S. HRG. 107–991

# CAPITAL INVESTMENT IN INDIAN COUNTRY

## HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

CAPITAL INVESTMENTS IN TRIBAL COMMUNITIES, FOCUSING ON EXPANDING TRIBAL LAND HOMEOWNERSHIP, OVERCOMING BARRIERS TO CAPITAL ACCESS ON TRIBAL LANDS, AND RELATED FINDINGS OF THE NATIVE AMERICAN LENDING STUDY

JUNE 6, 2002

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

U.S. GOVERNMENT PRINTING OFFICE

90–371 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

PAUL S. SARBANES, Maryland, *Chairman*

CHRISTOPHER J. DODD, Connecticut
TIM JOHNSON, South Dakota
JACK REED, Rhode Island
CHARLES E. SCHUMER, New York
EVAN BAYH, Indiana
ZELL MILLER, Georgia
THOMAS R. CARPER, Delaware
DEBBIE STABENOW, Michigan
JON S. CORZINE, New Jersey
DANIEL K. AKAKA, Hawaii

PHIL GRAMM, Texas
RICHARD C. SHELBY, Alabama
ROBERT F. BENNETT, Utah
WAYNE ALLARD, Colorado
MICHAEL B. ENZI, Wyoming
CHUCK HAGEL, Nebraska
RICK SANTORUM, Pennsylvania
JIM BUNNING, Kentucky
MIKE CRAPO, Idaho
JOHN ENSIGN, Nevada

STEVEN B. HARRIS, *Staff Director and Chief Counsel*
WAYNE A. ABERNATHY, *Republican Staff Director*
MARTIN J. GRUENBERG, *Senior Counsel*
DARIS MEEKS, *Republican Counsel*
JOSEPH R. KOLINSKI, *Chief Clerk and Computer Systems Administrator*
GEORGE E. WHITTLE, *Editor*

---

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

TIM JOHNSON, South Dakota, *Chairman*
ROBERT F. BENNETT, Utah, *Ranking Member*

ZELL MILLER, Georgia
THOMAS R. CARPER, Delaware
DEBBIE STABENOW, Michigan
CHRISTOPHER J. DODD, Connecticut
JACK REED, Rhode Island
EVAN BAYH, Indiana
JON S. CORZINE, New Jersey

JOHN ENSIGN, Nevada
RICHARD C. SHELBY, Alabama
WAYNE ALLARD, Colorado
RICK SANTORUM, Pennsylvania
JIM BUNNING, Kentucky
MIKE CRAPO, Idaho

NAOMI G. CAMPER, *Staff Director*
MICHAEL NIELSEN, *Republican Professional Staff*

# C O N T E N T S

## THURSDAY, JUNE 6, 2002



## WITNESSES



## Additional Material Supplied for the Record

# CAPITAL INVESTMENT IN INDIAN COUNTRY

**THURSDAY, JUNE 6, 2002**

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
*Washington, DC.*

The Subcommittee met at 10:02 a.m. in room SD–538 of the Dirksen Senate Office Building, Tim Johnson (Chairman of the Subcommittee) presiding.

## OPENING STATEMENT OF SENATOR TIM JOHNSON

Senator JOHNSON. The hearing will come to order.

Today, we are holding a hearing on Capital Investment in Indian Country. I want to thank all of the witnesses in attendance at today's hearing for providing testimony on the critically important issue of bringing more capital investment to Indian Country. Also, I am encouraged by the number of people in the audience who obviously have an interest in what we are doing. In particular, I would like to thank, and note, that John Steele, President of the Oglala Sioux Tribe in South Dakota is here today. President Steele is testifying this afternoon before the Senate Energy and Natural Resources Subcommittee on Water and Power, and I am pleased that he is able to join us here this morning for this important Banking Subcommittee hearing.

In spite of the recent economic downturn and some uncertainty in the capital markets, most Americans can look forward to continued prosperity. However, an important segment of the population—about 2.7 million Native American and Native Hawaiian people living in the United States—have never fully shared in America's wealth and economic growth. In order to resolve this disparity and create meaningful and sustainable economic growth, we need to continue to look at innovative strategies and draw, not only on the resources of Federal and State governments, but also private capital markets.

Part of the reason that I wanted to hold this hearing under the auspices of the Financial Institutions Subcommittee is to emphasize the importance of access to private sources of capital. I wanted this hearing to be less focused on Government subsidies, although they are important, and more focused on the role that private financial intermediaries can have in creating and sustaining a viable economic infrastructure on Indian Lands.

Consider the following statistics. According to the U.S. Department of Commerce, unemployment rates on Indian Lands in the continental United States range up to 80 percent, compared to 5.6

percent for the United States as a whole. Census data also show that the poverty rate for Native Americans during the late 1990's was 26 percent, compared to a national average of 12 percent. In fact, overall, Native American household income is only three-quarters of the national average.

This disparity is particularly evident in my home State of South Dakota, where Native Americans represent over 8 percent of our State's population. While the overall State economy is relatively strong with, for example, a low 3.1 percent unemployment rate, the Native American population continues to suffer. South Dakota counties with Indian reservations are ranked by the U.S. Census Bureau as among the most impoverished anywhere in the United States.

In light of this unacceptable economic disparity, I believe it is important to address this issue in a comprehensive manner. And at this hearing, we will consider such issues as mechanisms for providing small business capital, means for fostering the growth of Native American-owned financial intermediaries, incentives for financial institutions to provide services on Indian Lands, ways to encourage personal savings, and vehicles for improving financial literacy.

In essence, the purpose of this hearing is to explore what this Committee can do to facilitate and expand the private-sector economy in Indian Country. To accomplish this, tribes and enrolled members in the reservations must have access to private capital and the wherewithal to put it to good use.

Presently, I am working with my colleagues in Congress on an array of initiatives to promote capital investment in Indian Country, including the Native American Small Business Act that creates a statutory Office of Native American Affairs and establishes a related assistance program, reauthorizing the Native American Housing Assistance and Self-Determination Act to allow low-income housing tax credits to work more effectively with block grants, cosponsoring the Indian Financing Act amendments which will create a secondary market for small business loans, sponsoring the Indian School Construction Act, which establishes a pilot program under which eligible Indian tribes have the authority to issue bonds to fund construction. Also, one provision in the American Indian Welfare Reform Act expands tribal authority to issue tax-exempt private activity bonds for residential rental properties, qualified mortgage bonds and, in some circumstances, enterprise zone businesses. I am a proponent of broadening the availability of individual development accounts, or IDA's. And, finally, I want to mention the Wakpa Sica initiative, which a number of us are working hard to make a reality, including, notably, two of today's witnesses, Chairman Michael Jandreau and Bill Fischer of South Dakota. One of Wakpa Sica's goals is to improve the court system on the reservation to facilitate private-sector lending.

There is a great deal more that can be considered and I look forward to hearing any thoughts and ideas from the distinguished panels that we have here today.

I have one more thought, however. And that is the concept of tribal sovereignty needs to remain central to the integrity of the reservations, and we must do everything that we can to protect that tribal sovereignty. I am concerned about the viability of sovereignty in the long run, if we do not succeed in laying the groundwork for a viable private-sector economy on Indian Lands through initiatives such as the ones that we are going to discuss today.

I am pleased that the Chairman of the Senate Banking Committee can be with us this morning. I know that he is under a great deal of pressure with conflicting obligations that he is going to have to attend to. But I think it speaks to the significance of the issues that we are dealing with today that Senator Sarbanes would be here.

And I would recognize the Chairman for any opening statement that he might have.

## STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you very much, Senator Johnson.

First, I want to commend Senator Johnson for holding this hearing on what I consider to be a very important topic of capital investment in Indian Country.

In fact, one of the top priorities of this Committee under my leadership has been the challenge of bringing all Americans into the financial mainstream. And I thank Senator Johnson for continuing that effort and focusing attention on the initiatives being undertaken by the Government, financial institutions, and others, to address the historic and geographic barriers that leave large segments of the Native American population outside of the financial mainstream.

We want to address this problem. And Senator Johnson's initiative in launching these hearings is extremely important in trying to accomplish that objective.

We actually have learned from a series of hearings at the Full Committee level that access to capital and credit are essential for Americans seeking to fully participate in our increasingly complex financial services system.

Native American communities have been particularly impacted by the lack of access to wealth-building capital and equity investments. Rural Native Americans suffer high rates of poverty and homelessness. They have a severe shortage of decent housing, as well as very low homeownership and small business ownership rates.

Now these ownerships, both of homes and businesses, serve to stabilize communities and to fuel economic growth all across our country. It is important that we address, as Senator Johnson is doing with this hearing, the situation on Indian Lands.

Native Americans that do gain access to credit often pay exorbitant rates and fees charged by predatory lenders, which is an issue that this Committee has paid increasing attention to.

Federal initiatives, such as the Community Development Financial Institutions Fund, the low-income housing tax credit, laws such as the Community Reinvestment Act, have encouraged partnerships between Government, financial institutions, investors, and nonprofit organizations. And they have resulted in improvements in many Native American communities. However, much more work needs to be done.

For instance, we need to encourage more banks to locate on or near Native American reservations. We need innovative financing techniques to make mortgage lending easier on Indian Lands, incentives to encourage more business development, many of the things which Senator Johnson mentioned in his opening statement which he is working on in the Congress.

Now, a comprehensive study conducted by the Department of the Treasury's Community Development Financial Institutions Fund, the report of the Native American Lending Study, has identified many of the key barriers to accessing capital and equity investment on Indian Lands.

We think this study should prove useful as policymakers, financial institutions, investors and others continue to seek solutions to the special problems of underserved Native American communities.

I want to express my appreciation to the witnesses who have agreed to appear here today. I know they bring a wealth of knowledge to today's hearings and I am very pleased that Frank Raines is here because it is my understanding that Fannie Mae has made a significant commitment in terms of investment to help Native Americans become homeowners on tribal lands, and I look forward to hearing about that.

But, again, I close by commending Senator Johnson for his leadership and his commitment to this issue and to our general objective here in the Subcommittee of bringing more Americans right into the economic mainstream of American life.

Thank you very much.

Senator JOHNSON. Thank you, Senator Sarbanes.

Our first panel consists of Mr. Frank Raines, Chairman and CEO of Fannie Mae. Mr. Raines has been a friend to Senator Daschle and myself, and South Dakota, and has shown his sensitivity to the problems we have in rural parts of America by his personal visit to South Dakota and the establishment of a Fannie Mae office in our very small State, which has done remarkable work.

I appreciate, Mr. Raines, your participation in today's hearing. I also want to express my appreciation for the work being done in my home State by Bob Simpson, Director of Fannie Mae's partnership office in South Dakota. In particular, I am encouraged to hear about the work that he has been doing with Roger Campbell, Executive Director of the Oglala Sioux Tribe Partnership for Housing, to build new, affordable housing stock in the Pine Ridge Indian Reservation.

Mr. Raines has been Chairman and CEO of Fannie Mae since 1999. Prior to that, he distinguished himself as Director of the Office of Management and Budget during the Clinton Administration.

His career has spanned the public and private sector, giving him a unique perspective on public and private sector collaboration, a perspective that is invaluable in helping to address the Nation's housing needs.

Welcome, Frank, to the Committee today and thank you for your willingness to participate in this important hearing.

## STATEMENT OF FRANKLIN D. RAINES CHAIRMAN AND CHIEF EXECUTIVE OFFICER, FANNIE MAE

Mr. RAINES. Thank you very much, Chairman Johnson and Senator Sarbanes for this opportunity to allow me to describe Fannie Mae's efforts to expand homeownership among Native Americans and on tribal lands.

I have submitted written testimony for the record, which I would like to summarize this morning.

Senator JOHNSON. Your testimony will be placed in the record.

Mr. RAINES. Thank you. And also, thank you for accommodating me in allowing me to go first in the panels today.

Fannie Mae's mission is to expand homeownership, with a special focus on helping underserved Americans overcome their unique barriers. Our role among financial institutions which sets us apart is that we provide private capital to all communities at all times under all economic conditions at the lowest rates in the market. By expanding homeownership, Fannie Mae can help to strengthen families, communities, the economy, and the Nation as a whole.

June is National Homeownership Month. It is a time to celebrate the American Dream. But also to rededicate ourselves to those who have been denied the Dream. And Native Americans face some of the toughest barriers to homeownership of all.

Their homeownership rate, which estimates range from 33 percent to 55 percent, not only is significantly below the 68 percent national average, but many of the homes are barely livable. And according to a 1999 estimate by the Treasury and HUD, while about 38,000 families on tribal lands had enough income to qualify for a mortgage, only 471 actually had a mortgage.

Poverty and unemployment create significant barriers to Native Americans obtaining conventional credit. So do the regulatory and legal complexities of lending on Native American lands. It is a rough irony when the very laws that protect Native American lands actually prevent Native Americans from benefiting fully from that land. Fannie Mae can help resolve this paradox. By expanding homeownership for Native Americans, we can not only provide these families with better housing, but also the power to raise capital, accumulate wealth, and build a more secure financial future.

The solutions are not simple. Expanding Native American homeownership begins with listening to and responding to tribal leaders and members. And we need the best ideas and cooperation of the public, private, and nonprofit sectors.

So let me thank this Committee for your leadership on this matter, and also recognize the work of the Housing Subcommittee in general, and that of Senators Reed and Allard in particular, for advancing the cause of housing.

Let me underscore Fannie Mae's commitment to work with Congress, Native American tribes, the Bureau of Indian Affairs, HUD, and USDA, as well as mortgage lenders and other housing leaders, to increase homeownership opportunities for Native Americans.

Fannie Mae has also learned a great deal from working with the speakers on the next panel, Chairman Jandreau and Elsie Meeks. In fact, it was in cooperation with Elsie Meeks that Fannie Mae has made a 5-year, $3 million commitment to the Pine Ridge Reservation. Under our Pine Ridge plan, for example, we have invested

$250,000 in venture capital to develop 14 single-family homes and $100,000 to help create a revolving loan fund for more new home construction. We have also invested $500,000 in the Lakota Fund, the community development financial institution that is helping to create small business loans and new jobs at Pine Ridge, the first step in creating new homeowners.

Fannie Mae's approach to serving the Native American community is broad, multifaceted, and comprehensive. And let me describe the full range of our efforts so far.

Our first formal effort with tribal communities began in 1994, with our trillion-dollar commitment, our pledge to provide $1 trillion to help 10 million underserved Americans to own or rent a home.

As part of this plan, we created our Native American Housing Initiative and made a commitment to purchase HUD- and USDA-guaranteed mortgages on tribal lands. Then in 2000, we launched a more formal strategy as part of our new $2 trillion American Dream commitment to serve 18 million underserved families.

As part of this plan, we pledge to provide at least $350 million to serve 4,600 Native American families. Through these commitments, over the past 4 years, Fannie Mae has provided over $6 billion for over 50,000 Native American families. And we have provided over $174 million to serve 1,900 families specifically on reservation and trust land.

We also set a goal to establish partnerships with at least one hundred tribes on tribal and trust lands. These partnerships are crucial. Since Fannie Mae does not originate mortgages, we need to help mortgage lenders understand and overcome the hurdles to lending on tribal lands.

Our tribal partnerships provide this knowledge, and in the first quarter of this year, we surpassed our goal establishing 113 partnerships across the country.

What we have learned from our partners is that we need more than just capital and commitment to make a difference for Native American homeownership. We also need to tear down the barriers that keep our housing capital from reaching and benefiting Native Americans.

And let me describe these barriers and what we are doing about them.

First, we address the shortage of affordable housing on tribal lands. We are working with tribes to finance new housing construction using low-income housing tax credit investments, collateralize revenue bonds, and HUD-guaranteed loans. Our investments in the low-income housing tax credits alone have helped create 156 new units of housing last year and we have another 232 units in the pipeline this year. We have also developed a secondary market option for HUD-guaranteed development loans to ensure a ready source of liquidity for these loans.

Second, we work to overcome financing barriers. We are working with lenders to tailor mortgage products for tribal members who lack the resources or background to qualify for traditional financing. We have also designed legal documents and agreements to help tribes establish the formal financial infrastructure to support mortgage lending on trust and restricted land. Through these initiatives, we can now offer our special community lending products on tribal lands. These reduce the cash needed for the downpayment and closing costs and ease income requirements and loan-to-value ratios. These products also work with tribally provided homebuyer education, downpayment assistance, and intervention for borrowers who might get behind. To deliver our lending products, we now have relationships with 60 mortgage lenders to serve tribal lands, including Countrywide Home Loans, First Mortgage Company, J.P. Morgan Chase, Wachovia Corporation, and Washington Mutual. These lenders should be applauded for their efforts to reach and serve tribal lands.

Third, we work to overcome the legal barriers. Trust land is inalienable. It is generally subject to the jurisdiction and laws of the tribe, which is protected by sovereign immunity. Tribal sovereignty generally entails the right to govern, adjudicate disputes, and be immune from lawsuits. While some tribes have fully developed commercial codes, others maintain a tribal council or executive body as a legal enforcement mechanism. And some smaller tribes have no court system at all. As a result, mortgage lenders have had concerns about enforcing obligations on sovereign lands, and market data to determine property values is scarce. The legal complexities of sovereignty diminish market values, and contracts cannot be enforced without the approval of the Federal Bureau of Indian Affairs. Addressing such legal impediments is not easy, since each tribe is sovereign and acts independently. Recognizing these difficulties, Fannie Mae has worked closely with individual tribes throughout the country to accommodate the differences in legal regimes in a manner that supports mortgage lending on their lands, while acknowledging and supporting tribal court jurisdiction over such lending. Recently, Fannie Mae modified its legal policies to eliminate our requirement that tribes make limited waivers of their sovereign immunity. We also will provide for the mutual consent to tribal court jurisdiction over conventional lending.

Fourth, we work to share best practices. Each tribe may have unique housing needs and solutions. But as a nationwide leader in affordable housing, Fannie Mae has the opportunity to help tribal communities share their knowledge and experience with others.

We are working to create an open dialogue between individual tribes in an attempt to gain greater understanding of each tribe and the challenges it faces. We recently made a major investment and created an ongoing dialogue with tribes and lenders through our Native American Business Council, which will work to expand our capacity to make tangible investments that increase affordable housing opportunities on Native American lands. This past April, we convened the Northern Great Plains Native Housing Summit. We brought housing officials from 18 Native American tribes in the Northern Great Plains together with representatives from the North Dakota Indian Affairs Commission and the North Dakota Housing Finance Authority, the South Dakota Tribal Affairs Commission, and the USDA Rural Development Agency, in addition to the Federal Reserve Bank, in Minneapolis, and the National American Indian Housing Council.

Finally, we need to overcome the information barriers. Many Native Americans have little experience with banking, credit reporting, and loan qualification process and standards, and must obtain credit through nontraditional means. And many are not aware of how to qualify for the safest and the cheapest financing available to them. As a result, Native Americans have the highest conventional loan denial rate of any ethic group—over 43 percent. As you might imagine, Native Americans are particularly vulnerable to predatory lending, which locks borrowers into a financial crisis. One survey found that 68 percent of Native Americans reported paying predatory rates for installment loans.

Improving financial literacy can help. Separate and apart from my position as the head of Fannie Mae, I serve as Chairman of the Fannie Mae Foundation, which is solely funded by Fannie Mae, and the foundation is focused on how best to provide financial education to Native American communities.

Most recently, the Fannie Mae Foundation has joined with the First Nations Development Institute to develop a financial literacy curriculum specifically tailored for Native Americans, one that embraces native traditions and values.

Since publication, the foundation has distributed over 18,000 copies of the curriculum and has sponsored train-the-trainer workshops in 30 different tribal communities.

These efforts are just the beginning of what we can and will do, and there is a long way to go. But with Fannie Mae's capital, commitment, and partnerships with lenders, tribal communities, and national leaders such as the Members of this Subcommittee, as well as the efforts of nonprofits like the Fannie Mae Foundation, we will make even greater progress toward tearing down the barriers and expanding homeownership, and all of its blessings to the Native American community.

I look forward to working with you and once again, let me thank you, Chairman Johnson, and Senator Sarbanes, for the leadership that you have shown.

Thank you for the opportunity to be here today to discuss perhaps one of the most critically important issues facing homeownership in the Nation.

And I would be happy to answer any questions that you might have.

Senator JOHNSON. Thank you, Mr. Raines. It is an excellent statement.

I think that you touched on a key point in making reference to trust lands. There are certain benefits that come from trust status of land, obviously. But, also, there have been historically some problems, in the sense that housing on that trust land then is not so easily collateralized for non-Indian financial institutions to lend for construction or improvement of that housing.

You indicated that you have worked with individual tribes to get around those issues. I would assume that the Federal Government could probably do more in terms of upgrading the resources available for tribal judicial systems, as well as improvement of codes.

But is there anything more that we should be doing to facilitate the collateralization of lending into Indian Country, particularly where there is trust land involved, that respects the sovereignty of the tribe, and yet, at the same time, is realistic for purposes of our nontribal lenders that want to be involved?

Mr. RAINES. Well, this is a major development issue around the world. The experience around the world is that if people cannot either own land or have the ability to borrow against that land, then investment doesn't follow. And so, this is a critical issue on trust lands.

I think you mentioned one area where the Federal Government can be helpful, and that is support for judicial systems within tribes. As they develop a clear commercial code and clear systems for adjudicating commercial disputes, then I think more lenders will follow our lead and respect these courts as a means to adjudicate their contracts. So assistance in that area to establish these codes and court systems I think would be helpful.

Also, the Bureau of Indian Affairs has an important role in the protection of trust lands and they are an integral party to all mortgage transactions. We have to get from them a land title certificate that, in order to know who owns the land and to enforce any contract, there has to be approval of that contract ahead of time. Facilitating that process and making it easier, and streamlining that would go a long way to encouraging additional lending on tribal lands.

The important issue here is to allow the individual homeowner to obtain a mortgage without putting the tribal land in any danger of moving out of Native American hands.

And I believe if we work on this, particularly at the tribe level, that we can resolve it. But it will require enormous resources to assist the tribes in doing that and the cooperation of the Bureau in permitting a higher volume of transactions to occur.

Senator JOHNSON. How should we measure our efforts to bring housing opportunities to Indian Country?

I understand that there are disparities in mortgage-lending reporting involving subprime and manufactured housing loans. I wonder if you could elaborate a bit on these disparities and indicate to us how Fannie Mae measures the success of its efforts in Indian Country.

Mr. RAINES. The numbers that we have come from the HMDA data collected through the Fed. That data has many problems, but the least reliable is that in nonmetropolitan areas, in rural areas where most of the tribes are located.

So, we really do not have a good base of information. And if we can improve the reporting in those areas, I think that would go a long way.

We at Fannie Mae, we look to ensure that the families are obtaining credit that they qualify for and the lowest-cost credit for which they qualify. And when we see statistics such as I recited that so many families on tribal and trust lands have the income to qualify for a mortgage, but, nevertheless, have not been able to obtain one, that to us is a measure of our lack of success in our target.

But as well, the percentage of lending that comes from nontraditional sources on these lands is also troubling because it is typically higher cost. And that higher cost lending acts like a tax on these families. Where they are paying more for credit than they need to pay, that is really stripping wealth out of these communities.

And so, we need to get more conventional lenders doing business within the Native American community so that the only source of credit is not high-cost, subprime lenders or vendor financing, which in some cases leaves people impoverished because if they bought a manufactured home, and that home has depreciated the moment it has left the lot of the dealer, and it doesn't last as long as the loan, that is not a healthy process as well. An enormous amount of work needs to be done on the manufactured housing side, not just for Native Americans, but for many people who live in rural areas where manufactured housing is housing. There is no other significant housing construction going on.

We are working in both these areas, but having the two tests—are people getting the credit for which they qualify, and are they getting the lowest-cost credit for which they qualify?

Senator JOHNSON. Do the mortgages that Fannie Mae acquires for Native American homeowners count toward the affordable housing goals that HUD establishes for you?

Mr. RAINES. The affordable housing goals are focused primarily on income levels and location. And if the Native American family falls below the median income, then it would qualify. If they did not have income at that level, then it would not.

Again, it depends locationally, whether or not it falls within the areas that HUD has designated.

So some do, and indeed, I assume that most would qualify on the income side given the very low-income levels that we find among Native Americans.

Senator JOHNSON. Thank you, Mr. Raines.

Senator Sarbanes.

Senator SARBANES. Well, Mr. Chairman, I do not have a question to ask Frank Raines, but I do want to make this observation.

I am very struck by the innovative and imaginative thinking that Fannie Mae has brought to this situation. As I understand it, you have been able to work out an approach that gets around the sovereign immunity, or accepts the sovereign immunity situation and then works out a way of dealing with that in order to go ahead and extend credit.

And I commend you for that because many have looked at that and said, "well, we are just not going to bother," and obviously, there are ways to do that and you have found such a way.

I do think that this emphasis on trying to develop tribal court jurisdictions is important so you do have a commercial code in which disputes can be resolved.

But clearly, Fannie Mae has been out ahead of most everybody I think in this regard. And it seems to me that you are establishing some very important precedents on how we might be able to move forward to address these very serious concerns.

I just wanted to register that for the record.

Mr. RAINES. Thank you, Senator Sarbanes.

We found on these issues that there are no easy solutions. One of the benefits of our partnership offices is that we have people on the ground now who really can work on these problems individually. And we are now working with over a hundred different tribes to try to resolve them because each tribe is different. So the efforts to say there is a magic solution, we found does not work, that we really have to work with each tribe.

But the benefits are so astounding. When you see, as I saw at Pine Ridge, new homes going up, it is not just that those families got new homes, but the aspiration of others, that they too could have a new home because they look and say, "well, gee, I have known them my whole life and I think I could do that, too."

You get this multiplier effect going. And so, it is worth it to put in the time and the effort to try to craft solutions, as hard as they may be. But if we can craft them, then our lenders can follow behind us. We simply decided that no one else is going to put in that time and effort, so we had to do that. But our goal then is to encourage more and more lenders to come in and then we will get even more creativity and we will get their efforts and their commitment. And working with the tribes who I think are focusing more and more on the importance of homeownership as part of their overall development strategy, it has been very encouraging. So, we are looking forward to making enormous progress over this decade where we have committed over $300 million to the effort.

Senator JOHNSON. Mr. Raines, would you elaborate just a bit on what is unique about lending to Native American lands versus your lending or the mortgages you purchase, for low-income people in general? What is unique? We have talked a little bit about the trust land situation. But are there lessons to be learned about getting low-income people into their own housing and upgrading their housing, that are applicable to Indian Country? And are there other issues that are just so unique to Indian Country, that there are no lessons to be learned?

Mr. RAINES. Many of the lessons we know because the same problems affect Native Americans that affect other Americans.

Income level is the single largest determinant of the ability to own your own home and the economic opportunities on reservations have not generally been good. So, the ability to get a job that can pay sufficiently to be able to afford and own standard housing is a problem.

Native Americans face that because the income levels are quite low. But that is a problem that is shared with others. Doing homeownership and housing generally in rural areas is difficult, and doing lending there is difficult, in part, because it is hard to find what are the comparables? How much is the house worth, because there just are not that many houses that you can look to.

And if you do not have a vibrant housing market, you can get wide variations in the appraised value of the property. And if the contract value is one thing and the appraised value is another because the only transaction was a transaction that occurred two towns over or three miles away, you often have difficulties in rural lending because of that.

Also, Native Americans suffer again similar problems to others in rural areas because banking infrastructures have not been there. Having sufficient competition for their business with community banking has been difficult, although we are making progress there as well as Native American banks are now beginning to expand and coordinate their own efforts.

Those things affect Native Americans in the same way that they affect other Americans. The impact, though, is much more grave because the economic condition of Native Americans is not as high.

The special problems that relate to the tribal lands are particularly devastating because the unique thing about the United States is that we have such a highly developed property loss system, that it allows us to have competition for home mortgages anywhere in the country.

Fannie Mae, for example, if we are in any community in the country, on an automated basis, we can appraise that house. We can approve the borrower through our technology, and we know what the legal rights are of the contract that we have entered into because it has been well tested throughout the system.

That has helped the United States to have the best mortgage system in the world. Many of the features of our property system do not exist elsewhere.

Indeed, there is an economist who has written a book called, "The Mystery of Capital," named DeSoto, who says this is the key difference between development in the United States and in the northern capitalist countries, and those of people elsewhere in the world—the lack of a formal property system on which you can rely and where people know their property is protected, and then they can borrow against it if they want to start a machine shop or start a small business, they can build equity. For the average American, they have far more money in their home than they have in the stock market.

This legal system has been a bulwark for the rest of the country. It is just developing in Indian Country because there just has not been the need for the formal property systems that has been the case outside.

That is why it is so critical to develop that, to eliminate that barrier, because that is the most radically different circumstance. And that is why it is so hard for lenders and others to apply their normal systems here.

And that is why we have dedicated ourselves to building up those systems, and I think it is going to affect not just homeownership. I believe it will open the spigot to capital generally.

When we find a methodology by which the sovereignty is respected and in which that respect for sovereignty leads to an assurance as to the legal outcome on contracts, I think that will open up the spigot of capital on tribal lands.

Homeownership is a good place to start. And if we can make it work here, it will help in other parts of economic development.

Senator JOHNSON. Well, I think that point is well taken. Our tribes and individual tribal members tend to have land as one of their key assets. But it has also been one that they have not been able to leverage for purposes of additional investment. And that has had catastrophic consequences.

The thrust of our hearing today has to do with the capitalization and the development of private sector in Indian Country. But I think that leading off with you and Fannie Mae and a focus on what are we doing about housing, is I think very appropriate.

Because as you note, for most Americans, their chief source of economic growth, of prosperity, is the equity that they acquire in their home, which then may be used for other spin-off purposes.

In Indian Country, all too often, there are no beauty shops, barber shops, shoe repair, coffee shops, and the kinds of small businesses that you would expect a population of that size to sustain for a number of reasons, but among them being a lack of capital to get started.

And I think that if we could make great progress on the housing side, I think not only will it result in significant improvement in the quality of life of a lot of people, but it also will be the spark or the foundation, I believe, for expanded private economic activity that will at least begin to take hold in Indian Country, which I believe is so essential if we are going to break this cycle of dependency and exclusive reliance on Government programs.

So, I think it was very appropriate that we led off this hearing today with your testimony and what Fannie Mae is doing. I thank you for being here today.

Senator Sarbanes, do you have anything further?

Senator SARBANES. [Nods in the negative.]

Senator JOHNSON. Thank you. I know that you have great demands on your time. We will be in continuing contact with you and your people at Fannie Mae.

Mr. RAINES. Thank you very much.

Senator JOHNSON. Thank you, Frank.

Our second panel—and I would caution that we are anticipating a vote at around 11:00 a.m. And so, we may have to take some time off and come back again.

But our second panel consists of: Mr. Rodger Boyd, who is currently Special Assistant to the Director of the Community Development Financial Institutions Fund, Department of the Treasury. He designed, directed, and managed the Fund's Native American lending study, which he will discuss today. He also initiated the Fund's Native American Technical Assistance and Training Program to encourage the establishment of financial institutions on Indian Lands.

Previously, he had held positions in the offices of Commissioner of Indian Affairs, Bureau of Indian Affairs, Assistant Secretary of Indian Affairs, Department of the Interior, and has worked for Members in the U.S. Congress.

Working for the Navajo Nation, he established and directed the tribe's governmental affairs office in Washington, DC and was Executive Director for the Division of Economic Development.

And we thank Mr. Boyd for joining us.

Mr. J.D. Colbert is a founder of the North American Native Bankers Association and serves as the Association's President and Executive Director. He has had a long and extensive background in banking and Indian finance issues.

Mr. Colbert's special expertise is as the Chief Executive Officer and Director of Independent Community Banks. His expertise covers asset quality, bank investments, interest rate risk management, Community Reinvestment Act, bank holding company issues, marketing, and tribal minority banking opportunities.

Mr. Colbert has been a speaker on banking issues at conferences sponsored by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Oklahoma Bankers Association, the American Bankers Association, and numerous Indian economic development conferences.

Mr. Bill Fischer is President of American State Bank of Pierre, South Dakota, and Chairman of the ASB Bank Holding Company.

Mr. Fischer has been President of American State Bank since 1983, and Chairman of the ASB Bank Holding Company since 1988. He has extensive experience lending in Indian Country. He has been involved in numerous business and community activities in Pierre. These include serving as board member for the South Dakota Chamber of Commerce and Industry, serving as Treasurer of the South Dakota Health Education Facilities Authority, as well as serving as a board member in the Wakpa Sica Historic Society.

Mr. Fischer is a long-time friend and confidante to both Senator Daschle and me and we very much appreciate that.

Mr. Mike Jandreau is Chairman of the Lower Brule Sioux Tribal Council. He has been a rancher since the 1960's, involved in tribal politics since 1972. He has been Chairman of the Tribal Council for most of the past 29 years, and has been agent for economic and social change for the tribe through development projects such as the Lower Brule Employment Enterprises, the tribe's farm corporation, the Lower Brule propane plant, and the Golden Buffalo Casino.

Mike has done an extraordinary job. He is an example of tribal leadership continuity for the Lower Brule, and it has been enormously beneficial to that particular tribe.

Ms. Elsie Meeks is Executive Director of the First Nations Oweesta Corporation. First Nations is a national financing intermediary that offers technical assistance and capital to assist native communities, establish community development financial institutions.

Previously, she was active in the development of the Lakota Fund, a nationally known small business and micro enterprise loan fund located on the Pine Ridge Indian Reservation.

Welcome to all of you to our Subcommittee this morning. This is a very distinguished panel which we have the good fortune of having. And I would certainly recognize Chairman Sarbanes for any comment that he might have on this panel.

Senator SARBANES. Senator Johnson, I apologize to you and the panel, but there are a lot of conflicting engagements and I am going to have to excuse myself.

But before I leave, I wanted to thank the panel for the very substantial and significant contribution you are making toward considering this issue.

I have had a chance to look through your statements and we very much appreciate the obvious time and effort that went into preparing them.

There is a good deal of analysis there that I think will be extremely helpful to us as we seek to deal with this issue under Senator Johnson's leadership. And I just wanted to register that before I excused myself.

Mr. Jandreau, let me just say to you, I liked the way you put the problems and then put the solution. That is a very nice way to present this. And I worked through that and that is extremely helpful to us.

But I apologize that I am not going to be able to stay for the panel, and Mr. Chairman, I again commend you for holding this hearing and for bringing this focus and attention to this important issue.

Senator JOHNSON. Thank you, Senator Sarbanes. The statements are excellent and are being reviewed by staff, obviously, on both sides of the aisle on the Subcommittee and is invaluable to us.

Thank you, Senator Sarbanes, for your participation.

Senator Carper of Delaware has joined us.

Senator Carper, do you have any remarks that you would like to share with us?

## COMMENTS OF SENATOR THOMAS R. CARPER

Senator CARPER. Thank you, Mr. Chairman. We have no Indian housing in Delaware. We do have Indians, and they have housing, but it is not what we traditionally think of as Indian housing.

I am grateful for the witnesses for being here and we look forward to your testimony. Thank you for pulling us all together.

Senator JOHNSON. Thank you, Senator Carper.

We will begin the second panel with Mr. Boyd. Again, I caution that we could have a vote and we may have to take a short recess and come back.

But we will begin with Mr. Boyd. Your full statements will be placed into the record, so choose as you will to either summarize or to read from your statement. But be assured that the full statement is in fact in the record.

Mr. Boyd.

## STATEMENT OF RODGER J. BOYD SPECIAL ASSISTANT TO THE DIRECTOR COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND U.S. DEPARTMENT OF THE TREASURY

Mr. BOYD. Thank you, Senator Johnson, and Members of this Subcommittee. I greatly appreciate the opportunity to appear here today to discuss some of the issues on capital investment in Indian Country.

I would request that in addition to our statement being put into the record, that the Native American Lending Study Report* also be submitted.

Senator JOHNSON. That will be placed into the record.

Mr. BOYD. Thank you. When Congress authorized the CDFI Fund, the enabling legislation required the Fund to implement the Native American lending study on lending and investment practices on Indian reservations and other lands held in trust in the United States. The Fund's Native American lending study was undertaken for the purpose of examining the barriers to accessing capital in Indian Country.

I will not go into all the details of this. I would like to just skim over some of the major facts and findings that we had and to dis-

*This report is held in Senate Banking Committee files.

cuss briefly some of the process that we went through to obtain the information that we had.

To assist us, we did 13 regional workshops throughout the country and worked with various stakeholders whom we sincerely appreciate that they took the time and the effort to spend that time with us over the duration of our study.

One of the things that I think was confusing to a lot of people when we began to look at the issue is that they thought that we were just going to concentrate on housing, which is one of the major issues, and as was discussed by the earlier panelist.

Our study also looked at, in addition to mortgage lending, small and large business lending, consumer loans and infrastructure development on Indian reservations. So it was pretty expansive.

In all of our findings, we developed 17 major barriers to accessing capital in Indian Country. And as some examples, the legal infrastructure, and I think that was discussed a little bit earlier, such as uncertainty of tribal commercial laws and regulations, government, that being Federal and tribal operations, such as cumbersome conflicting Federal programs and regulations, and poor understanding by financial institutions of tribal sovereignty and sovereign immunity.

There were barriers, the limited use of trust land as collateral, as you have pointed out, Senator, and financial and physical infrastructure also was a great aspect of not allowing greater access to capital. And that is, the limited number of financial institutions that exist on reservations or even near reservations.

I think at one point we, in our financial survey that we conducted, 33 percent of tribal responses had to travel more than 30 miles to have any financial services near their reservations. And of course, there were education and cultural issues—the lack of knowledge of experience with the financial world on the part of the Native American community, and lack of technical assistance and resources, and some very basic differences between the Native American and banking cultures.

We established in the lending study a roadmap, a platform in which I hope that Members of Congress can use, certainly that the financial institutions can use and that the Native American community can use.

In the study, the way we laid it out is that we presented some remedies and recommendations. Certainly, those recommendations, very briefly, were to enhance the tribal legal infrastructure, strengthen tribal courts, create alternative collateral options for trust lands, establish a public/private Native American equity fund, increase the number of financial institutions on or near Indian Lands, develop financial products and services that will meet the needs of Native American depositors and borrowers, expand financial literacy education opportunities for Native Americans, and expand technical assistance and training.

We also did not want to just talk about the issues and the problems out there because there are a number of things that are going on throughout the country that I think are helping to overcome some of these barriers.

And in our study, what we tried to do is approach that in a way that would provide examples, both at the Federal level, the tribal level, and on financial institutions as to what was going on.

The Department of Justice and the BIA as an example have a current funding technical assistance and training program to assist tribal court systems.

There are several options for creating additional financial institutions. Some tribes are beginning to convert revolving loan funds as an example and setting them up as for-profit or nonprofit loan funds, and they in turn, apply for certification through our program, through the CDFI Fund Program, and that will give them greater access to capital that they can then leverage.

A number of tribes have just outright purchased banks, which is another process. And to assist that whole process at the CDFI Fund, we have instituted the Native American CDFI Technical Assistance Program because we found that there are a lot of tribal people that are not quite sure what kind of financial institutions that they would like in the community.

So through this technical assistance grant program, they can obtain grants from us to help create those financial strategic plans and ultimately, to create their own community-based financial institutions, then come back to us for further funding.

Also, we found that one of the real important aspects, as I think the previous panelist mentioned, all the various tribes are different. You cannot approach this issue thinking that one resolution is going to resolve such a massive problem. But we also believe that by looking at regional concepts and regional approaches, is also going to be very effective.

As an example, the Native American Development Corporation, located in Montana, is a corporation that is providing capital to Native American businesses both in Montana and Wyoming.

The Native American Lending Group, Inc., is a nonprofit, multitribal CDFI in New Mexico, which is a very unique situation because a lot of the Pueblos are very small. They cannot create a good market for traditional financial institutions. So they have set up one CDFI to service 18 Pueblos in northern New Mexico, and we think that that is going to be very effective.

In closing, Senator, we have discovered that it is going to take the movement and the actions of many different stakeholders to make this happen. And certainly, that includes the Federal Government, Federal agencies, financial institutions, and tribal governments. And as sovereigns, they certainly can do many things to help create better access to capital.

Senator JOHNSON. Thank you, Mr. Boyd.

I would note as an aside, also, welcome to Chairman Tom Ranferance of the Flander Ti Sioux, who has joined us here as well today, and has provided extraordinary leadership for his particular tribe.

I would note for the panel members that we are using a 5-minute clock. The Chairman is being fairly liberal about enforcing this, but at the same time, try to keep somewhat within that framework.

Mr. Colbert.

**STATEMENT OF J.D. COLBERT, PRESIDENT NORTH AMERICAN NATIVE BANKERS ASSOCIATION**

Mr. COLBERT. Good morning, Chairman Johnson, and Committee Members. I appreciate your concern regarding capital access in Indian Country and I applaud your efforts to effect greater change.

I am here this morning as President of the North American Native Bankers Association. NANBA is an association of commercial banks and other regulated financial institutions owned by Indian tribes.

Our mission is the provision of credit, mortgage lending, and financial services in Indian Country. And particularly, we think that one of the best ways to effect that mission is to put tribes in control of the issues surrounding capital access by virtue of owning financial institutions.

Lack of Native ownership of financial institutions continues to be a major impediment to greater capital access. This has been identified in numerous studies in the past and more particularly, by the fine work that Mr. Boyd and the CDFI Fund recently completed.

To underscore the point in Indian Country, right now, there are approximately 23 regulated financial institutions in Indian Country that are owned by Indian tribes and/or individually enrolled tribal members. There are eight commercial banks owned by tribes, nine commercial banks owned by individual Indians, and about six community development credit unions. So only 23 to serve approximately 560 Federally recognized tribes and over 2.7 million individual Indians. Clearly, there is a great disparity between those numbers and the demographics of Indian Country.

Presently, there is at least one piece of legislation on the books that could help effect change on this point. In August 1989, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act, generally known as FIRREA. Section 308 of FIRREA established at least three salient public policy goals. One was to preserve the number of minority-owned financial institutions. The second was to promote and encourage creation of new minority-owned financial institutions. And three was to provide for training, technical assistance, and educational programs.

As indicated by the paucity of Native-owned financial institutions and minority-owned institutions in general, I think the will of the Congress as expressed by Section 308 has been frustrated by the Federal bank regulatory agencies who have the primary responsibility for implementing this Congressional mandate. In fairness, there has been some recent positive developments on behalf of the Federal bank regulatory agencies. The Federal Reserve Bank of San Francisco has conducted various sovereign lending workshops. The FDIC recently adopted a revised policy statement on minority-owned institutions which expands the scope of their activities. And the Office of the Comptroller of the Currency, with NANBA's assistance, published "A Tribal Guide to Bank Ownership."

I certainly welcome these efforts. However, they do not directly address what I think is the key goal of Section 308, which has to do with promoting and encouraging the creation of new minority-owned institutions. And I personally have not seen much, if any, effort that could be reasonably construed as meeting that goal on the part of the Federal bank regulatory agencies.

NANBA has been active on that point. We held a conference 2 years ago called Tribal Ownership of Banks. We had about 150 attendees, I think something like 20–25 tribes attended. To my knowledge, that conference, whose goal was specifically to create additional Native-owned banks, to my knowledge, that is the only conference ever held with that goal in mind for Native America. And indeed, it may stand as the only conference ever held in the history of the United States whose goal was to see the formation of new, minority-owned institutions.

I would like to see Congress provide some motivation, if you will, to put some teeth into Section 308, and to see that the Federal bank regulatory agencies actively work toward seeing the creation of new, minority-owned institutions. I think the Federal bank regulatory agencies are in a unique position to be a catalyst to help make that happen.

One specific suggestion is that they might take up on the work, follow the work of NANBA with regard to additional conferences such as the one we held, to kind of help get the word out to Native Americans and the minority community generally.

I think also the regulatory agencies are in a unique position to act as a catalyst to help bring together some mentoring opportunities between some of the Nation's larger banks, and some of the new ones that might be spawned in Indian Country.

I also would like to address one other area briefly that has to do with bond financing in Indian Country. Obviously, Indian Country badly needs to access capital investment through bond financing. I think one particular way to stimulate this important sector of the capital markets for Indian Country is for Congress to consider amending the Securities Act of 1933, to allow Indian tribal governments the same exemption from registration requirements that State governments, county, and local jurisdictions enjoy with regard to the issuance of tax-exempt bonds.

Presently, in order to access the mainstream bond markets, tribes are forced to go through the rather costly, time-consuming, and expensive registration process. Not surprisingly, tribes avoid this registration process and instead turn to the private placement markets, which generally, among other things, require much higher coupon rates and interest payments on the tribes' issuances than, as opposed to the regular mainstream bond market.

And to the extent that the Congress should see fit to allow tribes the same exemption from registration by amending the 1933 Securities Act, I think a couple other things would need to be implemented to really put some teeth into that. One would be to amend the Internal Revenue Code of 1986, to allow tribes to issue private activity bonds, in the same manner as State and local governments are presently able to issue private activity bonds. In addition, I think we would need to exempt tribes under certain circumstances from the so-called volume cap requirements of Section 146 of the Internal Revenue Code.

I think by providing Indian tribal governments with equal footing as that enjoyed by State and local governments with respect to private activity bonds will greatly stimulate the flow of capital to Indian Country for a wide variety of purposes, of housing and small business development. Also granting this exemption to Indian tribes from the volume cap restrictions will result in tribes not having to request a private activity allocation from a State government who may be unwilling or unable to grant such allocation due to the fact that Indian tribal governments obviously are not a political subdivision of the State.

That concludes my statement, Mr. Chairman. I would be pleased to entertain any questions or comments.

Senator JOHNSON. Thank you, Mr. Colbert, and we will come back to questions at the conclusion of the entire panel's discussion.

Mr. Fischer, welcome.

**STATEMENT OF WILLIAM V. FISCHER PRESIDENT, AMERICAN STATE BANK PIERRE, SOUTH DAKOTA**

Mr. FISCHER. Thank you. Before I give my statement, I would like to tell you how pleased I am to be here to address this long overdue, most important subject. It is imperative that we figure out a way to bring private-sector capital into Indian Country.

Good morning, Mr. Chairman, Ranking Member, and Members of the Subcommittee. Thank you for the opportunity to appear here today. My name is William Fischer. I am President of the American State Bank, a $90 million independent commercial bank located on the Missouri River, in the center of the State. I am a third-generation South Dakotan. My grandfather arrived in South Dakota in 1884. I am here to testify from my position as a commercial bank in central South Dakota, Indian Country, for the past 36 years.

South Dakota is not unique from other States in having Indian reservations located within its boundaries. We have nine reservations in South Dakota. Three of these reservations are located within my lending area.

There have been numerous studies, some commissioned by Congress and other independent studies done addressing lending in Indian Country. Recently, there as a workshop held in Rapid City, South Dakota, sponsored by the U.S. Treasury on lending in Indian Country. Also, the FDIC, out of Kansas City, has been working with the Cheyenne River Sioux Tribe Reservation since 1996, regarding lending in Indian Country. I have attached a letter from an individual at the Kansas City Fed to be a part of my testimony.

First, let me address what I feel are some obstacles to lending in Indian Country. Instability of tribal reservation government. There are no checks and balances. Virtually all tribal governments are legislative, executive, and judicial combined, and thus, virtually no check and balance. Constant turnover, inexperience, and the lack of consistency in tribal governments. Economics, lack of financial education and economic knowledge. A general lack of unified tribal vision, planning, and business experience. Lack of understanding of tribal sovereignty and sovereign immunity. State and Federal regulations and bureaucracy. A lack of basic economics and credit knowledge at the enrolled members' level. Each reservation has its own specific laws and no degree of uniformity of tribes dealing with economic issues, like Uniform Commercial Code. The tendency to insist on tribal members to manage tribal businesses when the members have no experience in managing this type of business venture. The general tendency to try and run managed businesses without accurate financial accounting records.

Now let me address some of the practices that the American State Bank has implemented to overcome some of these obstacles. Know the tribe or the tribal member wanting to borrow the money. Establish a professional relationship with an attorney and accountant familiar with tribal law. Follow a basic credit criteria—credit, capacity, and collateral—that is used throughout the industry. Know the tribe, its officers, its council, issues, and history. Realize that very few customers, Indian or non-Indian, are entrepreneurs and thus, should we lend money to such a venture, we must allocate the time and special attention to assisting and ensuring the venture has an even chance to succeed. Tribes and tribal members do not need more examples of failure. American State Bank has been very active in positioning itself in understanding the issues of concern on the Cheyenne River Sioux Tribe reservation. We have one employee, Bob Claire, who serves on the Four Bands' community loan fund at Cheyenne River.

Now let me address legislative and regulatory remedies that I think would help facilitate flow of income in Indian Country. Promote tribal governing system that better separates legislative, executive, and judicial systems and thereby, provide a check and balance and stability. Better separation of economics from political decisions. Needs to be a better working relationship between the BIA and the tribes, working for a betterment for all parties involved. Promote establishment of 1-, 3-, 5-, and 10-year economic development plans whereby necessary, hire the best managers to implement these plans. Managers for tribal business should be the very best that there are available, whether they are Indian or non-Indian, with built-in incentives to enforce successful and profitable operation. Implement a series of courses at high school and post-high school level to promote good business practices. Let us reconsider loan guarantees for commercial loans that are made in Indian Country. Let us consider tax incentives for loans to be made in Indian Country.

Thank you very much for this important hearing. I am very pleased to try and answer any questions you might have.

Let me conclude by quoting Bobbie Whitefeather. "I know what we need to do. All the ingredients are there. We just need to put the pieces together. The challenge is, are tribes ready, is Congress ready, and the Administration willing to provide or create necessary, receptive environments and support to enable Native nations to prosper?"

I also have handed out to Jack Taylor a statement from Stewart Sarkozy-Banoczy of the Four Banks Community Fund. He will give that to you afterwards.

I will try and entertain and answer any questions that you might have.

Thank you.

Senator JOHNSON. Thank you, Mr. Fischer.

The testimony of the first three panelists I think is excellent and I am looking forward to an opportunity to question and elaborate a bit on their testimony.

The last two witnesses I think will be interesting as well because they bring on-the-ground insight as tribal members themselves as to capital formation and economic development in Indian Country.

I am told that we have only a few minutes remaining to cast a vote on cloture on the supplemental appropriations bill. I assume that Mr. Carper would like to vote on that as well.

I will recess this hearing momentarily to run across the street, cast that vote, and then return as promptly as possible in order to continue this hearing.

And we will be back very soon. Bear with us. I apologize for this, but this is one of those things that is beyond our control at the moment.

[Recess.]

Senator JOHNSON. We are back and we will resume testimony. And we are about to come to Chairman Jandreau.

Mr. Jandreau.

## STATEMENT OF MICHAEL B. JANDREAU

## CHAIRMAN, LOWER BRULE SIOUX TRIBE, SOUTH DAKOTA

Mr. JANDREAU. Thank you, Chairman Johnson. It is with great appreciation that I have the opportunity to address the Subcommittee.

You have my statement and I will try to summarize the statement because I believe that our statement will become a part of the record.

Senator JOHNSON. Your full statement will be part of the record. And so, you may summarize or proceed however you choose.

Mr. JANDREAU. I would like to talk about some practical problems that affect us as tribes and individual members of tribes who attempt to access financing.

I listened with great interest to the first witness as he spoke about the things that Fannie Mae is able to do.

The irony of what happens, not only with Fannie Mae, but with Section 184 and the rest of these programs is the tribe becomes the underwriting authority for that whole process, that truly building credit is not being effectuated in enough of a real manner.

Most of the programs that are there for tribes to access utilizing commercial industry, banking, et cetera, always requires the tribe to underwrite, and thereby jeopardizing or putting at risk the entire tribe's assets for the development of individual commercial industry of any magnitude. And it has to be of some magnitude if it is going to be sustainable.

We need to look at those things, as Mr. Colbert pointed out, that are currently within the law that impede the tribes in their relationship with commercial industry, and allow a study by Indians with Congress and with people in the industry to be accomplished so that the real overall solutions can be accomplished.

There are so many things out there that at some points we are able to access. At Lower Brule, we have been able to do things because, somehow, there is a feeling that I am not going to go away or die or anything. We all know that is a reality.

It needs to be so that anyone in tribal government, any tribe has the same and equitable access. It cannot be just built on the identification of the leadership and the idealism that respective tribe presents.

In order to sustain ourselves and to develop our reservations as we truly should, the whole infrastructure has to be dealt with. And at the risk of plugging something we have been working on, the whole idea of Wakpa Sica, and that project, is about doing that effort.

But I believe in the interim, there has to be a panel of Indian experts and financial, a panel of Indian political persons who deal with financial institutions, and people from Congress and the Administrations to really work on this project and to develop the entire solutions, because this is no easy answer.

As you can see, we have tried in my testimony to identify some of the problems and our projected solutions.

But we could go on with volumes and volumes of paper identifying those solutions. But without a comprehensive process to pull this all together and to say, this is what we are going to go forward with, I do not believe that we are going to accomplish very much.

And there are some sincere people in the different financial processes in the Federal Government. But so many times, there are regulations, there is lack of capital, there is lack of guarantee levels, that are happening during that period of time to really do a lot to solve the problem overall.

So, I guess that is my basic statement. Thank you.

Mr. JOHNSON. Well, thank you, Chairman Jandreau. I want to acknowledge as well President John Yellowbird Steele has joined us here as well from the Oglala Sioux Tribe in South Dakota, and we are pleased to have him in attendance as well.

Ms. Meeks, welcome.

**STATEMENT OF ELSIE MEEKS**
**EXECUTIVE DIRECTOR**
**FIRST NATIONS OWEESTA CORPORATION**

Ms. MEEKS. Thank you. I am very appreciative that you have invited me here and thank you for holding this hearing. I guess Chairman Steele is here to keep me honest.

[Laughter.]

I work for First Nations Oweesta Corporation now, which was launched by First Nations Development Institute. We were launched to help Native communities access financial capital through the development and/or expansion of community development financial institutions. We provide technical assistance and training to Native communities to start these, and I will call them Native CDFI's.

Part of our effort, too, and this is just part of our effort, as Franklin Raines mentioned, is, along with Fannie Mae, we have developed a consumer financial literacy curriculum. It is called, Building Native Communities—Financial Skills for Families. We go out and do trainers of training sessions so that people from the communities can learn how to use this curriculum and provide it to their community members.

So, we think that generations now have to have financial skills to help them make decisions about personal finance and credit, and that is a serious economic barrier for many Native communities.

We are also the facilitator of the Native American Financial Literacy Coalition, and we are helping to overcome that barrier by supporting efforts to improve financial literacy and education and awareness in Indian Country.

My experience was really with the Lakota Fund to begin with. And my experience and that of First Nations really has showed us that tribes need institutions at the local and regional level to help form capital and provide technical assistance to their members. Tribes and communities need to develop their own institutions, to build their own wealth, and to build their own management capability. And Native CDFI's can provide capital for a number of things, including businesses, land acquisition, homeownership, consumer loans, and community development projects, and all of these help to create a healthy economy. Native CDFI's can also leverage grants from foundations, bank loans, and other sources of capital to bring into their community. And most importantly, they really work to build the capacity of their community members to improve their credit and to develop and manage management experience in business.

As I said before, my experience in the community development financial institution field began in 1985 with the development of the Lakota Fund, which was started by First Nations Development Institute, the organization I now work for. The Lakota Fund is a private, nonprofit, Native CDFI on the Pine Ridge Reservation. And I think most people are aware that Pine Ridge has been one of the poorest reservations in the Nation, and that the problems that persist there have gone on for many years. But despite that, the Lakota Fund is widely regarded as one of the most successful private-sector initiatives in Indian Country. And for the first 10 years that we were in operation, we never had one dime of Federal funding. This was all from private sources—foundations, socially responsible investors that believed that we could do the job.

When we first started lending, 85 percent of our borrowers had never had a checking or savings account. Seventy-five percent had never had a loan and 95 percent had never been in business.

We were started with the mission of small business lending. If anybody had told us how hard this was, we would probably have never done it.

But the Lakota Fund now lends in amounts up to $200,000. We started at $10,000, was our limit. We have—they have—I have to say they because I do not work with them any longer—have a loan fund capital of $3½ million from foundations, corporations, and private investors.

They provide training and technical assistance. They have loan loss rates of less than 10 percent. They have developed an IDA savings program, a low-income tax credit housing project. They operate a tribal business information center.

Now, lending in that environment, I mean, it really begs the question, how could we do it when banks and other lenders could not seem to? And I think it can be summed up in the fact that we wanted to. We wanted to change our community, and that is what a lot of other Native CDFI's, why they get started, is because it really is too hard for banks to make these kinds of loans. These are all start-up businesses, to sometimes first-time borrowers.

And so, there really needs to be a mechanism in place on the local level that can allow people their first access to credit and their first step into business. And that is what a lot of Native CDFI's do.

There has been many valuable lessons learned from the Lakota Fund. This was not easy and we made lots of mistakes, honest mistakes, and a lot of missteps. But these lessons really have helped other Native communities develop their strategies around lending. And I have listed some of the strategies and some of the lessons learned in the written testimony. Chief among those is keep politics out of the lending decisions, and that is really important. Then just building good operating systems and policies and adhering to that. And being model organizations.

There is a lot of other organizations now starting and a lot of other Native CDFI's starting. The Navaho Partnership for Housing, the Oglala Sioux Tribal Partnership for Housing are both organizations that are looking at starting—well, they are promoting homeownership, but out of desperation, in both cases, they have had to develop small CDFI's to provide some of the gap financing.

The Partnership for Housing has actually made some direct mortgages that—it is an alternative form of flexible financing until these loans can get through the land issues, the collateral issues, and then they can be sold to conventional lenders.

I want to say one thing about the role of the CDFI fund. Rodger Boyd addressed that here and talked about the NACTA—the Native American Component for Technical Assistance. I do not know that he said that there were 47 applications for that, and that is to help tribes develop CDFI's.

I think 47 is a phenomenal figure, and that is just in the first round. So, I think it shows the importance of the CDFI fund and the NACTA program.

There is not a single other agency that I know of that really helps tribes, that has focused on helping tribes set up CDFI's, and they are so important.

And I want to close by giving just a brief example of an instance of the Oglala Sioux Partnership for Housing and the reasons that these CDFI's can be so important.

They also operate a self-help housing program that up to 10 families a year get together and build their own homes. And it is really just a wonderful program.

But throughout this process, then they are trying to get financing, get the houses mortgages. And they have used the USDA Rural Development 502 loans, or tried to.

But, for one person, a single mother. Her credit was good. She had always worked. She wanted to build her home on her own homeland. There were only four people that owned interest in that land. And that complicated it more.

If it had been tribal land, it wouldn't have been nearly as difficult. But because of that—and really, the problem lay within rural development's lawyers that needed absolute certainty.

And the partnership for housing was able to make that loan, just do their own flexible financing, because they had reasonable certainty that she would pay the loan back. She had agreements from the other family members.

That is just one instance, but I can go on forever about the kinds of projects that these CDFI's have been able to do and the importance of the CDFI fund.

Thank you.

Senator JOHNSON. I have one question for Mr. Boyd and Mr. Fischer.

You both observed that one of the things we need to be doing is paying some attention to the quality of the legal code and the legal system so that it has credibility, both on and off the reservation, whether it be an Indian lender or a non-Indian lender.

Congress has been reluctant to impose on the tribes a separation of powers between the executive and judicial branches. The tribes are sovereign, and so that is their choice to make relative to that issue.

But given your experience and watching the tribal legal systems develop over the years, is it your belief that getting the politics out of a tribal legal system and having some separation between the executive and the judicial system, is that a recommendation that you would make generally to tribes who are looking at ways to attract the confidence of lenders for investment in their reservations?

Mr. Boyd, any comments about that?

Mr. BOYD. Yes, Mr. Chairman. As a matter of fact, in our study, that was one of our recommendations. We broke down the recommendations into three distinct areas—making recommendations to tribal governments, to financial institutions, and to Federal agencies.

In the recommendations to tribal governments, we clearly began to see and picked up throughout all the workshops that we did throughout the country that this is a big issue, that the lenders needed some kind of stability. They needed to be able to work with tribes in a uniform way, so that the more uniform commercial codes that could be developed, more consistency that could be developed within the tribal systems. And certainly, as tribal sovereigns, they have that authority and that jurisdiction to do it.

So, we strongly encouraged tribes to seriously look at that as their contribution to lowering some of these barriers to accessing capital.

Senator JOHNSON. Mr. Fischer, I know that you concur that these are decisions for the tribes themselves to make in terms of the nature of their legal system. But you have taken a very active interest in creating an environment where perhaps an appellate system could be created. It is obviously up to the tribes themselves to make those decisions. But you have paid some attention to legal systems in Indian Country.

Any further elaboration on that, in your experience?

Mr. FISCHER. Senator, I truly believe that it needs to be separated. I think the mere fact that we are here today substantiates that it is not working or it is not working to its potential.

I truly believe that if Indian Country is to develop to its highest and best use, that something has to be changed. You have to build some credibility into it.

I know one of the things that has happened at Cheyenne River is they have incorporated the State Uniform Commercial Code. We do quite a bit of business up there as far as ranchers and farmers are concerned. It gives us comfort. But definitely, there are classic examples where every 2 or 4 years, depending on the term of the chairman and the council, everything turns over.

Now, one of the unique features of Lower Brule is that hasn't happened. And because of that, there is quite a bit of credibility with creditors and outside people with regards to that it is going to be the same as is, or should be. On the other hand, we all know about the example of the Bell Farm situation at Rosebud that got very complicated.

I do think that some separation, some check and balance needs to be incorporated. I certainly understand the sovereignty. But, on the other hand, if, for some reason—it still can all be tribal. If there is a reason that we can figure out a way to do it better, easier—and that is one of the reasons why we, or I, am a champion of the Wakpa Sica project with the tribal supreme court. I think it is long overdue and I think it will benefit the tribes, as well as people off the reservation. So it is a step.

I think, whether it is in banking or whether it is in business, to survive, you have to change. And that needs to be done, constructive change.

And so, I am. I am an advocate for separating, providing stability. And I think, as I mentioned this Sioux Supreme Court, Wakpa Sica's project, would be a step in the right direction.

It just is not working. It may have worked at one time, as far as I am concerned, but it is not working now. We would like to go and do business with enrolled members, do business with tribes. On the other hand, there is a fine line between being a good guy and a dummy, and we need to sort. The tribes need to make it as comfortable for us, as well as we need to make it as comfortable for them.

They have hundreds of millions of dollars of assets and all kinds of potential. So we are looking for ways, and we think a change would—I do not know what the right change is, Senator, but I do think something needs to be addressed.

Senator JOHNSON. Very good, Mr. Fischer.

Mr. Colbert, you made reference to various kinds of Indian-run or owned financial institutions. Given your observation over the years, are we able to draw any conclusions at this point about what kind of institution, what kind of bank, what kind of charter, whether it is tribally owned or individually Native American-owned, or whether it is a credit union versus a bank.

Any conclusions we can draw yet, from your observation, about what seems to work best? Or are there no generalizations that can really be drawn, given our experience to this point?

Mr. COLBERT. Yes, Mr. Chairman. I think that, I personally see that—I would love to see the spectrum of financial institutions that exist in the dominant society in effect be replicated where appropriate in Indian Country.

Certainly, I mentioned community development credit unions. Those have been successful in certain jurisdictions. Regular commercial banks have been successful in other jurisdictions.

A lot of that is predicated on the readiness, willingness, and ableness, if you will, of the owners and organizers of those institutions to meet the local needs.

Ultimately it depends, in large part, on what are the particular financing needs of that particular community or reservation, and then to begin to organize an appropriate type of financial institution around that need.

And it may be, for example—we have talked about some of the community development financial institutions who are subjected to the same degree of regulation as, let us say, banks or S&L's might be. I think, clearly, there is a role and a need for those.

So, in summary, Mr. Chairman, I would simply say that I think we do need a range of financial institutions, all of which have pros and cons to their particular type of charter or organization. But it really depends on what do the organizers want to accomplish and what market are they looking to serve?

Senator JOHNSON. Very good. Chairman Jandreau, it strikes me, looking at the success that you have had in Lower Brule, that one of the things you have been able to do is to get, by and large, to get the politics out of the management of tribal businesses and enterprises in Lower Brule.

Where you have had local talent, you have utilized local talent. Where that wasn't available, you have not thought twice about going outside the tribe and bringing in management skills for the various enterprises that the tribe has run.

I wonder if you would comment about that. You have been chair there for many years, and obviously, there has to be an enormous amount of pressure on you to hire somebody's son, daughter, or cousin for a high position in this business or that enterprise going on. How have you dealt with that and kept your eye on the quality management of these enterprises?

Mr. JANDREAU. Basically, we have done that through the ability to communicate with the people that—our reservation community is not real large, as you know. Approximately 1,600 members live on the reservation. And so, our ability has been to communicate with different groups of leadership—elders, other significant individuals who are in leadership roles, either heads of large families or things of that nature.

One of the things that we have found is that the more involved that those segments of our population are with, and understanding what our end-goals are, and being actually a part of creating those end-goals, has been significant in allowing us to hire management, whether it is our own tribal members or whether it is individuals who possess the skills necessary from outside of our community, to advertise for them and to interview them and to go through the processes that are used nationwide, in trying to acquire good management.

We will also create incentive programs for the individuals, whether it is tribal members or nontribal members, so that their end result is their productivity determines the expansiveness of their salary range.

And we have found that very effective. We have found that has created in the hearts and minds of people a greater desire to get the right product accomplished.

I would like to go back to, though, one question that I heard you ask Mr. Fischer. And that is in regard to the changing of the constitutions to allow for the separation of powers.

Although I do not disagree totally with that concept, I believe that concept has to be done with the cultural relevance that is to be expressed by that particular band or tribe, being a very significant part of it.

I have also found on Lower Brule in regard to both of the questions that you asked me and that you had asked them, that the success of that is depending on the education that is provided to the people who make the decision, and in the membership, and in the governing body.

So that process, whether totally accepted or totally rejected, is at least understood. And that makes all the difference in the world.

I guess maybe that sounds too simple.

Senator JOHNSON. Well, it strikes me as the same philosophy as you used for your business management, that the tribe feels that they have a stake in it, that it was their idea and they are the ones who benefit from it. And the same would be true of any kind of legal system reorganization, that it has to come from within the tribe itself, I think is what you are saying, rather than we here in Washington are going to tell the tribe, regardless of their culture or traditions, how to run their legal system.

I think your point is very well taken.

Elsie, we could talk all day about your experiences. I am fascinated in part with your development of the Lakota Fund, which is another financing mechanism. We talk about banks and credit unions and things. But this has been another one that has been a success story.

I wonder if you could tell us a little bit from your observations, how do you set up a fund like that and allocate the loans in a thoughtful, professional manner, require, I assume, business plans of some kind from people who do not have a lot of experience with business plans.

You do not become a source of money for everybody who woke up one day and said, why don't I do this or that? How do you keep this from becoming some crony slush fund?

And then, last, how do you guarantee these loans? How do you have any confidence that you will get repayment if in fact the business goes bad?

Ms. MEEKS. Well, those are all good questions and important questions, that if any Native community or tribe is going to set up a CDFI, they have to ask those same questions.

Those are the exact lessons we learned at the Lakota Fund. I think Mike said it very well, that education is a big part of that. And at the Lakota Fund, we had to find ways to make loans and training was a big piece of that. If people did not know about business, we had to deal with the issue of how do we even help them to understand the concept of what it means to be in business?

So, we provided a training program that was 10 weeks long that people had to go through if they would even be considered for a business.

Only a Native CDFR or CDFI could do something like that. There had to be financing attached to it, at least the hope of financing. There has been the Tribal Business Information Centers, which are important, that I think Congress has addressed recently.

But many of the tribes that I have talked to have those training programs, but they do not have the financing available. So, at the end of the business plan, there is nothing.

It is very important that I tell tribes in Native communities everywhere that tribes can play a very important role in developing these CDFI's. They can provide financing. They can provide the first step, as with the Four Bands case. The Cheyenne River Sioux tribe actually hired a person out of their economic development office to set up the fund. But they developed a separate board.

I always tell communities, too, that it is very important to get bankers on their board that have lending experience. We use them extensively. We quit beating up on them after we understood all the issues of lending.

So it is just all those lessons. And it is just building, it is really building the market, building borrowers, building business people. We realized that is what our key purpose was, was that we were building a business foundation that had not been there before.

It has been a long, slow process, but now we have a number of businesses at Pine Ridge. In fact, I look at Pine Ridge, despite its few problems, and there is really a lot of people in business in Pine Ridge, a lot of contractors, and I think a lot of that has come out of the culture that the Lakota Fund has helped build.

Senator JOHNSON. I applaud the development of a chamber of commerce at Pine Ridge.

Ms. MEEKS. Yes, that was another key issue.

Senator JOHNSON. I think that is a wonderful new development, of people banding together to promote entrepreneurship and business development.

Well, let me say, I think that this has been a very valuable hearing. And I think the testimony here is going to be looked at with great care by my colleagues and by staff.

I am a bit in a unique situation to be a Subcommittee Chairman on this Banking Committee. I also serve, of course, on the Indian Affairs Committee and on the Appropriations Committee.

And there is no question that the Federal Government cannot, should not walk away from its trust and treaty obligations. We cannot allow that to happen.

But, at the same time, if that is all we focus on, we will have made a huge mistake. The symptoms of poverty and unemployment will continue to bedevil us so long as we do not complement the Federal Government IHS and BIA programs with a growing, blossoming private sector, with more Native American entrepreneurs, with more tribally run enterprises, that is giving us revenue streams both for the tribe and for individual Native American citizens. Until that happens, we will never have enough subsidized housing and subsidized health care and subsidized this and subsidized that.

They are all important programs, but it has to be complemented, I think, with a much more robust private capitalization and private-sector development in Indian Country. Otherwise, we are simply never going to get ahead of the curve of all the symptoms of poverty and unemployment that we currently suffer.

Your testimony here today is going to be very useful to the U.S. Senate as we begin to rethink our relationship, in a Government-to-Government relationship with our tribes, honoring and recognizing their sovereignty, and yet, rethinking in some ways what needs to be done, what the full breadth of the relationship between America as a whole and our Native peoples should be.

And so, I think that this has been a very useful hearing, and I thank you for taking time and the distance that you have traveled to join us here today.

And so, with that, the hearing is adjourned.

[Whereupon, at 12:05 p.m., the hearing was adjourned.]

[Prepared statements and additional material supplied for the record follow:]

## PREPARED STATEMENT OF SENATOR TIM JOHNSON

Good morning. I would like to thank all of the witnesses in attendance at today's hearing for providing testimony on the important issue of bringing more capital investment to Indian Country. Also, I am encouraged by the number of people in the audience who, obviously, have an interest in what we are doing. In particular, I would like to note that John Steele, President of the Oglala Sioux Tribe in South Dakota is here today. President Steele is testifying this afternoon before the Senate Energy and Natural Resources Subcommittee on Water and Power, and I am pleased he is able to join us here this morning for this important Banking Subcommittee Hearing.

In spite of the recent economic downturn and some uncertainty in the capital markets, most Americans can look forward to continued prosperity. However, an important segment of the population—the approximately 2.7 million Native American and Native Hawaiian people living in the United States—has never fully shared in America's wealth. In order to resolve this disparity and create meaningful and sustainable economic growth, we need to continue to look at innovative strategies and draw, not only on the resources of Federal and State governments, but also private capital markets.

Part of the reason that I wanted to hold this hearing under the auspices of the Financial Institutions Subcommittee is to emphasize the importance of access to private sources of capital. I want this hearing to be less focused on Government subsidies, although these are important, and more focused on the role that private financial intermediaries can have in creating and sustaining a viable economic infrastructure on Indian Lands.

Consider the following statistics. According to U.S. Department of Commerce census data, unemployment rates on Indian Lands in the continental United States range up to 80 percent, compared to 5.6 percent for the United States as a whole. Census data also show that the poverty rate for Native Americans during the late 1990's was 26 percent, compared to the national average of 12 percent. In fact, overall, Native American household income is only three-quarters of the national average.

This disparity is particularly evident in my home State of South Dakota where Native Americans represent over 8 percent of the State's population. While the overall State economy is relatively strong with, for example, a low 3.1 percent unemployment rate, the Native American population continues to suffer. South Dakota counties with Indian Reservations are ranked by the U.S. Census Bureau as among the most impoverished in the United States.

In light of this unacceptable economic disparity, I believe it is important to address this issue in a comprehensive manner. At the hearing, we will consider issues such as:

- mechanisms for providing small business capital;
- means for fostering the growth of Native American-owned financial intermediaries;
- incentives for financial institutions to provide services on Indian Lands;
- ways to encourage personal savings; and
- vehicles for improving financial literacy.

In essence, the purpose of this hearing, is to explore what this Subcommittee can do to facilitate and expand the private sector economy in Indian Country. To accomplish this, tribes and enrolled members on the reservations must have access to private capital and the wherewithal to put it to good use.

Presently, I am working with my colleagues in Congress on a number of initiatives to promote capital investment in Indian Country:

- I recently sponsored The Native American Small Business Act that creates a statutory Office of Native American Affairs and establishes related assistance programs.
- I have played an active role in reauthorizing the Native American Housing Assistance and Self-Determination Act and have sponsored a bill to allow the low-income housing tax credit to work more effectively with block grants provided under this program.
- I am a cosponsor of the Indian Financing Act Amendments, which will create a secondary market for small business loans guaranteed by the Department of the Interior.
- Since education is an important part of economic development, I have sponsored the Indian School Construction Act which establishes a pilot program under which eligible Indian tribes have the authority to issue bonds to fund the construction, rehabilitation, or repair of tribal schools. Bondholders receive tax credits.

- Also, one provision of the American Indian Welfare Reform Act expands tribal authority to issue tax-exempt private activity bonds. This would expand the use of these bonds for residential rental properties, qualified mortgage bonds and, in some circumstances, enterprise zone businesses.
- Relating more to family savings, I am a proponent of broadening the availability of Individual Development Accounts (IDA's). These accounts are savings accounts maintained by low-income individuals where amounts deposited by the saver are matched to some extent by the sponsoring organization. Funds saved in IDA's only can be withdrawn for education, starting a small business, or purchasing a home. The Savings for Working Families Act, which I cosponsored, would provide tax credits for organizations that sponsor IDA's.
- Finally, I want to mention the Wakpa Sica initiative, which a number of us are working hard to make a reality—including, notably, two of today's witnesses, Michael Jandreau and Bill Fischer. One of Wakpa Sica's goals is to improve the court system on the reservation to facilitate private sector lending.

I am sure there is much more that can be considered. I look forward to hearing any thoughts you may have on other initiatives that can be undertaken to provide greater access to capital in Indian Country and bring about a sustainable independent economic base for the future.

Let me add just one more thought before we hear from our distinguished panel of witnesses: the concept of tribal sovereignty is central to the integrity of the reservation, and we must do everything we can to protect tribal sovereignty. I am concerned about the viability of sovereignty in the long run if we do not succeed in laying the groundwork for a viable private sector economy on Indian Lands through initiatives like the ones we will discuss today.

---

## PREPARED STATEMENT OF FRANKLIN D. RAINES

CHAIRMAN AND CHIEF EXECUTIVE OFFICER, FANNIE MAE

JUNE 6, 2002

Thank you, Chairman Johnson and Members of the Committee. I want to thank you for inviting me to testify on the state of homeownership on tribal lands and to commend you, Chairman Johnson, for your leadership on this issue. Without the attention of Members of Congress, public and private sector efforts to expand homeownership opportunities to the Native American community would not be successful.

I am pleased to be here today to discuss Fannie Mae's commitment to expanding homeownership in tribal communities and the steps we are taking to overcome the barriers to capital access on tribal lands.

As this Subcommittee is keenly aware, Fannie Mae's mission is to expand homeownership, with a special focus on helping underserved Americans overcome their unique barriers. Our role among financial institutions—and what sets us apart—is that we provide private capital to all communities, at all times, under all economic conditions, at the lowest rates in the market. Finding ways to create affordable housing opportunities for Native American families living on tribal lands is one of the toughest challenges to our mission. Native American families are one of the most underserved, impoverished minority populations in the country. Native American homeownership rates are substantially below the national average, ranging between 33 percent and 55 percent,[1] and Native Americans are six times more likely than any other ethnic group to live in substandard or crowded housing. Stubbornly high levels of poverty and unemployment are significant barriers to conventional credit, as is the legal complexity of mortgage lending on Native American lands.

Fannie Mae has embraced this challenge, and we are committed to working with Congress, Native American tribes, the Bureau of Indian Affairs, the Department of Housing and Urban Development, the U.S. Department of Agriculture, mortgage lenders, and other housing leaders to increase mortgage financing opportunities for Native Americans. We believe firmly that our housing finance system can and must do more to ensure that Native Americans have an equal opportunity to obtain mortgage financing.

---

[1] 2000 Census data put Native American and Alaskan Native homeownership at 55.4 percent, but other measurements list Native American homeownership at lower percentages; HUD and Treasury's One-Stop Mortgage Center Initiative's *A Report to the President* published in October 2000 puts the rate at 33 percent, and a 1997 Census survey found that 46 percent of Native American respondents reported owning a home.

**Fannie Mae's Commitment to Native American Borrowers and Communities**

Fannie Mae's first formal effort with tribal communities began as part of our Trillion Dollar Commitment—a commitment to invest $1 trillion to serve 10 million underserved families—low- and moderate-income families, minorities, new Americans as well as residents of central cities and urban areas. Through our Native American Housing Initiative (NAHI) we committed for the first time to purchase HUD and USDA guaranteed mortgages on tribal lands.

We increased our efforts to expand housing opportunities for Native Americans in 2000 with Fannie Mae's American Dream Commitment—a 10-year, $2 trillion pledge to increase homeownership rates and serve 18 million targeted families by 2010. This effort includes a formal strategy to address the unique housing needs of Native Americans, one element of which is a commitment to invest at least $350 million to serve 4,600 families and to expand our network of partnerships to include 100 tribes on trust and tribally restricted land.

We are well on our way to achieving these goals. Here are some of our accomplishments:

- Over the past 4 years, we have helped over 50,500 Native American families purchase homes off trust lands, by providing more than $6 billion in affordable financing, and on reservation and trust land, we have invested over $174 million to serve over 1,900 families;
- We have partnered with 113 tribes—exceeding our commitment to partner with 100 tribes;
- In 2001, we invested $81 million and purchased loans made to tribal members of 46 tribes, helping over 950 families, and in the first quarter of 2002 have continued to see expansion, with $38 million in loans to members of 42 tribes helping over 400 families on reservation and trust land; and
- In 2001, we invested more than $12 million with the Enterprise Social Investment Corporation and the Raymond James Indian Country Tax Credit Fund to develop low-income housing tax credit business, which includes new construction for rental housing as well as rehabilitation of existing housing units in Native American communities.

**Overcoming Barriers**

While delivering these quantifiable results is necessary and important, it is not sufficient to achieving our goal to increase housing opportunities for Native Americans. Some of the most important work we and others have done, and will continue to do, centers on building trust and developing relationships that will allow us to be successful in these communities for the long run. That is why a fundamental piece of our approach to serving this community has been working to build a lender base that understands the challenges of tribal communities. The gains we have made are made possible by working collaboratively with tribes and lenders to understand the needs of these communities and to overcome some of the barriers to capital access—and there are many—that block the economic development of Native American communities.

I would like to share with you some of the issues Fannie Mae has faced in our efforts to bring the American Dream of homeownership to first Americans, and what we are doing to meet these challenges.

*Economic and Infrastructure Barriers*

The most stubborn barrier to capital access in Indian Country is the lack of economic opportunity. Poverty rates are 26 percent for Native Americans, over double the national average of 12 percent. The unemployment rate for tribal communities is 50 percent. The annual household income of Native American households is less than $8,000. And, in many tribal communities, the economic base is negligible, leading to substandard infrastructure. Many Native American reservations and tribally designated lands suffer from a limited housing stock and a lack of road and utility infrastructure to support new housing.

Against this backdrop, it is not surprising that estimates of the Native American homeownership rate range between 33 percent and 55 percent, well below the national rate of 67 percent, and that Native Americans are pessimistic about the lending process; a 2000 survey by the Treasury Department found that 65 percent of tribal members viewed conventional home mortgages as "difficult" or "very difficult" to obtain. While it is not clear how many mortgages there are on Indian Lands that are held in trust, a joint report by Treasury and HUD found that in 1999 there were only 471 home mortgages on Indian Lands overall, even though an estimated 38,000 families residing on Indian Lands had sufficient income to qualify for a mortgage.

Obviously Fannie Mae cannot single handedly overcome these difficulties. As Chairman Johnson and Members of this Committee recognize, the Federal Government must play a role in working with tribes to create self-sustaining economies by bringing private companies and tribal governments together. Fannie Mae can help by doing what we do best: developing the tools that expand access to homeownership. Homeownership is a key driver of economic growth and revitalization. It promotes commercial investments and infrastructure improvements, which in turn reinforce homeownership. By expanding homeownership for Native Americans, we can not only provide families with better housing, but also with the power to raise capital, accumulate wealth, and build a more secure financial future.

Fannie Mae is taking a two-pronged approach to promoting homeownership in tribal communities: first, by developing the right products to optimize Native American access to homeownership, and second, by expanding housing capacity on tribal lands.

*Product Development.* Fannie Mae is working with our lender partners to tailor lending products to meet the needs of tribal members who lack the resources to qualify for traditional financing. In 1999, we launched our Native American Conventional Lending Initiative (NACLI), designed to make conventional lending possible for Native Americans on tribal trust or otherwise restricted lands. Through this initiative, the full range of our low down payment mortgage product options, as well as specific accommodations responsive to the unique circumstances of Native American borrowers, are available to lenders working on tribal lands.

Fannie Mae has also customized its suite of Community Lending mortgage products to respond to the unique needs of Native American communities. Our Community Lending products are designed to help borrowers overcome the two primary barriers to homeownership—lack of down payment funds and qualifying income—through lower cash requirements for down payment and closing, reduced qualifying income requirements, and higher acceptable debt-to-income and loan-to-value ratios than required for traditional conventional mortgages. To this product line we have worked with tribes to add features such as homebuyer education, down payment assistance programs, and intervention programs for borrowers who get into difficulty.

As of the first quarter of 2002, we have established relationships with sixty lenders to make loans to Native Americans on tribal lands. Some of our major partners include Countrywide Home Loans, First Mortgage Company, J.P. Morgan Chase, Wachovia Corporation, and Washington Mutual.

Additionally, Fannie Mae uses automated underwriting to bring our most flexible underwriting options to Indian Country. The Chickasaw and Choctaw Nation of Oklahoma and the Aluetian Housing Authority in Alaska have developed the capacity, using our Desktop Originator technology, to act as a loan origination source, expanding availability of low down payment loans to tribal members.

*Housing Capacity.* Fannie Mae is partnering with public and private resources to address some of the infrastructure challenges to expanding housing capacity. Fannie Mae has worked with tribes to support new construction through investments in low-income housing tax credit investments, collateralized revenue bonds and HUD guaranteed Native American Housing and Self Determination Act (NAHSDA) Title VI loans. Fannie Mae LIHTC investments helped create 156 units of housing in 2001, and we have an additional 232 units in the 2002 pipeline.

We have also begun developing a secondary market option for development loans guaranteed by HUD under Title VI of NAHSDA, purchasing the only loan yet sold in the secondary mortgage market—a $412,000 loan supporting the Pojoaque Corporation in New Mexico, and working with other partners to ensure a ready outlet for loans originated under this program.

In South Dakota, Fannie Mae has made a 5-year, $3 million commitment to the Pine Ridge Reservation, which includes a $250,000 venture capital investment to develop 14 single family homes and, in partnership with PMI and First Mortgage Co., a $100,000 revolving loan fund for more new home construction. As part of this commitment, we also invested $500,000 in the Lakota Fund, the Community Development Financial Institution that is helping to create small business and new jobs at Pine Ridge—the first step to creating new homeowners.

I would also like to acknowledge the work of Elsie Meeks, the next panelist. It was with her support and cooperation that Fannie Mae made this commitment, and I would like to thank her for her work on this project.

### *Legal and Regulatory Barriers*

Perhaps the greatest single obstacle to increasing homeownership in Indian Country is the legal framework governing tribal lands. Trust land is inalienable, being subject to transfer restrictions imposed by Indian treaties, Acts of Congress and proclamations of the Secretary of the Interior, and is generally subject to the jurisdiction and laws of the tribe, which is protected by sovereign immunity. Tribal sovereignty generally entails the right to govern, adjudicate disputes, and be immune from lawsuits. While some tribes have fully developed commercial codes, others maintain a tribal council or executive body as a legal enforcement mechanism, and some have no court system at all. As a result many lenders have concerns about the enforceability of contractual obligations and of the legal remedies available. Some lenders have been unwilling to provide capital in the face of such legal uncertainty.

Even for those willing to lend, the legal environment creates many additional hurdles. For example, there is a very limited market from which lenders can obtain data for the purposes of determining property values, and the restrictions against alienation further diminish market values. In addition, the making of a home loan on tribal land generally requires the tribe to be a party to the transaction and contracts related to the property that require the tribe to be a party are not enforceable unless the Federal Bureau of Indian Affairs (BIA) approves the contract. The BIA, as administrator of trust lands, also has to provide title status reports on land covered under any mortgage.

Addressing the legal issues such as tribal sovereignty and tribal court jurisdiction is a prerequisite for increasing the flow of capital to tribal lands. But it is not an easy task, since each tribe is sovereign and acts independently.

Tribal governments have recognized this and have taken steps to clarify tribal sovereignty and sovereign immunity, particularly regarding business and housing development, but resolving this issue requires partnership from the private and public sectors. Fannie Mae has worked with HUD, the USDA, and Treasury to support tribes in creating standardized documents and model legal ordinances to support government guaranteed and conventional mortgage activity.

In fact, in April we made a major announcement that we hope will minimize what has been a significant barrier to lending on tribal lands: Fannie Mae will no longer require tribes to make limited waivers of their sovereign immunity and we will also provide for the mutual consent to tribal court jurisdiction over conventional lending initiatives on tribal trust land.

We believe that these modifications to our legal policy that simplify and streamline the implementation of appropriate structures for tribal governments will encourage our lender partners to expand their efforts to serve the Native American community. Addressing this issue should go a long way toward building a better relationship between the lending community and tribal governments and improving housing opportunities for Native Americans on tribal lands.

*Communication Barriers*

Another major barrier to homeownership in Indian Country has been simply communication. For years, Native American communities have been told how to solve their problems but given few opportunities to participate in developing the solutions. Fannie Mae recognizes each tribe as its own sovereign nation, with unique housing challenges and that a one-size-fits-all approach to expanding homeownership will not work with tribal communities.

As a result, we are working to create an open dialogue between individual tribes in an attempt to gain greater understanding of each tribe and the challenges it faces. In April 2002, we convened the Northern Great Plains Native American Housing Summit, which brought together housing officials from 18 Native American tribes in the Northern Great Plains, representatives from the North Dakota Indian Affairs Commission, the South Dakota Tribal Affairs Commission, the North Dakota Housing Finance Authority, USDA Rural Development, the Federal Reserve Bank of Minneapolis and the National American Indian Housing Council to build stronger relationships and to improve communication among the various stakeholders. The Summit included a financial literacy course, workshops on a variety of homeownership-related issues, and a strategic planning session to identify key areas of focus for Fannie Mae and tribal leaders to work together to expand Native American homeownership.

*Information Barriers*

The final barrier to capital access for Native Americans we have identified is education. Many Native Americans do not have banking relationships, and in many Native American economies, financial transactions have long been conducted in cash. As a result, many Native Americans lack an understanding or familiarity with banking, credit reporting, and loan qualification process and standards. And unsurprisingly, they have difficulty obtaining credit through traditional means. Native Americans have had the highest conventional loan denial rate of any ethnic group every year since 1994; in 1999 the conventional loan denial rate stood at 43.2 percent.

This lack of familiarity with bank practices and products also leaves many native communities vulnerable to unscrupulous financial practices that undermine communities' efforts to build financial assets. In 1999, the National American Indian Housing Council found that 68 percent of its survey respondents were victims of predatory lending.

One of the products that Fannie Mae has tailored to help those with impaired credit is our Timely Payment Rewards mortgage. This product helps borrowers obtain affordable housing finance, while simultaneously helping to repair their credit. Under this mortgage a borrower who makes 24 on-time mortgage payments is eligible for up to a 1 percent rate reduction, effectively saving them up to $60,000 over the life of a $100,000 mortgage.

We believe that improving financial literacy can be a significant help. To this end, Fannie Mae provides the sole funding for the Fannie Mae Foundation, for which I also serve as Chairman. As a result of Fannie Mae's financial support, the Foundation undertakes many activities to improve financial literacy of Native Americans.

Most recently the Foundation partnered with First Nations Development Institute to develop a financial literacy curriculum entitled *Native Communities: Financial Skills for Families.* This curriculum is dedicated to promoting economic understanding and personal financial literacy among American Indians. Released in November 2000, this curriculum provides training about financial products and personal financial management and is a unique tool to help Native Americans build on their own knowledge and develop personal financial skills while embracing native traditions and values. Since its release, over 18,000 copies of the Building Native Communities workbooks have been distributed. In addition, the Foundation, First Nations and its key partners—including the Federal Reserve, HUD's Office of Native American Programs, and the National American Indian Housing Council—collectively have sponsored 33 "train the trainer" workshops in 30 different tribal communities across the country, reaching 476 instructors who will offer financial education courses to their tribal members.

In addition, the Foundation and its partners—the Enterprise Foundation, the Ford Foundation, HUD, and the Neighborhood Reinvestment Corporation (NRC)—announced 2 days ago that they will provide a grant of $200,000 to the National Congress of American Indians to develop a national homeownership curriculum designed for Indian Country. This initiative will build on the One-Stop Mortgage Center Initiative developed by the Department of the Treasury and HUD whose purpose was to identify barriers and promote homeownership opportunities in Indian Country. The materials will incorporate successful components of existing local programs to create a national homeownership education model that is easily accessible to tribes and tribal nonprofits nationwide.

**Fannie Mae's and Fannie Mae Foundation's Ongoing Efforts to Serve Native American Communities**

*Fannie Mae*

Finally, I would like to briefly highlight for you some of the ongoing efforts of Fannie Mae to expand homeownership in tribal communities. First, Fannie Mae is moving aggressively toward the goal outlined in the $2 Trillion American Dream Commitment of investing at least $350 million for 4,600 native families and expanding our relationships to 100 tribes for Native Americans on trust and tribally restricted land.

Second, we are continuing to collaborate with tribal communities and lenders to build relationships necessary to overcome the barriers to capital access in Indian Country. To this end, we have created an internal Native American Business Council, which will work to expand our capacity to make tangible investments that increase affordable housing opportunities on tribal lands throughout the country. Some of the goals of this Council include the following:

- building a stronger lender base by educating lenders about the unique characteristics of lending to tribal communities;
- teaching tribes to leverage Federal resources to support the production of additional affordable housing units; these programs include Title VI, loan programs, low-income housing tax credit, and the Mortgage Revenue Bond Program; and
- developing additional products appropriately tailored to the specific needs of each tribe.

*Fannie Mae Foundation*

The Fannie Mae Foundation will continue its work on providing financial literacy training to all Native Americans. It is also working on a comprehensive analysis of the conditions of Native American tribal communities entitled *Economic and Housing Development Conditions, Constraints, Strategies, and Data Sources in Indian Country* which will be published in 2003. This report, which will be a significant advancement in the housing community's understanding of the current economic conditions on tribal lands, will include the following:

- a discussion of the legal issues surrounding lands held in trust by the Federal Government, and their implications for mortgage lending and economic development on affected tribal lands;
- an examination of economic development conditions in Indian Country;
- an analysis of housing and homeownership conditions; and
- a qualitative examination of the data, which includes findings from interviews and focus groups, and from case studies of housing and economic development practices and challenges of the Navajo Nation in the southwestern United States and of the Seminole Reservation in Florida.

I hope that with these commitments, Fannie Mae will begin to make progress in expanding homeownership for Native Americans. We recognize we have a long way to go, and we will continue to listen closely to Indian Country leaders. Combined with our knowledge of mortgage finance, we believe that we can create long-term partnerships with tribal leaders to address the tough housing and economic challenges facing Native American communities today.

I want to thank Senator Johnson for his leadership and for his commitment to engaging in this process. He has shown immense dedication to serving the Native American communities in his State. I know he has been a champion of developing infrastructure in Indian Country and has been very active in helping tribal members efforts to revitalize their communities. I look forward to working with him to make these changes happen.

Thank you, and I would be happy to answer any questions.

---

## PREPARED STATEMENT OF RODGER J. BOYD

SPECIAL ASSISTANT TO THE DIRECTOR
COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND
U.S. DEPARTMENT OF THE TREASURY

JUNE 6, 2002

Chairman Johnson, Senator Bennett, and Members of the Subcommittee, I am Rodger Boyd, Special Assistant to the Director of the Community Development Financial Institutions (CDFI) Fund. I appreciate the opportunity to appear before you today on behalf of the CDFI Fund. In addition to my current duties as Special Assistant, I served as the lead staff member for the Native American Lending Study conducted by the CDFI Fund. I have been asked to specifically address the findings of that study as they relate to the subject of this hearing, "Capital Investment in Indian Country."

The Community Development Financial Institutions Fund is a Government corporation within the U.S. Department of the Treasury. The CDFI Fund's mission is to expand the capacity of financial institutions to provide capital, credit, and financial services in underserved markets.

When the Congress authorized the CDFI Fund under P.L. 103–325, the enabling legislation required the CDFI Fund to undertake a study on lending and investment practices on Indian Reservations and other lands held in trust by the United States. The result, known as the Native American Lending Study (the Study), was undertaken for the purposes of meeting that Congressional mandate and examining the barriers to accessing capital and providing financial services on Indian Lands [1] and Hawaiian Home Lands. [2, 3]

**The Issue**

In the Community Development Banking and Financial Institutions Act 1994, Congress found that "[m]any of the Nation's urban, rural, and Native American communities face critical social and economic problems arising in part from the lack of economic growth, people living in poverty, and the lack of employment and other economic opportunities." Indeed, many communities located in Indian Lands face economic and social challenges that place them significantly behind the rest of the U.S. economy.

**Study Approach**

The Study was designed to produce a broad, if not necessarily exhaustive, qualitative review of the state of lending and investment on Indian Lands and Hawaiian Home Lands. This was accomplished largely through input from many of the stakeholders involved in capital access issues on Indian Lands and Hawaiian Home Lands. Simultaneously, the Study has attempted to supplement this review with meaningful quantitative input and analysis. This was accomplished through the CDFI Fund's Financial Survey, the Equity Investment Research Report, and other CDFI Research. Accordingly, the Study approach was designed not only to provide a catalog of economic problems on Indian Lands and Hawaiian Home Lands by integrating the concerns and recommendations of those who are attempting to lead their communities into the Nation's economic mainstream, but to provide a statistical reporting as well.

To assist in accomplishing this, the CDFI Fund convened 13 regional workshops and two national roundtable meetings involving tribal leaders and economic development professionals, Native American and Native Hawaiian business people, private investors and bankers, Federal regulatory officials, and Federal agency Government officials. The workshops discussed issues related to barriers to capital access and identify possible remedies. The Fund developed this Study approach to gain the knowledge and experience of these participants that have worked with these issues on a day-to-day basis.

The workshops were complemented by the following research:

- The Financial Survey was administered to 851 tribal government housing and economic development directors and 735 private financial service organizations (FSO's) located on or near Indian Lands or located in Hawaiian Home Lands to identify the barriers to lending and provide financial services and to help develop recommendations to address those barriers.
- An Equity Investment Research Report on Indian Lands and Hawaiian Home Lands was developed to provide the background and recommendations for enhancing equity capital access. This research included discussions with equity market participants, review of the relevant findings from the Financial Survey, and analysis of the findings from the workshops. In addition, a questionnaire was adminis-

[1] "Indian Lands" are defined for purposes of the Study as lands owned by or under the control of tribal governments including reservations, Indian Lands, and Alaska Native Villages. For purposes of the Study, Alaska Native Villages have the definition ascribed by 43 U.S.C. 1602, et seq.

[2] "Hawaiian Home Lands" are defined for the purposes of the Study as trust lands held for the benefit of Native Hawaiian people and are administered by the State of Hawaii's Department of Hawaiian Home Lands.

[3] For the purposes of the Study, the term "Native Hawaiian" is defined as "a person having origins in the original peoples of Hawaii", see *Federal Register* 58,781 (1997). "Native Hawaiian" is not a term that refers to a Federally recognized tribe. Inclusion of Native Hawaiians in the Study does not confer or imply any specific, legally enforceable duties on the United States as trustee that apply under certain circumstances when it manages tribal or individual Indian property or resources. In addition, this study does not support or create any right enforceable or cause of action by or against the United States, it agencies, officers, or any person. The CDFI Fund's experience with CDFI's and prospective CDFI's in Hawaii has suggested that Native Hawaiians face many of the same issues and barriers as Native Americans and Alaska Natives in their attempts to access loans and investment capital. Accordingly, in 1999, the CDFI Fund proposed to Congress to expand the Study beyond the original Congressional mandate to include Native Hawaiian. The Senate Committee on Indian Affairs encouraged and supported the proposed expansion. We do not currently recommend that Congress enact any Federal Government programs to provide special benefits to Native Hawaiians. The Study addressed various actions that could voluntarily be undertaken by financial institutions and Native Hawaiian organizations. Any program targeting Native Hawaiians as a group is subject to strict scrutiny and of questionable validity under the Constitution.

tered to participants in the Equity Investment Roundtable that provided useful information about equity investment on Indian Lands and Hawaiian Home Lands.

The CDFI Fund's research found that there exists a significant difference in the amount of capital investment when comparing the rest of the United States to Indian Lands and Hawaiian Home Lands.

The Financial Survey and Equity Investment Research Report found the following evidence of this historic under investment on Indian Lands and Hawaiian Home Lands:

- 65 percent of Native American and Native Hawaiian respondents to the Financial Survey report that conventional mortgages are "difficult" or "impossible" to obtain. Home equity loans and construction and property rehabilitation loans are also in short supply on Indian Lands and Hawaiian Home Lands.
- Business loans were rated as "impossible" to obtain by 24 percent of Native American and Native Hawaiian respondents to the Financial Survey and as "difficult" to obtain by 37 percent. Larger business loans, those over $100,000, are even more difficult to obtain; 67 percent of said Financial Survey respondents rated them as "difficult" to impossible to obtain.
- 66 percent of Native American and Native Hawaiian respondents to the Financial Survey stated that private equity investments are "difficult" or "impossible" to obtain for Native American and Native Hawaiian business owners.
- 33 percent of Native American respondents to the Financial Survey indicated they had to drive over 30 miles to ATM and bank branches.
- The Equity Research Report estimates the buying power of Native Americans is about $35 Billion and estimated Indian Country revenue of $34 Billion for 2001.
- The Equity Research Report estimates that the investment gap between Native American and Native Hawaiian economies and the United States overall totals $44 billion.

**Barriers to Capital Access**

The Study identified 17 major barriers to capital access, relating to legal infrastructure, Government operations, economic, financial and physical infrastructure, and education and cultural issues.

The Study identified one major barrier to capital access related to legal infrastructure:

1. Uncertain Tribal Commercial Laws and Regulations and the Absence of an Independent Judiciary.

Three major capital access barriers were identified that are related to Government operations:

1. Cumbersome, Conflicting, or Ineffective Federal Programs and Regulations.
2. Uncertainty Generated by Changes in Tribal Government Leadership.
3. Poor Understanding of Tribal Sovereignty and Sovereign Immunity.

Five major economic barriers to capital access were identified:

1. Limited Use of Trust Land as Collateral.
2. Inflexible Bank Lending Rules and Regulations.
3. Lack of Capital, Collateral, and/or Credit Histories of Native Americans and Native Hawaiians on Indian Lands and Hawaiian Home Lands.
4. Negligible Economic Base on Indian Lands and Hawaiian Home Lands.
5. Lack of Networking of Native-owned Businesses With Equity Investors.

There are two major capital access barriers related to financial and physical infrastructure:

1. Lack of Financial Institutions on or Near Indian Lands.
2. Lack of Physical and Telecommunications Infrastructure on Indian Lands or Hawaiian Home Lands.

Six major capital access barriers related to education and cultural issues were identified:

1. Lack of Knowledge or Experience With the Financial World on the Part of Native Americans and Native Hawaiians.
2. Lack of Technical Assistance Resources.
3. Failure of Lenders and Investors to Understand Tribal Government or Legal Systems.
4. Historical Absence of Trust Between Tribes and Banks.
5. Differences Between Native American and Native Hawaiian Cultures and Banking and Investor Cultures.

6. Discrimination Against and/or Stereotyping of Native American and Native Hawaiian Communities.

**Remedies and Recommendations**

Study participants identified a number of potential remedies and recommendations related to the major capital access barriers identified above.

Participants identified one recommendation related to the legal infrastructure barrier cited above.

**1. Enhance the Tribal Legal Infrastructure.** Some Study participants recommended a strategy of creating a more pro-business legal environment on Indian Lands, through such actions as:

- Establishment of a tribal legal infrastructure for business development, including tribal commercial codes, foreclosure regulations, permitting processes, and general regulatory frameworks,
- Development of zoning codes and land use plans, and
- Clarification of sovereignty and sovereign immunity, particularly regarding business and housing development.

Study participants identified four recommendations related to the three Government operations barriers.

**1. Improve Tribal Planning Processes and Structures.** Some workshop participants felt that tribal governments need to enhance their ability to establish, articulate and manage a clear and concise vision, to formulate policies and strategic plans for overall economic development, and to cultivate the professional Government workforce necessary to implement such plans.

**2. Separate the Goals and Management of Tribal Government From Those of Tribal Business.** Some workshop participants recommended separating the management of business and Government, spinning off tribally owned enterprises to a separate bodies for oversight and management, delegating privately owned enterprise oversight to nonpolitical bodies, and clarifying the differences between tribal government and corporate liability.

**3. Strengthen Tribal Courts.** Some actions recommended by Study participants include:

- Increasing the skills and capacity of judges and judicial personnel regarding lender and investor issues, and
- Establishment of enforcement procedures for, garnishment.

**4. Streamline and Improve the Efficiency and Effectiveness of Certain Federal and State Programs Used By Native Americans and Native Hawaiians.** Many workshop participants expressed the need to accelerate the pace of decisionmaking, reducing excessive requirements and paperwork, rationalizing conflicting requirements and revising programs with overly restrictive entry guidelines, of certain State and Federal programs.

There were four remedies identified that relate to economic barriers.

**1. Create Alternative Collateral Options for Trust Land.** Workshop participants recommended recognizing and leveraging the value of trust assets; facilitating development of trust land through alternative means of valuation and collateralization, such as the creation of leaseholds and master leaseholds; building equity pools from trust lands and other resources; and converting traditional assets into collateral.

**2. Develop New Local and Non-traditional Mechanisms to Deliver Capital on Indian Lands and Hawaiian Home Lands.** Workshop participants suggested that tribal governments should develop their capacity to orchestrate and leverage all sources of capital, and financial institutions should develop new lending and financing products and revise underwriting criteria to meet the unique needs of Native American and Native Hawaiian markets, including the development of microlending programs for small businesses and securitization of oil and gas reserves and timber. Workshop participants proposed two options for providing access to nontraditional sources of debt and equity capital:

- Develop tribal or intertribal CDFI's, community banks, and other lending and investment institutions; and
- Create tribal or intertribal pools for loan guarantees, equity investments/venture capital, microlending, and lending for housing and small business.

**3. Increase Equity Investment on Indian Lands and Hawaiian Home Lands.** Equity Investment Roundtable participants suggested the following methods of increasing equity investment in Native American and Native Hawaiian communities:

- Create industry sector specific incubators that provide management and technical assistance to start-up businesses and that focus on the specific needs of Native American and Native Hawaiian business owners,
- Use existing "angel investor" networks (for example—networks of investors who provide start-up capital for new business, sometimes accompanied by technical expertise and contacts networks),
- Build an "angel" network that specializes in investments in Native American-owned or Native Hawaiian-owned businesses,
- Create community development venture capital (CDVC) funds,
- Use existing corporate venture capital programs,
- Use State and city venture capital programs, and
- Form a public/private intermediary to direct funds into Native American and Native Hawaiian CDFI's, businesses, or projects.

**4. Establish a Native American/Native Hawaiian Equity Fund.** To attract equity investments in Native American and Native Hawaiian communities, workshop participants suggested that the Federal Government sponsor an equity fund to help encourage private sector investors and public/private partnerships to invest on Indian Lands and Hawaiian Home Lands.

Four recommendations related to the two financial and physical infrastructure barriers cited above, were identified:

**1. Increase the Number of Financial Institutions on or Near Indian Lands.** To provide Native Americans and Native Hawaiians greater access to financial services, a number of policies need to be considered, including:

- Creating more financial institutions, including CDFI's, on Indian Lands, and
- Encouraging existing financial institutions that are not located on Indian Lands to open branches on Indian Lands.

**2. Develop Regional Financial Institutions.** The workshop participants believed that regional partnerships and alliances are essential to overcoming barriers to capital and credit access, and possible strategies include:

- Building on partnerships established with the CDFI Fund's regional intertribal cosponsors and holding follow-up forums similar to those conducted in the Study,
- Establishing information clearinghouses at the regional level on model financing approaches, methods of accessing equity capital, and sources of training and technical assistance,
- Providing channels of information to Native American and Native Hawaiian communities so that they can adapt existing models to their unique cultural and community needs, and
- Establishing regional partnerships among banks, lending institutions, venture capitalists, Federal agencies, and tribes/intertribal organizations.

**3. Develop Financial Products and Services That Will Meet the Needs of Native American and Native Hawaiian Depositors and Borrowers.** Workshop participants suggested that this could be accomplished by financial institutions through the development of new lending and financing products, revised underwriting criteria more suited to the unique attributes of Native American and Native Hawaiian communities, the creation of micro lending programs for small business, and the creation of CDFI's.

**4. Create Innovative Strategies to Develop Physical Infrastructure on Indian Lands and Hawaiian Home Lands.** Various initiatives were explored at the workshops to facilitate development of a more adequate infrastructure system on Indian Lands and Hawaiian Home Lands, including creation of partnerships with private developers to plan for infrastructure development and development of an infrastructure investment strategy that utilizes available Federal resources and encourages private partnerships to participate in the funding and development process.

Study participants identified four recommendations related to the seven educational and cultural barriers.

**1. Expand Financial Literacy Education Opportunities for Native Americans and Native Hawaiians.** Workshop participants agreed that providing financial literacy education and personal finance education for Native Americans and Native Hawaiians can provide them with the means to participate in the contemporary economy and that culturally appropriate financial literacy curriculum is available from various sources. Many existing CDFI's regularly provide this type of training in their communities.

**2. Develop Entrepreneurship Programs for Native Americans and Native Hawaiians.** Workshop participants recommended that these programs include:

- Development of core materials on small business finance and entrepreneurship,
- Establishment of teaching partnerships with tribal and nontribal colleges, financial institutions, CDFI's, and nonprofits,
- Incorporation of web-based training in the curriculum, and
- Facilitation of funding and teacher recruitment through the private sector, tribes, intertribal organizations, and Federal agencies.

**3. Conduct Lender and Investor Education.** Actions recommended by the workshop participants include:

- Development of informational handbooks on issues such as tribal government structures, sovereignty and sovereign immunity, and land status,
- Creation of a directory of tribal credit officers, economic development officers, and department heads and a directory of attorneys qualified to practice in tribal courts,
- Development of a marketing campaign that illustrates effective practices and success stories, initiation of educational outreach seminars by Native American and Native Hawaiian communities for potential lenders and investors, and
- Initiation of "road shows" focusing on investment opportunities on Indian Lands and Hawaiian Home Lands.

**4. Expand Technical Assistance and Training.** From the workshops, several initiatives were identified for increasing technical assistance and training on Indian Lands and Hawaiian Home Lands:

- Provide Native Americans and Native Hawaiian business owners with technical assistance related to developing business plans and proposals and other business management needs,
- Help tribal governments develop a comprehensive strategic plan to meet development and financing needs,
- Assist lenders, investors, and potential business partners in developing an understanding of tribal laws, tribal enforcement capabilities, and lender rights, and
- Help lenders, investors, and potential business partners understand Federal programs, requirements, and application processes.

### Examples of Initiatives and Programs

One of the important aspects of the Study was the identification by participants of programs and initiatives that involve Government, the private sector, and tribes to address the major barriers identified above. Each initiative identified below, designed to meet the needs of a particular community, may offer insights to other communities that can be adapted to meet the unique needs of other particular communities or regions.

For example, some tribes have enacted legislation to promote business development, tribal commercial codes, land use and planning codes, zoning codes, and laws regulating corporate and business activity.

Workshop participants noted that lenders and investors are often reluctant to accept the jurisdiction of tribal courts to enforce financial contracts and, to address this problem, suggested increasing the capacity of tribal courts to resolve commercial and financial disputes and to enforce commercial codes. Some initiatives are currently underway:

- The Federal Bureau of Justice Assistance, Department of Justice, and Bureau of Indian Affairs are currently funding technical assistance and training grants for tribal court capacity building.
- The National American Indian Court Judges Association has established the National Tribal Justice Resource Center to assist tribes in strengthening methods of self-government and to provide technical assistance for enhancing tribal justice systems.
- The Tribal Court Clearinghouse has been created as a resource for tribal court development, training, court review, code drafting, and training.

To provide Native Americans and Native Hawaiians greater access to financial services, Study participants felt that a number of options need to be considered, including creating more financial institutions on Indian Lands and Hawaiian Home Lands, expanding and/or rebuilding existing financial institutions on Indian Lands, purchasing existing banks, expanding Native-ownership of financial institutions through purchase or *de novo* creation of new institutions, and creating more CDFI's.

Workshop participants and CDFI Fund research identified the following examples of successful initiatives:

- The Cheyenne River Sioux Tribe used an existing revolving loan fund to create the nonprofit Four Bands Community Fund, which makes business loans.
- In 1990, the Navajo Nation had only three bank branches and one ATM serving a geographic area of 17 million acres. To increase the availability of financial services on the reservation, the tribe entered into an agreement with Norwest Bank (now Wells Fargo) to build four new branch banks with ATM's, hire and train Navajo personnel, and target financing to business startups and housing development.
- In all, nine tribally owned commercial banks, seven credit unions, and 14 loan funds have been developed nationwide to serve Native American communities.
- Hawaiian Community Assets, Inc. is developing a charter for the first Native Hawaiian-owned bank.
- As of September 30, 2000, the CDFI Fund had made awards totaling nearly $27 million to 33 CDFI's that provide some level of service to Native American or Native Hawaiian communities.
- In fiscal year 2002, the CDFI Fund initiated its $5.0 million Native American Technical Assistance program to assist Native American and Native Hawaiian communities in establishing community based CDFI's.

Workshop participants identified regional partnerships and alliances as essential components to overcoming barriers to capital and credit access, and examples of successful regional initiatives include:

- The Native American Development Corporation is a CDFI that provides Native American business communities in Montana and Wyoming with funds to create jobs, develop long-term economic self-sufficiency, and facilitate access to capital. Its Capital Loan Fund was initially capitalized with funding from banks, the Federal Government, First Nations Development Institute, and private corporations.
- The Native American Lending Group, Inc. is a nonprofit multitribe CDFI in New Mexico that serves 19 Pueblo communities. It was created to provide tribes, businesses, and individuals access to private investment capital.
- Coastal Enterprises, Inc. is a nonprofit CDFI that serves low-income communities in Maine and provides financial and technical assistance for development and expansion of certain targeted industries, small businesses, housing, and social services. CEI has established a partnership with the Penobscot Indian Nation to develop a CDFI to fund housing and business development.

Tribal leaders and private investors participating in the workshops suggested strategies that relied on accessing capital sources that have not traditionally been on the Native American investment "radar screen" and on expanding Native American awareness to include more equity and nontraditional financing and thus increase the likelihood of securing funding.

One example of an existing strategy captured significant workshop participant attention: Center of North America Capital Fund is an "angel" investor network and investment fund in North Dakota that links two tribes—the Turtle Mountain Band of Chippewa and the Spirit Lake Sioux—with investors. The CONAC Fund was modeled after Minnesota's Regional Angel Investor Networks Fund, a series of rural investment funds formed by the Minnesota Investment Network Corporation.

The following are examples of public/private intermediaries cited by workshop participants that direct funds to Native American and Native Hawaiian businesses:

- The Hopi Credit Association is a tribal loan fund that provides a bridge between banks and tribal borrowers, obtaining funds from banks, handling all loan selection and servicing with tribal members. Participating banks thus gain a point of entry to the tribal community, via a tribal loan fund that understands banking needs, and tribal members are served directly by a credit union that understands their needs.
- Another example is the Southern Ute Growth Fund, which uses a partnership approach and co-invests, using its growth fund and capital provided by outside investors, in a variety of growth opportunities.

**Conclusion**

Much of the progress in expanding access to capital was not achieved by tribal governments, financial institutions, or Federal agencies acting alone. Rather, progress often depended on these stakeholders acting together. One of the most important themes to emerge from the CDFI Fund's research, workshops, and Equity Research is the need to foster even greater coordinated activity among stakeholders. For example, input of tribal or Native Hawaiian representatives to any review of the effectiveness of Government programs or policies would help to answer questions about community compatibility and relevance. Neither technical assistance nor cultural education will have the desired effect unless tribes, Native Hawaiian communities, and FSO's commit to such processes. Moreover, FSO's, Government regulators, and tribes would all likely have to participate in attempts to create new loan products and equity investment opportunities for Native American or Native Hawaiian communities.

---

## PREPARED STATEMENT OF J.D. COLBERT

PRESIDENT, NORTH AMERICAN NATIVE BANKERS ASSOCIATION

JUNE 6, 2002

Good Morning Mr. Chairman and Subcommittee Members. I am here today as President of the North American Native Bankers Association, also known as "NANBA". NANBA is an association of commercial banks and other regulated financial institutions owned by Indian tribes. I appreciate the Subcommittee's concerns regarding Capital Investment in Indian Country and applaud your efforts to effect greater capital access. Thank you for allowing me to make a brief statement before this Committee.

### Native Ownership of Financial Institutions

Lack of native ownership of financial institutions continues to be a major obstacle to greater capital access in Indian Country. This lack of native-owned financial institutions has repeatedly been identified as an impediment to greater capital access. For example, the Native American Lending Study conducted at the Community Development Financial Institutions Fund at the Department of the Treasury recently identified the lack of native ownership of financial institutions as a major obstacle regarding capital access.

With respect to regulated financial institutions, at present there are only eight (8) tribally owned banks and another nine (9) banks owned by individually enrolled tribal members in the United States. In addition, there are approximately six (6) tribally owned community development credit unions. Accordingly, there are only 23 regulated financial institutions owned and controlled by native tribes or individuals to serve over 560 Federally recognized Indian tribes and over 2,000,000 individual Indians. Clearly there is a great disparity between the number of native-owned banks and the demographics of Indian Country.

Presently, there is at least one piece of legislation currently on the books that could be utilized to address this disparity. In August, 1989 Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act of 1989 known as "FIRREA." Section 308 of FIRREA established at least three salient public policy goals:

1. To preserve the number of minority-owned financial institutions,
2. To promote and encourage creation of new minority-owned financial institutions, and
3. To provide for training, technical assistance, and educational programs.

As indicated by the paucity of native-owned financial institutions, and minority-owned institutions in general, the will of the Congress as expressed by Section 308 of FIRREA has been frustrated by the lack of responsiveness of the Federal bank regulatory agencies. At best this responsiveness could be described as "minimal," at worse, it could be described as disregarding this Congressional mandate.

In all fairness, there have been some recent positive developments with regard to efforts made by the various Federal bank regulatory agencies to reach out to Indian Country. For example, the Federal Reserve Bank of San Francisco has sponsored various "Sovereign Lending Workshops," the FDIC has recently adopted a revised policy statement on minority-owned financial institutions that expands the scope of their activities and the Office of the Comptroller of the Currency published, with NANBA's assistance, a booklet entitled *A Guide to Tribal Ownership of a National Bank*.

While these and other efforts are most welcome in Indian Country they fail to directly address a key goal of Section 308: **to promote and encourage the creation of NEW minority-owned financial institutions** (emphasis mine). The Federal bank regulatory agencies, who have primary responsibility for implementing the goals of Section 308, have done very little to actually increase the number of native-owned banks.

NANBA, however, has been active on this point. In July, 2000 NANBA hosted the "Tribal Ownership of Banks Conference." The goal of the conference was to foster the development of additional native-owned banks. We had approximately 150 people attend the conference with over 25 tribes represented. To my knowledge, the NANBA conference was the first and only conference ever conducted to stimulate the development of additional native-owned banks. Indeed, it may stand as the ONLY conference ever held in the history of the United States that had the goal of creating new Minority Owned banks.

I would suggest that the Congress might provide funding to allow an Interagency Task Force of the Federal bank regulatory agencies to fulfill their Section 308 responsibilities by hosting a similar conference for Indian Country as well as for members of other minority groups. I would further suggest that such a conference be conducted for at least 3 years in a row to maximize its potential impact and outreach efforts.

In addition, the various bank charter granting Federal bank agencies should work with established Indian organizations such as NANBA to continually provide outreach, training and educational efforts to both expand the number of native-owned financial institutions as well as to assist in the growth and development of existing native institutions. We at NANBA stand ready to work together with the Congress, the Administration and the Federal bank regulatory agencies to fully implement all the public policy goals of Section 308 of FIRREA and especially the goal of creating NEW native- and minority-owned banking institutions.

**Bond Financing**

In addition to the need for additional native-owned banks and financial institutions, Indian Country badly needs to access capital investment through bond financing.

In order to stimulate access to this important sector of the capital markets, I would suggest that the Congress consider amending the Securities Act of 1933 to allow Indian tribal governments access to the same exemption from securities registration that State, county, and local governments currently enjoy with respect to the issuance of tax exempt bonds.

Presently in order to access the mainstream bond markets tribes are forced to go through an expensive and time consuming registration process. Generally tribes naturally avoid this process and will turn to the private placement market. This entails paying higher yields on their paper than what could otherwise be expected in the mainstream bond market.

To the extent that the Congress sees fit to so amend the 1933 Securities Act, I would further suggest amending the Internal Revenue Code of 1986 to allow Indian tribal governments to issue "private activity bonds" in the same manner as allowed for State and local governments. In addition, I would suggest exempting tribes, under certain circumstances, from the "volume cap" requirements of Section 146 of the Internal Revenue Code.

By providing Indian tribal governments with equal footing as that enjoyed by State and local governments with respect to the issuance of private activity bonds it will greatly stimulate the flow of capital to Indian Country. Also, by granting an exemption to Indian tribes, under certain circumstances, from the "volume cap" restrictions will mean that tribes will not have to request a private activity allocation from a State government who may be unwilling or unable to grant such allocation as an Indian tribal government is not a political subdivision of the State.

**Closing**

That concludes my statement. Thank You, Mr. Chairman and Subcommittee Members for allowing me the opportunity to represent NANBA before this Subcommittee. I will be pleased to entertain any questions or comments from the Subcommittee.

---

## PREPARED STATEMENT OF WILLIAM V. FISCHER

PRESIDENT, AMERICAN STATE BANK OF PIERRE, SOUTH DAKOTA

JUNE 6, 2002

Good morning, Mr. Chairman, Ranking Member, and Members of the Subcommittee. Thank you for the opportunity to appear here today. My name is William V. Fischer. I am President of the American State Bank of Pierre, South Dakota, a $90 million independent commercial bank located on the Missouri River in the center of the State. I am a third generation South Dakotan whose grandfather arrived here in 1884. I will be testifying from my position as a commercial banker in Central South Dakota, Indian Country, for the past 36 years.

South Dakota is not unique from other States in having Indian Reservations located within its boundaries. We have nine reservations in South Dakota, three of these reservations are located in our lending area.

There have been numerous studies compiled, some commissioned by Congress and independent studies done over the past years regarding lending in Indian Country. Recently, there was a workshop held in Rapid City, South Dakota, sponsored by the U.S. Treasury on lending in Indian Country. Also, the FDIC out of Kansas City has been working on the Cheyenne River Sioux Tribe Reservation since 1995 regarding lending in Indian Country. (See attached letter from John P. Misiewicz of the Kansas City FDIC Office)

First let me address what I feel are some of the obstacles to lending in Indian Country:

- Instability of reservation tribal form of government;
- No checks and balances—the legislative, executive, and judicial are very interrelated and thus virtually one;
- Constant turnover, inexperience and thus lack of consistency in tribal governments;
- Economics—lack of financial education and economic knowledge;
- A general lack of unified tribal vision, planning and business experience;
- Lack of understanding of tribal sovereignty and sovereign immunity;
- State and Federal regulations and bureaucracy;
- Lack of basic economics and credit knowledge at the enrolled members level;
- Each reservation has its own specific laws and policies with no degree of uniformity of tribes dealing with economic issues—for example UCC;
- The tendency to insist on tribal members to manage tribal businesses when the members have no experience in managing this type of business venture;
- The general tendency to try and run (manage) businesses without accurate financial accounting records;

Some practices that American State Bank has implemented to overcome obstacles of lending in Indian Country:

- Know the tribe and/or tribal member wanting to borrow money;
- Establish a professional relationship with an attorney and accountant familiar with tribal law and the reservation involved;
- Follow basic credit criteria—character, capacity and collateral;
- Know the tribe, its officers, council, issues and history;
- Realize that very few customers, Indian and/or non-Indian, are entrepreneurs and thus should we lend money for such a venture, we allocate time and special attention to assisting and ensuring the venture has an even chance to succeed—tribes and tribal members do not need more examples of failure;
- American State Bank has taken a very active position in understanding the issues and concerns on the Cheyenne River Sioux Tribe Reservation. One employee of the Bank serves on the Four Bands Community Loan fund;

Legislative or regulatory remedies that I believe would be helpful to facilitate the flow of capital to Indian Country:

- Promote a tribal governing system that better separates the legislative, executive, and judicial systems and thereby provide check and balance, and thus stability;
- Better separation of economics from political decisions;
- Needs to be a better working relationship between the BIA and tribes . . . working for the better good of all parties involved;
- Promote establishment of 1, 3, 5, and 10 year economic development plans and where necessary hire the best managers to implement them;
- Managers for tribal businesses should be the very best that are available whether they are Indian or non-Indian—with built-in incentives for successful/profitable operation;
- Implement a series of courses both at the high school and post high school levels promoting good business practices;
- Let us reconsider loan guarantees for commercial loans that are made in Indian Country;
- Let us consider tax incentives for loans that are made in Indian Country;
- Perhaps the Congress should at least establish pilot projects on each of these ideas;
- Perhaps all Indian Reservations should be empowerment zones; or
- Possibly pick a few, well managed reservations, and make them into experimental models, empowerment zone, to implement business practices;

- And last but not least, fund the Wakpa Sica project #HR5528 and thereby establish a supreme court for the eleven tribes of the Great Sioux Nation—this is truly the first step in bringing uniformity and creditability to a system that is very suspect by creditors.

Mr. Chairman, as you know, Federal Indian policy at this point is mostly a series of programs that attempt to address basic human needs: education, housing, health care, etc. They are very expensive and they have had mixed results, at best. Let us try investing through private markets with the goal of creating an Indian private sector, so that the human needs will not be as great or cost as much. As Chairman Jandreau states in his testimony, unemployment in South Dakota is under 4 percent yet in Indian Country the unemployment rate is, on average, 75 percent. If the Federal Government can drive that rate down by stimulating a private sector it will save the Government a lot and be a good return on investment.

Thank you for convening this very important hearing. I would be pleased to answer any questions.

Let me conclude by quoting Bobby Whitefeather: "I know what we need to do. All the ingredients are there. We just need to put the pieces together. The challenge is, are tribes ready and is Congress and the Administration willing to provide or create the necessary receptive environments and support to 'enable' Native Nations to prosper."—Bobby Whitefeather, Tribal Chairman, Red Lake Band of Chippewa Indian, Minnesota.

**FDIC**
**Federal Deposit Insurance Corporation**
2345 Grand Ave., Suite 1200 Kansas City MO, 64108
Division of Compliance and Consumer Affairs

June 4, 2002

William V. Fischer
President
American State Bank
Pierre, South Dakota 57501

Dear Mr. Fischer:

In response to your recent request, I am providing a summary of the Federal Deposit Insurance Corporation's participation in two significant initiatives that involve the Cheyenne River Sioux Tribe (CRST), Eagle Butte, South Dakota. These two initiatives include the establishment of a Tribal Uniform Commercial Code (UCC) on the tribe's reservation and the creation of the Four Bands Community Fund, a micro-enterprise lender.

**Tribal UCC**

On May 23, 1996, the Federal Deposit Insurance Corporation (FDIC), in collaboration with the Tribal Council, facilitated a focus group meeting on the Cheyenne River Sioux Indian Reservation. In attendance at this first focus group and subsequent meetings were members from the CRST, eight representatives from local banks, and two from the South Dakota Bankers Association. Banks represented included State Bank of Eagle Butte, Eagle Butte, South Dakota, (Total Assets of 26M); 1st Financial Bank, Dupree, South Dakota, (Total Assets of 145M); Community First Bancshares, Fargo, North Dakota, (Total Assets of 4.9B); Bank of Hoven, Hoven, South Dakota, (Total Assets of 137M); American State Bank, Pierre, South Dakota, (Total Assets of 81M); Farmers and Merchants Bank & Trust, McIntosh, South Dakota, (Total Assets of 434M); Bank West, Pierre, South Dakota, (Total Assets of 316M); and Dewey County Bank, Timber Lake, South Dakota, (Total Assets of 14M).

At the first meeting in 1996, bank representatives mentioned the need for a tribal UCC to provide a set of consistent laws to enforce business transactions and to provide lenders with legal means to recover loans in case of default. A working group made up of tribal, banker, and FDIC representatives was formed to explore the creation of a tribal UCC similar to that of the State of South Dakota. The South Dakota Bankers Association also provided their technical expertise throughout the process. Over the next five years, the Cheyenne River Sioux Tribe working group met more than a dozen times to work on the UCC and many other issues of importance to both the tribe and bankers.

A succession of significant events in the course of the UCC implementation followed. On February 23, 1997, the Cheyenne River Sioux Tribal Council passed a new tribal UCC which was very similar to the South Dakota UCC. On May 19, 1998, the new UCC was established on the reservation. On November 19, 1998, the focus group decided that the tribe and the State of South Dakota needed to formally cooperate to ensure that the new UCC proved workable for both tribal members and financial institutions. On August 17, 1999, a draft Memorandum of

Understanding was fashioned and negotiations began on the specifics of filing liens and other implementation issues between the tribe and the State. Finally, on January 4, 2001, the Joint Powers Agreement between the South Dakota Secretary of State and the Cheyenne River Sioux Tribe was signed in Eagle Butte, South Dakota.

This agreement marked the first time any tribe in the nation agreed to cooperate with a state government on the filing of loan information. The agreement sets a precedent by enabling banks lending to tribal members to use the state's UCC filing system. Financial institutions can file property liens online using the state's system without having to file separately with the tribe's system. The implementation of the UCC on the reservation has played a significant role in the improvement of lending opportunities for tribal members.

**Four Bands Community Fund**

During an August 1999 meeting of the Cheyenne River Sioux Tribe Focus Group, CRST Chairman Bourland suggested creating a revolving small business loan fund. A focus group sponsored by the Kansas City Regional Office of the FDIC consisting of three tribal officials, three local financial institutions, three federal agencies, and the South Dakota Bankers Association was formed and agreed to meet on September 23, 1999. During this meeting, participants outlined the positive effects of the proposed fund. If established, the fund would originate loans and give technical assistance to tribal members, build good potential customers for local lenders, provide gap financing, reduce the general assistance roles on the reservation, promote self-sufficiency, and sustain economic development. The focus group met five more times, and on April 26, 2000, the Four Bands Community Fund, Inc. (Four Bands) received its Certificate of Incorporation from the State of South Dakota.

During Four Bands' first board meeting, held on July 19, 2000, the following individuals were nominated and elected as Officers of the Loan Fund: Bill Picotte (Chairman), Donna Rae Peterson (Vice Chairman), Steve Payne from Eagle Butte State Bank (Treasurer), and Keith Willard from 1st Financial Bank, South Dakota (Secretary). Selected as board members were Robert Claire from American State Bank, Cherie Farlee, James Claymore, David Hump, and Benita Clark. All of the individuals listed, except for Mr. Payne, Mr. Willard, and Mr. Claire are representatives of the Cheyenne River Sioux Tribe.

Since its formation, Four Bands has obtained over $400,000 in grants for operation of the loan fund. There have been eight micro-enterprise loans made totaling $8,000. Also, Four Bands uses the FDIC's *Money Smart* program as a means to financially educate potential loan fund borrowers and community members. Four Bands staff offers *Money Smart* classes on an intermittent basis. So far, Four Bands has conducted four classes with 34 attendees.

The accomplishments of these South Dakota bankers, trade associations, government agencies and tribal leaders have directly contributed to the creation of jobs and credit programs which will enhance the economic development of the reservations with minimal government intervention and funding.

If you need any more information, please contact me at (816) 234-9099.

Sincerely,

John P. Misiewicz
Regional Director

FOUR BANDS COMMUNITY FUND, INC.

101 South Main Street
Box 932
Eagle Butte
South Dakota
57625
(605) 964-FOUR *voice*
(605) 964-3689 *fax*
4bands@sat.net *email*
www.fourbands.org

Executive Director:
Stewart Sarkozy-Banoczy

LATA (Loan and Technical Assistance) Officer:
Tanya Fiddler

CREATE Program Coordinator:
Amber Lopez Bald Eagle



30 May 2002

U.S. Senate Committee on Banking, Housing and Urban Affairs
Attn: Paul S. Sarbanes
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Sarbanes and Honored Committee Members

I write to you from the middle of the Cheyenne River *Lakota* Sioux Reservation on behalf of the staff and board of directors of Four Bands Community Fund, Inc. I respectfully submit this letter for our organization in the hopes that you will see the continued need for investing heartily in Indian Country. I have included my card and our brochure to be entered into the records and to provide a better understanding of what we do for the reservation.

Over the last two and a half years, we have had the unwavering support of local banks, the FDIC, national foundations, local businesses and federal agencies in our efforts to raise the level of personal and business knowledge and grow our loan capacity to seed our eager entrepreneurs. However, without the capital to lend on the reservation and the ability to provide high quality technical assistance and educational programs, we would not have taken the major steps in growth since our inception. We have logged hundreds of hours of technical assistance time with entrepreneurs and private citizens of the reservation. We have already conducted five 10-week business plan development courses, and now we have begun to make loans and incubate our clients. This affords them equal opportunities to develop strong businesses in a reservation setting.

We need your support to continue our positive relationships with local banks. We need your support for programs like the CDFI Fund, the HUD RHED Program, the USDA RBEG and RBOG Programs – only a few of the many programs that have impacted Indian Country, and our program specifically, with investment and growth opportunities. We can show you that what might seem like a small amount of money elsewhere can go a long way with our program and others like it on reservations around the country.

We have just started to gain momentum in this battle, and I cannot emphasize enough how important it is that we not give up now. We respectfully ask that you listen to your witnesses – they know us here and some of them are among those that have made all the difference to us in our struggles. Mr. Fisher and his people at American State Bank in Pierre have been involved with our development since the beginning. Mr. Boyd of the CDFI Fund has assisted with our work here at home and helped bring our story to other reservations. Ms. Elsie Meeks and her program have been in a mentoring position for us since I was first assigned to put the pen to paper for the development of our organization. We ask that you support these people and the other programs that make a difference. Listen to their stories. Ask what more you can do. Visit us on the reservation and witness what we've accomplished thus far. I thank you for your time and consideration.

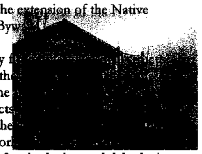
Best regards,

Stewart Sarkozy-Banoczy
Executive Director

**FBCF, Inc.**
***"Wicoicage Sakowin kin un Wicakagapi"***
**Building for the Seventh Generation**

### Made On The Rez

In the coming months, Four Bands Community Fund will be blend an icon of history with the technology of today. Introducing MADE ON THE REZ – our newest effort to help market the products of our local entrepreneurs and artisans! Made On The Rez, will have its home right on Main Street in Eagle Butte in the restored Eagle Butte freight depot, one of the last reminders of the days of the *Tasunka Maza* (Iron Horse) here on the reservation. The depot was saved from destruction and is being restored to serve as the Made On The Rez store and mini-museum. We will be in full swing just in time for the Lewis & Clark Bicentennial and the extension of the Native American Scenic By[illegible]



We thought it only f[illegible] that once housed th[illegible] should also become [illegible] our client's products[illegible] establishment of the[illegible] products to the wor[illegible] becomes a point of embarkation and debarkation for the visiting tourist as well as the online visitor. Once more we will be bringing commerce to the people of the Reservation – with a new twist.

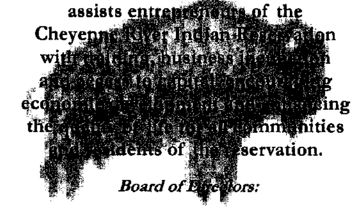
### Our Challenge

The Cheyenne River Reservation consists of two of the poorest counties in the entire United States, with an unemployment level of 78 percent. Four Bands Community Fund is dedicated to empowering the Lakota people through the development of personal and business skills, the creation of a viable private sector, and the establishment of a lasting economic infrastructure.

We can attack this challenge only with assistance from off the reservation, from organizations and individuals that have access to the kind of capital we hope to someday create here on the reservation. As a start-up nonprofit, we urge you to help where you can. Contact us directly with inquiries or donations or visit us on the web: http://www.fourbands.org. We also welcome visitations to our location and volunteers for the organization.

*Wopila Tanka!*
Thank you very much.

# OUR MISSION:



**Four Bands Community Fund, Inc., a nonprofit, nonpartisan corporation, assists entre[illegible] of the Cheye[illegible] n wit[illegible] [illegible] eco[illegible] ing the[illegible] ities [illegible] of [illegible] servation.**

*Board of [illegible]:*

**Bill Picotte**
*Chairperson*
**Donna Rae Petersen**
*Vice Chairperson*
**Steve Payne**
*Treasurer*
**[illegible] Willard**
*[illegible]*

**[illegible]bert [illegible]**
**Benita Clark**
**Ch[illegible] F[illegible]**
**David [illegible]**
**[illegible] K[illegible]**

FOUR BANDS COMMUNITY FUND, INC.

*[illegible] Director:*
**Stewart Sarkozy-Banoczy**
**kiksapa2@sat.net**
**[illegible].3[illegible]5.667[illegible]**

***LATA (Loan and Technical Assistance) Officer:***
**Tanya Fiddler**

***CREATE Coordinator:***
**Amber Lopez Bald Eagle**

# Creating RESERVATION Entr[illegible]reneurs

***Wicolcage [illegible]akowin***
***kin un [illegible]icakagapi***

**B[illegible]ilding for the S[illegible]venth Generation**


FOUR BANDS COMMUNITY FUND, INC.

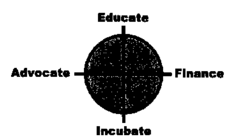
**[illegible]uth Main Street Box 93[illegible]**
**[illegible]e Butte, SD 57625**
**[illegible]05) 964-FOUR *voice***
**(605) 964-3689 *fax***
**4bands@sat.net**
**www.fourbands.org**

FOUR BANDS COMMUNITY FUND, INC.

101 South Main St
Box 932
Eagle Butte
South Dakota
57625
(605) 964-FOUR v
(605) 964-3689 f
4bands@sat.net
www.fourbands.org

## Our Model

We have developed a model that provides the entrepreneur the proper steps, the adequate support (financial, educational, technical and administrative) and the innovative thinking to build and grow businesses on the reservation. We call this the *Icahya* (ee-chax-ya) Model, from the *Lakota* word for "to grow" and it shares that name with our Business Incubator, the *Icahya Woecun* (the place to grow)




## CREATE (Cheyenne River Entrepreneurial Assistance T… and Education) Program

- Program runs 10 weeks, three times … starting in January, May and Septemb…
- Loan applicants are required to take … program to qualify for loan considera…
- Basic and advanced programs are op… interested business person or potenti… enterepreneurs. (Application to loan program is not a prerequisite.)
- Curriculum is a unique combination of materials targeted at small-business start up on the Cheyenne River Reservation.

## *Mazaska Ksapa Nitawa*

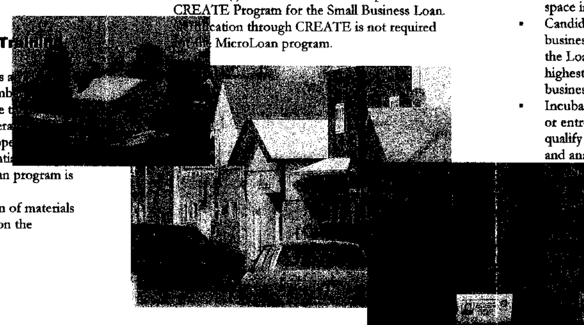
## Your Money Wisdom

Four Bands Community Fund specializes in the development of small business on the reservation. However, we know that sometimes you have to get your personal and familial finances in order before you tackle something larger.

That's why we have begun creating a series of modules to assist our community members with the building blocks to financial stability. We are working with individuals and groups in the areas of credit counseling (credit when credit is due), personal banking, home ownership, and other specific technical assistance needs.

## Revolving Loan Fund:

- Loans can be used for equipment and inventory purchases, working capital, acquisition of land or buildings, construction of buildings, and/or leasehold improvements for a commercial space.
- All business owners or partners must be enrolled CRST tribal members or permanent residents (1-year minimum) of the Cheyenne River Reservation and must reside within the boundaries of the reservation. The business must be operated within the boundaries of the reservation.
- Borrower(s) must enroll in and complete the CREATE Program for the Small Business Loan. …cation through CREATE is not required … MicroLoan program.



## *Icahya Woecun*

## Business Incubator

Presently we are "virtually" incubating clients through our TA and support programs, as well as the development of online and store-based marketing outlets. However, our development of the *Icahya Woecun* (Place to Grow) Business Incubator is a necessary final step in the support of our local entrepreneurs/artisans and the advancement of local infrastructure. Eagle Butte's population is expanding and the expansion of private business is being slowed by a lack of office/work space in the downtown area. As part of our main office, classroom and computer workspace, we have drawn the initial plans for a series of incubation units on the ground floor of the proposed building.

- Plans for separate business incubation units (combination of storefront design, office space and artist workspace) with manager and incubator assistant for daily tasks related to the clients.
- Preference for incubation units will be given to Loan Fund recipients, but application to the incubator is open to all start-up businesses on the reservation with related documentation. Some office space will be available to established businesses looking for appropriate space in Eagle Butte.
- Candidates, their applications and their business plans will be thoroughly reviewed by the Loan Committee/*Icahya* Committee for the highest degree of potential success as a business.
- Incubation space will be open to all business or entrepreneurial ventures as long as they qualify under the *Icahya* Committee's decision and analysis of the proposed business.
- …n period for clients will be 6 months …nsion periods available. Space …tions may allow individual businesses …tunity to continue to rent space after …ation period, but preference will be …ew incubation clients.
- …incubator candidates will be provided …rk space, telephone, fax, e-mail, … computer, copier, utilities and …l/administrative support during their occupancy.

**PREPARED STATEMENT MICHAEL B. JANDREAU**

CHAIRMAN, LOWER BRULE SIOUX TRIBE, SOUTH DAKOTA

JUNE 6, 2002

**Background**

Chairman Johnson, Members of the Subcommittee, I would like to thank you for providing me with the opportunity to testify on this extremely important issue. My name is Michael B. Jandreau; I am the Chairman of the Lower Brule Sioux Tribe in South Dakota. I have been Chairman for over 20 years. My tribe is located in the Bureau of Indian Affairs' Great Plains Region, which includes the 16 tribes in North Dakota, South Dakota, and Nebraska.

As you know, Indian Country is facing many pressing issues that would make excellent topics for Congressional hearings. The Indian health care system is a prime example. Indian communities in the Great Plains Region lead the country in almost every negative health care statistic available. We have the lowest life expectancy of any demographic group in the country, and alcoholism and diabetes are ravaging our communities.

There are also pressing economic development needs. According to the 2000 Census figures, South Dakota Indian Reservations are home to 5 of the top 10 poorest counties per capita in the entire United States. We have an average unemployment rate of 75 percent on reservations throughout the Great Plains while a State like South Dakota currently enjoys an unemployment rate of 3.4 percent. How can these islands of poverty coexist with prosperous communities literally just down the road? I believe this hearing can be a positive step toward answering that question.

Let me be clear. Improving Indians' access to investment capital is one of the best ways to solve the deep-rooted economic problems that exist on reservations across South Dakota and the Northern Plains. Real economic development in Indian Country will, in turn, provide tribes with the resources they need to deal with the countless other challenges and difficulties plaguing our people. Government programs currently provide for many of our basic needs, but if we are to break the cycle of poverty that exists in Indian Country, we must establish a private sector in our Indian communities. And if we are to develop a private sector, we must have access to capital. It is as simple as that.

Unfortunately, our Indian reservations face economic and social challenges that place us at a distinct disadvantage. The lack of economic growth, poverty, and unemployment place us well behind the rest of the country. In addition, the lack of access to capital and other financial services makes it almost impossible for tribal leaders and individual entrepreneurs to have the necessary resources available to assist in growing our local economies.

**Specific Problems and Solutions**

I know we are here today to focus on solutions—how to create and restructure Federal programs so as to foster capital investment in Indian Country. For that reason, the Subcommittee must be made aware of the real obstacles to achieving this goal, and how to overcome those obstacles. The barriers to capital access in Indian Country cross an entire spectrum of issues: how tribal governments operate; the perception among non-Indians that the legal systems in Indian Country are unstable or unreliable; the lack of adequate infrastructure; and cultural misunderstandings on both sides of the issue.

- *Problem:* Some tribal courts may seem as though they are not sufficiently independent of the executive branch of their tribal government. Additionally, the absence of codified tribal commercial laws and regulations may cause investors to be hesitant to invest capital on Indian Lands.
- *Solution:* Provide tribes with adequate funding for court systems and proper staff training. This will allow tribes to develop the expertise to create a legal infrastructure that supports successful business development.
- *Problem:* Existing Federal programs that have been developed to foster capital investment in Indian Country have been ineffective and conflicting. They do not support the type of decisionmaking necessary for business to be completed in a timely manner.
- *Solution:* Create a task force, comprised of tribal and government officials, and banking experts, to evaluate the current laws and regulations and make recommendations to Congress for needed changes.
- *Problem:* Misunderstanding and mistrust of tribal sovereignty and sovereign immunity.

- *Solution:* Provide funding and develop curricula to educate potential investors as the business advantages that tribal immunity offers.
- *Problem:* Many bank lending rules and regulations are inflexible in dealing with local banking institutions and their ability to lend.
- *Solution:* Provide more opportunities for secondary market development for guarantee loans such as Bureau of Indian Affairs and Small Business Administration guarantee loan programs. The selling of these loans to secondary markets allows smaller local banks the ability to free up cash that is available to be loaned again. This will allow lenders to originate more loans without violating laws and regulations that limit the amount banks may lend to a particular borrower. This limit is a function of the bank size and further prohibits banks from having to many of the same types of loans in its portfolio.
- *Problem:* Many individual Indians lack the collateral and/or the personal credit histories needed to secure loans.
- *Solution:* Develop or expand tribal or inter-tribal Community Development Financial Institutions (CDFI), community banks, and other lending and investment institutions. Create tribal or inter-tribal pools for loan guarantees, equity investments/venture capital, offer microloans and lending for housing and small business. Provide technical assistance opportunities for Indians to address their credit histories.
- *Problem:* Most reservations have small economic bases and so, many of their communities' basic financial needs cannot be met.
- *Solution:* Create incubators for Indian businesses, create a board of Indian business leaders to provide guidance for businesses looking to invest in Indian Country. Foster technical assistance between successful Indian businesses and new emerging businesses, tap into current investment opportunities through Congressionally sponsored roundtables, create a Federal/tribal investment board that provides guidance to potential investors about investing in Indian Country.
- *Problem:* There is a limited opportunity for Indian businesses to network with potential investors. Because most reservations are located in rural areas, their access to those with capital to invest is limited at best.
- *Solution:* The Federal Government should sponsor an equity fund to help encourage private investment in tribal projects.
- *Problem:* Lack of financial institutions on or near Indian reservations.
- *Solution:* Examine current banking laws dealing with historically underserved rural communities to see if changes are warranted to allow exceptions for reservations.
- *Problem:* Many homes on reservations lack the necessary physical and telecommunications infrastructure needed to properly encourage and support business development.
- *Solution:* Expand current programs that provide funding for infrastructure development in rural communities and create financial incentives for private investment in Indian communities.
- *Problem:* Most Native Americans lack experience with the banking industry in general. Therefore, they find the process of obtaining loans cumbersome and uncomfortable.
- *Solution:* Provide funding and incentives so the banking industry will work with tribes to increase the financial literacy for Native Americans.
- *Problem:* Lack of technical assistance and training resources for financial literacy, financial management, and entrepreneurship.
- *Solution:* Develop entrepreneurship programs for Native Americans that include information on small business development and web-based training. These programs can be implemented through work with tribal colleges and universities.
- *Problem:* Lenders and investors do not understand tribal governments or their legal systems.
- *Solution:* Conduct lender and investor education seminars that could include handbooks on tribal government structure, sovereign immunity, tribal history, and contact information to various officials.
- *Problem:* Historical misunderstanding and mistrust between tribes and lenders.
- *Solution:* More interaction between people and development of educational materials and forums.
- *Problem:* Discrimination and stereotyping of Native Americans.
- *Solution:* More interaction between people and development of educational materials and forums.

Chairman Johnson, clearly I have identified more challenges than we can solve today. But just the convening of this hearing has encouraged me and other elders and tribal leaders. We want to work with you and the Congress to encourage the development of capital markets on the reservations. We have tried to address some of these problems through the creation of the "Wakpa Sica Reconciliation Place," (Public Law 106–568). We thank you for your support for this project. As you know, Wakpa Sica has several goals, including the establishment of a more reliable court system in an effort to attract private capital.

Because of the trust relationship with the United States, I believe this effort must be a creative partnership between tribes, private business and the U.S. Government to work to find solutions and have proper legislation and regulations that provide the incentives necessary, and the guarantees necessary, to direct private capital to the Indian Country.

Out treaties are still sacred documents to Indian people. Tribal sovereignty is still an important legal principle to Indian people. But I am convinced that if we are to succeed in Indian Country we must have a strong private sector. Anything this important Committee can do to help would be greatly appreciated. Thank you. I would be pleased to answer any questions.

## PREPARED STATEMENT OF ELSIE MEEKS

EXECUTIVE DIRECTOR, FIRST NATIONS OWEESTA CORPORATION

JUNE 6, 2002

### Organizational Background

First Nations Oweesta Corporation (FNOC) was incorporated in December 1999 as a subsidiary corporation of First Nations Development Institute, a national organization that has been focused on assisting tribes and other native communities to access, control, create, leverage, and retain financial assets. FNOC was launched to enhance native communities access to financial capital through the development and/or expansion of native community-based community development financial institutions. FNOC provides to qualified native community development financial institutions loan/investment capital, training, and technical assistance.

FNOC, in partnership with National Community Capital Association has developed a training curriculum, *Developing Strong CDFI's in Indian Country,* to be delivered to tribes and native communities to assist them in organizing and implementing community development financial institutions. It has also, along with Fannie Mae Foundation developed a consumer financial literacy curriculum, *Building Native Communities, Financial Skills for Families.* In addition to developing the curriculum, FNOC has conducted numerous "train the trainers" workshops that enable people employed at the local level to conduct the training in their own communities. As part of its effort to improve access to capital in Indian Country, First Nations believes that the foundation of self-reliant, economically healthy communities—now and for future generations—are households empowered with financial tools and skills. Lack of information about personal finance and credit is a serious economic barrier for many native communities. As the facilitator of the Native American Financial Literacy Coalition, First Nations is working to overcome that barrier by supporting efforts to improve financial literacy education and awareness in Indian Country.

### Role of Native Community Development Financial Institutions (NCDFI's)

Lack of access to capital and the lack of business and management experience are among the chief barriers to economic and business development in Indian Country. While there are needs for macrofinancing structures for infrastructure development and large tribal enterprises, private, regional, and local financial institution are key for Indian Country development.

- Tribes need institutions at the local and regional level to help form capital and provide accessible technical assistance. Tribes and communities need to develop their own institutions to begin to build their own wealth and management capability.
- NCDFI's can provide capital for financing businesses, land acquisition, home-ownership and development, and community development projects. All help to create a healthy economy.
- NCDFI's leverage grants, bank loans, and other sources of capital into the community.

- NCDFI's can build capacity of tribal members to improve access to credit, buy homes and develop and manage businesses.

My experience in the community development financial institution field began in 1985 with the development of The Lakota Fund which was started as a project of First Nations Development Institute. The Lakota Fund is a private, nonprofit NCDFI on the Pine Ridge Indian Reservation in South Dakota. Pine Ridge is one of the poorest reservations in the Nation. Many are aware of the problems that have persisted at Pine Ridge. Despite its environment The Lakota Fund is widely regarded as one of the most successful private sector initiatives in Indian Country. It was also the first private, nonprofit microenterprise loan fund in Indian Country.

When The Lakota Fund began lending:

- 85 percent of its borrowers had never had a checking or saving account;
- 75 percent had never had a loan;
- 95 percent had no business experience.

The Lakota Fund now:

- lends in amounts up to $200,000;
- has a loan capital fund of $3.5 million from foundations, corporations, private investors, and governmental sources;
- provides training and technical assistance;
- they have loss rates of less than 10 percent;
- has been instrumental in starting the Pine Ridge Area Chamber of Commerce;
- has developed an IDA program;
- has developed a 30 unit low-income tax credit program;
- operates a Tribal Business Information Center.

How was The Lakota Fund able to do business lending in this environment when banks and other lenders could not? Simply, The Lakota Fund as well as other CDFI's are able to take on more risk than banks and other regulated financial institutions. CDFI's missions allows them to develop capacity among their borrowers. Their mission is to develop the market in underserved and economically distressed communities. Another important reason why most lenders have trouble lending in Indian Country is the security and collateral issues, especially for home mortgages. NCDFI's can safely make concessions which allow them to provide flexible financing for homebuyers.

Many valuable lessons were learned from The Lakota Fund's experience. Lessons that have helped develop strategies for start-up NCDFI's such as Four Bands Community Fund on the Cheyenne River Reservation in South Dakota and others.

**Lessons Learned**

- Keep politics out of lending decisions.
- Develop and maintain good loan tracking system.
- Commitment to making borrowers accountable.
- Require investment from the borrower.
- Be a model organization.
  - Responsible, disciplined, ethical staff/board.
  - Develop good policies/adhere to policies.
  - Develop good operating systems.
  - Acquire annual audits.

Other examples of the critical need for NCDFI's are the Navajo Partnership for Housing, Inc. (NPH) and the Oglala Sioux Partnership for Housing (OSTPH). These nonprofit homeownership organizations, operate on the Navajo Nation and the Pine Ridge Indian Reservation, provide homebuyer education and assistance working with lenders to first-time homebuyers. Almost out of desperation, both organizations created small loans funds to fill the gap in lending market for interim construction financing.

OSTPH has also, on several occasions, provided first mortgages to homebuyers. In all cases, OSTPH had worked with USDA/Rural Development to obtain a 502 loan for the homebuyer but because of fractionated land issues the loan approval was delayed beyond 2 years. OSTPH was left with no other options, but to provide a first mortgage to the homebuyers. When and if the land issues are resolved, OSTPH hopes to "sell" the loans to a conventional lender.

Although no lender would offer this type of loan product due to the perceived risks of construction lending on the reservations, NPH and OSTPH were perfectly situated to make these loans as local intermediaries familiar with the market. Both organizations have plans to expand their loan fund to meet other types of financing needs such as soft second mortgages and, eventually, first mortgages.

**Role of Banks in Community Development**

Banks can be a partner in community development; they can offer valuable lending experience and can provide funding and investments. But, because banks and credit unions are regulated financial institutions, they generally cannot be lenders to the markets that are served by NCDFI's. They cannot play the role as technical assistance providers nor can they risk lending to primarily start-up businesses or first time borrowers.

**Role of the Department of Treasury's CDFI Fund**

Despite The Lakota Funds success, until recently, few native communities had successfully developed and implemented NCDFI's. This was due, in part, to the tremendous effort and funding needed for start-up. Several changes in the environment has precipitated interest in NCDFI development: (1) The CDFI Fund has been instrumental as a catalyst for native communities to begin the development and implementation of NCDFI's; (2) the knowledge of the CDFI field has grown substantially and, therefore, technical assistance for start-ups has improved. Some of the NCDFI's that have recently started are:

1. Four Bands Community Fund (Cheyenne River Sioux Tribe, South Dakota)
2. Lac Courte O'Reilles Credit Union (Wisconsin)
3. Four Direction Development Corporation (multitribe—Maine)
4. Affiliated Tribes of the Northwest Indians Revolving Loan Fund (Wasington)
5. Hochunk Community Development Corporation (Winnebago—Nebraska)
6. Valley Credit Association (Duck Valley—Nevada)
7. Hopi Credit Association (Arizona)
8. OST Partnership for Housing (Pine Ridge, South Dakota)
9. Navajo Partnership for Housing (Navajo Nation)

The CDFI Fund's NACTA Program (Native American Component for Technical Assistance) received an incredible 47 applications in the first round. This funding allows tribes and native communities funding to start NCDFI's. Tribes and native communities must develop a 2-year proposal that articulates their plan from organizing a NCDFI to implementation.

The importance of the CDFI Fund in assisting native community development financial institutions cannot be overstated. There has been or is no other single agency that has created a focus for building community development financial institutions in Indian Country. Because of my experience working in economic development over the past 20 years, I know of no other effort than private or regional community development financial institutions that allow native people to develop management and decisionmaking skills while building self-sufficiency. The CDFI Fund has been effective in facilitating growth of NCDFI's. It is important that Congress provide funding for the CDFI Fund in an amount of at least $125 million and that at least $5 million be set aside for native communities to develop CDFI's.

# Oglala Sioux Tribe

Box H
Pine Ridge, South Dakota 57770
Phone: (605) 867-6074 / 6075
Fax: (605) 867-6076

*Office of the President*
JOHN YELLOW BIRD STEELE

May 31, 2002

Senator Tim Johnson
324 Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Johnson:

I am writing on behalf of the Oglala Sioux Tribe to respond to your May 16, 2002, letter asking for input on the issue of promoting capital investment in Indian Country. We hope that the following provides information to help break down the barriers to investing and conducting business on reservations.

OGLALA SIOUX TRIBE BACKGROUND

Tribal History

The Oglala Lakota, part of the Great Teton Lakota Nation, generally recognizes their land base in accordance with the Fort Laramie Treaty of 1851, with boundaries stretching from the Big Horn Mountains in the west and east to eastern Wisconsin, as well as north from Canada to the Republican River in Kansas to the south. However, in a treaty with the U.S. government in 1868, the Great Sioux Nation's land was reduced to include all of South Dakota west of the Missouri River.

In 1874, General George A. Custer and his 7th Cavalry violated the treaty by entering the Black Hills, sacred to and the physical center of the Great Teton Lakota Nation's land, and found gold. This violation led to another reduction of land allotted to the Lakota/Dakota peoples. Custer and his cavalry added salt to the Lakota wounds by entering the Black Hills. The Lakota people consider the Black Hills as sacred lands, the Hills are believed to be the place in which human footsteps were first heard. The treaty violations and resulting gold rush led to some of the most devastating conflicts ever witnessed between the U.S. government and American Indian people. By 1889, the Great Sioux Reservation was again reduced, this time to five separate reservations, one of which is the Pine Ridge Reservation.

The Lakota Today

The Pine Ridge Reservation today is home to the Oglala Lakota people. Total tribal membership is almost 18,000, while the total American Indian population residing on the reservation totals over 20,000, one-third of which report Lakota as their first language.

The Reservation is currently divided into nine districts encompassing several communities. The largest of these communities is the Pine Ridge Village, where tribal headquarters is located. The primary employers are the Tribe and the U.S. Government and the primary economic occupation is cattle ranching and farming.

## I. INTRODUCTION

In the past the winds of the economic, political and cultural change have blown as fiercely over the American Indian as over any people in history. These winds have brought military violence, epidemics of disease, seizures of land and property, viscous racism, and economic deprivation. Yet, today we still persevere and grow bound together by ties of family, language, history and culture.

What can be done to improve the economic conditions on the Pine Ridge Reservation? Many times economic development ideas for the Pine Ridge Reservation has come from outside the boundaries of the Reservation These ideas for the most part come to the Tribe with rose colored glasses and the individuals presenting the ideas have their own agenda. Unfortunately, more often than not, these ideas are doomed for failure because they are not completely thought through or because they do not fully take into account all of the potential obstacles of doing business on the reservation. The ideas , even some of those blessed by the BIA, do not always accompany full discussions with the Tribe about whether to and how to implement the idea.

## II. WHAT CAN TRIBES DO?

Tribes need to have complete control over the running of tribal affairs, including primary control over economic decisions. They need to reassume control over economic decisions and not allow the federal government to be heavily involved in the running of day-to-day tribal affairs. While the BIA is the primary agency of the federal government to carry out the trust responsibility to tribes, it is on a painfully limited budget. It can only do so much. It must work with in partnership with the tribes - - with the tribes taking on most of the responsibility. Tribes have stronger incentives to make appropriate development decisions. For it is their tribal members that have to live day-to-day with the result of such decisions.

Tribes are sovereign - - and with sovereignty comes accountability. The sovereign status of tribes offers distinct legal and economic market opportunities, from reduced tax and regulatory burdens for industry to commercial use of wildlife. Sovereignty is one of the primary development resources tribes now have, and the reinforcement of tribal sovereignty under self-determination should be the central thrust of Indian policy in the arena of economic development.

A sovereign tribe must also have the ability to have capable institutions of self-governance. Institutions of self-governance are essential to sovereignty and to successful economic development. Formal institutions include constitutions, charters, laws and formal rules that govern people. Governing institutions need to perform three basic tasks: (1) mobilize and sustain the tribal community support for institutions and development strategies; (2) efficiently develop and carry out strategic choices; and (3) provide a political environment in which investors, large and small, and all tribal members and nonmembers feel secure to conduct business.

The Tribe's decisions must have the support of its constituent communities. Without community support, stagnation and instability can result. The Oglala Sioux Tribe has taken important steps toward avoiding this problem and establishing an environment in which investors would feel confident conducting business on our lands. In December 2001, the Tribe developed and is implementing a 12-point plan to set forth a "new way of doing tribal business." The plan was developed with an eye-toward creating greater program stability, facilitating economic development opportunities and making a positive impact on reservation statistical data in economic, social programs, employability and the general raising of the standard of living on the reservation.

The Tribe's plan includes, among other things, (1) considering the development of a business council separate from the tribal council that will facilitate economic and business development in all tribal business ventures; (2) researching and prioritizing resources to support a financial institution locally within the boundaries of the Lakota Nation to assist with all financial business of the reservation; (3) requiring compliance by the Tribe's program directors to processes that ensure accountability, efficient governance, communication throughout the Tribe and adheres to periodic program evaluations and adjustments for better functioning. We believe our nation-building plan will create a stable, potential-rich environment that will foster economic development by attracting investors and by encouraging our tribal member entrepreneurs to take a chance on opening businesses on the reservation. They can be confident that the Tribe will support their efforts.

IMPLEMENTATION

It is important to realize that the aforementioned plan, along with other avenues of overcoming obstacles to economic development in Indian Country, costs money. There are so many areas that need to be developed - - areas in which the Tribe is making substantial progress, but more work needs to be done. Some of these steps include: (1) codifying our laws and regulations and publishing our tribal court decisions; (2) developing effective and efficient financial management, personnel, property procurement and record retention systems; (3) ensuring proper training by program directors and staff in such systems; and (4) maintaining an environment that is safe for and attractive to investors and remains consistently so from one Administration to the next. When tribes approach improvement of institutions on the reservation for better economic opportunities, economic conditions should improve. Constitutions, courts and capable bureaucracies, management boards, and program operation can lead to successful development. Ensuring the efficient functioning of these, however, takes both time and money.

The Tribe is currently seeking monies for technical assistance from the BIA to assist in its development of financial management, personnel, property procurement and records retention systems. The monies, which will be used for financial consultants and subsequent training of our members in the newly developed systems, are necessary for us to move forward. Without them, we are stuck in a cycle of trying to better our economic situation but failing to do so because we do not have the initial capital to set us on our way to progress and success.

OTHER NECESSARY STEPS TO SPUR ECOMONIC GROWTH

There are other steps that must be taken to improve the economic condition of the Pine Ridge Reservation - - external actions in addition to the necessary internal actions set forth above. Mechanisms for providing small business capital must be developed. The small business development office run out of the University of South Dakota should be studied to glean wisdom into what works to foster economic development on reservations and what does not. Tribes themselves can develop plans to entice investors to supply jobs but further external incentives must go hand-in-hand with the plans, incentives such as offering greater tax breaks to investors to conduct business on Indian lands and employ Indian people. We have a ready and willing workforce, we simply need the job opportunities.

The Oglala Sioux Tribe has known for some time that we need to develop a financial institution on the Pine Ridge. We know that our funds turn over only one and one half times on the Reservation before going into non-Indian hands. We put millions of federal dollars into the bank in Gordon, Nebraska, allowing non-tribal and non-Indian entities the opportunity to invest and make money from it rather than our own people. Further, a store in the village of Pine Ridge charges to cash tribes payroll checks. There obviously is a need for a financial institution on the Pine Ridge Reservation, a place where people can manage their money at a local institution, keeping their financial business close to home rather than being forced to leave the reservation for almost all money transactions. A financial institution would create jobs, provide professional training and educate people how to manage money.

We certainly encourage our members to learn how to manage money well and to adhere to a financial management plan. Unfortunately, it is impossible to do this if the members have no money to save. Unemployment on the Pine Ridge Reservation is approximately seventy – percent (70%). The poverty level alternates with the Rosebud Reservation as the highest in the nation. Before encouraging personal savings plans, we must first provide jobs for our people. This is a priority matter. We thank you for the good work Congress has done to try to address this problem. Building up our nation's infrastructure is necessary. This will attract business and employ people in the process. The Mni Wiconi Project, our water project that will deliver safe clean water to our people, is a prime example of a project that has provided many benefits while be completed. We have several members (and non-members) who work for the project; they are full-time employees who now can earn paychecks and provide for their families. They are also receiving invaluable training in construction, administration, heavy equipment operation, water treatment plant operations and more. The Tribe certainly has other needs (housing for example) where we can develop plans to address the housing shortage and also train and employ people in the process. Like with the Mni Wiconi Project, though, we might need your help in developing and implementing these plans.

CONCLUSION

In closing, we would like to express our support for your efforts as well as those of Senators Johnson, Daschle, Cantwell, Wellstone, Baucus, Inouye, Stabenow and Clinton who have cosponsored S. 2335, the Native American Small Business Development Act. This legislation seeks to establish a statutory office within the Small Business Administration to focus on the concerns specific to Indian populations. An active advocate for Indian Country within the SBA is necessary. This bill should assist us with removing the obstacles to conducting business on reservations and spur economic development for our people.

Thank you for your efforts. We look forward to working with Congress toward building a brighter economic future for our tribal members.

Very truly yours,

OGLALA SIOUX TRIBE

John Yellow Bird Steele
President

# COALITION FOR INDIAN HOUSING & DEVELOPMENT

## Home Ownership, The American Dream

**A**

**REPORT**

**FOR**

**SENATOR TIMOTHY JOHNSON**
**SOUTH DAKOTA**

**COALITION FOR INDIAN HOUSING AND DEVELOPMENT**
**A Native American View of the Housing Dilemma**
**March 31, 2002**

**SUMMARY DOCUMENT**

Senator Johnson, the Coalition for Indian Housing and Development (CIHD) would like to thank you for your genuine concern for housing and economic development issues in Indian Country. We appreciate the opportunity to work with you and your staff to address deficiencies that adversely affect access to capital in Indian Country. The CIHD has identified several key issues that will increase access to capital for tribes and individual Native Americans.

- Equity Investment Capital and Regulatory support for the creation of a Native American Financial Intermediary that supports Indian Housing financing;
- Financial and technical support for a Credit Union based education and financial literacy program in Indian Country;
- Native American set-asides under the New Markets, Low Income Housing, and Homeownership Tax Credit initiatives;
- Legislation that would require Fannie Mae and Freddie Mac to have specific target goals for Native American Loans on Trust/Tribal Lands;
- Increased appropriation for USDA Rural Development 502 Direct Loan Program, and Rural Rental Housing 515 Program;
- The following Amendments:
    1. Housing Act of 1949
    2. Paragraph (3) of Section 149(b) of the IRS Code

Although housing is the primary focus of CIHD, we believe it is important to recognize the role that residential development plays in the local economy. The current backlog of housing in Indian Country is approximately 130,000 dwelling. This figure represents existing demand for single-family and rental units. If we place a theoretical cost of $80,000.00 on each dwelling, the aggregate demand equals roughly $10,400,000.00. When the infrastructure requirements to support this magnitude of development are added to the housing cost, the economic impact approaches $15-16,000,000,000.00.

NAHASDA has assisted tribes to produce new homes units in record numbers. Unfortunately, at the current funding levels, the prospects of meeting existing demand remains doubtful. Therefore, tribes must look to leverage based programs and products to make-up the difference between available funds and their development needs. This task becomes far more complex when we begin negotiating for housing on Trust Land. The lending community is spending a great deal of time and money in their attempts to facilitate mortgage financing on Tribal Lands. However, there is still an information gap between the two parties. The role of the BIA also makes the transaction somewhat cumbersome.

Mortgage financing is still a relatively new phenomenon on Trust Land, consequently there is no establish market for real estate transactions.

The CIHD is advocating the creation of a Native American Financial Intermediary to educate tribes, individual Native peoples, and arrange the financing of homes. The Coalition is also recommending a Credit Union based initiative that supports financial literacy and promotes Credit Unions in tribal communities. The Department of Treasury CDFI study supports the need for education, greater access to capital and indicates that equity investment is going to be necessary to create a real estate market.

**1. Native American Financial Intermediary**

The Native American Mortgage Corporation (NAMC) is a self-directed mortgage lending initiative. This financial intermediary offers a viable mechanism to finance housing on Trust and Tribal Lands that eliminates barriers and addresses a major social and economic shortcoming in Indian Country. This concept offers a unique structure and the psychology behind the program differs from other Native American loan programs.

**2. Credit Union Proposal**

Financial literacy and access to banking services is a well-documented problem in tribal communities throughout the country. The National American Indian Housing Council, CUNA Mutual, and the Enterprise Foundation, have received funding from the Ford Foundation to establish a training program. The group will be holding in six regional meetings in close proximity to tribal communities. Please see attachment

**3. Tax Credit Set-asides**

**4. Legislation to require Fannie Mae and Freddie Mac to Have Specific Targets for Native American Loans on Trust Lands**

**5. Increased appropriation for USDA Rural Development 502 Direct Loan Program, and Rural Rental Housing 515 Program**

The Rural Development 502 Direct Loan and the Rural Rental Housing 515 Program are subsidies entry level housing programs. These programs are primary tools for Indian Country, which does not have a high number of vouchers or other rental subsidy programs.

**6. Amendments to Federal Statutes and Policies**

A couple of the proposed changes require amendments to existing laws to incorporate exceptions for Native Americans as it relates to Tax Exempt Bonding Authority and Fair Housing concerns. Fair Housing issues have become barriers because some Civil Rights Attorneys within the Office of General Counsel have taken the stance that Tribes must comply with Title VI of the Civil Rights Act of 1964 and not Title II of the Indian Civil Rights Act of 1968 unless the particular funding statute explicitly exempts tribes from compliance. Most of the laws that govern federal programs in question were written before mortgage-financed housing and economic development on Trust/Tribal Lands were a consideration. The issues CIHD brings forward are not preferential in nature; tribes are seeking protection and equal access under the law. When federal laws, regulations, and policies are interpreted to exclude or single out any segment of the population from participation it results in discrimination.

**To Amend the "Housing Act of 1949"**

ξ501 (k) Federally recognized Indian tribes who exercise powers of self government ( or their instrumentalities) must provide assurances that they will comply with the Indian Civil Rights Act (Title 11 of the Civil Rights Act of 1968; 25 U.S.C. 1301 -- 1303) when receiving Federal financial assistance for housing that is located on land over which the Indian tribe has sovereignty/civil jurisdiction. In all other instances, recipients and subrecipients of Federal financial assistance that is provided under this title must provide assurances that they will comply with Title V1 of the Civil Rights Act of 1964 (42 U.S.C. 2000d). For purposes of this paragraph, the term "Federal financial assistance" means federal funding that is given to a non-federal entity which, in turn, provides financial assistance to the ultimate beneficiary.

**Amendment to Section 149(b) of the IRS Code**

"Paragraph (3) of Section 149 (b) of the IRS Code is amended by redesign ting subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph: (D) EXCEPTION FOR BONDS ISSUED BY INDIAN TRIBAL GOVERNMENTS.—Paragraph (1) shall not apply to any bond issues by an Indian tribal government ( or subdivision thereof)..."

**Attachment I**

2/21/2002

# NATIVE AMERICAN HOUSING FINANCE

**For**

# NATIVE AMERICAN BANCORPORATION

**February 26, 2002**

Created By:
**Thomas C. Wright**
**Wright & Associates**
PO Box 385
Hessel, Michigan 49745
Twright@cedarville.net

The challenge facing the Native American Bancorporation (NAB) in the mortgage arena is to generate financial solutions that eliminate barriers and address a major social and economic shortcoming in Indian Country. To meet this objective, NAB must create mechanisms to deliver products that are available through other financial institutions (i.e., the services exist in the market) in a manner that is sensitive to tribal/cultural concerns and without compromising profitable and/or sound business practices.

NAB is uniquely positioned to facilitate a transitional period that can be revolutionary as compared to the evolutionary approach being pursued by most providers in the market today. As a consortium of Indian tribal investors, it exemplifies what tribes can accomplish when they work together. In simple terms, the problems in housing are threefold:

1. Current funding levels only scratch the surface compared to the demands for housing creating the need to ration housing resources through a political process;
2. The providers of the funding dictate both the nature and occupants of the housing units by imposing income restrictions; and
3. Indian people that have always lived within the tribal community are generally inexperienced with the benefits of homeownership.

HUD Block Grant funding is the largest source of housing capital on Trust Land today. However, reliance on federal funding to house tribal members is often counter productive to a community and does not include leveraging. The income restriction imposed by federal assistance more often than not fails to recognize the need to reward families for improving their financial situation. Homeownership and the ability to build equity in one's home is an important component in the development of strong tribal communities.

The task is to introduce financial products/services in communities where cash economies are the norm. The challenge is to create a strong support system that is community based to educate and counsel families through the homeownership process and to access new pools of capital to finance the construction and mortgaging of new homes. Therefore, the success of this endeavor hinges on NAB's ability to attract investment and commitments from tribal communities seeking increased access to mortgage capital for the benefit of their people.

**Lending Psychology**

What makes this concept different from existing mortgage programs? Voice! Under this proposal, NAB is being asked to sponsor a real estate financing vehicle (Native American Mortgage Corporation ("NAMC") that supports community building on Tribal Lands and that provides the participating tribes a voice in the development of products/programs and then rewards their successful implementation. NAMC is to become the financial intermediary that provides the participating tribes direct access to the capital markets. The participating tribes will deliver individual loans to NAMC. These loans will be placed in geographically diverse pools and sold in the secondary market.

As a tribally owned and run consortia, NAMC will be guided by the experience and wisdom of its participating members and possess the ability to craft flexible programs in consideration of the unique circumstances of individual tribal nations:

- The Program and Policy Committees will develop the underwriting guidelines and ownership responsibilities of the investing tribes.

- The composition of all NAMC committees will be structured to protect the interest and sovereign rights of the participating tribes.

NAMC must balance the cultural and sovereignty concerns with the risk tolerance factors of the secondary market. Although underwriting guidelines may be more liberal in some areas to allow for cultural differences, it is understood that the reserve requirements of NAMC will be a byproduct of the amount of risk associated with loans delivered to the pool.

All mortgage loans will carry a "put feature" that permits the consortium to assign a loan back to the originating tribe (this feature is commonly known as a "recourse loan"). In the event NAMC exercises a "put", the tribe (defined as the tribal entity financially accountable to NAMC) will assume responsibility for their loan(s). Simply stated, all mortgages delivered to NAMC that are not otherwise insured (HUD Section 184, RHS 502, VA, FHA 248) will have a "recourse" provision within the tribe's loan delivery agreement.

An important component in this equation is the psychology behind how housing is viewed. We want to alter the expectation of potential borrowers. Mortgage financing represents a long-term commitment to a payment structure. Real estate lending creates a vision of investment in something of value. The creation of real value is the fundamental basis for a paradigm changing transition that must occur for home ownership to become the norm on reservations. The transition will be complete when families grow up in homes owned by their parents and the children see this path as means to financial stability.

The shortage of safe, adequate, affordable housing and the financing thereof is a well documented problem throughout Indian Country. (See enclosed Executive Summary from CDFI study - complete text can be found on Department of Treasury CDFI Web Page) The lack of housing is often mentioned as a socioeconomic problem in tribal communities. However, the economic value associated with building more than 100,000 additional dwellings is typically overlooked. Conservatively speaking, the overall development price tag including the infrastructure to support the pent-up housing demand nationwide exceeds fifteen Billion dollars ($15,000,000,000.00)! By creating an environment wherein tribes have access to the needed capital, houses get built, jobs are created, and communities benefit from the residual affects of cash turning over in local businesses.

This real estate lending initiative will enjoy the benefit of a five-year demand based window of opportunity given the combination of factors; the current need (exceeds 100,000 dwellings), annual productivity (20-25,000 units per year) and modest (2-4 percent annually) increases in demand. Notwithstanding all the press releases and propaganda, real estate lending on Trust Land, while available on a number of reservations, is still the exception – not the rule. And at current funding levels, federal assistance can only meet a fraction of the overall need (in 1997 Fannie Mae estimated that percentage to be in the 3 percent range). NAHASDA funding generates between three and five thousand (3-5,000) homes annually. The balance of the housing starts comes from Low Income Housing Tax Credits, Rural

Development programs, HUD Section 184 Mortgages and other portfolio or conventional lending initiative. Leveraging options is the missing component in most tribal communities.

In the past, the idea of forming a new Government Sponsored Enterprise (GSE) has circulated through Indian Country. The underlying merits of forming a Native American GSE are consistent with the premise behind a Native American lending consortium. The fundamental difference in the two entities is government bureaucracy. A GSE by its very nature is subject to governmental oversight. GSE status subjects the corporation to HUD oversight and Congressional review – neither of which is desirable in a tribal setting. However, while NAMC will be unfettered by such political and bureaucratic baggage, as an affiliate of NAB it will be subject to market and regulatory discipline. NAB must comply with all the rules and regulations imposed on a bank holding company enterprise, which includes secondary market lending requirements.

**The Concept**

The solution lies within the creation of a grassroots-lending intermediary that forges a partnership between tribal nations and the lending community. The success of this endeavor will depend on the organization's ability to increase access to mortgage capital without exceeding the risk tolerance thresholds of the secondary market. It is important to distinguish this proposal from a portfolio- based lending program. A real estate lending business plan that does not look to the secondary markets for liquidity faces extraordinary risk. The interest rate and credit risks associated with a portfolio of lower credit score loans can place a burden on the organization to create capital reserve accounts to satisfy regulators. These capital requirements will ultimately diminish the entity's ability to fulfill its primary objective. This concept is about taking calculated risk. Risk models support all successful lending programs. Initially, the consortia will utilize payment risk projections based on loans with similar characteristics.

The proposed concept focuses on the creation of a third party risk shared intermediary/organization – Native American Mortgage Corporation ("NAMC") - that is funded by tribes, lending partners, mortgage insurance companies, and/or other related industry companies. NAMC will provide economic support in the form of payment guarantees for individual mortgage loans originated by the participating tribes. In theory, if the payment guarantee can enhance the investment quality by assuring timely payments of principal and interest to the investor, the desired objective of accessing the secondary markets for mortgages will be achieved. The principal behind this structure is modeled after the full faith and credit guarantee of Ginnie Mae securities. When the risk pool makes the required debt service payments, the individual loans never go into default in a manner that interrupts the cash flow to the ultimate investor.

What is unique about NAMC is the role to be played by the participating tribes. When a borrower misses a payment, the borrower will be delinquent in his/her obligation to the risk pool and will be required to work with his/her tribe to resolve the situation. All mortgage loans will have an assumption feature as well as a provision that enables tribes, tribal instrumentalities (including CDC's), and tribal members to be eligible borrowers. The tribe will be asked to increase its investment in the pool if the value of its reserve account (B stock holdings) falls below acceptable levels. The originating tribe will be responsible for initiating all foreclosure and evictions proceedings. The timely payment of all mortgage obligations will also be a provision of the leasehold agreement between the tribe and its member.

The cost of funds (mortgage rates) to the tribes will be a function of the performance of the loans originated using this program. Early notification/intervention and loss mitigation techniques will be used to identify and address potential problems before the loan goes into default. Importantly, the consortia must establish procedures to assure compliance with the mutually agreed upon policies, procedures, and quality control standards. This is an investment program in which each tribal investor has a responsibility to its fellow investors. Failure to perform could result in the liquidation of a tribe's shares and the inability to access the funding source. NAMC will attract financial support from non-tribal entities because of the benefits it offers to them. It will be providing a mechanism that provides lenders a vehicle to participate in Native American real estate financing under a controlled risk scenario that reaches out to a heretofore-underserved segment of the population. Even though they will be partners in this venture, they will continue to compete for business from the best customers on a retail level.

**Support Organizations and Non-Shareholder Partners**

Home ownership and credit counseling must play an integral role in the lending process. Tribes will be expected to provide this counseling as part of the lending function. The intent is to improve financial literacy within the universe of potential borrowers. NAB and/or NACDC will need to form strategic alliances with a certified credit-counseling provider and a debt-restructuring provider. Counseling services alone cannot solve the problem; the debt consolidation phase provides a means to convert past credit indiscretions to a positive payment history. (The cash collection and disbursement functions for the debt-restructuring program may be done electronically through the NABNA.)

The long-range business plan of the consortia should include building stronger relationships with all federal, state, and local housing finance/support organizations. This value added approach should enhance tribal access to additional sources of grant and low cost mortgage financing. IF NAMC is to become a true financial intermediary, grant writing and technical assistance with low income housing tax credit applications must become part of the services provided to members. These services would also be an additional revenue source for the consortia. The more comprehensive the intermediary becomes, the greater the likelihood that it receives federal dollars for the supportive activities it performs. The NACDC may become the conduit for many of these services, but we need to consider that some of the tribes will already have relationships in place or a CDC of their own to perform these functions.

**Secondary Market**

The secondary market for Native American loans on tribal lands represents approximately $150 Million in aggregate balance. Issues like tribal sovereignty, uniform documentation, tribal courts, cost-based appraisals, lack of liquidity, and non-traditional credit have presented problems to lenders. The HUD Section 184 mortgage program has not been well received by many tribes for a variety of reasons. However, given the dollars available, this product can be a viable tool and is recommended as a program to be offered through the consortia. Although the initial emphasis is on the development of a new conventional loan program, NAMC will seek lender approval from HUD, Rural Development, VA, and possibly Fannie Mae and Freddie Mac in order to maximize the potential sources of funding. We want to be able to negotiate for our shareholder tribes from a position of strength and not rely on a single source for all of our business.

When the Federal Home Loan Bank of Chicago unveiled the Mortgage Partnership Finance Program (MPF) three years ago, they introduced a completely new dynamic to real estate lending. The Federal Home Loan Banks (FHLBs) have a combined capitalization in the $870 Billion range. The FHLBs can purchase investment grade mortgages. The structure of the proposed financial intermediary is specifically designed to credit enhance marginal loans so they can become investment grade. The reserve requirement of the consortia will be structured to comply with the findings of a credit quality review from a recognized rating agency. Although the NAMC desires access to FHLBs secondary market capital, the goal is to make NAMC pools meet or exceed the minimum investment quality standards required by the GSE's as well.

**Summary**

This document is intended to outline a concept that has been discussed in other venues but which has not received the broad support necessary to bring it to a logical conclusion. We have reached a critical juncture. The time has come to stop discussing the barriers to mortgage lending in Indian Country and put the solution into practice. Collectively, tribes and lenders need to reach some definite conclusions and offer viable products that address the risk requirements of the secondary market while retaining enough flexibility to serve the unique characteristics of native applicants.

Tribal Sovereignty and recognition of the tribal court system as the proper venue to adjudicate conflicts must be cornerstones on which this proactive strategy is built. At the same time, tribal participants must recognize the importance of the Uniform Commercial Code (UCC) to the securitization process. However, some tribes may not have a tribal court system and/or have other legal barriers that prevent them from complying with UCC. NAMC can elect to permit tribes that fail to meet the entire membership criterion to participate by increasing their Class B stock holding requirement. This program is designed to be a mechanism to realize self-determination in lending. It is important to remember that the proposition does not recommend originating bad loans. Nothing can be gained from a portfolio of non-performing loans.

As an existing consortium of leading tribes committed to economic independence for tribal nations, Native American Bancorporation is poised to be the catalyst in the creation of this vehicle. It is strongly recommended that NAB commit the resources necessary to move this concept forward to implementation. The recommended first step is to solicit Federal Home Loan Bank System participation and financial support for a Native American Borrower Profile Research Project. (See Borrower Profile Study) This valuable tool will bring us closer to qualifying and quantifying risks associated with Native loan applications. Mortgage lending in Indian Country is still an emerging marketplace. The sooner an accurate risk assessment model becomes a reality, the faster mortgage lending expands beyond its current levels. The prevailing uncertainty perpetuates loss severity concerns and makes risk premiums justifiable to the market. (An analogy to this is the AMERIND experience where the "market" perceived the risk to be 200% more expensive than is the reality.) The Native American Borrower Profile increases the probability for success by measuring borrowers against empirical data rather than relying strictly on inconsistent subjective evaluations of individual loan characteristics.

This initiative relies on education prior to application and post closing support that makes self-sufficiency a reality. Martha McLeod, President of Bay Mills Community College (a tribal Community College in Brimley, Michigan) highlighted the benefits of culturally specific education in a recent interview with National Public Radio. She spoke to the disparity of the success rate of native student in higher education. Ten percent of Bay Mills students that went directly to four-year colleges from public high schools received four-year degrees. Ninety percent of Bay Mills students that attended Native American Community Colleges for two years prior to attending four-year institutions went on to receive degrees. Mrs. McLeod sited the one-on-one training in a culturally relevant environment as the factors that produced such impressive results. The same results can be achieved in the homeownership arena.

**Chapter I – The Concept**
**Risk Pool Program/Consortia**

**Organizational Structure**

__Native American Mortgage Corporation,__ a financial intermediary specifically created to credit enhance Native American mortgage instruments by providing a third party payment guarantee. The partnership corporation (consortia) will be comprised of tribes and investor partners. The consortia will be closely aligned with a non-profit homeownership/credit counseling agency that will conduct the financial literacy training and support the early intervention loss mitigation component of this initiative.

**Capitalization**

The proposed organization would receive initial funding by selling membership shares (Class A stock) to tribes seeking to access the real estate financing program. The goal is to attract fifty (50) tribal entities committed to investing fifty thousand dollars ($50,000.00) each in the endeavor. The consortia will solicit investments (the "institutional capital") from banks, mortgage lenders, GSE's, mortgage and title insurance companies, and other related partners of the tribes. The non-tribal investors will purchase a junior security that will be used to help fund the risk pool. The target for tribal and institutional capital is five million dollars ($5,000,000.00) in the aggregate.

In addition to the membership or Class A stock, participating tribes will be required to make additional investments in the risk pool by purchasing Class B stock in an amount to be based on a combination of the volume and credit quality of the loans it delivers to the consortia. It may be that this stock can be structured as a preferred that pays a nominal dividend.

**Membership Stock**

The membership stock represents the required investment to become eligible to access the NAMC real estate finance program. The membership stock is a moving target at this stage. The goal is to fund the start-up costs and establish a capital reserve account. The factors that make this number difficult to define at this point are the number of investor tribes that accept the initial invitation and the requirements placed on NAMC by the credit rating agency assessing the program.

**Class B Stock**

The institutional capital and class B tribal stock will be used to fund the risk pool. The institutional investment could be structured as a preferred stock. In the event "New Markets Tax

Credits" are available to the consortia, the credits would be assigned to this stock.

The Class B tribal stock will be a required investment made by members when real estate transactions are financed through the consortia. The amount of B stock required to be held by the member will be contingent on the capital requirements placed on NAB by the FHLBanks and/or other investors. The initial expectation is for a member to own a minimum percentage based on the aggregate outstanding loan balance originated by the tribe, most likely in the range of four to five percent at all times.

**Additional Capitalization**

Because the organization will serve tribes, it may be possible to seek funding from a federal source, such as Rural Housing Services or HUD. The consortia may wish to become a HUD Approved Credit Counseling Organization.

**Fees and Revenues**

The goal is to make the operating business profitable and self-sustaining within two years. NAMC will function as a for-profit enterprise. The mortgage rates passed through to the tribes will include a fee in the range of one and one quarter (1.25) percent on each loan, comparable to what takes place in the private mortgage market. This fee will cover administrative expenses and ultimately a profit for the benefit of the investors. The originating tribe will receive a fee equal to three quarters of one percent (.75) on each transaction, subject to adjustment as volume increases and once the consortium achieves profitability.

**Construction Financing**

The consortia will combine retained earnings and excess reserve dollars (unencumbered by Investor reserve requirements) with two year Community Investment Program ("CIP") Advances from the FHLBs to fund construction loans. The target annual rate of return on these dollars should be in the eight (8) percent range. The positive spread between CIP Advances and construction rates make it a natural investment vehicle for the consortium. The consortia will be able to fund the entire real estate transaction from the ground breaking through completion.

**Dividends**

The operating profits of the consortia will be split among the shareholders in the following manner. The consortia will retain forty (40) percent of all earnings to assure adequate liquidity within the organization. The remaining balance (sixty (60) percent) will be split among the various classes of stock and distributed quarterly. Class B tribal stockholders must meet their share retention requirements before any dividends can be paid to them. Any Class of shareholder can elect to reinvest their dividends in additional shares of the B class stock. (A tribe that anticipates accessing additional mortgage loans may wish to hold excess Class B stock for the short-term investment return versus the rate of interest paid on 1-90 day money market or sweep accounts.)

**Mortgage Instrument**

The point of the consortia is to increase access to mortgage financing. Therefore, it is likely and possible that some pools will include government-sponsored mortgage products in addition to the conventional product being developed. The consortia will package a geographically diverse pool of mortgage loans from its members. A blended pool containing loans from various geographic regions and a wide range of credit circumstances allows the NAMC to combine positive and negative risk characteristics to produce an investment with less risk.

The loan pool will receive a payment guarantee from the consortia to credit enhance the whole loan product. The structure of the loan pools should provide adequate security to receive favorable pricing. The objective is to narrow the spread between the consortia's cost of funds and the 30 day delivery price paid by Fannie Mae and Freddie Mac for similar product.

**Guarantee Fee**

The NAMC has the discretion to charge a guarantee fee (that is payable by the applicant) on each closed loan. For example, this fee could be one and one half (1.50) percent. The fee would be carried in a separate interest bearing account for the benefit of the borrower. The balance would be shown on the borrower's monthly mortgage statement; however, the borrower could not draw against these funds until twenty-four (24) timely payments (i.e., no late payments) have been received. This additional security would be used to reduce the B Class stock burden on the tribe. It also places some measure of responsibility on the borrower. HUD Section 184, VA, and Rural Housing Services' loans all carry a guarantee fee. What makes the NAMC fee unique is the ability to earn a refund by complying with the terms of the loan agreement.

**Credit Enhancement**

The success of this program hinges on the development of an accurate model to measure risk. The consortia will seek advice from the Federal Home Loan Banks on how to structure the different classes of stock to meet their minimum investment requirements. The credit enhancement will come in the form of a payment guarantee. The principle behind the payment guarantee is to eliminate the payment risk by providing a consistent revenue stream for investors while the real estate market on Trust and/or Tribal Lands is given time to develop.

In August of 2000, Moody's Investors Service assessed the risks associated with the HUD Section 184 mortgage program. The report cited recent "delinquency statistics which show that the Section 184-guaranteed loans are performing significantly better than FHA-insured mortgages." The most recent delinquency data (yearend 2001) confirms the findings of that study. (Section 184 delinquency experience was 6.4 percent versus FHA's 11.4 percent). Furthermore, "Moody's does not believe that Section 184 loans pose any significant additional credit risk to bond programs than do more traditional federally-guaranteed mortgage loans, particularly given the fact that all three of the federal Native American guarantee programs are closely modeled after existing federal mortgage insurance programs and that portfolio performance to date has been strong." Note that none of the Native American programs reviewed by Moody's required credit counseling or financial literacy training.

The success of credit counseling programs has led Freddie Mac and Fannie Mae to develop counseling based lease purchase programs wherein the borrower assumes the mortgage after completing a three (3) year debt-restructuring program. This type of program will be a primary tool for the consortia.

**Underwriting Guidelines**

One of the drawing cards of this proposed product is flexibility. The underwriting guidelines are to be developed by an advisory committee comprised of tribal representatives and institutional investors. The basic credit criteria will be a hybrid of government programs and conventional underwriting guidelines tempered by tribal realities. There will be more liberal treatment of medical bills/collections and increased emphasis on non-traditional credit sources such as rent and utilities payments when applicants have too few credit references. Tribes also can be the borrower or guarantee individual loans for the benefit of tribal members participating in the homeowner credit counseling program. All loans will have an assumption feature designed to facilitate lease/purchase transactions and increase liquidity in resale and foreclosures transactions. The FHLBs and credit rating agencies will be advising the committee on risk issues, and all loans must meet minimum underwriting criteria to be eligible for purchase by the pool.

The consortia will look to its non-tribal shareholders for additional support in this area. It is desirable to establish an underwriting agreement with an existing lender to simplify the process. The lender selected would receive a servicing agreement wherein all of the economic benefits associated with servicing the loan pools would remain with the servicing lender. The servicing agreement would be in lieu of financial consideration for underwriting the pools.

**Application Process**

The loan application process will begin with a face-to-face meeting between a tribal member (applicant) and the tribal representative trained to credit counsel and provide supportive service throughout the entire homeownership process. This is truly a grassroots initiative in that the participating tribes will be providing education, mortgage financing and moral support to members who desire and are committed to homeownership. The NAMC and NACDC will provide the training, counseling support services (tribal) and mortgage financing instruments.

The NAMC will work with industry experts to identify the best computer based program to meet the needs of the organization. We want to see all potential borrowers in a database at the earliest possible date. The idea is to track counseling activities and loan applications from start to finish. This data will help the consortia establish a record of accomplishment and identify positive and negative trends.

Once the client data is in the system, the information will be used to provide credit counseling or process a mortgage. We anticipate gaining access to or developing a lending model that will assess the risk associated with a given transaction and directs the processor to the proper mortgage program early in the process. We want to use as much technology in processing the loans as possible because the counseling service is very time consuming.

**Down Payment**

The recommendation is for a minimum down payment of five (5) percent; three (3) percent must come from the borrower's own funds. Tribal funds may include IHS dollars, down payment assistance programs, grants, and/or soft second mortgage forgivable loans. Tribes are encouraged to make applications for AHP funds and HOME funds for the benefit of their members. The consortia will consider a loan with zero money from the borrower if the loan-to-value does not exceed eighty-five (85) percent (may consider ninety (90) percent).

**Appraisals**

The most controversial subject among underwriting criteria involves the appraisal. HUD has taken the position that improvements to the site can constitute ten (10) percent of the appraised value when utilizing the cost approach. It is recommended that this criterion be adopted when there is no resale market from which to draw comparable sales data. It is important to note that the actual costs for infrastructure: water, sewer, and utilities in remote localities often exceeds ten (10) percent of the total development costs. Although the payment is guaranteed, the LTV remains a factor when calculating risks.

**Early Intervention/ Loss Mitigation**

The tribes themselves will determine and designate the level of exposure they are willing to accept. Post-closing counseling will be a standard practice for the consortia members. It must focus on face-to-face meetings with borrowers beginning within fifteen-(15) days of a missed payment. The tribal entity will notify the risk pool (NAMC) and exercise the payment option through the guarantee pool until such time that the borrower (or tribe) can arrange to bring the loan current. The unique characteristic of these loans will be the inclusion of a timely payment clause in the lease when tribal lands are involved. This provision gives the tribe (as opposed to NAMC) a mechanism to pursue borrowers for triggering a technical default of the lease terms without sending the loan into default. Once a loan becomes delinquent, the tribe has three options:

- The tribe can elect to follow the counseling track and make the payment from tribal funds rather than reaching into the guarantee pool. Under this scenario, the tribe would keep the payment history out of delinquency. This methodology negates the services of the risk pool, but it offers greater flexibility to the tribe. (It is important to note that risk pool payments will be deducted from any excess cash and/or shares from prior dividends or by liquidating shares of B stock. Participating tribes will be required to maintain a minimum balance of B stock and adjustments to the member accounts will be made quarterly.)

- The second option involves the tribe making every possible effort to resolve the situation through counseling. Nonetheless, NAMC will exercise a "put" provision, which enables NAMC to assign none performing loans back to the originating tribe after said loan(s) become ninety-(90) days past due. When the circumstances are beyond repair, the tribe will initiate eviction and foreclosure proceedings in Tribal Court. The tribe is responsible for bringing their Class B stock holdings current and assuming all losses associated with the transaction.

- The tribe can issue a blanket guarantee for all loans that become ninety-(90) days delinquent. The tribal housing entity would already be well aware of the situation and would purchase the mortgage from NAMC based on a recourse option negotiated in the tribal agreement with the consortia.

One possible scenario has all mortgage payments being made to a tribal entity and the servicing lender receiving a single lump sum payment and a ledger sheet from the tribe each month. The tribe would identify any payments coming from a source other than borrower funds on the ledger. This practice would emphasize the role of the counselor and give the process a local flavor, which is often lost when servicing is done two states away.

Primary mortgage insurance would appear to be redundant with this program. However, supplemental insurance could be a valuable tool to create a stop loss level if a tribe were to experience a catastrophic event that upsets the economic conditions in the area. The added cost of mortgage insurance would have to be included in the mortgage rate.

**NAMC Loan Delivery Agreement**

All participating tribes must execute a loan delivery agreement with NAMC that defines the terms for participation. The product underwriting guidelines, capital requirements, reimbursement schedules, recourse provisions, and responsibilities of the participating tribes will be spelled out in this agreement. NAMC is a financial intermediary created to provide liquidity for real estate transactions. The consortium cannot assume the financial risk for loans originated without a recourse clause.

**Risk Pool Payments**

The risk pool will make all payments to the investor regardless of whether the borrower has made their payment. The investor payments will be made on the fifteenth (15) day of each month.

**Tribal Sovereignty/ Tribal Court System**

A limited waiver of sovereign immunity would be required only in those instances where the tribe is guarantor of the mortgage. Tribal courts will be the appropriate jurisdiction where the tribe has enacted appropriate foreclosure and eviction laws.

**BIA & Leases**

It is recommended that each participating tribe utilize a master lease arrangement. A master lease creates a scenario wherein title insurance and local recording can become factors and the 24 CFR 162 states that subleases' under a master lease agreement do not require BIA to do anything beyond approving the encumbrance. The BIA must approve the master lease and duel recordation is truly desirable. All leases must include a technical default clause for non-payment i.e., a leaseholder that fails to make their mortgage payment is defaulting on their lease as well.

**Additional Services**

Another possible scenario involves the NABNA or consortium financing the permanent debt for a home ownership low income housing tax credit (LIHTC) transaction or originating 184 loans for a tax-exempt bond transaction. The consortia will also be negotiating with State Housing Finance Agencies (HFA) to gain access to State specific programs that could benefit our member tribes. The HFA relationship is important to the member tribes because these agencies control LIHTC dollars, HOME funds, and subsidized mortgage programs. The products and services provided will determine the success rate of the endeavor.

**Chapter II –Native American Borrower Profile**

**Project Overview**

The focus of this research project is to develop a comprehensive database comprised of Native American mortgage recipients. Once the data is compiled and interpreted, it will become the foundation for a Native American borrower profile. Though much attention has been given to projecting future market performance, little has been done to create an organic lending model that is applicable to Indian Country. The unique demographic and cultural characteristics of native borrowers make traditional lending models obsolete. To reach its potential Indian Country needs a means to qualify risks based upon actual results as opposed to unfounded assumptions.

**Assigned Goals**

The stated objective of this undertaking is to create a mortgage-lending model for native applicants. In addition to its statistical value, the research material will help cultivate successful lending initiatives by replacing assumptions and speculation with historical data. Essentially, this database will provide the means to measure and forecast some of the unknown variables often associated with the risks of lending on trust land. A large portion of the research will be identifying pools of existing loans. These loan pools could be an excellent source for investment in seasoned mortgage paper.

**Scope of Work**

The initial phase of this research project involves discovery and fact-finding. Through the NAIHC membership and other sources, data will be assembled to develop a borrower universe. The control group of mortgage applicants will include Native Americans with mortgage financing through their tribes, financial institutions, mortgage companies, and federal agencies. (Mutual Help homeownership units are not eligible for this study.) The pertinent information will be provided to S&P, Moody's or another recognized rating organization to determine the theoretical value of the borrower profile in the same way that similar information is used in the mortgage securities market.

**Benefits**

The borrower profile is the first step toward building a seamless lending environment for Native Americans. In current terms, native applicants are more likely to experience higher interest rates and/or increased points than an urban borrower because of the perceived risks. The data collected can be combined with the findings from the Rutgers study (DEFINE) to more accurately assess the risks and implement a mitigation strategy that matches the anticipated concerns. Tribes have demonstrated a willingness to absorb risks, but the success of mortgage lending hinges on cooperation and shared risk scenarios. This new dimension is a natural progression for sophisticated tribes.

**Summary**

The Native American lending market is in a major transition period. Fiscal year 2002 is the final year of the five-year NAHASDA funding cycle and tribes are working diligently to find solutions for the acute housing shortage on reservations throughout the country. As tribes sort through their alternatives, it is evident that conventional lending must play a prominent role so that the market can become a profitable source of business for lenders. Furthermore, if the risks can be quantified, Native American programs should enjoy broad-based acceptance from the lending community. A borrower profile will not change the market, only the way the market views mortgage lending in Indian Country.

**Chapter III – Home Ownership & Credit Counseling**

**Prologue**

Access to credit continues to be the number one barrier to advancement for under developed segments of the US population. The ever-widening gap between upper and lower income households confirms the premise that it is impossible to coexist with equality without entry into the capital markets. Education is the only effective means to enlighten less sophisticated sectors of the country. For those who are embracing electronic commerce, it is difficult to conceive how the mattress money societies exist today. Without grassroots initiatives that counsel families in the fundamental benefits and requirements of responsible credit use change will never occur.

When utilized as an educational tool, counseling becomes a mechanism to retrain and/or reprogram consumers. This valuable service can alter expectations, which make change possible.

Viewed in proper context, credit counseling is another way of saying *cash management services*. The idea is to establish relationships and gain the trust of the consumer while facilitating the activities of the counseling agency. By supporting independent non-profit credit agencies, banks can gain access to more informed customers in underdeveloped markets without taking unnecessary risks.

**Credit Counseling**

The goal is to establish a culturally specific, non-profit counseling agency that is available to serve every Indian nation. Since supporting a grassroots community based credit-counseling agency could have some CRA value for participating banks, it would make sense to form a credit service foundation like the National Foundation for Consumer Credit (NFCC).

The role of this agency will begin as the educator and mentor. The consumer will follow a prescribed program designed to pay all of their monthly obligations until they demonstrate the capacity to take responsibility for their own affairs. (All cash transactions for the counseling service could be cleared through NABNA.) Through the utilization of mechanisms such as direct deposit of paychecks, payroll deductions and automatic debits of payments, the counseling agency will be introducing banking and money management at the same time. Although some clients will select out after completing the program, many will find the debit payment option more attractive than the checkbook and money order phases of the banking cycle. This approach could make mattress money to home banking in one-step a reality.

The program will include a series of six (6) required classroom type exercises that involve interactive participation with a counselor. The graduation process will culminate with the agency helping the client obtain new credit. Since existing creditors may be asked to accept lower interest rates, fixed payments, and/or reduced balances, the consumer will make the organization a trustee of sorts, through which any new credit applications must pass. This safeguard measure should help reduce the likelihood that creditors submit to the terms of the counseling contract only to find themselves in a lower priority position in the repayment order after the agreement is executed. An acceptable provision for emergency relief needs to be part of the plan. The counseling agency plays a role similar to that of the trustee in a Chapter 13 Bankruptcy.

The education portion of the process will augment or reinforce the initiatives being sponsored by financial institutions everywhere. *Homeownership counseling is going to play a vital role in the training. Quality of life begins at home. The goal is to make homeownership a viable option for more Native Americans. If we can create hope where there is none, we will succeed.*

**Market Assessment**

The primary objective is to create a nurturing environment wherein underprivileged and underserved segments of the population have equal access to credit. Included among this group should be consumers with poor credit ratings that display a willingness to change. Although there are countless groups that merit this type of attention, the dynamics of the forces driving the Native American economy make a compelling argument for concentrating on tribes at this stage.

As a demographic group, Native Americans (which include Indians, natives of Alaska and Hawaii) are among the poorest per capita in the country. Forty (40) percent of the 2.4 million Native Americans surveyed for the 2000 census lives at or below the poverty level. Native Americans also represent one of the fastest moving segments of the population in terms of income growth. The arrival of Casino Gaming has generated thousands of jobs for Native Americans and contributes significantly (approximately $4-6 billion annually) to the economies of the surrounding areas. Improved school systems have produced a generation of better-qualified workers. High school graduation and college attendance among Native Americans is up. The 580 Indian Tribes represent the equivalent of a Third World Nation with a GDP in the Fifteen (15) billion dollar range prior to meaningful outside influence. Progress has begun, but the need for imported expertise remains high.

The passage of Welfare Reform and the Native American Housing Assistance and Self-Determination Act of 1996 (aka NAHASDA) changed the playing field for federal assistance. Under the terms of the new laws, tribes will take greater responsibility for their people. Financial resources from the federal government will be limited; therefore, the people of the Tribal Nations must become accustomed to the requirements of the capital markets. The transition from an entitlement-based mentality to a free market economy could prove to be challenging for many tribal members. Because of their relatively low level of exposure to credit, many Native Americans will need the type of help a credit-counseling agency offers.

The National American Indian Housing Council, National Congress of American Indians, HUD, and Fannie Mae project the immediate housing need in Indian Country to be approximately two hundred thousand (200,000) units. Assuming an average cost per home of eighty thousand ($80,000.00) dollars, this is almost a sixteen billion ($16,000,000,000.00) dollar market. Government Guarantee and/or supported housing initiatives can only meet three (3) percent of the current need. Where will the rest of the dollars come from? New mortgage developments...

While the tribes themselves are having greater economic success, the individual members are not enjoying the same level of acceptance. There is a challenge facing Native Americans that is no less threatening to their quality of life than the issue of sovereignty --- POOR CREDIT. Without personal financial independence, individual Native Americans cannot reach their potential. Furthermore, the inability to access credit leaves open the possibility for oppression and ultimately creates dependency.

**Program Rationale**

Credit is the driving force in the American economy. Again, it is difficult to coexist with equal power without equal access to capital. Wealth development becomes an object of chance rather than a calculated risk when leverage is taken out of the equation. The Equal Credit Opportunity Act eliminates discrimination in lending, but it does not respond to the lack of exposure or knowledge on the part of the consumer. It is often assumed that a person with a good income will have a sophisticated understanding of credit. In reality, it is knowledge of the benefits of judicious credit use, regardless of income, that most often leads to the creation of personal wealth.

Having already highlighted the shortcomings associated with limited credit knowledge it's time to offer some solutions. In this next section, you are going to find a series of bullet points. These issued are the genesis of the counseling process. This proposal does not include full explanations under each individual category listed below.

*I.* *Provide a Vehicle to Establish or Re-establish a Satisfactory Credit History Within a Reasonable Period of Time ( Two Years)*

*II.* *Encourage the Establishment of Banking Relationships Through Direct Deposit Programs.*

*III.* *Utilize Payroll Deduction and Automatic Payments to Assure Timely Payments to Creditors*

*IV.* *Utilize Advance Communication Technology to Create an Online Network Comprised of Counseling Agency, Tribal Housing Offices and Participating Banks*

*V.* *Participate with Creditors Under a Revenue Sharing Agreement and Become a Referral Source for Problem Borrowers*

*VI.* *Lobby to Redefine Credit Trade Line Reporting*
- *A. NR in credit counseling status (during repayment)*
- *B. Report counseling payments as a trade line on report*
- *C. Add Counselor notification warning to credit report*
- *D. Offer Credit Counseling as a possible solution in bankruptcy court*

*VII.* *Educate Consumers about Responsible Credit Use*

Most, if not all, of this program should be developed in partnership with Native American Community Development Corporation.

**Home Ownership Stage**

This marks the beginning of the loan origination phase of the relationship. Once clients of the counseling service reach the point where they are ready to apply for new credit, the counselor becomes an originator. By design, the counseling procedure will be based on a computer program that is compatible with most mortgage-processing programs. Throughout the entire counseling period, the counseling agency (Tribal Housing Entity) will be honing its mortgage processing skills. In the end, the only components missing are going to be the house and an appraisal. Many financial institutions already have non-profit organizations delivering loans. Under this scenario, the lender will have a deposit relationship with the borrower and a reliable source for low cost originations.

As the program evolves, it would make little difference if the originating entity were a Tribal Housing Authority, Municipal Housing Authority, or strictly a non-profit agency.

**Summary**

Although the dividends from the counseling service will be numerous, the real values of this program probably will not produce profits immediately. This formula generates depositors in markets where most banks have had very little measurable success in the past. To quantify the success rate for this program, several areas will need to be monitored: 1) counseling deposit accounts 2) new account retention 3) residual business development i.e., mortgages originated, new consumer loans 4) tribal relationships developed and 5) new business opportunities like joint ventures or venture capital investments. Initially, the tangible benefits associated with this project lie in the model for attracting low risk deposits that can be reproduced anywhere.

Keep in mind this is a credit-counseling agency that will be providing support and guidance for individual counseling organizations within the network. The participating banks would be the agency facilitator for the non-profit organization, and as such, could take on whatever role seemed appropriate at any given time. This structure positions the banks as the outside expert. It is all about positioning. Perception is reality. We are creating an environment wherein the solicitor becomes the solicited. Why? By offering a solution to a major problem without being forced into this decision by the regulators or a competitor, the bank becomes consumer friendly. When the lender performs the credit counseling/debt restructuring, there is a level of assumed or implied responsibility for the outcome of the process.

In the final analysis, Native American Bancorporation must decide if taking a leadership role in housing is important to its corporate mission and philosophy. If community based relationships are a component of the long-term strategic plan, it makes sense to go after underdeveloped markets and grow with them. Regardless, can you name another scenario that offers tremendous upside potential that does not already have a dominant player?

**Additional Background Information**

Home ownership must undergo a transformation of sorts to fulfill its potential on Trust Land. The current image of home ownership is a byproduct of the HUD Mutual Help Program. Families have been able to acquire their homes by paying a fraction of the actual cost to build the unit. For those who are not familiar with the Mutual Help Program here is a brief synopsis of how the program works.

> HUD awarded an Annual Contribution Contract (ACC) under the United States Housing Act of 1937, to a Tribal Housing Authority through a competitive grant process. The ACC defined the terms of the agreement between the Housing Authority and HUD. The projects were fully funded by the grant. The cost of the homes could not exceed a regional figure based on the typical cost of construction for a similar unit. The adjusted development cost was typically divided by 300 to create 25-year payment term. (Tribes were given the option of charging a nominal interest rate on the Mutual Help loan agreements.) An administration fee was added to the prior figure and a utility allowance (if applicable) was then subtracted to determine the actual monthly payment. For example:

| | |
|---|---|
| Total Development Cost | \$85,000/300 = \$283.33 |
| Administration Fee | 100.00 |
| Utility Allowance | 145.00 |
| Mortgage Payment | \$238.33 |

While the Mutual Help Program provided housing, it failed to create real estate value. The acquisition cost on these homes was below market because of the deep subsidy and therefore, fostered an entitlement mentality. Families failed to see their homes as a wealth-building tool. As a result, the expectations of many tribal members must be altered if the goal of additional funding and individual wealth creation are to be realized.

The original private-sector lending model for Indian Country was flawed. Lenders sent loan officers with a brief case, calculator, and a product overview. No one thought to research tribal culture, heritage, legal structure, or the economic conditions within the community. Tribal members were excited initially. Unfortunately, when the loan terms and conditions were explained most potential applicants shied away. The payment shock and/or credit requirements exceeded their expectations. Tribes were given little if any impute in the process and were asked to waive sovereign immunity as a prerequisite for accessing financing. And no one addressed the concept of land alienation.

Many of the myths or past sins of poor lending techniques exist today. We have a collective obligation to educate and create an environment wherein Native families can achieve financial success through home ownership.

**Attachment II**

**PROPOSAL FOR NATIVE AMERICAN TRAINING/NETWORKING PROGRAM FOR CREDIT UNION MANAGERS**

SPONSORING ORGANIZATIONS:
**CUNA MUTUAL**
**NATIONAL AMERICAN INDIAN HOUSING COUNCIL**
**ENTERPRISE FOUNDATION**

SEPTEMBER 26, 2000

## BACKGROUND

### Need for Financial Services and Housing

Native Americans are the most underserved population in terms of housing, credit and mortgages of any group. From 1991 to 1996 only 91 conventional mortgages were made on Indian trust land and not many since. On the Navajo reservation, a population of 250,000 in a geographic area the size of West Virginia, is served by 4 bank branches and one credit union.

### Poverty and Substandard Housing

In 1990 there were 2 million Native Americans (American Indian and Alaska Native) living in 591,000 households in the United Sates. The unemployment rate among Native Americans was 14% compared to 6.2% for the non-Indian population. At that time, 12.7% of the U.S. households were below the poverty level, but 24.4% of the Native American households lived in poverty.

The housing statistics are even worse. In Tribal, areas 28% live in households that are overcrowded or lack plumbing or kitchen facilities (compared to 5.4% for all U.S. households). If the condition of the housing is taken into consideration the statistic is 40% of all households in Tribal areas live in substandard homes compared to only 5.9% in the total U.S.

Government studies continue to report that housing shortages and deplorable living conditions are at crisis proportions in Native American communities throughout the United States. The lack of private capital to finance housing and economic development seriously exacerbates this problem.

Although private lenders have begun to make some loans for homes on Tribal lands, the actual effect has been negligible. The primary obstacles to expanding the amount of private financing are:

- **The small number of potential homebuyers in any given area**
- **The lower income levels and credit histories/lack of credit history of the borrowers make lending difficult and expensive**
- **The complexity of affordable housing programs**
- **The unique legal issues of lending on tribal lands.**

## NEED FOR EXPANDED SERVICES/TRAINING

The need for expanded credit services, including mortgages for Native Americans living on reservations has come to the attention of the Credit Union National Foundation in discussions with the National American Indian Housing Council. Expansion of services by existing credit unions in 8 states is being proposed, but with a specific local training effort linked to meetings with local Native businessmen and Native housing leaders. **To provide the training, Enterprise Foundation has agreed to work with CUNA Foundation and NAIHC to conduct a series of 6 training programs that would serve as a pilot for a national effort.**

Enterprise will conduct the training offered by CUNA. NAIHC will facilitate the networking aspects with Native American businesses.

The training sites will be in the following states where reservations exist in fairly close proximity to existing credit unions:

- Alaska
- California
- New Mexico
- Minnesota/Wisconsin
- Northwest (Washington/Oregon)
- Oklahoma

### Proposed Budget:

6 training sessions x2 days = 36 days of training
$25,000 salaries for 36 days
$15,000 preparation time
$15,000 travel
$6,000 food (served at training)
$5,000 printing
$4,000 miscellaneous (signs, promotional mailings)
**$70,000 Total Cost**
-12,000 registration fees
**$58,000**