust lands. The Acting Deputy Assistant Secretary for HUD's Office of Native American Programs told us that while NAHASDA will provide additional housing to Native Americans, it is difficult to predict how tribes will use leveraged funds or whether tribes' use of such funds could result in expanded conventional home purchase lending on trust lands.

In addition, NAHASDA amended federal law to allow for a lease term on tribal trust lands of up to 50 years. Previously, many tribes had 25-year leasing authority, which, with BIA's approval could have been renewed for another 25 years. The Comptroller of the Currency, in its July 1997 Guide to Mortgage Lending in Indian Country, stated that there were some concerns that the former 25-year limit may have discouraged some financial institutions from extending home purchase loans on trust lands, since many loans carry a 30-year term. But whether this provision will encourage more conventional home purchase lending on Native American trust lands is questionable, according to the Acting Deputy Assistant Secretary, because many tribes already had lease terms that either extended well beyond 25 years or were for 25 years with an automatic 25-year extension. The Navajo Tribe, for example, gives its members 65-year leases. The Acting Deputy Assistant Secretary said that she was not aware of any situation in which a private lender had not made a home purchase loan on Native American trust lands because land lease terms

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expired after 25 years. She told us that HUD expected to issue regulations implementing NAHASDA in early 1998.

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## Conclusions

Privately supported opportunities for Native Americans to own homes on trust lands are limited. If private mortgage lenders made more conventional home purchase loans to Native Americans on trust lands, they could help expand homeownership opportunities and reduce the burden on government agencies to design, administer, and finance special homeownership programs for these Americans. However, formidable barriers exist, such as limitations on the use of trust lands as collateral. Nevertheless, homeownership initiatives undertaken by a few private lenders and some public and private organizations demonstrate that there is some potential for overcoming these barriers.

While these efforts are noteworthy, conventional home purchase loans are unlikely to become a major source of financing for Native Americans on trust lands. Even if the barriers to conventional home purchase lending are eliminated, the economic status of many Native Americans on trust lands may preclude them from qualifying for these loans. The small number of home purchase loans made to Native Americans on trust lands, even when private lenders are protected against most losses by federal mortgage guarantee and insurance programs, illustrates the limited potential for conventional home purchase loans for Native Americans on trust lands.

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## Agency Comments

We provided the departments of the Interior and Housing and Urban Development with a draft of this report for their review and comment. We received written comments on the draft report from Interior. (See app. VI.) In addition, the Department of Housing and Urban Development's Acting Deputy Assistant Secretary for Native American Programs provided us with two changes that clarified information contained in the report, which we incorporated. We also discussed applicable sections of this report with officials of the Federal National Mortgage Association; the Navajo Partnership for Housing, Inc.; Washington Mutual Bank; Associated Bank of Green Bay; First Heritage Bank; First State Bank of Rolla; the Office of the Comptroller of the Currency; the Federal Housing Finance Board;<sup>22</sup> the Rural Housing Service; and the Department of Veterans Affairs. We incorporated these organizations' clarifying comments into the report where appropriate.

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<sup>22</sup>The Federal Housing Finance Board has regulatory and supervisory oversight responsibility for the 12 Federal Home Loan Banks. The Board ensures that the Federal Home Loan Banks fulfill their public policy mission of facilitating residential mortgage lending, among other missions.

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Interior expressed concern that our conclusions placed too much emphasis on the “trust” status of lands and commented that there are federal agencies that routinely make loans on trust lands and three of the four barriers to conventional home purchase loans cited in our report are not related to the trust status of the lands. Specifically, Interior stated that the limitations discussed in our report are the concerns of private mortgage lenders and that federal agencies, such as the Department of Agriculture’s Farm Service Agency, routinely make farm and ranch operations loans on trust lands. Interior also commented that the Farm Service Agency also had many concerns about mortgages on trust lands, but it became knowledgeable of the process and now makes numerous loans. Private mortgage lenders need to do the same, Interior stated.

Our assessment of the barriers to conventional home purchase financing focused on trust lands because of the Chairman of the Senate Committee on Indian Affairs’ interest in increasing homeownership opportunities for Native Americans on such lands. About 1.2 million Native Americans, or 60 percent of all Native Americans, live on trust lands or in the surrounding counties. Private mortgage lenders, as they become knowledgeable of the process of making home purchase loans on trust lands, may increase the number of such loans. However, our concern, as pointed out in our report, is whether conventional home purchase loans are likely to become a major source of financing for Native Americans on trust lands. We believe the small number of home purchase loans made to Native Americans on trust lands, even when private lenders are protected against most losses by federal mortgage guarantee and insurance programs, illustrates the limited potential for such conventional home purchase loans. Also, the farm and ranch operations loans made by the Farm Service Agency on trust lands differ in important ways from the loans that are the focus of our report—conventional home purchase loans. The Farm Service Agency’s loans are made or guaranteed by the federal government, which incurs all or most of the loss that may occur if the loans are not repaid. Conventional home purchase loans are made by private lenders without federal assistance, such as federal loan guarantees or insurance. Losses on these loans are absorbed by private lenders or other entities in the mortgage finance market.

Regarding Interior’s comment that three of the four barriers cited in our report—(1) uncertainty about recovering funds in the event of a foreclosure, (2) unfamiliarity with the tribal court procedures associated with foreclosure, and (3) the absence of tribal housing ordinances—are not related to the trust status of the lands, we believe that it is in fact

because of the trust status that these barriers arise. Generally, on privately held lands, lenders are not uncertain about whether they can recover outstanding loan balances if foreclosures occur. For example, if a borrower defaults and a foreclosure results, a lender has the ability to take possession of the collateral that in many cases is the land and the improvements on that land. It should also be noted that our report discusses six barriers to conventional home purchase loans and not four as stated by Interior.

Interior also provided us with changes that clarified information in the report on the transfer and definition of trust lands, the cost and time required to eliminate the backlog of requests for title documents, and the cost to examine titles by and the number of land ownership interests under the jurisdiction of the Aberdeen Land Titles and Records Office. We incorporated the clarifications in the report.

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## Scope and Methodology

To determine the number of conventional home purchase loans made on Native American trust lands, we asked the Bureau of Indian Affairs (BIA) to survey its 83 Agency Offices in the continental United States to identify the number of such loans these offices had approved from calendar year 1992 through 1996. To identify the major barriers preventing conventional home purchase lending on Native American trust lands, we reviewed studies and reports from 1983 to the present. (See the bibliography for a list of these studies and reports.) We also visited and interviewed members of the Navajo Tribe and the Oneida Tribe of Indians of Wisconsin and lenders that made conventional home purchase loans on Native American trust lands. To document the efforts being made to facilitate conventional home purchase lending to Native Americans on trust lands, we analyzed BIA's survey results and interviewed representatives of the Department of Housing and Urban Development (HUD), the Federal National Mortgage Association (Fannie Mae), the National American Indian Housing Council, tribes, and lending organizations to locate lenders that made such loans during the 5-year period ending in calendar year 1996. Moreover, we interviewed representatives from Fannie Mae, the Navajo Partnership for Housing, Inc., and other appropriate organizations to identify initiatives under way to facilitate conventional home purchase lending for Native Americans on trust lands.

To learn whether implementing the Native American Housing Assistance and Self-Determination Act of 1996 will result in more conventional home purchase loans being made to Native Americans on trust lands, we

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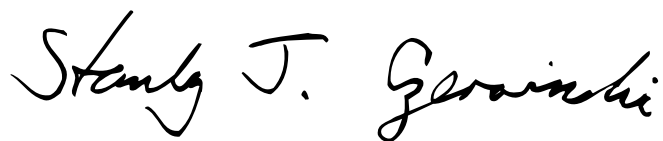
reviewed the act; reviewed literature on the act; and interviewed representatives of HUD, lending organizations, and tribal organizations to gain their perspectives on the law. To determine whether BIA's backlog of requests for certifying documents has deterred conventional home purchase lending to Native Americans on trust lands, we visited three of BIA's five Land Titles and Records Offices in the continental United States: Aberdeen, South Dakota; Albuquerque, New Mexico; and Portland, Oregon. We visited these three offices because, among other things, they process most of the documents related to the status of trust lands. Appendix VII provides additional details on our scope and methodology. We conducted our review from April 1997 through January 1998 in accordance with generally accepted government auditing standards.

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We are sending copies of this report to other appropriate Senate and House committees; the Secretary of HUD; the Secretary of the Interior; the Commissioner of Indian Affairs, BIA; and the Director, Office of Management and Budget. We will make copies available to others on request.

Please call me at (202) 512-7631 if you or your staff have any questions. Major contributors to this report are listed in appendix VIII.

Sincerely yours,

A handwritten signature in black ink that reads "Stanley J. Czerwinski". The signature is written in a cursive, flowing style.

Stanley J. Czerwinski  
Associate Director, Housing and Community  
Development Issues

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## Abbreviations

|            |                                                                          |
|------------|--------------------------------------------------------------------------|
| BIA        | Bureau of Indian Affairs                                                 |
| CRA        | Community Reinvestment Act                                               |
| FHA        | Federal Housing Administration                                           |
| FHLBank    | Federal Home Loan Bank                                                   |
| Fannie Mae | Federal National Mortgage Association                                    |
| HUD        | Department of Housing and Urban Development                              |
| LTRO       | Land Titles and Records Office                                           |
| NAHASDA    | Native American Housing Assistance and<br>Self-Determination Act of 1996 |
| OCC        | Office of the Comptroller of the Currency                                |
| RHS        | Rural Housing Service                                                    |
| VA         | Department of Veterans Affairs                                           |

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# BIA's Backlog of Requests for Certifying Documents Has Not Deterred Conventional Home Purchase Lending to Native Americans on Trust Lands

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Before transactions that affect the status of trust lands, including conventional home purchase loans, can be legally completed, the Bureau of Indian Affairs (BIA) must issue a certified title status report for the land that, among other things, certifies current ownership. Although BIA currently has a backlog of requests for title documents that it estimates will take 113 staff years to eliminate, the backlog has not been a deterrent to conventional home purchase lending to Native Americans on trust lands, according to the lenders we interviewed. If the volume of conventional home purchase loans were to increase, however, BIA's backlog could become a deterrent.

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## Lenders That Made Conventional Home Purchase Loans Did Not Experience Delays in Certifying the Legal Status of Native American Trust Lands

The U.S. government holds title to Native American trust lands to prevent loss of these lands to individuals and to state and local governments. Thus, most trust lands cannot be encumbered, conveyed, taxed, or used as collateral for the repayment of a debt without the approval of the Secretary of the Interior. Within the Department of the Interior, BIA is responsible for protecting trust lands from "alienation," that is, for preventing the transfer of the land's ownership to non-Native Americans. Key components of BIA's responsibilities are maintaining land ownership records and title documents and issuing title status reports to lenders certifying the legal description of tracts of trust lands. BIA also certifies current ownership, including any applicable conditions, exceptions, restrictions, or any encumbrances on record, and determines whether the lands are held in tribal or individual trust.

All commercial businesses and financial institutions rely on certified title status reports (the official land titles) to develop, mortgage, or secure trust lands and resources. Thus, if the certified title is not accurate and up to date, a business or financial institution that is conducting business with tribes or Native Americans either will not enter into a transaction until the certified title can be obtained or will rely on an out-of-date or inaccurate title to their detriment. In the continental United States, BIA's five Land Titles and Records Offices (LTRO)—and three smaller Land Service Offices—issue the certified title status reports lenders need before they make home purchase loans on trust lands.<sup>1</sup> Despite a large backlog of requests for title documents, BIA's certification process for trust lands has not been a deterrent to conventional home purchase lending. When asked about barriers to lending, the four lenders that made 82 of the 91 conventional home purchase loans on trust lands during the 5-year period

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<sup>1</sup>LTROs in the continental United States are located in Aberdeen, South Dakota; Albuquerque, New Mexico; Anadarko, Oklahoma; Billings, Montana; and Portland, Oregon. The smaller Land Service Offices are located in Sacramento, California; Muskogee, Oklahoma; and Arlington, Virginia.

**Appendix I**  
**BIA's Backlog of Requests for Certifying**  
**Documents Has Not Deterred Conventional**  
**Home Purchase Lending to Native**  
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ending in calendar year 1996 did not identify BIA's issuance of certified title status reports as a barrier. During our visits to three of the five LTROs, we found that two of them made issuing certified title status reports for mortgages their highest priority. These LTROs—Aberdeen and Portland—processed certified title status report requests for conventional home purchase loans within a few days to a few weeks. The remaining LTRO we visited, Albuquerque, generally prioritized requests for certified title status reports by the dollar value of the transactions. We were unable to determine how long the Albuquerque LTRO took to process requests because no conventional home purchase lending activity occurred on trust lands within its jurisdiction over the 5-year period we studied.

Few conventional home purchase loans have been made to Native Americans on trust lands. However, should the volume of requests for certified title status reports for these loans increase, BIA's certification process could become a barrier because of the substantial backlog of requests for title documents that need to be reviewed or cleared before loans are approved. BIA estimated that eliminating the backlog that existed as of April 30, 1997, would cost the agency over \$8 million and take over 113 staff years at current levels. Table I.1 shows BIA's estimated cost and time to eliminate the processing backlog by function.

**Table I.1: Estimated Cost and Time to Eliminate BIA's Backlog at All LTROs, as of April 30, 1997**

| <b>Functions and business processes</b> | <b>Total backlog (documents)</b> | <b>Salary cost to eliminate backlog</b> | <b>Time to eliminate backlog (staff years)</b> |
|-----------------------------------------|----------------------------------|-----------------------------------------|------------------------------------------------|
| Record titles                           | 31,798                           | \$373,295                               | 10.69                                          |
| Process-encode titles                   | 25,363                           | 394,583                                 | 8.21                                           |
| Process-encode probates                 | 7,616                            | 286,786                                 | 4.29                                           |
| Manage titles                           | 177,232                          | 839,263                                 | 8.42                                           |
| Determine titles                        | 14,374                           | 3,012,023                               | 26.43                                          |
| Modify probates                         | 7,616                            | 939,384                                 | 6.73                                           |
| Certify title status maps               | 68,449                           | 2,174,586                               | 48.54                                          |
| <b>Total</b>                            | <b>332,448</b>                   | <b>\$8,019,920</b>                      | <b>113.31</b>                                  |

Source: Bureau of Indian Affairs.

In September 1994 and subsequently in June 1996, we reported that BIA had a serious backlog in ownership determinations and record keeping that could have a significant impact on the accuracy of trust fund accounting

data.<sup>2</sup> Moreover, in our 1994 report we recommended that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to take immediate action to eliminate the backlog by reprogramming existing resources, hiring temporary employees, or contracting for services.

In response to our recommendation, BIA issued a draft report on its Related Systems Improvement Project that recommended hiring contractors to bring various records, including land and ownership records, up to date. Because of budget reductions, however, BIA did not acquire the contracting services nor did it hire additional staff. In an April 1997 strategic plan for implementing Indian trust fund reforms, Interior's Special Trustee for American Indians called for the elimination of the backlog of title and ownership determinations and record keeping. Also in April 1997, the Deputy Commissioner for Indian Affairs told us that she had assembled a team of Land Titles and Records Officers to visit each LTRO. In August 1997, BIA headquarters' Land Records Officer told us that the team had completed its visits and had determined the extent of, and reasons for, the backlog. BIA's 1997 Government Performance and Results Act Strategic Plan states that BIA's goal is to eliminate the backlog by the year 2002.

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## **BIA's Backlog of Title Status Reports Will Grow and May Affect Conventional Home Purchase Lending Efforts**

BIA estimates that its backlog of title status reports will increase in the future because of fractionated land ownership on trust lands and the U.S. Supreme Court decision in *Babbitt v. Youpee*, 117 S. Ct. 727 (1997). Some Native American land ownership becomes fractionated as the ownership interests are passed on through several generations of multiple heirs, with more and more people coming to own smaller and smaller interests in the land over time. The Indian Land Consolidation Act, 25 U.S.C. 2201, et seq., as amended, among other things, attempted to reduce the extent of fractionization within a reservation's boundaries. A key provision of that act, section 207, as amended, generally provided that if an individual Native American has an ownership interest of 2 percent or less in a tract of land, that interest transfers to the tribe upon the individual's death, provided that (1) it is not willed to another owner in the same tract and (2) the interest is not capable of earning \$100 or more in any of the 5 years following the individual's death.<sup>3</sup> BIA had estimated that legislation

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<sup>2</sup>Financial Management: Focused Leadership and Comprehensive Planning Can Improve Interior's Management of Indian Trust Funds ([GAO/AIMD-94-185](#), Sept. 22, 1994) and Financial Management: Interior's Efforts to Reconcile Indian Trust Fund Accounts and Implement Management Improvements ([GAO/T-AIMD-96-104](#), June 11, 1996).

<sup>3</sup>Tribes could override this provision through the adoption of their own codes governing the disposition of fractionated interests.

eliminating or consolidating fractionated ownership interests of 2 percent or less might eliminate or consolidate over half of the title records.

In February 1992, we reported that land fractionization had continued to increase at a rapid pace.<sup>4</sup> We pointed out that in the years since the Indian Land Consolidation Act's enactment, the number of small ownership interests (2 percent or less) at the 12 reservations that we reviewed had more than doubled, from about 305,000 to over 620,000 records.

In addition, in Babbitt v. Youpee, the U.S. Supreme Court held that the amended section 207 of the Indian Land Consolidation Act was unconstitutional. This 1997 decision will place a significant workload on BIA because the agency must modify probate court orders and title data transactions to implement the Court's decision. Administrative law judges across the country are issuing probate modification orders that direct BIA to distribute to the heirs at law thousands of real property interests that have been held in abeyance or previously distributed to the tribe involved. According to BIA, these probate orders will add to the business processing workloads at each LTRO and Agency Office nationwide. As of July 1997, BIA had not determined the costs and time that this additional processing effort will require.

The Manager of the Aberdeen LTRO told us that fractionated land ownership is continuing to increase and is a major reason for the title status report backlog in his office's jurisdiction. As fractionation increases, processing title status reports becomes more complex and time-consuming. An analysis by the Aberdeen LTRO of a particular land allotment it administers revealed, for instance, that the number of owners had increased from 1 in 1900 to 962 in 1990, while the number of documents affecting its chain-of-title increased from 1 to 306.<sup>5</sup> The Aberdeen manager estimated that with current staff levels it would cost about \$4,000 and take about 141 overtime hours to examine the title of this one allotment, starting from the original trust patent. He also told us his office has over 1 million individual land ownership interests in its jurisdiction.

The effects of BIA's backlog on federal and local governments, commercial businesses, tribes, and individual tribe members are many and generally carry substantial liability should parties rely on federal Indian land titles

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<sup>4</sup>Indian Programs: Profile of Land Ownership at 12 Reservations (GAO/RCED-92-96BR, Feb. 10, 1992).

<sup>5</sup>"Chain-of-title" is the chronological order of the conveyancing of a parcel of land, from the original owner to the present owner(s).

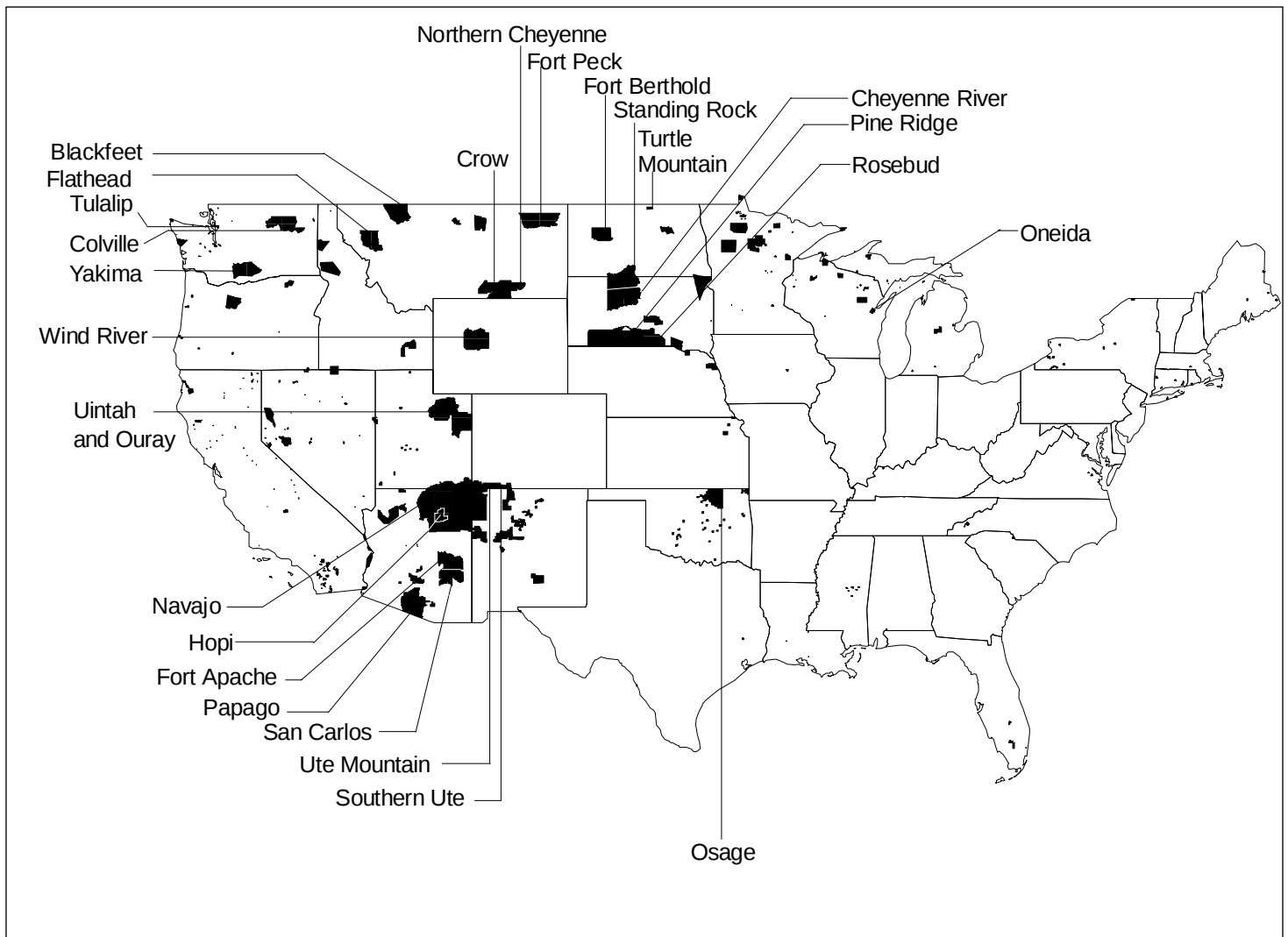
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**Appendix I**  
**BIA's Backlog of Requests for Certifying**  
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that are not up to date or accurate. The right to convey (e.g., through a deed or probate) or encumber (e.g., through a lease or right-of-way) interests in trust lands or resources is based on the title ownership in the lands or resources as determined and certified by BIA. Thus, the lack of up-to-date titles can result in (1) many land transactions being delayed until titles can be obtained, (2) the wrong people or the wrong quantum of interest being involved in the transactions, and (3) decisions to proceed with land transactions without obtaining the required up-to-date and certified land titles.

# Map of Selected Indian Reservations in the United States



Note: This map shows the general locations of a number of Indian reservations in the United States.

# Federal Programs Providing Housing Assistance Specifically to Native Americans

Through eight programs operated by four different agencies, the federal government provided assistance totaling about \$325 million in fiscal year 1997 for the construction, acquisition, and operation of housing for Native Americans. These programs include nonconventional (federally supported) home loan assistance programs and rental assistance programs.

## Federally Supported Homeownership Programs for Native Americans

The Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA), and the Department of Agriculture’s Rural Housing Service (RHS) operate housing programs specifically intended to help Native Americans become homeowners. HUD’s and RHS’ programs guarantee or insure private lenders against most losses, whereas VA’s program provides direct loans to Native Americans on trust lands. In addition, HUD, VA, and RHS operate other homeownership assistance programs that Native Americans can use. Moreover, broader population groups can also use these programs. Table III.1 shows the funding for homeownership assistance programs and the programs’ results for the fiscal year 1997.

Table III.1: Funding for and Results of Federally Supported Homeownership Assistance Programs for Native Americans, Fiscal Year 1997

| Dollars in millions                     |                    |                 |
|-----------------------------------------|--------------------|-----------------|
| Program                                 | Funding            | Number of loans |
| HUD Section 184 Loan Guarantee          | \$3.0 <sup>a</sup> | 155             |
| FHA Section 248 Mortgage Insurance      | 1.4                | 18              |
| VA Native American Home Loans           | 2.6                | 32              |
| RHS Rural Housing Native American Pilot | 0.0                | 0               |

<sup>a</sup>The \$3 million appropriated for fiscal year 1997 is a credit subsidy for HUD’s Section 184 loans initiated during fiscal year 1997. The 155 loans represent loans closed in fiscal year 1997 and as such do not relate to the \$3 million appropriated to initiate loans in that year.

A description of the federal programs that provide homeownership opportunities specifically for Native Americans follows.

## HUD’s Section 184 Loan Guarantee Program

Section 184 of the Housing and Community Development Act of 1992 authorizes HUD to operate an Indian Home Loan Guarantee Program to provide Native American families and Indian housing authorities access to sources of private financing that might otherwise not be available without a federal guarantee. Under the program, HUD guarantees loans made by private lenders to Native American families, tribes, or Indian housing

authorities for constructing, acquiring, or rehabilitating single-family dwellings that are standard housing and are located on trust lands or lands under the jurisdiction of a tribe. The program aids families with incomes that exceed the limits for other assisted housing programs. The program can also indirectly benefit low- and moderate-income Native Americans. For example, HUD officials told us that when tribes or Indian housing authorities obtain Section 184 loans, they use the funds to construct rental homes for low- and moderate-income Native Americans. In fiscal year 1997, lenders closed 155 loans under the program.

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**FHA's Section 248  
Mortgage Insurance  
Program**

HUD's Federal Housing Administration's (FHA) Section 248 Mortgage Insurance Program was established in 1983. Under the program, FHA insures mortgage loans for Native Americans on trust lands whose higher incomes disqualify them from other federally subsidized housing programs available through the Indian housing authority. Fewer types of land are eligible for the Section 248 loans than for the Section 184 loans. For example, homes on privately held lands are not eligible for the Section 248 program. Section 248 insured loans are available for both new construction and existing properties. In fiscal year 1997, FHA insured 18 loans totaling \$1.4 million. HUD is considering requesting that the Section 248 program be terminated because of the Office of Management and Budget's interest in eliminating underutilized programs.

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**VA's Native American  
Home Loan Program**

VA guarantees home loans to all eligible veterans and makes direct loans to Native American veterans to purchase, construct, or rehabilitate homes on trust lands. VA's guaranteed and direct loans are available to all eligible Native American veterans who meet credit and income requirements. In addition, the Native American Home Loan Program, a pilot program enacted in 1992, specifically targets Native American veterans on reservations. Native American veterans can borrow up to \$80,000 to purchase, construct, or improve homes on tribal or individual trust lands. The tribe must sign a memorandum of understanding with VA verifying that foreclosure, lien, and eviction procedures have been enacted and establishing the jurisdiction of the tribal court. In fiscal year 1997, VA made 32 loans totaling \$2.6 million.

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**RHS' Rural Housing Native  
American Pilot Program**

The Rural Housing Native American Pilot loan program was jointly developed by RHS and Fannie Mae and implemented in December 1995. Under the program, RHS guarantees home loans made by private lenders to

individual Native Americans. The loans are for low- and moderate-income families who are first-time home buyers and who are located in rural areas on, among other types of property, tribal trust lands. Tribes must be approved by RHS and Fannie Mae to participate in the pilot before applicants are eligible for loans guaranteed by RHS. Fannie Mae must review the tribe's laws to determine whether they provide adequate protection for mortgage lending. The tribe must enter into a memorandum of understanding with RHS and Fannie Mae to, among other things, ensure that lenders can enforce mortgage-related documents and can foreclose and evict through the tribal court if the need arises. Currently 21 tribes in 11 states are eligible for program approval. Private lenders had not made any loans under the program as of December 4, 1997.

## Federally Supported Rental Assistance Programs for Native Americans on Trust Lands

HUD and BIA also operate rental assistance programs specifically for Native Americans on trust lands. HUD administers the most widely used programs, which provide funding for lease purchase and rental subsidy purposes. BIA provides grants to Native Americans for housing improvements. Table III.2 shows the funding for the rental assistance programs and the programs' results for fiscal year 1997.

**Table III.2: Funding for and Results of Federally Supported Rental Housing Programs for Native Americans on Trust Lands, Fiscal Year 1997**

| Dollars in millions                                |         |                                  |
|----------------------------------------------------|---------|----------------------------------|
| Program                                            | Funding | Results                          |
| HUD Mutual Help                                    | \$98.8  | 770 units                        |
| HUD Rental Housing                                 | 101.2   | 764 units                        |
| HUD Indian Housing Authorities Operating Subsidies | 101.8   | Subsidized expenses <sup>a</sup> |
| BIA Housing Improvement Program                    | 16.0    | 556 units                        |

<sup>a</sup>The operating subsidies cover Indian housing authorities' expenses for preventive maintenance, planning, rent collection, tenant counseling, and contracting.

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# Additional Barriers Impede Lenders From Making Conventional Home Purchase Loans to Native Americans on Trust Lands

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In addition to the barriers discussed in the body of this report, two other barriers have made it difficult to attract private financing for Native Americans to buy homes on trust lands: (1) the low socioeconomic status of many Native Americans on trust lands and (2) the remoteness of the Native American trust lands.

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## Low Socioeconomic Status of Many Native Americans on Trust Lands Is a Barrier to Conventional Home Purchase Loans

Low income levels, the lack of credit histories, and seasonal, unstable employment have meant that many Native Americans on trust lands are often unable to qualify for conventional home purchase loans. To finance a home, an individual must have an income adequate enough to assure the lender that the loan can be repaid. In May 1996, the Urban Institute reported that low and unstable incomes were rated as a major barrier to homeownership by about 85 percent of the Indian housing authority directors and tribal staff surveyed.<sup>1</sup> According to the Executive Director of the Navajo Partnership for Housing, Inc., many Navajo Tribe members with incomes adequate enough for obtaining conventional home purchase loans may still have inadequate credit histories. This official added that many Navajos do not understand what type of credit history is necessary for obtaining a conventional home purchase loan. Moreover, this official told us, most Navajos do not have experience with private lenders and will be first-generation home buyers.

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## Remoteness of Native American Trust Lands Increases Building Costs

As we reported in March 1997, the remoteness of some tribal lands has created significant problems for housing development.<sup>2</sup> In contrast to metropolitan areas, where basic infrastructure systems (sewers, landfills, electricity, water supply and treatment, and paved roads) are already in place, remote tribal areas require a large capital investment to create these systems to support new housing. Where infrastructure does not exist, housing must be built that is self-contained. For example, much of the housing constructed on Navajo lands is scattered across remote sites. According to one builder, the cost to provide infrastructure to these homesites is over \$20,000 per home. Moreover, housing built in such locations must include water cisterns and septic tanks. In addition, homes on the Navajo lands are mainly solar-powered. If housing is developed in subdivisions, the infrastructure costs are lower but still significant. For

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<sup>1</sup>The Urban Institute surveyed tribal leaders and Indian housing authority officials at 36 representatively sampled tribal areas. See *Assessment of American Indian Housing Needs and Programs: Final Report* (Washington, D.C.: May 1996).

<sup>2</sup>Native American Housing: Information on HUD's Housing Programs for Native Americans (GAO/RCED-97-64, Mar. 28, 1997).

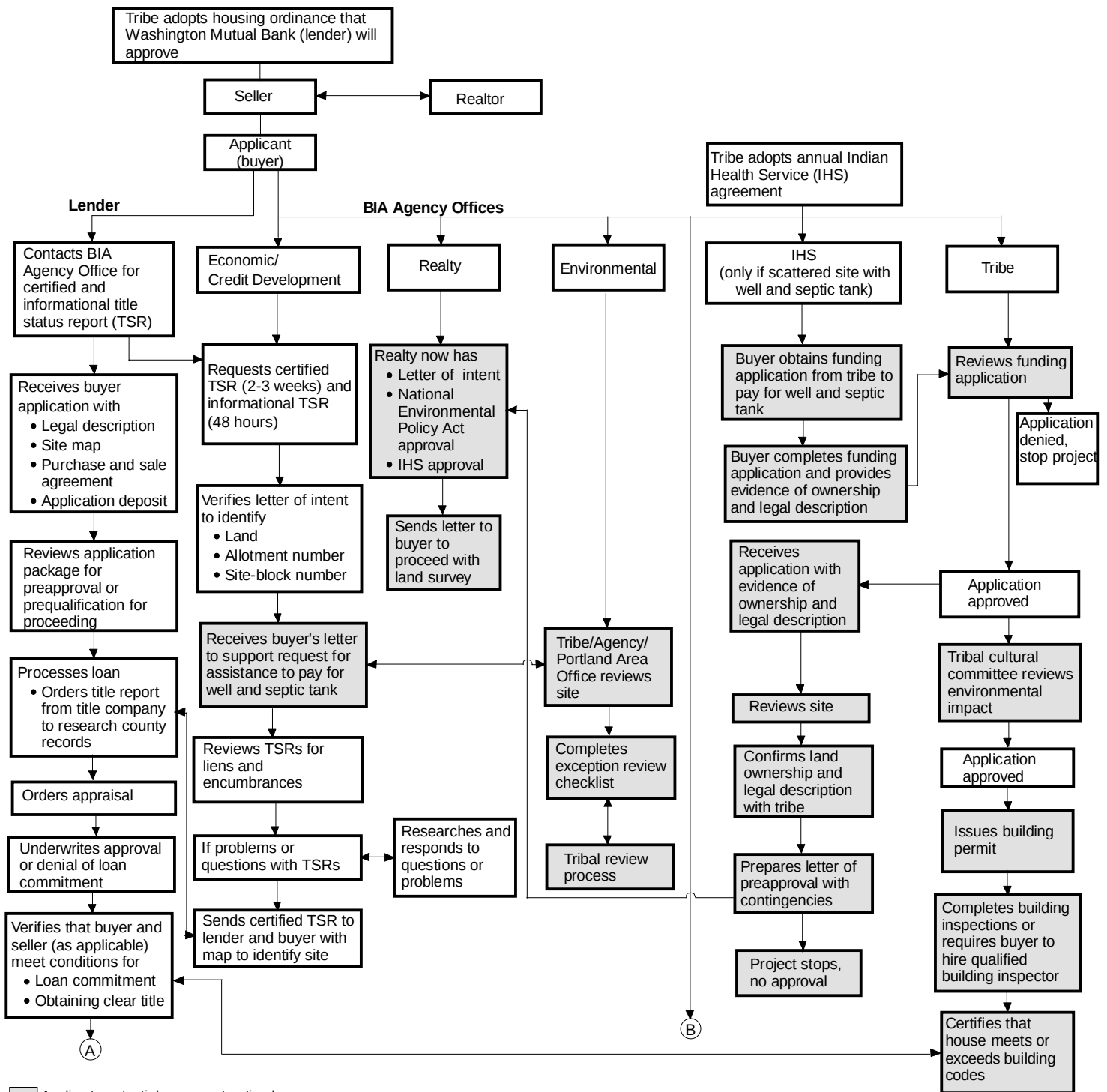
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**Appendix IV**  
**Additional Barriers Impede Lenders From**  
**Making Conventional Home Purchase Loans**  
**to Native Americans on Trust Lands**

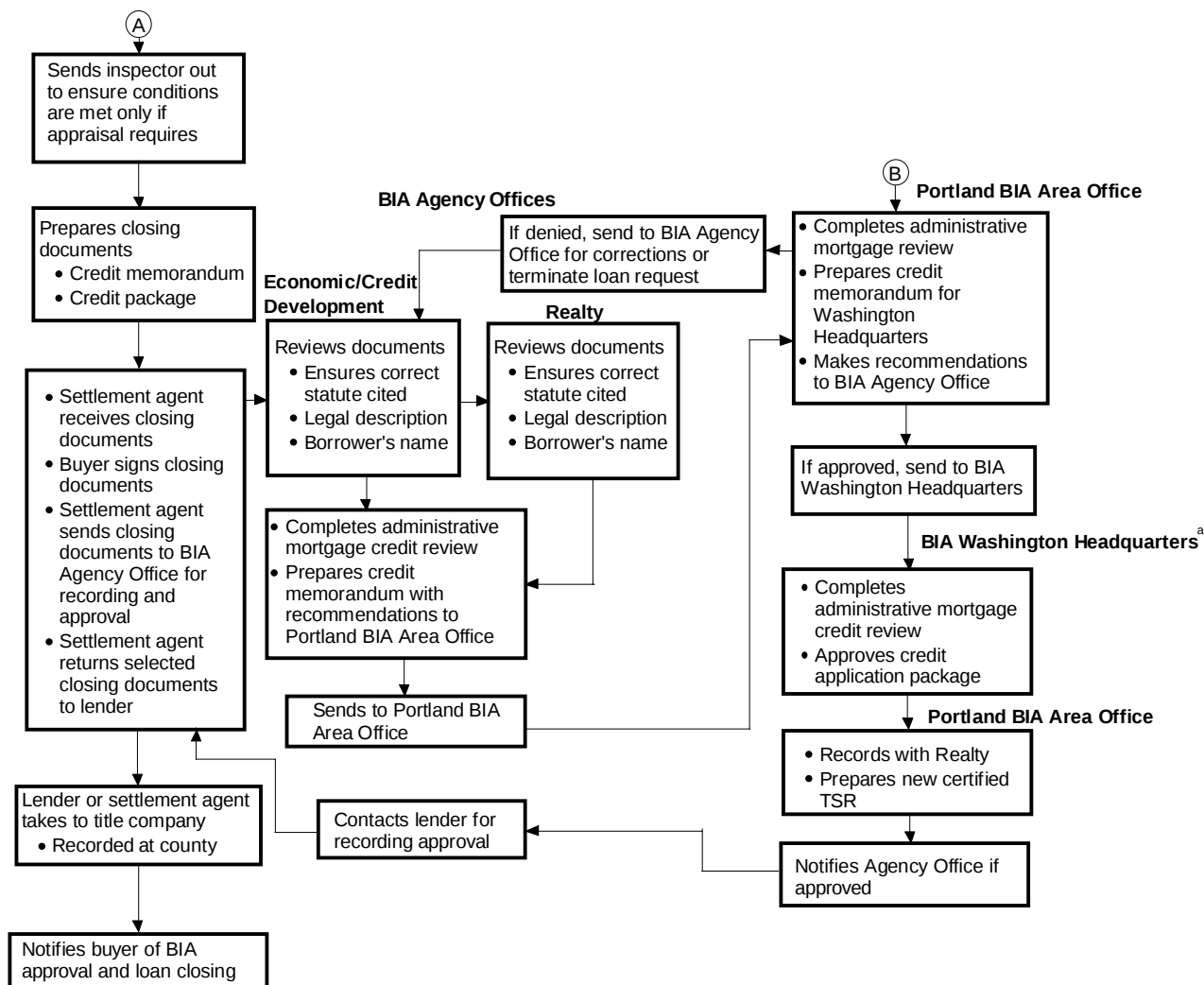
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instance, at one particular housing development on the Navajo reservation—containing a mix of rental and privately owned units—\$8 million is needed to develop the necessary infrastructure (i.e., water lines and sewer system connections).

# Washington Mutual Bank's Process for Making Conventional Home Purchase Loans on Native American Trust Lands



**Appendix V**  
**Washington Mutual Bank's Process for**  
**Making Conventional Home Purchase Loans**  
**on Native American Trust Lands**



<sup>a</sup>According to BIA officials in Washington, D.C., BIA Headquarters' credit reviews of trust mortgages began in December 1996 and are temporary. These officials told us that BIA plans to issue proposed rules early in 1998 that will govern how BIA's Area Offices will conduct credit reviews of trust mortgages.

# Comments From the Department of the Interior

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

JAN 5 1998

Mr. Stanley J. Czerwinski  
Associate Director, Housing and  
Community Development Issues  
Resources, Community, and Economic  
Development Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Czerwinski:

We have reviewed the draft audit report titled "Native American Housing: Homeownership Opportunities on Trust Land Are Limited" and offer the following comments on the background and the conclusion and on Appendix 1.

Background. The draft report includes a statement that trust lands generally cannot be transferred to non-Native Americans, which prevents Native Americans from using trust lands as collateral for mortgage loans. Trust lands can be transferred with the consent of the Secretary of the Interior. We suggest the sentence be revised as follows:

Native American trust lands can be transferred to non-Native Americans with the consent of the Indian landowner and approval by the Secretary of the Interior or his/her authorized representative. Although the Secretary's approval process requires an additional procedure not otherwise used in the non-Indian community, it does not prevent Native Americans from using trust lands as collateral for mortgage loans.

In this same paragraph, the draft report refers to trust lands as "distinct geographic areas." Trust lands are not distinct geographic areas but lands located on reservations and former reservation areas. We suggest combining the sentences as follows:

Trust lands, tribally and individually owned, are lands to which the title is held by the United States for the use and benefit of the Indian owner. These lands are located within, contiguous to, and outside the boundaries of an Indian tribe's reservation or former reservation.

Conclusion. Although the report makes no recommendations, we are concerned that the conclusion section of the draft report places too much emphasis on the "trust" status of the title. The limitations discussed in the report are the concerns of the private mortgage lenders. Federal agencies, such as the Farm Services Administration, routinely make loans for farm and ranch operations on trust land.

See Comment 1.

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**Appendix VI**  
**Comments From the Department of the**  
**Interior**

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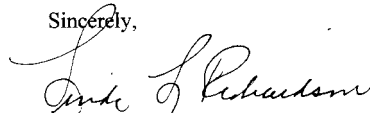
Initially, they also had many concerns about mortgages on trust land. However, they became knowledgeable of the process and now make numerous loans. Private mortgage lenders need to do the same. In addition, three of the four barriers cited in the report are not related to the title -- (1) recovering funds in the event of foreclosure, (2) tribal court procedures associated with foreclosure, and (3) absence of tribal housing ordinances.

Appendix 1. We suggest eliminating the phrase "at current staff levels" from the sentence estimating the cost and time required to eliminate the backlog of requests for title documents.

Regarding the example used in Appendix 1 of a land allotment that had a significant increase in owners, the cost to examine the title should be \$2,800 not \$7,000. In addition, the Aberdeen Land Title and Records Office includes within its jurisdiction the Minneapolis Area. The total number of land ownership interests for which it is responsible is over 1 million (Aberdeen and Minneapolis Areas combined).

Thank you for the opportunity to comment on this draft. If you have any questions regarding our response, please contact me at 208-1916.

Sincerely,



Linda Richardson  
Director, Office of Audit  
and Evaluation

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**Appendix VI**  
**Comments From the Department of the**  
**Interior**

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The following are GAO's comment on the U.S. Department of the Interior letter dated January 5, 1998.

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**GAO Comments**

1. Interior inadvertently refers to the Farm Service Agency here as the Farm Services Administration.

# Scope and Methodology

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To determine the number of conventional home purchase loans made on Native American trust lands, we asked BIA to survey its 83 Agency Offices in the continental United States to identify the number of such loans they had approved. We used this approach because (1) BIA did not have a centralized database containing information on home purchase loans on trust lands, (2) BIA officials were not confident that the 83 Agency Offices transferred all their data to the 12 Area Offices that oversee the Agency Offices, and (3) the Agency Offices' mortgage information did not show whether a mortgage was for the purchase of a conventional or a manufactured home, or was for the refinancing of a home, or whether it was a business loan, or a federal guaranteed or conventional loan. At our request, BIA asked its Agency Offices to identify the number of conventional home mortgage loans approved from calendar year 1992 through 1996 on Native American trust lands. We interviewed the BIA officials who responded to verify that the loans identified were conventional home purchase loans on Native American trust lands and to identify the lenders involved.

To identify the major barriers preventing conventional home purchase lending on Native American trust lands, we reviewed reports and studies from 1983 to the present. (See the bibliography for a list of these reports and studies.) We also visited and interviewed members of the Navajo Tribe and the Oneida Tribe of Indians of Wisconsin and lenders that made conventional home purchase loans on Native American trust lands. Finally, we interviewed HUD and BIA officials about the barriers preventing conventional home purchase lending on Native American trust lands.

To document the efforts under way to facilitate conventional home purchase lending to Native Americans on trust lands, we used BIA's survey results and interviewed representatives of HUD, Fannie Mae, the National American Indian Housing Council, tribes, and lending organizations to locate lenders that made conventional home purchase loans on Native American trust lands during the 5-year period ending in calendar year 1996. We interviewed and obtained information from the eight lenders on their processes and additional efforts involved in making the 91 loans. In addition, we obtained information from the eight lenders on the reasons for making loans, the barriers encountered, and the actions taken to overcome the barriers. Moreover, we interviewed representatives from Fannie Mae; the Federal Home Loan Mortgage Corporation; the Navajo Partnership for Housing, Inc.; the Office of the Comptroller of the Currency; HUD; the Community Development Financial Investment Fund; the Housing Assistance Council; and the National American Indian

Housing Council to identify the initiatives under way to facilitate conventional home purchase lending for Native Americans on trust lands. For each initiative identified, we obtained information on the program and the latest information available on the program's outcomes.

To learn whether implementing the Native American Housing Assistance and Self-Determination Act of 1996 will result in more conventional home purchase loans being made to Native Americans on trust lands, we reviewed the act; reviewed literature on the act; and interviewed representatives of HUD, lending organizations, and tribal organizations to gain their perspectives on the law.

To determine whether BIA's backlog of requests for certifying documents has deterred conventional home purchase lending to Native Americans on trust lands, we visited three of BIA's five Land Titles and Records Offices in the continental United States: Aberdeen, South Dakota; Albuquerque, New Mexico; and Portland, Oregon. We visited these three offices because they process most of the documents related to the status of trust lands. In addition, these offices administer trust responsibilities for most of the trust lands in the continental United States. We also interviewed lenders, tribe representatives, and BIA and HUD officials, and obtained documents on BIA's land titles and records processes.

# Major Contributors to This Report

|                                                                  |                                                                                              |
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