



Written Testimony of
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*Improving Housing Opportunities for
The Native Americans*

Submitted to the U.S. House of Representatives
Committee on Financial Services
Subcommittee on Housing and
Community Opportunity

May 3, 2004

Good afternoon Chairman Ney and Members of the Committee. My name is Renee Konski, and I am a Senior Loan Specialist for American Financial Resources. I would like to thank you for this opportunity to talk about Native American lending and homeownership. I want to personally thank and acknowledge Congressman Rick Renzi, for his leadership as member of this Committee from Arizona. I also want to thank and acknowledge Congresswoman Maxine Waters whose office extended an invitation to me, and made my participation possible this afternoon.

American Financial Resources is an Arizona State owned and operated Banker/Broker (bk#14268) with over ten years experience in the mortgage finance business. Our lending footprint covers six states. American Financial Resources prides itself with ownership involvement in the daily operations of our organization. While I can boast about American Financial's experience in the mortgage finance business, I must confess that my experience in Native American lending is only four years old. In that time I have learned many things through the partnerships I have helped develop. I am aware of how each family and situation is unique and contains its own challenges. My personal desire is to discover and experience the challenges I may not have encountered yet, and then educate others on these challenges.

What I would like to offer this afternoon is to acknowledge my partnerships and share my experiences, express to you how these programs are working, offer a lender's perspective on the largest obstacles to improving housing opportunities for Native Americans, and some recommendations for removing these obstacles.

Partnerships and Experiences

Five years ago, I developed a desire to pursue my interest in a loan that I anticipated would be both challenging and unique. That is when I began my research in lending on trust land. I attended classes offered by Rural Community Assistance Corporation, taught by Mr. Joe Waters, and soon learned that I was the only lender attending. I am eternally grateful for the funding that makes these classes available, because without them, it would have been nearly impossible to progress. RCAC helped me to understand the obstacles confronting the tribes, families and lenders. It was here I first became aware of the requirements of the tribes to become eligible to offer mortgages to their families. RCAC, and Mr. Joe Waters then referred me to Mr. Paul Jankowski, Director for the HUD 184 Native American Program.

It was a short time later I was educated on the HUD 184 instrument as a tool to begin my Native American lending career. Working directly with the staff, Ms. Deanna Lucero, I began the process of becoming a HUD-approved 184 lender. This required training was provided directly by the program. After my completion of training and subsequent approval, I had access to a program that would offer Native American families the

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opportunity of a mortgage. This program was so similar to the basics of other HUD programs, it was easy to understand, and flexible enough to address many types of land issues. As an approved lender, I have closed both the purchase mortgage transaction, and the refinance mortgage transaction.

My refinance transaction was most memorable, as I was able to help a family reduce their monthly mortgage by more than \$700.00 per month. The mortgage which this family had originally obtained had a high interest rate, with a two-year pre payment penalty, and an adjustable rate that increased in the third year. Since this family resided outside of their own tribal service area, I contacted the tribe in which service area the family had resided. I requested permission to assist this family obtain a 184 mortgage within this service area. The approval was received within twenty- four hours. This mortgage offered a 30-year fixed-mortgage rate, without the cost of monthly mortgage insurance. This was a savings of over \$700.00 per month from the existing mortgage.

I might add that the relationship built with the servicing tribe was cultivated during my attendance at a conference on Native American Lending sponsored by the Department of Housing. I believe that my request to serve the family I mentioned was expedited by building this relationship.

As most recently as April 30, 2004, I completed a transaction with the Cocopah Housing and Development. This project consisted of nine mortgages submitted, underwritten, and approved by the HUD 184 program. This project made possible fixed-rate, thirty-year mortgages that will provide two triplex one- bedroom units, two triplex two-bedroom units and five single-family three-bedroom units for a total of seventeen units. These loans were offered to the Cocopah Housing and Development as the borrower, and are assumable to families within the tribe in the near future.

My next partnership came when I developed a relationship to sell these loans on the secondary market. This is where Fannie Mae became my newest partner. With the guidance of the many offices within Fannie Mae, I learned of the secondary market to sell these mortgages. Along with the market to sell the mortgages was a program to offer conventional lending. The program, called NACLI, offered a lending tool to make conventional mortgages possible. I have successfully closed two conventional mortgages that were underwritten by American Financial Resources and sold to Fannie Mae under the NACLI program. Since American Financial Resources is an approved Fannie Mae lender, we utilize the automated underwriting system, and participate as a sponsor for the Fannie Mae automated underwriting system called desktop originator. This is an automated underwriting system that we have made available to our tribes that provides them with the ability to determine eligibility of a conventional loan product. Fannie Mae also introduced me to the One Stop Mortgage initiative. This initiative has greatly contributed to the success in streamlining the standards for mortgage documents,

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and offered many tribes the opportunity to develop leases and foreclosure procedures that are acceptable, and uniform. When I am asked if this One-Stop initiative works, the answer is YES.

Throughout this period, I had already begun utilizing the Rural Development 502 Guarantee loan as a product for fee simple land. I was familiar with the program and had already secured many mortgages for families in rural areas of Arizona, all of which were done on fee simple land. Upon meeting with USDA State Director Eddie Browning and Loan Specialist Alan Watt, I was made aware of their interest to participate in trust land guaranteed loans. We successfully closed the first USDA guarantee loan on trust land with a family from the Navajo Tribe. This mortgage was guaranteed by USDA and then purchased on the secondary market by Fannie Mae.

During this entire period, I was introduced to the Navajo Partnership for Housing, Inc., a 501 (c) non-profit and member of the national NeighborWorks network, located on the Navajo Nation. This was a partnership that educated me as to the great need for affordable housing and homebuyer education. I became so impressed with NPH that I requested to join the organization and offered to assist with my experiences as a private lender. Through my ideas and opinions, together NPH and American Financial Resources have brought private mortgage opportunities to several Navajo families. In January of 2004, I was nominated to join NPH's Board of Directors.

Recently I have worked with the Developers of Karigan Estates. This is a sub-division with greater than two-hundred homes that will provide single family housing in the St. Michael, Arizona area, located on the Navajo Nation. Together we are on the precipice of the next phase of this master plan community. As a lender familiar with the needs of the families, guidelines of the various programs, and land issues, I have the opportunity to work directly with the builders and developers and address the issues that surround many of the Navajo families.

How Programs Are Working

Members of the subcommittee, I want to reassure you that federal programs are working on Tribal land, and I am here today to testify that solid partnerships can make dreams of home ownership with mortgage opportunities for many Native Americans come true. There is so much more I could add about the organizations of Rural Community Assistance Corporation, HUD 184 Native American Program(s), Fannie Mae, USDA, Navajo Partnership for Housing, Karigan Estates, and several of the Tribes. What is important to note is that the basic communication of these organizations working together have made so many opportunities become realities.

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I don't need to tell you that there is an overwhelming need for affordable housing on Tribal land, and even with the current level of federal funding this housing need will not be adequately met without access to private mortgage and interim construction financing.

Many Native Americans typically have very low incomes, which average about half that of the rest of the United States. Of the over 180,000 residents of the Navajo Nation alone, the median income barely exceeds \$20,000 per year. One third of Native Americans live in poverty. They are more likely to die of disease or alcoholism than other Americans, and they are victims of violent crimes at a rate greater than three times the national average.

Native Americans living on reservations suffer severe housing distress. Even middle- and upper-income Native Americans on reservations are confronted by substandard housing, which is aggravated by a lack of access to "private" home mortgages and infrastructure and industry needed to build new homes.

But, I have come to realize there many Native Americans want to "earn the own way" to homeownership.

A Lender's Perspective on Issues Around Mortgage Lending on "Trust Properties"

Land Status

Mortgages can be issued only when the tribe approves a lease, which allows for leasehold improvements. Many banks are anxious about this land arrangement and will not become involved unless the land is held as fee simple private property, of which there is very little.

This is a lengthy process for obtaining a home site lease and obtaining all the required Tribal and Federal (BIA) reviews and approval. Also, because we are dealing with Federal Trust lands, numerous other environmental and archaeological reviews and approvals are required which add another layer of time consuming activity, which tires out both lenders and potential home buyers.

Recording and Timely Retrieval of Title Status Reports

In order to perfect financing arrangements, recording and having timely access to Title Status reports is crucial. In the lending world, time really is money. For example, I have seen Navajo families who had to pay three to six months of accrued interest on interim construction loans while waiting for the recording and receipt of Title Status Reports to

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close the permanent first mortgage. This is unfair to the families. This rarely happens in the lending world outside the reservation.

Lack of Public Access to Land Ownership Documents

When a family wants to determine ownership of a vacant lot, or an existing particular piece of property (a house), the typical first step is an inquiry of city planning or county records. This is hardly the case on the Tribal Land. Such access to records is restricted to the actual owner. The BIA considers this information “private and confidential”. Here again, this does not facilitate the “buying and selling” of real estate. For instance, I am aware that NPH had identified 21 vacant lots in a Navajo sub-division. When they asked the BIA, NPH was told they could not release the ownership information. NPH was told they had to get written permission from the land owners in order for BIA to release the information. How can NPH find the owner to get written permission? If NPH knew the owners, they wouldn’t be asking for ownership information from the BIA in the first place. These types of regulatory barriers further complicate an already difficult process.

Title Insurance

Although title insurance is not required under the HUD 184 mortgage, I have recently encountered four major Title companies that have denied a request to complete an escrow-only transaction. I have been told that it does not make sense for them to participate in an escrow-only transaction from a liability and cost effectiveness standpoint. In many instances where title insurance is mandated, title companies require a deposit in advance, and it is also the lenders responsibility to provide the title company with the most recent Title Status Report. Again, we are dealing with a time sensitive issue that does not effect the fee simple transaction.

Title Insurance Restrictions in New Mexico

A problem has arisen concerning a residential mortgage on a “residential lease” located within a Navajo Indian allotment on the New Mexico portion of the reservation. Specifically, in order to close both the interim construction loan and the USDA Rural Development 502 Guaranteed permanent, an acceptable title insurance policy must be obtained. The title insurance company has declined to issue a title commitment based upon the belief that the Title Status Report may not identify all of the heirs of the allotment, and because of possible title conflicts with mineral leases. This would also affect any conventional first mortgage, which requires title insurance. An interim solution was being sought by attempting to have first mortgages guaranteed through the HUD 184 program. HUD requested a letter from the Navajo Department of Justice indicating that

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the Navajo Nation has no involvement with the residential lease on Individual Indian Allotments. As of today, I am not aware of any action on this matter.

Lack of Capacity in Tribal Government and the Bureau of Indian Affairs

Both agencies need additional staff and resources to deal with the requirements of timely processing of real estate transaction, mortgage and land related documents. Staff shortages result in unnecessary delays. It is a requirement of the lender to have obtained a new Title Status Report upon completion of the mortgage transaction. Some programs require this revised TSR before they will guarantee the mortgage. The exposure of three to six months of no loan guarantee makes lending on trust land undesirable, without even considering the overhead in following up with the BIA to ensure the TSR arrives. What is not realized is that in an active “buy and sell” real estate market, processing of real estate transaction documents is crucial to the process.

Conclusion and Recommendations

I would like to thank the Subcommittee for the opportunity to testify about the challenges facing Native populations in obtaining homeownership on trust properties.

In summary I would make the following recommendations:

1. The process to “free” land for home-site leases and to obtain all the clearance required needs to be streamlined so that the entire transaction can occur within a three to six month period.
2. The recording and timely retrieval of Title Status report needs to be reduced drastically to a three- to five-week time frame. Privatization of this function should be highly considered to improve efficiency.
3. Public Access to land ownership documents needs to be allowed. Whatever policy or regulatory change is needed, the BIA should address that matter.
4. Encumbrance of lot assignments for financing purposes within approved Navajo Nation master leases for housing sub-division should become a standard provision. To address the problem outlined earlier in my testimony, the Navajo Government administration and attorneys should do what ever is necessary to help their people.
5. Regarding the lack of Title Insurance on Indian Allotments, the Navajo Nation government, attorneys and all other interested and affected parties need to resolve this problem. NPH has five clients who cannot move forward toward home ownership until this issue is resolved.
6. Lastly, both governmental entities involved in the review and approval of real estate transactions, mortgage documents and land related documents need to be

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adequately staffed, with adequate budget resources given to them to get the job done.

I would like to thank RCAC, the HUD 184 Native American Program, the Arizona Department of Housing, Fannie Mae, USDA, Navajo Partnership for Housing and Neighborhood Reinvestment Corporation, Karigan Estates, and especially the tribes and the families; each experience with you has made me a better person. Thank you, Members of the Subcommittee, for the opportunity to express my experiences and recommendations.