



Testimony
of
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Bank2
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for
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Affairs
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Introduction

Chairman Barrasso, Vice Chairman Jon Tester and Members of the Committee, thank you for inviting me to testify today on Accessing Capital in Indian Country.

My name is Ross Alan Hill, and I am the Founder, President and CEO of Bank2.

Bank2 is a small community bank headquartered in Oklahoma City, OK, with total assets of approximately \$118 Million. Bank2 is 100% owned by the Chickasaw Banc Holding Company and the Holding Company is 100% owned by the Chickasaw Nation. The Holding company was formed in 2001 and the Bank began operations in January of 2002.

Bank2's mission is to "Build Better Lives" with a direct focus on Chickasaw tribal members and on Native Americans across the entire country. We have customers with loans or deposits in all 50 States. Our customer base consists of consumers, small businesses, medium size businesses, tribes and tribal housing authorities.

Bank2 has provided capital for commercial purposes to individual Native Americans, Native American businesses, tribes and tribal housing authorities since our inception. Bank2 has been active in providing capital for housing and commercial ventures to individual Native Americans, Native American housing authorities and to tribes since 2004.

We have utilized numerous federal government programs to assist us with these efforts, including the HUD-184 Home Loan Program, the HUD-Title VI Loan Program, the USDA, SBA, FHA and BIA Loan Guarantee Programs.

Since our inception, we have provided approximately \$1.5 billion dollars of capital in the form of loans to Indian country. In each of the past 6 years, over 80% of all of our loans have been made to individual Indians or tribal entities. Just this year we have made loans to tribes, tribal housing authorities and individual Native



Americans totaling \$41 million dollars. We anticipate closing an additional \$20 million in loans during the next 30 days.

We have provided capital in the form of loans for many different businesses including; trucking companies, an oil field servicing company, a forest firefighting company, a coffee house, an auto body shop, an oil lube shop, a natural gas distribution company for rural Oklahoma and Arkansas, an art gallery, a real estate holding company and a commercial development company. We have made loans to various Native American housing authorities for the construction of apartments, new maintenance facilities, office buildings, housing developments and rental units. We have financed thousands of home loans for Native Americans in all 50 states and on tribal trust lands.

We have received numerous awards for this activity including the "Access to Capital Award" in 2011 presented by the U.S. Department of Commerce Minority Business Development Agency and the Oklahoma Native American Business Enterprise Center. Bank2 was recognized by the prestigious American Banking Journal as the number one community bank in 2009 and the number three community bank in 2010 based upon earnings. Bank2 was named one of the "Top Places to Work in Oklahoma" in 2013 and 2014.

We believe our consistent and intentional service to Indian country makes us uniquely qualified to testify before this committee. Through our experiences we can provide this committee with success stories of what really works and what needs to be fixed. In many of these situations, we believe we know what is necessary to fix the problem(s).

We have made Indian and Indian country loans from Alaska to Florida and from Hawaii to Maine. I have personally visited every tribal headquarters in Oklahoma and hundreds across America. We do not claim to know everything about Native America, but we do believe we can offer a great deal of input about what works



and what is broken, especially concerning government guaranteed lending designed to provide access to capital in Indian country.

We pray our testimony proves to be very valuable to this Committee.



BIA Commercial Loan Guaranty Program

Eligible Borrowers

- Tribes
- Housing Authorities
- TDHES/Alaska Corp.
- Individual Enrolled Native American
- Native American Owned Business (51% or more)

The Purpose of the Program

The purpose is to encourage eligible borrowers to develop viable Indian businesses through conventional lender financing. The direct function of the Program is to help lenders reduce excessive risks on loans they make. That function in turn helps borrowers secure conventional financing that might otherwise be unattainable.

Funds may be used for:

- Business loans
- Operating capital
- Equipment purchases
- Business refinance
- Lines of credit
- Real estate
- Construction

Positive Aspects of the Program:

- Designed specifically to benefit Native American businesses and individuals
- Typically works well on smaller loan sizes and start-ups
- Offers a 90% guaranty
- Helps tribes to promote economic development on and off of reservations



- Promotes economic opportunity for American Indians, Indian tribes and Alaska Natives while protecting trust resources
- Interest rates and terms are similar to conventional commercial loans

Examples of BIA success stories:

2-New Native American Business Loans

- \$350,000 loan to provide working capital for government contracts on a start-up business. The business was to provide firefighting equipment and man power to fight forest fires for the U.S. Forest Service. A start-up business is typically a hard loan to make for a bank because of the failure rates, but the BIA guaranty allowed us to help fund the start-up and provide working capital for the business to operate and grow. This particular customer had gone to 16 other banks seeking financing before arriving at Bank2. Bank2 along with the BIA helped make this business idea a reality. Today this is a thriving business.

- \$375,000 loan to provide capital for the purchase of furniture, fixtures and equipment for a restaurant. Restaurants also are typically hard to finance as the failure rate exceeds 80%. This combined with the fact it was a new business start-up made this loan most difficult to approve. The use of the BIA guaranty allowed us to make this loan and provide the capital needed to start the restaurant.

Negative Aspects of the Program:

- Often takes several months to gain approval of loans
- Slow turn times for TSR's
- Larger loans must go through multiple approval levels
- The approval process and time frames are not clear
- No secondary market for the guaranteed portion of the loans
- Program capacity is not sufficient to meet the demand
- BIA loan guaranty fund is out of money for this year even as you read this testimony



Examples of BIA problems:

3-New Native American Businesses Not Able to Secure a BIA Loan

- \$477,000 loan to purchase a sports bar. Our customer applied through BIA in late February of 2014. We received a preliminary approval in early April. A few weeks later we received an email stating that "...the Division Chief (for the BIA) wants all requests to go to a committee," but the date and time of the committee meeting had not been determined. This was a purchase transaction and thus had contractual time lines to which must be adhered. The contract had time constraints of which the BIA was fully aware. The BIA ignored the time constraints of the contract. The borrowers asked the bank to make the loan directly to them without the BIA guarantee otherwise the Native American borrowers would lose the business opportunity. The bank complied but the borrowers were forced to provide the bank with considerable additional collateral and this created a hardship on the borrower. Bank2 and the customer were able to close the transaction within the contractual time frame. Again, restaurants are a high-risk business and if the BIA would have responded on a timely basis, the loan could have been made with the BIA loan guarantee and would not have created a hardship on our Native American customers.

- \$2,100,800 loan to refinance an auto body shop business property and equipment. The Native American customer insisted upon using the BIA loan program to refinance his business. We actually warned the customer using the BIA loan program could be a mistake because of the length of time and the uncertainties surrounding the approval process for larger loans. After months of attempting to secure a BIA loan approval and guaranty we suggested to a very frustrated Native American that we change the request to an SBA loan. Even though the loan was large and complex, the SBA approved the loan in short order and we closed the loan.



- \$9 million dollar loan for the purchase and operation of a rural natural gas distribution system by a Native American. The bank was forced to use the USDA loan program even though the loan guaranty percentage was less, due to the size and complexity of the loan. In fact, many times we are forced to use other government guaranteed loan programs because there is no secondary market for BIA guaranteed loans.

Problems with BIA Guarantee Limits Access to Capital:

Some background on the secondary market issue:

We have talked with three different secondary market buyers and all have agreed that in a nut shell, the structure of the BIA program limits the ability to enforce the guarantee. One of our primary outlets for the secondary market told us that the BIA has acknowledged that this is not likely to change. According to our outlet, "...while the BIA realizes that the development of a secondary market is congressionally mandated, the functionality of that market is not a primary concern of the BIA."

There remains a problem with the requirement for the lender to submit any claim on the guarantee and limits the bank's ability to sell BIA loans in the future. It is unlikely that this issue will disappear in the near future without this committee's actions. This is primarily due to the fact that the BIA has the right to review the loan once the claim is submitted for payment by the lender and then determine whether or not the guaranty is valid. Intentionally, the vetting process is nowhere near that of the SBA or USDA at the time the loan is made. We believe the BIA may be trying to increase the likelihood that the tribe (or tribal member) will be able to obtain the loan, which on the surface maybe a good thing for Native Americans and their businesses. However, this also means that the BIA reserves the right to review the process at the time the claim is made and deny the claim. Thus, the BIA guaranty is not unconditional. Consequently, without this committee's actions to require the BIA to fix or change their processes and their guaranty to mirror those of the SBA and the USDA and satisfy the Congressional mandate, it is unlikely to create a functional secondary market for the BIA loans.



Thus access to capital on reservations and tribal trust lands will continue to be restrained. If this committee truly wants to increase capital for commercial purposes in Indian country, a change in process to mirror that of the USDA or SBA program would enable a secondary market to be established and if properly done, would not impede the mission of the BIA which is to provide funding for tribes and tribal members.

Why it works and why it doesn't:

Why it Does Work:

Smaller loans that are not time sensitive can be approved at local levels and have worked well for us in the past. The BIA's flexibility in getting the loans approved helps Native Americans and their businesses. SBA and USDA do not loan on trust lands; therefore, the BIA may be the only option for these loans.

Why it Does Not Work:

The vast majority of loan requests are time sensitive, if you have a program such as the BIA program that does not recognize this fact, most requests will never make it to closing. Additionally, the larger loan requests appear to be the ones that fall out or move to other programs because the current system is not efficient. The time sensitive and larger loans often don't have the flexibility to wait and go through what can be a lengthy approval process.

The larger loans require a loan guaranty because many of these lenders are small banks and need the loan guaranty to avoid violation of regulatory lending limits. Additionally, many banks desire to earn income by selling off the guaranteed portion of commercial loans on the secondary market as described above. *The BIA loan guaranty does not afford this opportunity to banks and thus limits the capital available for Indian country.* Remember, the BIA loan guaranty is the only one that will cover loans on tribal trust lands.



Recommendations

- BIA guaranty on tribal lands should be increased to 95%
- Separate non-shared collateral should be permitted to cover non-guaranteed percentage similar to the Title VI program
- During the approval process BIA should review and approve the lenders capacity for reporting and monitoring
- For lenders with approved reporting and monitoring, BIA assumes lenders reps and warrants for monitoring requirements during the life of the loan
- Increase staffing and improve technology across the country to accommodate the increased demand for TSRs, recording of land documents, surveys, environmental (particularly on allotted lands) and business loans
- Annually fund an adequate amount to meet the demand of the program
- Fix the guaranty so that the guaranteed portion of the loan can be sold in the secondary market
- Require the BIA to report semi-annually to this committee on the progress they have made to fix the many problems they are creating for tribal lending



HUD-184 Home Loan Program

Why there is a need for the program

- Housing related spending is estimated to be 17.6% of GDP.¹ Obviously, housing is a huge part of the U.S. economy.
- 1996-2003 study indicated 90,000-200,000 units were needed to house Native Americans who were homeless or lived in overcrowded or substandard dwellings.²
- 41% of housing on reservations is considered inadequate, compared to 6% nationwide.¹
- The legislature deplored the fact that there are 90,000 homeless or under-housed Indian families, 30% of Indian housing is overcrowded and less than 50% is connected to a public sewer.²
- About 40% of on-reservation housing is considered inadequate and living conditions on the reservations have been cited as "...comparable to Third World."³
- Overcrowded homes, or homes with more than one occupant per room, are common on Native American lands. Of the homes on Native American lands, 8.8% are crowded compared to 3.0% nationwide. Although crowding is partially linked to stronger kinship ties that exist within Native American communities, it also highlights a serious shortage of safe, affordable housing. A 2006 study on homelessness on tribal lands in Minnesota found that 99% of doubled-up responders, or individuals staying in another

¹ CoreLogic. *Housing-Related Spending Makes Up 17.6 Percent of GDP*, <http://www.corelogic.com/blog/authors/molly-boesel/2013/11/housing-related-spending-makes-up-176-percent-of-gdp.aspx#.VXr7o00o7cs>, Accessed: June 10, 2015.

² Cooper, Kenneth J. *Housing Shortage Forces Native Americans to Use FEMA Trailers*, America's Wire Maynard Media Center on Structural Inequity, <http://americaswire.org/drupal7/?q=content/housing-shortage-forces-native-americans-use-fema-trailers>, Accessed: June 10, 2015.

³ Native American Aid. *Living Conditions*, http://www.nrcprograms.org/site/PageServer?pagename=naa_livingconditions, Accessed: June 10, 2015.

⁴ American Indian Relief Council. *Living Conditions*, http://www.nrcprograms.org/site/PageServer?pagename=airc_livingconditions, Accessed: June 10, 2015.



individual's house, would "prefer to be in their own housing if they could find or afford it." Doubling up is often a last resort.⁴

- Homeownership is the single largest source of wealth creation for Americans. Fully 31% of American wealth is in home equity, and Americans of color have 61% of their wealth in home equity.⁵

The Purpose of the Program

The purpose of HUD-184 Indian Home Loan Guarantee Program is to provide a home mortgage specifically designed for enrolled American Indians and Alaska Native families, Alaska Villages, tribes, or tribally designated housing entities. HUD-184 loans can be used, both on and off native lands, for new construction, rehabilitation, purchase of an existing home or refinance.

Because of the unique status of Indian lands being held in trust, Native American homeownership has historically been an underserved market. Working with an expanding network of the private sector and tribal partners, the HUD-184 Program endeavors to increase access to capital for Native Americans and provide private funding opportunities for tribal housing agencies with the HUD-184 Program.

Funds may be used for:

- Single Family to a quad-plex
- Construction
- Purchase
- Refinance
- Professional homes such as doctors, teachers, executives, etc.

⁴ Wilder Research. *Homeless and Near-Homeless People on Northern Minnesota Indian Reservations* (Saint Paul: Wilder Research, 2009), <http://www.wilder.org/Wilder-Research/Publications/Studies/Homelessness%20in%20Minnesota,%202009%20Study/Homeless%20and%20Near-Homeless%20People%20on%20Minnesota%20Indian%20Reservations,%20Full%20Report.pdf>, Accessed: June 10, 2015.

⁵ The Greenlining Institute. *Economic Equity Homeownership*, <http://greenlining.org/issues-impact/economic-equity/homeownership/>, Accessed: June 10, 2015.



- Retirement-senior independent living
- Group homes
- Supportive housing
- Student housing

Positive Aspects of the Program:

- Designed specifically to benefit Native America's access to capital for home ownership
- Office of Loan Guarantee within HUD's Office of Native American Programs, (ONAP) guarantees the HUD-184 home mortgage loans
- Loans are underwritten by the Lender and/or HUD-184 office
- Loan Guarantee Certificates are issued by ONAP on behalf of HUD
- Loans are made to enrolled Native Borrowers
- Guaranty is 100%, this encourages lenders to serve the Native communities
- This increases the marketability and value of the Native assets and strengthens the financial standing of Native communities
- Collateral consists of one real estate property per loan
- Single family up to a four-plex
- Homes can be on fee simple or tribal lands
- Loan terms and rates are similar to other Ginnie Mae loans not to exceed 30 years in length
- Loans are credit qualifying assumable
- LTV is 97.25% with a 1.5% guarantee fee
- No prepayment penalties

Examples of HUD-184 Success Stories:

2-New Native American Multi Unit Home Projects

-465 Tribal Home Loan Project. We have closed and funded over 120 HUD-184 home loans for one tribe. We have over 100 more in the pipeline to be completed over the next 90 days. The program is a long term lease with the tenant owning the home at the end of the lease. The tenant donates an acre of



land. This provides the opportunity for a tribal member to build a brick 3-4 bedroom home on fee simple land across the tribe's geographic territory. Usually, the home is built on family land but the family has not had the income or credit capacity to construct a home. It has simply been beyond their means to construct a home. So the tribal housing authority can utilize the HUD-184 loan program and borrow the money, lease the home to the individuals which provides most of the benefits of homeownership. Once the loan has been paid in full, the tribe transfers ownership of the home to the tribal member. The tribal member's net worth takes a giant leap forward since they now own the asset. They have financial security and peace of mind. For the first time in their lives they own a home and possess personal wealth.

-28 Low/Moderate and Senior housing projects. Another example was a project we completed building 7 quad-plexes in Alaska. This affordable housing project was part of a multi-funded, multiple purpose project. The community consists of affordable housing, senior housing, single family homes and some maintenance buildings. The funding for the quad-plex buildings was very complicated and consisted of Alaska Energy Grant Funds, NAHASDA, and a HUD-184 loan. These buildings are a combination of low income and market rate with some units being handicapped accessible. The ONAP office worked diligently with the bank to complete funding for the project. In fact, all parties worked as a cohesive team to accomplish this project. In our minds, it was a model for cooperative/creative funding to bring capital to Indian country and provide affordable housing.

Examples of Individual Home Loans

Late last year we completed a home loan for an Alaskan Native living above the Arctic Circle.

We have used the single close HUD-184 home loan to help Native Americans build homes on many reservations and on fee simple land.

We have closed thousands of home loans for Native Americans across the country.



Negative Aspects of the Program:

- Intermittent refinance opportunities
- Understaffing at ONAP
- Slow turn times for TSR's from BIA
- Slow turn times for LGC's
- Slow turn times on claims paid
- Program shutdowns
- Manual process / lack of technology from ONAP

Examples of HUD-184 Failures:

Moratorium of Refinancing

During the period from October 1, 2012 to April 4, 2014 (550 days) Native Americans with HUD-184 home loans on fee simple land were not permitted to refinance their home loans through the HUD-184 program. This was during an extremely low rate environment. ONAP said that they were forced to stop allowing refinances due to being out of loan commitment authority. We argued that HUD already had the loan on their books and the borrowers would simply be refinancing the current balance at a lower rate. Therefore, the HUD-184 program did not have any more exposure. In fact, it would have been just the opposite because the borrowers payments would be lower, thus enhancing their ability to repay the loan. HUD would not have any more exposure to loan guaranty amounts and what exposure HUD did have would be reduced by allowing the rates to be lowered. Plus, the HUD-184 program would receive a refinance fee from the borrower.

This was a huge disservice to Native American borrowers. We have calculated that it cost, *just* our Native American customers approximately \$45,391,207 in **additional interest**. One can only image what this cost all Native Americans in the HUD-184 program. I believe it could top \$200 million dollars.



We worked diligently with ONAP, congressional representatives, The National Congress of American Indians and anybody else that would listen to the problem. No one seemed to be able to fix what I believe to be a very, very simple solution. It makes me ask, why?

Slow turn times for TSR's from BIA

In the Yerington, Nevada area, the BIA is unable or unwilling to issue final TSR's. They state there is an ongoing Congressional audit, due to errors in the legal descriptions on their leases and ultimately their mortgages and Title Status Report (TSR). Unfortunately, the BIA issued many initial TSR's with which lenders used to close loans. Now lenders are unable to receive final TSR's and that prevents lenders from filing the loan notes and mortgages. Without a final TSR or filed note and mortgage ONAP is unable to issue a Loan Guarantee Certificate. Multiple lenders have these issues. Bank2 currently has three loans in a pool that are three years old and considered severely delinquent by Ginnie Mae. Many lenders are in this situation. Bank2's senior management has worked with senior management from ONAP to try and resolve the issue with BIA. Thus far, the BIA has refused to fix the issue. We are experiencing this issue in other BIA offices as well. Discussions with other lenders indicate they are having the same issues and some have indicated they have suspended lending on tribal trust lands because of the BIA. Likewise, Bank2 is unable to continue to make loans in many tribal trust land areas because the BIA will not resolve the issues. The people hurt are the hundreds, if not thousands of Native Americans that want to buy a home but cannot do so because the BIA will not issue final TSRs. As a result this is limiting access to capital in Indian country and perpetuating poor housing conditions on many reservations.



Slow turn times in the ONAP office paying claims

The claim filing process is a manual paper process. All submissions are sent via FedEx to HUD versus an e-file process. FHA and VA allow e-filing. With the reduction in staffing and paper files getting shifted around to different desks and/or physical locations, ONAP has lost or misplaced files repeatedly.

Of the claims paid in 2013 and 2014, the average time of payment was 168 and 79 days respectively. HUD-ONAP commitment is to pay claims in 45 days.

Once a claim has been processed there is no reimbursement documentation sent to the lender. This is very confusing any time amounts are adjusted with no explanation.

Delays in processing claim payments and corrections to guarantees create problems with delinquency ratios and remaining in compliance with GNMA.

Compliance issues could affect GNMA's willingness to grant commitment authority which would hinder the lenders ability to lend to Native Americans.

Why it works and why it doesn't:

Why it Does Work:

ONAP has a dedicated and knowledgeable staff. They are small in numbers but great in commitment, expertise and tenure. The program has a 97.75% LTV and is 100% guaranteed loan for the lender. It is flexible enough to work well with the vastly different Native American housing programs, yet specific enough in its scope to avoid massive amounts of minutia. The staff understands the transactional side of a home purchase so most loans are able to close. Tom Wright has been with the program since inception and provides strong leadership and corporate knowledge to his staff.



Why it Does Not Work:

ONAP is extremely understaffed, underfunded and is decades behind in technology. Lenders hear horror stories about their peers being stuck with loans on tribal lands on which they can't get LGC's or TSR's. This puts the lender at risk for a 100% loss on large loans. Banks can no longer assume such risk. The BIA is largely responsible for these problems.

The process is broken. It is still 100% manual from start to finish and is extremely labor intensive. In a highly regulated environment, banks are unwilling or unable to justify the extra employee expense and risk to offer the program.

Recommendations:

- Increase staffing for ONAP. There are very dedicated and knowledgeable staff currently at ONAP but there is zero chance to operate efficiently with the limited number of staff they have currently
- Invest in technology. It is difficult to understand why this remains one of the only loan programs that requires a complete manual process. Specifically, issuance of case numbers, loan guaranties and payment of claims
- Develop a better government to government process with ONAP, BIA and tribes for acquiring TSR's early in the loan process
- Require the BIA to provide TSR's on a timely basis consistent with what a title company would provide in the market place
- Require the BIA to report semi-annually to this committee on the progress they have made to fix the many problems they are creating for tribal lending
- Develop a better government to government process with ONAP, BIA and tribes for delinquent loans
- Allow proven lenders to "self-issue" firm commitments like FHA



- Allow proven lenders to “self-pay” claims – automate the case number process like FHA



ONAP Title VI Guaranteed Loan Program

Eligible Borrowers

- Tribes
- Tribal Housing Authorities
- THDE's that are recipients of NAHASDA Grant Funds

The Purpose of the Program

The purpose of the Title VI loan guarantee program is to assist IHGB recipients (borrowers) who want to finance additional grant-eligible construction or development at today's costs. Tribes can use a variety of funding sources in combination with Title VI financing, such as low-income housing tax credits. Title VI loans may also be used to pay development costs.

With the flexibility of the Title VI program, tribes can structure their loans to meet the requirements of their project and negotiate a variety of repayment terms with the lender. Loan terms can range up to 20 years, and payments may be made monthly, quarterly, or annually. Additionally, interest rates can be fixed, adjustable or floating, and are based on an index.

How Funds may be used:

- Low to moderate income housing
- Indian Housing Assistance
- Housing Development includes infrastructure, 1-4 units and multifamily
- Housing Services
- Housing Management Services
- Crime Prevention and Safety Activities
- Model Activities (with HUD approval)

Positive Aspects of the Program

Benefit tribes and lenders. Tribes benefit by building more housing at today's costs and using the loan to leverage additional funds from other sources and



improved financial services from lenders and permit flexible financing terms. Additionally, tribes are not required to use land as collateral for loans.

Likewise, lenders benefit from administering Title VI loans. Some of these benefits include: limited risk exposure, reduced costs, increased loan marketability and improved opportunities to market financial services and credit towards meeting community reinvestment goals.

Guaranty is 95% the lender is allowed to collateralize an additional 5% with separate collateral that applies first to the lender. This is typically a Certificate of Deposit (or other cash deposit) resulting in a loan that is 100% covered and has minimum risk to the bank.

Collateral is the pledge of future IHBG funds. The tribe, housing authority or TDHE leverages IHBG funds to finance affordable housing activities today by pledging future grant funds as security for repayment of the guarantee obligation to HUD for their 95% guaranty. The lender is allowed to have additional collateral separate from the IHBG funds such as a CD for their 5% that is not guaranteed. This is negotiated with the tribe. The additional collateral is the only asset pledge to the loan.

Loan terms can be fixed rate and/or variable up to 20 years. Often the Construction period can be an adjustable rate and then fixed for the remaining amortization. Pre-payment penalties are allowed and typical. (Match funding) not assumable.

Examples of Title VI Success Stories

-\$7 Million dollar loan to a tribe on the west coast (closing 6.18.15) The project is providing funding for an on-reservation, 45 low income housing units (various types) for senior housing, supportive housing and transitional housing (defined as transitioning housing preparing from rental to home ownership), a community center and related buildings. Bank2 will utilize the Title VI loan program to



provide a 20 year market rate interest loan. In addition, plans call for the Title VI to be combined with normal HUD-184 single close home loans on the reservations.

Another example (in the discussion stages) is for senior housing on a reservation using the HUD-184 program. The concept includes several quad-plexes on adjoining lots. This loan format would be creating a senior community on the reservation using the lender's fund and not government funds. This approach allows all income levels to live in the senior housing units.

Negative aspects of the program

- Slow turn times from BIA for TSR's
- Narrow scope of the program

Why it Does Work:

HUD has a dedicated and knowledgeable employee that is devoted to the program. The program has a 95% guarantee and allows the lender to collateralize the additional 5%. Like the 184 it is flexible enough to work well with the vastly different Native American low income housing programs, yet specific enough in its scope to avoid massive amounts of minutia. There has never been a loss on a Title VI loan.

Why it Does Not Work:

The program is connected to low income housing and collateralized by NAHASDA funds. This puts the lender at risk on the guarantee if proper oversight and monitoring of NAHASDA reporting are not completed. Mixed use properties can be problematic if they serve non-low income members of the community. The program is too small. Since 1996 only 68 Title VI loans have funded. The need far outweighs this number.



Recommendations:

- More Tribal and Lender Training and Education
- Explore additional collateral sources other than NAHASDA funds including AR, investments, cash and or other chattel. The impact would allow tribes to expand the purpose of the program beyond affordable housing to include more traditional economic development.



Other General Recommendations

Environmental reviews are required on all loans on tribal lands in some form. Many of the tribes have environmental staff or departments trained to complete this requirement. However, on allotted lands it can fall to the BIA. This can create delays and additional expense to the borrower. The requirements are different for different agencies. More confusing are the different requirements for various regions of the same agency. Lenders and loan guarantee programs would benefit from standardized environmental requirements across all government lending agencies is needed.

BIA TSR issues affect all three programs upon which my testimony has touched. The problems created by the lack of speed and responsiveness of the BIA have a dramatically negative impact to the economic well-being of Indian country. It must be addressed and corrected. We believe without some sort of accountability the problem will not be corrected. We also believe market place Service Level Agreements (SLA's) should be established, monitored and real consequences should exist if SLA's are not met. This is too important. The BIA needs to get it right for Indian country and for lenders. Ask yourself this question: Would you put up with the issues the BIA creates?

Kill the Red Tape on issues that clearly make no sense and actually cost the American tax payers huge sums of money. Following are two loans that illustrate this point.

Examples

Bank2 has a loan that was in foreclosure. While in foreclosure the home burned and was a total loss. The insurance company issued a check to both the borrower and Bank2. The borrower refused to sign the insurance check for \$97,000 and hired an attorney. They made an offer to sign the insurance check over to Bank2



if Bank2 would forgive the outstanding balance of the loan (approximately \$7,000) and allow the customer to retain the land valued at \$5000. Bank2 asked HUD to approve the offer that would have resulted in a \$7,000 loss to the American tax payers. It took ONAP over a year to come to the final decision that they were unable to approve the offer. The only recourse Bank2 has is to continue with the foreclosure process, raze the home to the ground once it receives the property and submit a claim to HUD. At that point the claim is estimated by Bank2 and our attorneys to exceed \$50,000. The inability of the Director of ONAP to accept the offer from the borrower will result in American tax payers paying an additional \$43,000 in claims. Unfortunately this story doesn't stop there. We have been advised ONAP cannot accept vacant land; Bank2 will be required to sell the property before submitting our claims. This will undoubtedly add more expense to the claim. This type of red tape causes undue burden on banks and unnecessary expense on tax payers.

Another example is a HUD-184 single close home construction loan in California. The customer passes away prior to completion of construction. Her son wants to complete construction and HUD agrees to allow Bank2 to make the advances from the escrow account to complete the home. Upon completion, the son wanted to assume the loan, as is allowable by state law as the heir. However, the son previously defaulted on his own HUD-184 loan and HUD won't approve his assumption of the outstanding loan. Additionally, HUD approves excess construction funds to be applied to the mortgage as payments until resolution with the borrower's son is found. Meanwhile, the tribe considered first right of refusal, but was unsure whether they would implicate themselves by evicting the son, in the legal issues with rights of heirs. Ultimately, the son filed suit against Bank2 and created additional legal fees to add to the mounting expenses surrounding the unpaid mortgage, misapplication of loan proceeds at the direction of HUD, and indecision due to uncertainty on the part of all parties involved.



Clarity needs to exist regarding jurisdiction and recourse. Red tape and confusion are inherent to the homes on Native American lands. With the additional time and effort involved in dealing with these challenges, increased cost occurs with no offset other than capital that would otherwise be allocated to housing. Lenders are hesitant to provide loans when outcomes similar to the examples above or worse occur with no foundation of how to take appropriate action. ONAP must be free to have contingency plans for life. There are much better remedies to these issues than law suits that add considerably to customer and lender frustration, and to tax payer expenses.

Provide adequate funding for adequate staffing of programs. We feel most of the problems with the HUD-184 program stem from the ONAP office being under funded from a staffing standpoint. Without question the staff works hard and is dedicated to the program but there is only so much a handful of people can do. The program has grown but the staff level has not grown and thus it has created many problems as outlined in this testimony.

In the case of the BIA guaranteed lending program, we have reasons to believe that at least part of the problems have to do with limited staffing or staffing that is not dedicated to the loan program.



Conclusion

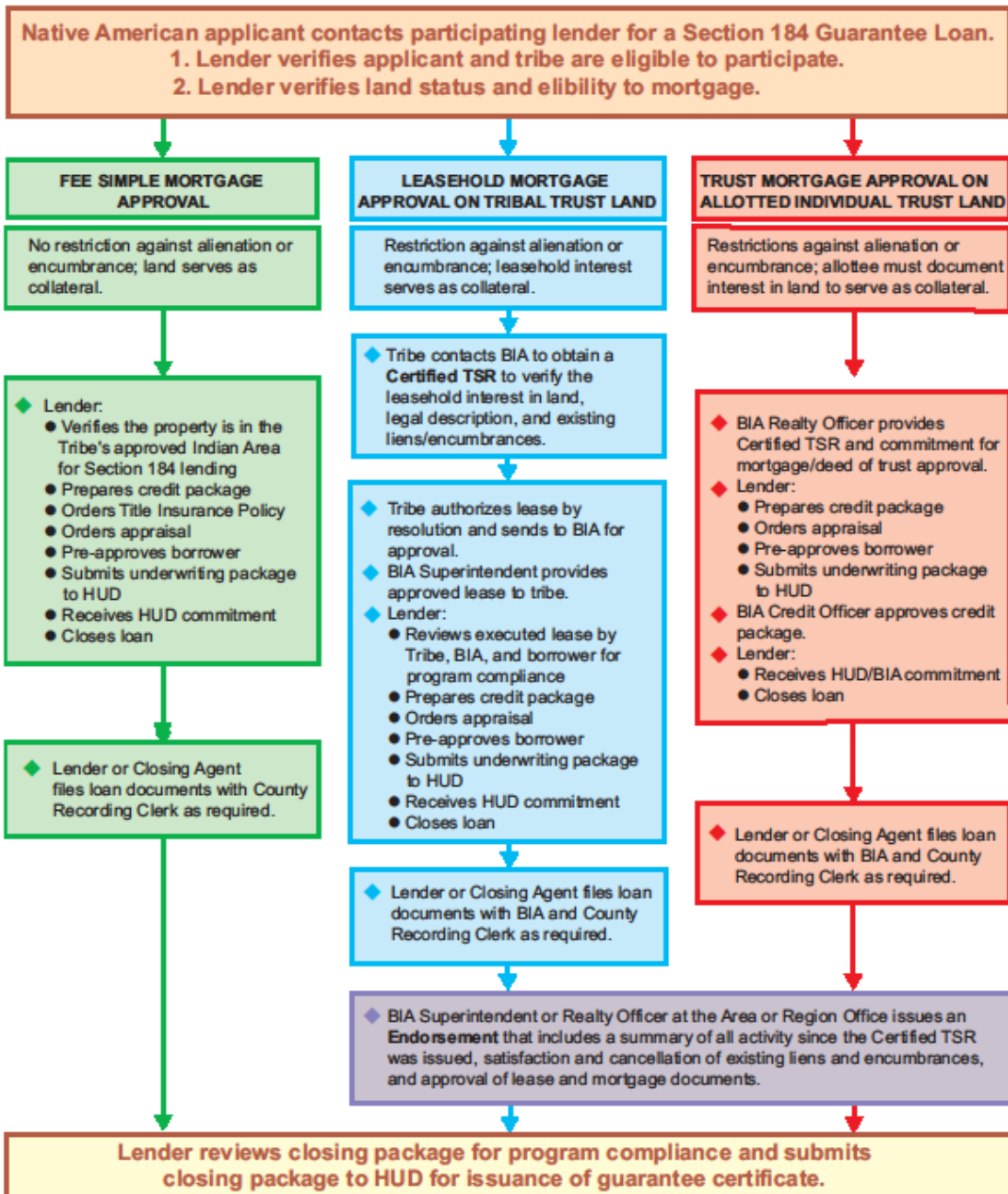
We are committed more than ever to meeting the capital needs of Native America. It is a worthy cause. We believe if the programs we have testified about were properly funded, staffed and held accountable, much of the access to capital problems in Indian country would be alleviated. We pray the Committee will take the appropriate steps to ensure these things are done.

I would like to express my sincere gratitude to the committee for allowing me to testify. This was a great honor and a unique opportunity.

Appendix I



Mortgage Lending Process In Indian Country





Appendix II

Fee Simple lands have state specific abstracting and title policy requirements. These have no Native American specific features. Fee Simple Restricted however do have Native American restrictions and/or requirements.

Fee Simple	Fee Simple Restricted
Title policy- standard	Title Policy- standard but reflects restricted to Native American
Appraisal- almost always market value	Appraisal- market value but could argue for cost as market is limited
	Land Status & Jurisdiction Report –
	Environmental- possible

Allotted trust lands are held in trust for the use of individual Indians (or their heirs). Again, the federal government holds the title, and the individual (or heirs) holds the beneficial interest. Tribal trust lands are held in trust by the United States government for the use of a tribe. The United States holds the legal title, and the tribe holds the beneficial interest. This is the largest category of Indian land. Tribal trust land is held communally by the tribe and is managed by the tribal government. The tribe issues the leases for the individual members. The BIA is responsible for the recording of the lease. The tribe may not convey or sell trust land without the consent of the federal government. Tribes may acquire additional land and have it placed in trust with the approval of the federal government.

Allotted	Tribal Trust
Trust Status Report In lieu of title policy	Trust Status Report In lieu of title policy
Appraisal- cost or market depends on location and market- usually cost	Appraisal- cost basis
Land value is included in the appraisal	Land is not included in the appraisal
Land Status & Jurisdiction Report –	Land Status & Jurisdiction Report –
Environmental-	Environmental-
	Lease must exceed loan by 10 years
	Lease if 25 year it must be automatically



	renewable for another 25 years (not have an option)
Submit complete file (including Credit) to BIA for underwriting approval Will respond with contingent approval and language to be included in the documents	Submit complete file (including Credit) to BIA for review Will respond with contingent approval and language to be included in the documents
HUD final underwrite or Lender if HUD approved	HUD final underwrite or Lender if HUD approved

Sources:

www.hud.gov

www.bia.gov