



MEMORANDUM

October 21, 2019

To: Housing Clients

From: HOBBS, STRAUS, DEAN & WALKER, LLP

Re: ***Senate Committee on Indian Affairs Holds Oversight Hearing on Homeownership in Indian Country***

This memo reports on the October 16, 2019, Senate Committee on Indian Affairs (SCIA) oversight hearing on "Lending Opportunities: Opening the Door to Homeownership in Indian Country." The hearing was presided over by SCIA Chairman Hoeven (R-ND) and Vice Chairman Udall (D-NM). During the lengthy and unusually well-attended hearing, the SCIA explored the growing role of Native community development financial institutions (CDFIs) to facilitate homeownership for tribal members as well as the federal impediments to the leasing, lending and title processes. The hearing page is available [here](#) and includes links to witness testimony. The hearing record is open for a period of two weeks. Please let us know if you would like assistance preparing a statement for the record.

Opening Statements.

Chairman Hoeven said homeownership is a foundational principle in any society, providing individuals and families with stability and safety and the opportunity to build their communities. He said credit plays an important role but rural and tribal communities can experience difficulties accessing credit. He cited issues with trust and reservation land as well as land title status as complicating factors. Chairman Hoeven urged the House to pass his bill, S 212, Indian Community Economic Enhancement Act, which would increase opportunities for Indian business promotion, and create mechanisms and tools to attract investments in Indian communities. Specifically, one of the provisions of S 212 would make permanent the waiver of the requirement for Native CDFIs to provide a matching cost share for assistance received by the U.S. Treasury CDFI.

Vice Chairman Udall lamented that for too many in Indian Country, homeownership remains only a dream. He cited federal delays in securing title records among some of the complicating factors. He asserted that homeownerships should not be more expensive on reservation versus off reservation. Finally, he inquired why the Trump Administration's budget requests for the past three fiscal years have requested that funding to support Native CDFIs be zeroed out.

Sen. Tester (D-MT) said that adequate housing is the key to having a healthy community and that the housing situation is particularly dire for large, land-based tribes. He explained that the lack of adequate housing impacts the ability of these communities to attract and retain critical professionals such as teachers, law enforcement officers, and doctors.

Sen. Smith (D-MN) said that at the listening sessions she has conducted in her state, everyone is essentially saying the same thing: if you don't have a safe, affordable place to live, nothing else works. Housing is foundational.

Housing and Urban Development (HUD) Assistant Secretary for Public and Indian Housing R. Hunter Kurtz said that a "one-size fits all" approach to housing does not work. He said far too many Native American communities struggle with severely overcrowded housing, lack of affordable housing, and infrastructure challenges – all of which result in significant barriers to economic opportunity. He explained that in addition to factors common to underserved markets and rural areas, the land may be held in trust by the federal government, and cannot be sold or readily mortgaged. Assistant Secretary Kurtz expressed hope that HUD's efforts to "modernize" the Section 184 home loan guarantee regulations would help guard against waste, fraud and abuse and help to get families into homes more quickly. We note that his written testimony states that, "a draft proposed rule has been developed and placed into clearance." His written testimony also contains references to the fact that in the past, HUD has also proposed various legislative "fixes" to the Section 184 program authorizing statute.

Pueblo of Isleta Governor Max Zuni said that their Native CDFI, Tiwa Lending Services, Inc. (Tiwa) was founded in 2013 and is the result of a multi-year effort by the Pueblo of Isleta, Isleta Pueblo Housing Authority and the CDFI Fund of the U.S. Treasury. Tiwa now has a substantial mortgage portfolio and also originates consumer, credit repair, personal, education, business, and debt consolidation loans. Additionally, Tiwa provides credit counseling, homebuyer workshops, and general classes to enhance financial literacy. Governor Zuni explained that because access to Tiwa is not limited to low-income borrowers, it is particularly helpful for when tribal members get a college education, get a good job and then want to return to their community to live but do not qualify for income-based assistance. He said that this is where the CDFI program has been most effective because through Tiwa, participants can design their own homes and pick their own contractor and there is a substantially shorter timeframe than going through the federal government. Governor Zuni also underscored the importance of the HEARTH Act to facilitate long term leasing of tribal land with minimal interaction with the federal government once a tribe's leasing regulations have been approved.

Ft. Belknap Indian Community Council Member Nathaniel Mount said that his community has experienced between 70-80% unemployment rates as well as severe home overcrowding with 13-18 people in a single home. He said that the tribal housing waiting list has over 150 families, with a waiting time of 3.5 years. He cited some of the problems with BIA's "cumbersome" title status process and HUD's 184 process. Council Member Mount said that because of his tribe's efforts to create an economic development arm, there is now greater employment and an emerging middle class but literally nowhere to live. He said that the process for getting his tribe's HEARTH Act regulations considered and approved has been difficult and that his tribe was redirected several times. Council Member Mount urged that there be a "one-stop leasing czar" at the Department of Interior. He noted that Congressional Appropriations Committees have underscored the need to fully digitize title records but this process is not complete and tribes do not have access to the Trust Asset and Accounting Management System (TAAMS) data yet. He proposed the creation of a priority list for certain areas with the greatest housing shortages to be first in line for records digitalization. Further, he urged that mortgages on tribal lands be categorically excluded from federal environmental reviews.

Department of Interior (DOI) Bureau of Indian Affairs (BIA) Director Darryl LaCounte said that the BIA Division of Real Estate Services helps tribal members purchase homes and that the Assistant Secretary-Indian Affairs has made this a top priority. He reported that the BIA has finalized and distributed their Mortgage Handbook, created a Contact Guide for Mortgage Lending in Indian Country, and is in the process of developing the BIA Enterprise Land and Resource Data Warehouse (Warehouse) to consolidate all data from BIA's various business subsystems within the Trust Asset and Accounting Management System (TAAMS) and those that are standalone data tools. He explained that this initiative will allow BIA to integrate data from TAAMS and other data sources into operational data views that can be easily accessed as a single point for strategic and operational reporting and analytical needs. Further, he reported that at the direction of the Secretary, the BIA continues to coordinate with HUD to develop a HUD Dashboard to access pertinent information, such as Title Status Reports (TSRs), to advance homeownership in Indian Country.

Federal Reserve Bank of Minneapolis Assistant Vice President and Center for Indian Country Development Director Patrice H. Kunesh said that there is a crisis of lending and homeownership in Indian Country. (She noted that her views are not necessarily those of the Federal Reserve.) She explained that homeownership has long been the path to social and economic health and wealth but Native Americans have largely been left out, particularly those living on reservation trust lands. She said that tribes have control over their lands but not control over the federal processes to put those lands to good use. Vice President Kunesh said that for example, the 184 program is popular but in recent years, over 90 % of the loans have been for off reservation homes. She said that there must be expansion of access to capital. She explained that as traditional lenders have retreated from Indian Country, Native CDFIs have stepped in. She urged that USDA's 502 program be expanded on trust lands and that there be mechanisms to direct 502 and other federal program funds through Native CDFIs into Native communities. Vice President Kunesh said that the scarcity of housing in Indian Country is an enormous unmet need.

Question and Answer

HUD and the 184 Loan Guarantee Program

Chairman Hoeven asked Assistant Secretary Kurtz whether he thought that there should be a program for Indian Housing that is separate from the Public Housing program at HUD. Kurtz agreed, saying, "We need to elevate the Office of Native American Programs so we have an Assistant Secretary who can work fully and solely on these unique and important issues."

Chairman Hoeven asked Assistant Secretary Kurtz why he thought the 184 program is underutilized on reservations. Kurtz said that the 184 program is open to all tribal members—not specifically tribal members on reservation and trust lands. He said while the rewrite of the regulations can aim to ameliorate this, HUD must take into account the fact that the program also, for example, must keep serving tribal members in Alaska and Oklahoma where there are no trust lands.

Council Member Mount urged that there be a categorical exclusion from NEPA for home building on the reservation land. For example, a tribal member was in the process of getting a 184 home loan but was first required to have an Environmental Protection Agency specialist come out and certify that he was not going to disturb any coastal land—in north central Montana.

Senators Hoeven and Udall as well as Schatz (D-HI) asked a number of questions regarding data sets, which appear to show a decrease in lending through the 184 program as well as a trend of large lenders exiting the market, which would contradict HUD's narrative that the 184 program is an increasing success. Assistant Secretary Kurtz explained that there was indeed a decrease in lending in 2016 but since that time, there have been gains. He explained that larger lenders have been exiting the market but smaller lenders have entered to take their place.

BIA Review of Leasing Regulations Pursuant to the HEARTH Act

Sen. Tester, noting the concerns expressed by Council Member Mount, and others, inquired with Director LaCounte about the timeline and process for tribes' applications for approval of their leasing regulations (pursuant to the HEARTH Act). Director LaCounte announced that because of these and other concerns expressed about backlogged applications and inconsistent reviews, he is going to centralize HEARTH Act approvals. He reported that he is looking for a HEARTH "czar" who knows the system and that the Solicitors Office has committed to adding an additional solicitor who will be focused on HEARTH.

BIA Title Status Reports

Senators Hoeven and Smith as well as Daines (R-MT) grilled Director LaCounte on the reported delays associated with obtaining title status reports (TSR). They urged that records digitization efforts and efforts to make TAAMS data available, be redoubled. Sen. Daines specifically identified the TSR process as the "biggest impediment" to the home loan process. Vice President Kunesh reported that she is hearing from lenders that there are 83 different BIA "touchpoints" for each TSR and that it is decentralized to area and regional offices with variations in the process both between offices and within offices. She suggested that, like efforts to centralize and streamline HEARTH Act reviews and create a HEARTH czar, there should likewise be a lending czar and a "one-stop" mortgage form across all agencies. She said she has heard that lenders are retreating from the 184 program because of delays and bureaucratic hurdles and that in some instances, lenders have even had to buy back a loan if they cannot get a TSR within a certain time frame.

Director LaCounte, alarmed, explained that when he ran the Office of Trust Services the timeline was supposed to be three days for a TSR. He said that this would be investigated and fixed. He said that BIA was within two months of being able to provide access to data from TAAMs and that additional integrated data would be accessible within a year. Regarding the timeline for getting a certificate of guarantee, he explained that to do this, BIA has to carve out a small piece of an existing tract to see the boundaries for a leasehold tract—essentially a tract within a tract—which requires a survey. Finally, he said that in some instances the issue is that there are banks and organizations that simply do not want to lend to tribal organizations or to Native people on tribal land.

Sen. Smith reported that she is working with Sen. Rounds (R-SD) to draft a bill which would allow HUD to issue a certificate of guarantee *before* a TSR is received. Chairman Hoeven noted that the HEARTH Act requires the BIA to conduct a study regarding the history and experience of Indian tribes who have chosen to assume responsibility for operating the Indian Land Title and Records Office functions from the BIA. Director LaCounte said he would find out the status of that study.

Increased Expenses and Steering of Borrowers to Particular Lenders or Home Types

Senators Hoeven and Udall, as well as Cortez-Masto (D-NV) asked a series of questions about increased expenses and fewer lender options for on-reservation loans and about whether Native borrowers are being improperly "steered" into particular lenders or home types, such as mobile homes or other "manufactured housing". Vice Chairman Udall noted that some studies show that loans made to tribal members for mobile homes are not only more prevalent for tribal members living on trust land but also more costly than brick and mortar loans. He expressed concern about the quality of these "manufactured" homes. He said that it appears the appeal of these loans is that they take less time to process even though mobile homes actually *depreciate* in value and are not as durable as "brick and mortar" built homes.

Council Member Mount said that the many federal impediments to getting loan on trust land increase costs and time and that banks have their own misconceptions about lending on reservations. For example, to secure a commercial mortgage loan, their tribal corporation had to put 50% down and pay 16% interest.

Assistant Secretary Kurtz said that HUD does have oversight standards for loans and that HUD enforces both their standards and the applicable tribe's standards. He agreed to look into whether loans to tribal members for manufactured housing are more costly than loans for "brick and mortar" homes. He said that HUD tries to monitor which rates tribal borrowers are being offered.

Vice President Kunesh this issue of quality of manufactured homes has been studied and that there are generally high standards for new manufactured or new modular homes in Indian Country. She said the opportunity to create homeownership through modular homes is exciting and that Native CDFIs are interested in expanding their lending in this market as well. She said that 70% of home loan applications in Indian Country are for manufactured housing and that borrowers who do not have a lot of time tend to go this route. Unfortunately, she said that there are few companies in this market now and that these loans for manufactured housing account for 35% of the loans with high interest rates.

The Role of Native CDFIs

Vice-President Kunesh explained that Native CDFIs are becoming more prevalent and are stepping up to fill a void of lending in Indian Country. She explained that they are close to communities and not only originate loans but also provide homebuyer and home maintenance education. She expressed concern that with the 502 loan program at USDA, she sees billions of dollars going out to rural communities, but bypassing Indian Country. She said that Native CDFIs could relend funds from HUD, USDA and VA home loan programs. Vice President Kunesh said that Native CDFIs present a ready, willing and well-trained workforce. She said that Native CDFIs are also working with Fannie Mae and the Securities and Exchange Commission (SEC) to create a secondary market to sell mortgages from their portfolios to investors and then use the proceeds to make more mortgages.

Vice Chairman Udall asked Governor Zuni to describe how Tiwa Lending (a Native CDFI) is able to have a \$7 million portfolio with 78 loans to borrowers with poor or no credit but no defaults. Governor Zuni explained that participants need to be certified, have to go through classes and are supported through the entire process. He said that once borrowers complete the classes, design their home, and pick a contractor, the money is appropriated from Tiwa to them

quite quickly—much faster than going through HUD. He said that if Native CDFIs are not funded, borrowers would have to go back to HUD and wait. Vice Chairman Udall, noting this, asked Director LaCounte why the Trump Administration continues to request that funding for Native CDFIs be zeroed out of the federal budget. Director LaCounte said that his understanding is that the Administration believes that federal agencies other than BIA are better equipped to handle housing. Vice Chairman Udall asked that he advocate within the Administration to stop the requests for cuts.

Senators Tester and Schatz urged Assistant Secretary Kurtz to actively recruit Native CDFIs to participate in the 184 program and to create a flow chart to show the process for a Native CDFI to form. Kurtz said he would look into this and would work with Treasury on this matter.

NAHASDA Reauthorization

In closing, Vice Chairman Udall noted that tribal people are three times as likely to live in overcrowded, substandard housing. He said that the Native American Housing Assistance and Self-Determination Act (NAHASDA) needs to be reauthorized but some Members of Congress oppose Native Hawaiians being included. He asked Assistant Secretary Kurtz for the Trump Administration's position on this matter. Assistant Secretary Kurtz replied, "We support NAHASDA being reauthorized in whatever form it is sent to us."

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If you have any questions about the items in this memorandum, or if you would like us to assist in preparing and submitting comments on homeownership issues for the SCIA record, please do not hesitate to contact Edmund Clay Goodman at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.