



July 29, 2022

Sandra L. Thompson, Director
c/o Marcea Hosay Barringer
Federal Housing Finance Agency
Attention: Duty to Serve
F H F A Constitution Center
400 7 Street, SW, Washington, D.C. 20219

Re: 2022 FHFA Duty to Serve Listening Session Input: Native American Housing, July 13, 2022

Dear Director Thompson:

I serve as the CEO for Native Community Capital (NCC). We are a certified Native Community Development Financial Institution (NCDFI) headquartered in the Pueblo of Laguna, a federally recognized tribe in New Mexico. We also maintain an office in Arizona. NCC partners with tribes, foundations, financial institutions, builders, and other housing industry professionals to raise capital and deploy those funds as home loans (including construction loans and privately held mortgages) to tribal members residing on tribal trust lands. We are the product of a 2019 merger of three formerly independent Native CDFI's one of which I had led since 2010. As of 2020 NCC is a licensed mortgage lender in New Mexico and Arizona. Over the last 10 years we've deployed over \$20MM to support community- and economic development on tribal lands.

The first half of my twenty-five year career was as the Director of Community Development for the Inter Tribal Council of Arizona for 9 years, later as the Deputy Director for Fannie Mae in Arizona, then as the Director of Economic Development for a Phoenix area tribe and since 2010 in the Native CDFI industry. As such, I hope to offer comments and insights helpful to the fulfillment of the GSE's Duty to Serve mandate.

The questions posed by HFHA in advance of the July 13, 2022 listening session include:

- What would a well-functioning housing market on tribal land look like?
- Description of current or ongoing programs or initiatives that have shown promise...
- What gaps [exist] and what steps should FHFA or GSE's take to help close gaps?

In my view, a well-functioning housing market on tribal lands suggests that Native Americans wishing to build or buy or sell a home on tribal trust lands would have the benefits of a complete housing market ecosystem. The components of such may include:

- Homebuyer Education classes taught by certified instructors who are ideally Native American but that in any case understand intimately the role informal economies play on tribal lands and the role that extended family or clan relations have on household economies and where such classes are held on or near tribal communities;
- Financial institutions with branches on or near tribal lands and that offer construction loans as well as long-term mortgage financing on tribal trust lands as well as other financial products and services needed by tribal communities that are disproportionately affected by social and economic distress and which in any case should not have only predatory lenders and other lenders of last resort or crowd-funding as their only source of credit and capital;

- Generally available appraisal and inspection vendors as well as general contractors and subs in rural tribal communities and certainly with knowledge of local building codes and ordinances and where such are not codified then at least exceptional knowledge by vendors of the local building methods and materials of traditional and contemporary homes on tribal lands;
- Tribal realty departments that have taken full advantage of the Helping Expedite and Advance Responsible Tribal Homeownership Act (aka the HEARTH Act) by promulgating residential leasing regulations that allow tribes to exercise their sovereignty and reduce their dependence on the Bureau of Indian Affairs Land Title and Recordation Offices which are woefully understaffed and underfunded causing potential homeowners to wait a year or more for a simple Title Status Report and where in a typical housing market such title documents can be obtained in the same day;
- A complete absence if not outlawing of storage shed vendors marketing and selling units for use on tribal lands as tiny, unsafe, unsanitary homes as well as mobile home dealers that use extractive chattel loan schemes that result in populating reservations with homes that do not generally meet the durability, resale nor investment standards of a conventionally built home.
- Large lenders who use their expertise to develop exotic financing options for their highest net worth clients and that finally also craft financial products appropriate and useful for tribal trust lands.

If that is what FHFA surmises that a well-functioning housing market on tribal lands would look like, then yes it would include all of those components and more. A more important question remains – why has such a well-functioning housing market on tribal lands not yet developed even with the mandate established well over a decade ago by the Duty to Serve provisions in the Housing Economic and Recovery Act of 2008?

POLICY CONTEXT

The Native American Housing Assistance and Self-Determination Act (NAHASDA) was signed into law in 1996 – the very year I began my career in tribal community and economic development. NAHASDA was – as heralded on the floor of the Senate during its debate – expected to “lift the yolk of paternalism and finally make the American Dream of Homeownership available to Native Americans!” Over 25 years later that dream remains just that for far too many American Indian people who need homes on their homelands. And so, if NAHASDA alone has not provided the impetus required to establish and grow homeownership opportunities for Native people on tribal trust lands then we must ask: What else is needed?

One element is certainly additional policy. The attached graphic shows four critical pieces of legislation since NAHASDA that have provided additional regulatory infrastructure and resources necessary for developing a well-functioning housing market on tribal lands. I trust that soon I’ll be able to revise the graphic with new Community Reinvestment Act regulations that include Tribal Assessment Areas for the very first time.

Nevertheless, policy functions more as an almost static structure akin perhaps to the framing, the plumbing and the electrical components of a home. Likewise, the electric power that allows a home to operate is akin to the financial resources needed to allow a well-functioning housing market to operate. Keeping with that analogy, while off-reservation citizens enjoy conventional and renewable energy generated by modern technology, a tribal citizen is too often left depending on nothing more than a simple wood burning stove to heat their entire home. And if connected to the grid, electric service that is unreliable at best. We, Native

CDFI's are like those wood burning stoves in a tribal home. Where we operate, we can operate at full capacity and still fall far short of what is needed in a modern home or more generally for our work in a nascent tribal housing market. And so, in addition to policy there must be sufficient financial products and services appropriate for tribal trust lands.

FINANCIAL PRODUCT & SERVICES DEVELOPMENT

A well-functioning housing market on tribal lands requires modern, reliable, and varied sources of financing. We need equitable access to the types and volume of financial resources that are available outside of tribal lands. A well-functioning housing market on tribal lands would be one where Native American citizens who are aspiring homeowners are seen and heard by the mortgage lending industry.

By seen I mean to say that tribal lands would attract the attention of the GSE's (and by extension banks) regardless of legislative mandates and where GSE's make substantial commitments to serve tribes both in the area of product development and investment. In their latest plans the GSE's have responded to the Duty to Serve mandate with loan production goals for Native America of exactly zero (\$0). By comparison Single-Family Home loan production / purchase goals for other (non-Native) rural areas (i.e Appalachia, the Gulf Coast, and Colonias/Hispanic communities) is 19,032. A loan purchase target for Native America is not even contemplated until 2024! Instead, Fannie Mae has proposed to provide only Technical Assistance.

Therefore, by seen I also mean that financial products and services (including loan purchase goals) would be ubiquitous in Indian Country with sufficient precedent across markets such that the buying and selling of homes would approach rates on fee-simple lands and corrected for the unique land status of Indian Reservations. It might approximate something more like any of the various affordable housing land trusts across the nation that serve specific populations and have as their mission home options that reflect the needs of the target market. There would be much less emphasis by banks on achieving "production numbers" for the sake of growing market share and profit margins and much more emphasis, at the least, on providing those of us working to house our people an opportunity to catch up...to replace the blight and despair with many more safe, decent, and affordable homes so needed in our communities.

By heard, I mean that the financial products and services noted would be developed in such a way that takes into account the unique logistical and market conditions which exist in Indian Country. The HUD 184 Loan Guarantee Program is one of the only such products available. We applaud the momentum of current legislation that may make USDA's 502 Direct Loan program and the VA Direct Loan Program permanently available in Indian Country. However, each of these options are all government solutions that leave the GSE's and banks off the hook for innovating solutions on their own.

New and innovative financial products must take into account lower incomes in rural and remote tribal lands and the effect of current inflation spikes. Also, higher labor, material, and other construction costs – even before increases owing to the COVID age are consequential. Finally, mortgage loan limits associated with the 184 suggest a product that incorporates a forgivable soft second would go far as has been described by my colleague Ms. Plummer from the Montana Native Growth Fund.

Other circumstances in tribal areas demand attention as well. One for example is the ubiquity of multi-generational crowded households and the importance Native people place on living on their original tribal homelands. Such households would benefit greatly from an assumable / portable inter-generational mortgage product as eloquently noted at the July 13 webinar by Mr. John Marian from the Northern Cheyenne Tribal Housing Authority.

The necessary solutions require GSE's and banks to act in a way that recognizes they have been largely absent in tribal markets and in fact complicit in denying tribal citizens homeownership opportunities.

BANKER REWARDS & INCENTIVES

True leadership by the GSE's and by extension regulated financial institutions would see those institutions lead by committing the resources necessary to recruit and retain Native American talent and to achieve loan production goals that have measurable and growing impacts in tribal communities. Yet, it's been 25 years since the passage of NAHASDA and 14 years since HERA's Duty to Serve and instead what we've seen is that banks have retreated and generally abandoned Indian Country.

It is curious that private financial institutions with total assets of \$4 trillion dollars in one case or \$2 trillion in another do not have the wherewithal to hire a Native American and to build the required team members to lead a Native American mortgage lending initiative or even to set production goals as mentioned. Despite even a federal mandate created by Duty to Serve, there seems to be a willful acceptance of the status quo. It seems a lack of Native American personnel and related production goals for this effort is in fact their policy. I fear a technical assistance plan alone places too much of a burden on tribes as well as small, under-capitalized Native CDFI's. It is as if the GSE's plans were crafted by consultants to build their businesses and to confirm the false justifications issued by banks instead of to build the capacity of Indian Country which should be at the center of facilitating the creation of a well-functioning housing market on tribal lands.

The GSE's in their latest plans identify lender challenges wherein they lament, "...the land tenure status of [tribal] trust land[s]...[and] the complex and unique challenges facing high-needs populations...[that] most traditional lenders are unfamiliar with and [are therefore] unable to serve... (FNM p. 81, FMC p. R24). With regard to such statements, I submit that the challenge is only such because of a severe lack of precedent for mortgage lending on tribal trust lands. And this severe lack of precedent owes exactly to a failure to dedicate sufficient resources to help develop a well-functioning housing market on tribal land. Native lending initiatives have been a last priority by the GSE's even when I was employed by Fannie Mae. Correspondence and internal data and communications, protected by a non-disclosure agreement when our office in Arizona was closed, confirm this. Nevertheless, the stated reason at the time I was there is that Indian Country represents too small a market – i.e. not enough profit. The issues I raised while at Fannie Mae generated a muted response then as they do now in the GSE's Duty to Serve Underserved Market plans submitted to FHFA.

The modern mortgage lending industry is a mature industry with no shortage of creative and innovative product design and market development solutions. Therefore, the challenge of lending in Indian Country does not exist at it is publicly portrayed by the GSE's. Otherwise, how is it that we a small, minimally funded, skeleton crew at a Native CDFI in a rural part of New Mexico can raise capital and originate private mortgages on tribal trust lands whereas a \$4 trillion dollar private-sector organization cannot? Small, under-capitalized Native CDFI's are setting the precedent that banks and the GSE's continually fail to establish. The challenge has much less to do with technical complexity and much more to do with the small size of the Indian reservation population (i.e. per the US Census, Native Americans are approximately 2% of the US population) that is scattered across a wide geography and that translates into lending volumes perceived too small by banks to affect short term thinking and the related profit-maximizing interests of private sector financial institutions.

I'm fond of saying that the US can put a man on the moon, land a rover on Mars, and now peer into the deepest realms of the cosmos but it cannot look even in its own back yard and put banks on Indian Reservations to provide mortgage loans to tribal citizens. What drove the engineers who achieved tremendous feats in the U.S. space program were potentially tremendous rewards. What drove policy makers for such efforts was resolve in the face of foreign competition. With regard to mortgage lending in Indian Country, clearly the banking community sees negligible or even negative rewards. As such, policy makers must act even more robustly when the subjects (i.e. the GSE's) of federal legislated mandates fail to comply.

REGULATORY RESOLVE

It must be the policy regulators who show resolve to temper the excesses of financial institutions to serve only the most affluent communities and maximize profit while leaving rural, remote Native populations to aspire to little more than being life-time renters and whose opportunity to create intergenerational wealth through homeownership is continually and effectively withheld as if with "...the yolk of paternalism".

The enabling legislation that includes the Duty to Serve provision was signed into law in 2008. The rules were not promulgated until 2016 and the GSE's didn't not submit their initial plans until 2017. Since then and to this day the GSE's have failed to perform and provide equitable progress when compared to benchmarks achieved for other underserved communities including Appalachia, Gulf-Coast, and Colonias. It has been almost 15 years since Duty to Serve was established. How much longer must citizens residing on tribal lands wait for the GSE's and banks to act? Now is the time to use the Duty to Serve legislation to demand that GSE's and banks make the investment into Indian Country that has been withheld for far too long.

INVESTING IN INDIAN COUNTRY

Tribal communities and in my case Native CDFI's are not asking banks to do work that we can do ourselves. However, we do need a level playing field. If the GSE's and banks will not lead then they should commit cash resources – equity investments and grant funds to grow the balance sheets of Native CDFIs and others that are actively and typically exclusively serving Native people and communities.

With regard to technical assistance proposals offered: intensive technical assistance by true subject matter experts and specific to getting established as a seller-servicer with the GSEs is very much appreciated. Technical assistance from generalist contractors charging exorbitant fees to learn the nuances of our communities and lending operations only to sell packaged Native lending programs back to other tribes or intermediaries is untenable. If that is the extend of the GSE's technical assistance initiative, then it is much better to direct-fund Native CDFI's to hire or contract with the requisite professionals on their own so as to build our own internal capacity. We do not need generalist contractors who offer little more than passive, remedial training that alone is expected to generate aspirational and unrealistic outcomes. We need serious, significant and sustained investment to make up for literally centuries of active exploitation by the US government and more recently active neglect (i.e. modern redlining) by the private sector.

The great prosperity of the United States, including a well-functioning housing market, was not built simply with lofty ideals – it required land and resources stolen from Indian Nations and the brutal trafficking of human bodies for labor. This is not a low-blow or a slight – it is simply historical fact whose legacy is alive and well. Where resources to manage our own affairs have been taken or withheld from us, we require redress in the form of investments and deference to us regarding the design, testing, refinement and scaling

of home loan and other financial products and services that are a best fit for our communities. The GSE's must commit to a focused effort on the ground in partnership with tribes and Native-led CDFI's and not a broad and shallow effort that will do little other than to advance public relations goals.

This commentary also must include a warning – if the GSEs and banks (and by extension non-Native non-profit intermediaries) will neither lead on their own nor follow our lead then they must get out of the way. They must stop making token investments, stop using Native American imagery on their websites and social media and stop making statements that their organizations serve all communities in their service territories.

It's taken our organization over a decade to reach the minimum threshold for a viable mortgage lender in Indian Country with virtually no financial assistance from the GSE's. I'm thrilled that other, fairly newly established Native CDFI's will achieve similar metrics in much less time. I'm sobered by the fact that many similar Native organizations have closed their doors and ceased operations. Those facts indicate what is possible and the challenges that remain.

Although July 13, 2022 was the first time in its history that the FHFA had convened a tribal listening session I sincerely hope it will not be the last. Those of us who lead and work for Native CDFIs and tribal nations are not going away. We shall remain advocates with an unwavering commitment to our communities. In good times we'll make tremendous progress to advance community goals. In bad times we'll challenge those who overlook, ignore, slow-walk or sacrifice our communities as part of their own corporate policy. We will carry on the work of those who came before us. I thank you for your attention and your assistance to help us improve implementation of the Duty to Serve provisions as related to Native America and stand ready to assist in any additional way you may see fit.

Sincerely,



Dave Castillo, CEO

Attachments:

- Slide Titled 25+ Years of Indian Housing and Related Legislation (1994 – 2021)



25+ Years of Indian Housing & Related Legislation (1994 – 2021)

“...during one of the first negotiated rulemaking sessions for NAHASDA, a tribal delegate recalled that the acronym for NAHASDA sounded very much like a word in his language (pronounced na-HAAZ-t’aa) that means “one who sits and waits patiently”. He recalled how tribes had indeed waited patiently but perhaps too long for the improvements the new law promised. Despite some early and scattered success stories, the waiting for much of Indian Country would continue for at least another two decades. A harbinger of the wait was forged in my mind when a banker sincerely asked me why he should go through the brain damage of doing a deal in Indian Country when he could get what he needed from the Office of the Comptroller of the Currency (i.e., bank regulator) by doing a deal with blacks or Hispanics.”

Excerpt from: *Creating Private Sector Economies in Native America* by Robert J. Miller (Editor)

