

Confronting the Barriers to Native American Homeownership on Tribal Lands: The Case of the Navajo Partnership for Housing¹

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I. Background

NATIVE AMERICANS LIVING ON RESERVATIONS suffer severe housing distress. Even middle- and upper-income Indians³ on reservations are confronted by inadequate housing, a situation aggravated by a lack of access to home mortgages. Through 1994, not a single conventional mortgage had been closed on the Navajo Nation, an Indian reservation with a land area larger than that of nine states.⁴

1. This article was originally published in a study conducted for the Fannie Mae Foundation. *Making New Mortgage Markets: Case Studies of Institutions, Home Buyers, and Communities* (© 2000 Fannie Mae Foundation. All rights reserved).

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3. Some question exists as to the appropriate nomenclature for Native Americans. The term "Native American" gained currency in the 1970s. In the 1990s, "American Indian," or simply "Indian" (if there was no confusion with people from India), was the term most commonly used. For example, a July 1997 conference conducted by the Comptroller of the Currency was titled *Lending in Indian Country*. This study will use the popular references of "Indian" and "Native American" interchangeably. As a technical note, legally (e.g., for eligibility for targeted mortgage programs) the terms "Indian" and "Native American" have various meanings depending on why they are being used. In the most general terms, a person must meet two requirements to be an Indian or Native American. He or she must: (1) have some Indian blood and (2) be regarded as an Indian or Native American by his or her community. To get funding for many federal programs, however, a person must also be a member of a federally recognized tribe. In this context, tribal status is as important as individual status, which means that one cannot be a Native American without a tribe. DAVID LISTOKIN ET AL., U.S. DEP'T OF HOUS. & URBAN DEV., RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY CENTER FOR URBAN POLICY RESEARCH (CUPR), *SUCCESSFUL MORTGAGE LENDING STRATEGIES FOR THE UNDERSERVED 95* (1998).

4. *Native Americans and Mortgages*, COMMUNITY INVESTMENT, Aug. 29, 1994, at 5.

This climate is changing, however; new loan products, new attitudes, and new priorities are combining to make mortgage lending and homeownership more viable for Native Americans. On the Navajo reservation, this endeavor is being led by a nonprofit organization, the Navajo Partnership for Housing (NPH).⁵ By offering extensive counseling and educational services and by guiding prospective home buyers through the bureaucracy that accompanies lending on the Navajo Nation, NPH is facilitating Navajo homeownership.

To better understand the complex challenges facing NPH, we begin by presenting background information on Native Americans generally, and the Navajo specifically, by describing the multiple obstacles to homeownership on the Navajo reservation. Our discussion is based on research conducted from 1997 through 1999 and builds from, and adopts portions of, earlier research conducted for the United States Department of Housing and Urban Development (HUD).⁶

II. Native Americans

At the time of Columbus, the area that became North America had an estimated 0.9 to 18 million Native Americans.⁷ Decimated by disease, warfare, and relocation, only about 0.2 million (237,000) Native Americans remained by 1900.⁸ Their population just exceeded 0.5 million (552,000) in 1960, but grew⁹ to an estimated 2.6 million by 1995.¹⁰ Those individuals belong to 500 different tribes, and 60 percent live on or near reservations.¹¹

Indians are among the poorest Americans. In 1990, almost one third (31.2 percent) lived in poverty¹²—much higher than the 1990 national

5. The Navajo Partnership for Housing was created in 1996 as a section 501(c)(3) nonprofit corporation to provide creative opportunities for private homeownership on the Navajo Nation. LISTOKIN ET AL., *supra* note 3, at 102.

6. See LISTOKIN ET AL., *supra* note 3, at 95–113.

7. NANCY SHOEMAKER, *AMERICAN INDIAN POPULATION RECOVERY IN THE TWENTIETH CENTURY 2* (1999).

8. G. Thomas Kingsley et al., *Assessment of American Indian Housing Needs and Programs: Final Report*, 1996 U.S. DEP'T OF HOUS. & URBAN DEV. 27.

9. Recent large gains to the size of the American Indian population are due in part to increased racial self-identification of American Indians. See generally C. MATTHEW SNIPP, RUSSELL SAGE FOUNDATION, *AMERICAN INDIANS: THE FIRST OF THIS LAND, THE POPULATION OF THE UNITED STATES IN THE 1980S: A CENSUS MONOGRAPH SERIES 71* (1989).

10. See Navajo Nation, Division of Community Development, *Navajo Nation Population Statistics* (Mar. 8, 2001) <<http://www.dcd.navajo.org/pops.htm>>.

11. See G. Thomas Kingsley, Maris Mikelsons & Carla Herbig, *Housing Problems of American Indians and Alaskan Natives*, URBAN INSTITUTE CENTER FOR PUBLIC FINANCE AND HOUSING, U.S. DEP'T OF HOUS. & URBAN DEV. 28, 32 (1996).

12. U.S. BUREAU OF THE CENSUS, *STATISTICAL ABSTRACTS OF THE UNITED STATES: 1997* (117th ed.), 51.

13.5 percent poverty rate.¹³ They are several times as likely to die of disease or alcoholism as other Americans.¹⁴ Indians are victims of violent crimes at a rate more than twice the national average.¹⁵

Native Americans also suffer severe housing distress.¹⁶ The most current and comprehensive evaluation, done by the Urban Institute in 1996, found that the American Indian and Alaskan Native (AIAN) populations had the following housing needs and problems:

The housing problems of AIANs remain considerably more severe than those of non-Indians in all parts of America. This is particularly so in reservations and other Tribal Areas where, according to Census data, 28 percent of AIAN households are overcrowded or lack plumbing or kitchen facilities (the comparable average for all U.S. households is only 5.4 percent). . . . Roughly 40 percent [of tribal area households] are overcrowded and/or with one or more serious physical problems (the comparable national average is 5.9 percent).¹⁷

III. The Navajo and the Navajo Nation

The Navajo reservation, or as it is often referred to by the Navajo, the Navajo Nation, was established in the 1860s.¹⁸ It extends into the states of Utah, Arizona, and New Mexico and covers more than 25,000 square miles (16 million acres) an area the size of West Virginia.¹⁹ The Navajo reservation is home to more than a dozen national monuments, tribal parks, and historical sites. Lake Powell alone boasts some 2,000 miles of shoreline—more than the entire West Coast.²⁰

The Navajo tribe²¹ is the most populous of all Indian groups in the

13. U.S. Bureau of the Census, *Table 2. Poverty Status of People by Family Relationship, Race, and Hispanic Origin: 1959 to 1999. Historical Poverty Tables* (Mar. 9, 2001) <<http://www.census.gov/hhes/poverty/histpov2.html>>.

14. See Doug Bandou, *Native American Success*, WASH. TIMES, Mar. 12, 1997.

15. Fox Butterfield, *Indians Are Crime Victims at Rate above U.S. Average*, N.Y. TIMES, Feb. 15, 1999 at A12.

16. See FRANCIS HARJO, NAT'L AM. INDIAN HOUS. COUNCIL, *INDIAN HOUSING IN THE 1990s: STILL WAITING* (1991).

17. KINGSLEY ET AL., *supra* note 11, at xii–xvii.

18. VERONICA E. VELARDE TILLER, *TILLER'S GUIDE TO INDIAN COUNTRY: ECONOMIC PROFILES OF AMERICAN INDIAN RESERVATIONS* at 214 (1996).

19. *Id.*

20. See WELCOME TO NAVAJOLAND, *DISCOVER NAVAJOLAND: VISITOR'S GUIDE* (Window Rock, Ariz. 1996).

21. According to Indian law, the “tribe” is the fundamental unit of operation. The federal government’s recognition of Indian tribes is the most widely accepted and used. The BIA insists on federal recognition before tribes or their tribal members can participate in many federal programs. Federal recognition can be the result of a treaty, a statute, an executive or administrative order, or events in which the federal government dealt with the tribe as a political entity. Any event or a combination of events may qualify as a political relationship between the federal government and the concerned tribe.

In 1978, the BIA published criteria for “acknowledgment” of the existence of tribes that were not otherwise “recognized.” The criteria were designed to establish eligibility for federal services and other tribal benefits for Native American groups that have main-

United States.²² Reduced to a population of only 8,000 at the time of the disastrous Long Walk in the 1860s, the Navajo population has burgeoned in recent years.²³ As of the 1980 census, the Navajo Nation contained 132,052 Indians; the 1990 census showed a count of 151,355 native people.²⁴ The 1995 estimated Indian population on the Navajo Nation is 162,378.²⁵

The 1990 census revealed that the Navajo Nation's population was young and faced severe social and economic distress.²⁶ The median age was 22 years old.²⁷ Per capita and median family incomes on the Navajo Nation were between \$4,106 and \$11,885, and household income was similarly low.²⁸ As of the 1990 census, 56 percent of the Navajo Nation's persons lived in poverty and 28 percent of the civilian labor force was unemployed.²⁹

The 1990 census counted 56,188 housing units on the Navajo Nation, of which 19,339 were vacant, leaving 36,849 occupied units.³⁰ Of those, 27,705 (75 percent) were owner occupied and 9,144 (25 percent) were renter occupied.³¹ Of the 27,705 owner-occupied homes, 5,147 (19 percent) were mobile homes.³² The average owner-occupied house had a value of \$31,495, and the average contract monthly rent was \$150.³³

The Navajo have pressing housing problems that parallel their social and economic distress. In the United States as a whole, according to the 1995 American Housing Survey, virtually all housing units have

tained a "substantially continuous tribal existence and that have functioned as autonomous entities throughout history until the present." The criteria stipulated that tribal identity may be established by evidence of (1) dealings as a tribe with federal, state, or local governments; (2) recognition by historical records; (3) scholarly opinion; and (4) dealings with other tribes.

To be acknowledged as a tribe, a group of Native Americans must exercise some governmental authority over its members and must occupy a specified territory or inhabit a community viewed as distinctly "Indian or Native American." See LISTOKIN ET AL., *supra* note 3.

22. Paul E. Frye, *Lender Recourse in Indian Country*, 21 N.M. L. REV. 275, 276 (1991).

23. Navajo Nation, Division of Community Development 2001, *Navajo Nation Population Statistics* (Mar. 8, 2001) <<http://www.dcd.navajo.org/pops.htm>>.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. See NAVAJO NATION, DIVISION OF COMMUNITY DEVELOPMENT, 1990 CENSUS POPULATION CHARACTERISTICS OF THE NAVAJO NATION (Window Rock, Ariz. 1993).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 47.

33. *Id.* at 45-46.

such basic amenities as plumbing and kitchen facilities.³⁴ By contrast, 52 percent of the Navajo Nation's 56,000 housing units lack complete plumbing.³⁵ Among Navajo units, 49 percent lack sewer, septic, or other means for wastewater disposal, and 15 percent have no regular source of water.³⁶ One-third of the housing units on the Navajo Nation have no bedrooms and more than three-quarters have no telephones. The litany of statistics about grim housing is detailed in Table 1 (see page 438).

IV. The Importance of Homeownership on the Navajo Nation³⁷

Like other Americans, the Navajo become homeowners in attempt to realize the American dream. At the same time, the Navajo seek homeownership for reasons that are very different from those of typical Americans. As noted, many Navajo live in inadequate homes that lack basic amenities such as plumbing.³⁸ Navajo homeowners often occupy very basic mobile homes that they find less than adequate. They cite creaky, unstable floor panels and thin walls, which provide poor insulation and wind resistance, among other problems.³⁹ Frequently, ownership of a newly constructed home is the easiest way for Navajo to remedy housing deficiencies.

In addition, the Navajo possess a special cultural attachment to their lands and to the concept of home, which serves as an important impetus for homeownership on the Navajo Nation. Land and home are viewed as central to family life in the Navajo culture. In interviews, the Navajo overwhelmingly reported that they wanted to buy a house so that they would "have a place to call home."⁴⁰ The Navajo notion of home is a strong and culturally important concept that stresses a place where family members are always welcome, accepted, and where all can live in peace and stability.

34. See U.S. DEP'T OF COMMERCE AND U.S. DEP'T OF HOUS. AND URBAN DEV., AMERICAN HOUSING SURVEY FOR THE UNITED STATES IN 1995 (1997).

35. See Informal Memorandum from Eric J. Bauer, Executive Director, NPH, on Housing data, to author (Mar. 16, 1996) (on file with author).

36. See *id.*

37. While we focus here on the Navajo, homeownership is important to Native Americans of various tribes who seek this housing tenure for various reasons. See Andriana Abariotes & John Poupart, *American Indian Experiences with Home Ownership*, CURA REP. (June 1996).

38. See Bauer Memorandum, *supra* note 35; Table 1 in text.

39. See Interview by Yair Listokin and Stephanie Wexler with individuals being counseled by NPH in Window Rock, Ariz. (July 11 and 14, 1998) (on file with author).

40. *Id.*

TABLE 1: Housing on the Navajo Nation

What exists today (1996)	<ol style="list-style-type: none"> 1. 56,372 units 2. 19,339 vacant (1,714 boarded up) 3. 37,033 occupied 4. 75% owner occupied 5. Average home value of \$31,495
Condition of 56,372 units that exist today	<ol style="list-style-type: none"> 1. 29,099 (52%) lack complete plumbing facilities 2. 26,869 (48%) lack complete kitchen facilities 3. 27,354 (49%) lack sewer, septic, or cesspool for wastewater disposal 4. 8,635 (15%) have no regular source of water 5. 20,094 (36%) are heated by wood only 6. 18,795 (33%) have no bedrooms 7. Average number of people per household is 4.07
Documented housing needs by the year 2000	<ol style="list-style-type: none"> 1. 12,000 new housing units constructed 2. 11,000 units rehabilitated to safe and modern living standards 3. 5,000 owner-occupied units demolished, reconstructed, or both 4. 500 free-standing, self-contained homes built in remote areas not served by conventional utility systems
Housing production vs. need	<ol style="list-style-type: none"> 1. Assuming funding continues at 1996 levels, all of the current Navajo housing providers (e.g., Navajo Housing Authority and BIA) will produce 704 units per year x 5 years = 3,520 units by 2000 2. Need by 2000 = 23,000 units 3. Shortfall = 19,480 units

Source: Housing data materials prepared by former NPH Executive Director, Eric J. Bauer, March 16, 1996.

Many Navajo desire homeownership simply because they want to have control over the premises and a higher level of privacy. Additionally, many have secured rental housing through an employer and will no longer be eligible for such housing if they retire or otherwise leave the employer.⁴¹ For those Navajo, homeownership offers a more secure housing situation.

41. *Id.*

Navajo in all income groups have to wait many years to find affordable housing because housing of all types is limited. Middle-income Navajo, in particular, have been afforded few housing options.⁴² Unable to qualify for government-subsidized housing and denied mortgages on the reservation, many have been forced to leave the reservation or to opt for temporary housing. As it becomes more possible to achieve homeownership on the Navajo Nation, some of these upwardly mobile Navajo may return to the reservation.⁴³

V. Obstacles to Homeownership on the Navajo Nation

Although powerful motivations exist for developing a mortgage-financed homeownership market on the Navajo Nation, no conventional home mortgages had been granted on the reservation through 1994.⁴⁴ Even through mid-1998, fewer than fifteen mortgages had been completed.⁴⁵ The numbers clearly imply that mortgage lending on the Navajo reservation faces potent obstacles, which are described below.

A. A Tangle of Complex Legal Issues⁴⁶

Historically, lending on Indian reservations has meant contending with two major legal obstacles that do not apply off the reservation, and that are related to the unique status of Indian lands.⁴⁷ First, most of those lands are held in trust by the federal government rather than owned outright.⁴⁸ Second, property transactions involving reservation lands are governed by sovereign tribes. Because of these legal issues, lenders have

42. See Interview by David Listokin with Eric J. Bauer, former Executive Director, NPH, in Window Rock, Ariz. (July 14, 1997) (on file with author). On the Navajo Nation, the cutoff for housing programs targeted to low-income households is \$24,950 as of 1998 for a family of four. (The very low-income ceiling is \$15,600.) Middle income would thus be those earning at least \$25,000.

43. See Dirk Johnson, *Growth of Gambling on Tribal Land Starts Trek Back Home by Indians*. N.Y. TIMES, Jan. 17, 1999, at A14. (describing the "trek back home [to the reservations] by Indians").

44. *Native Americans and Mortgages*, COMMUNITY INVESTMENT, Aug. 29, 1994 at 5.

45. Interview by Yair Listokin and Stephanie Wexler with Roberta Drake, Staff Member, NPH in Window Rock, Ariz. (July 15, 1998) (on file with author).

46. *Id.* Reservation land issues are part of a larger set of Indian claims and issues with the federal government. See H. D. ROSENTHAL, *THEIR DAY IN COURT: A HISTORY OF THE INDIAN CLAIMS COMMISSION* at ix (1990) (noting that the "tangle of legal issues that surrounds these claims is as complex as any facet of American jurisprudence.>").

47. See WILCOMB E. WASHBURN, *RED MAN'S LAND/WHITE MAN'S LAW: THE PAST AND PRESENT STATUS OF THE AMERICAN INDIAN* at 143 (Univ. of Okla. Press, 2d ed. 1997) (for an historical overview of the changing legal status of Indian lands).

48. See Stephen J. Pevar, *The Rights of American Indians and Their Tribes*, AM. CIVIL LIBERTIES UNION HANDBOOK FOR YOUNG AM. at 21 (1997). A total of 56 million acres is held in trust by the federal government for Indian tribes and individuals. See U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, *AMERICAN INDIANS TODAY: ANSWERS TO YOUR QUESTIONS* at 9 (3d ed. 1991).

been uncertain about their ability to recover outstanding loan balances in the event of mortgage defaults and therefore, have been hesitant to make loans on Indian reservations.⁴⁹

Land on Indian reservations is held in two broad types of trust by the federal government. Most of the land (about 80 percent) is held in trust on behalf of the tribe. Another 18 to 19 percent of tribal land is held in trust for individual Native Americans.⁵⁰ The remaining fractions of tribal land are fee simple properties that are legally similar to lands off the reservation.⁵¹

Homes built on tribal trust lands—the typical situation—present special difficulties when serving as collateral for a mortgage. By law, such lands cannot be encumbered or foreclosed on unless authorized by a tribal government. Because acceptable collateral is fundamental to the mortgage process, historically the inability to collateralize tribal land has defeated home lending to Indians.

To facilitate mortgage lending on tribal and individual trust land, the Navajo tribe first needed to address the problem of acceptable collateral. Here, the Navajo and other involved organizations have made important strides. The Navajo Master Area Land Lease Act designated specific tracts of land on the Navajo reservation as Master Land Lease (MLL) areas, each with a separate entity having oversight of the leasing activities for that area.⁵² MLL area land could be used as collateral for either commercial or housing development, but the Navajo tribe had the right of first refusal in the case of foreclosure.⁵³ The Navajo Deed of Trust Act also eliminated some of the obstacles to foreclosure when loans were backed by government agencies (e.g., Federal Housing Administration or Veterans Affairs).⁵⁴

The Navajo Deed of Trust Act was a precursor to the section 200c lease.⁵⁵ This new homesite lease was formulated by the Navajo in col-

49. See Frye, *supra* note 22, at 293.

50. See Drake interview, *supra* note 45.

51. See *id.*; see also Interview by Yair Listokin and Stephanie Wexler with Paul Loman, Homeowner Training Specialist, NPH in Window Rock, Ariz. (July 13, 1998) (on file with author). Between 1 and 2 percent of land on reservations is fee simple land. Fee simple properties are scattered throughout the reservation. On such properties, many of the legal obstacles described are not relevant. As a result, the fee simple lands see a disproportionate amount of building and lending activity. Nevertheless, fee simple lands make up too small a percentage of tribal areas to be a feasible option for many potential homeowners.

52. See Interview by Yair Listokin and Stephanie Wexler with Steve Barbier, Temporary Executive Director, NPH in Window Rock, Ariz. (July 13, 1998) (on file with author).

53. *Id.*

54. See Bauer interview, *supra* note 42; Drake interview, *supra* note 45.

55. See Bauer interview, *supra* note 42; Drake interview, *supra* note 45.

laboration with Fannie Mae and the Bureau of Indian Affairs (BIA). With a section 200c lease, Navajo tribal members can get exclusive rights to a one-acre property for a sixty-five-year period.⁵⁶ The objective of the section 200c lease is to have the leasehold serve as acceptable collateral for a mortgage because the bank could foreclose on both the home and the lease.⁵⁷ The new section 200c lease has been approved by the Navajo Nation and Fannie Mae as the lease to use with mortgage loans.⁵⁸

While the above changes, especially the section 200c homesite lease, have been heralded as a breakthrough in the legal logjam that has kept banks from granting mortgages on the Navajo Nation, problems do remain.⁵⁹ For both individual and tribal trust lands, obtaining a homesite lease requires considerable effort in acquiring approval from tribal authorities (and relevant individuals in the case of individual trust land). Additionally, using the section 200c lease as security for a mortgage loan requires Navajo Nation and BIA approval, and obtaining approval can be a tedious process (see next section). Further, the legal status of the security is still disputed. In the summer of 1998, for example, HUD lawyers for the section 184 loan guarantee program suddenly requested a new rider on the lease, to the great dismay of Navajo judicial experts.⁶⁰

The second major legal obstacle to lending on Indian reservations relates to tribal sovereignty. If foreclosure and eviction become necessary, the process is subject not to federal or state law, but rather to the laws of the sovereign tribes and to the jurisdiction of tribal courts.⁶¹ Many banks perceive tribal foreclosure and eviction laws as insufficient protection for their capital.⁶² Furthermore, even if laws are in place, lenders might be reluctant to press their claims in tribal courts because they are unfamiliar with this venue.⁶³

Many of the fears about problems with foreclosure may be the result of perceptions rather than realities. Navajo legal and housing officials

56. See Barbier interview, *supra* note 52.

57. *Id.*

58. *Id.*

59. See Drake interview, *supra* note 45.

60. *Id.* The section 200c lease contains a paragraph allowing the tribe to cancel the homesite lease if the lessee is involved in criminal activity. This contingent tribal ability to cancel the lease caused HUD concern.

61. See Susan Woodrow, *Tribal Sovereign Immunity: An Obstacle for Non-Indians Doing Business in Indian Country*, FEDERAL RESERVE BANK OF MINNEAPOLIS, COMMUNITY DIVIDEND at 9–10 (Summer 1998).

62. See Interview by Yair Listokin and Stephanie Wexler with Anonymous #2, lender in Window Rock, Ariz. (Aug. 3, 1998).

63. See U.S. GENERAL ACCOUNTING OFFICE, NATIVE AMERICAN HOUSING: HOMEOWNERSHIP OPPORTUNITIES ON TRUST LANDS ARE LIMITED, GAO/RCED-98-49 (1998).

point out that their eviction laws are nearly identical to those of New Mexico and Arizona.⁶⁴ Furthermore, the tribe is unlikely to change the laws after the loans are made because such a reversal would hinder future Navajo efforts to obtain private financing.

Even so, considerable apprehension remains over the section 200c lease-based foreclosure and eviction process.⁶⁵ The process has never been tried, and until tested, its efficacy is uncertain.

B. *Extensive and Time-Consuming Bureaucratic Requirements*

Dealing with bureaucracies is the norm for Navajo mortgage seekers. Because of the unusual nature of Navajo mortgages, individuals often must obtain documents unnecessary for off-reservation mortgages, such as the complicated homesite leases.⁶⁶ The number of agencies that a prospective Navajo home buyer encounters with respect to the lease is mind boggling.⁶⁷

Many of the bureaucratic requirements seem unnecessarily repetitive. For example, a homesite lease on tribal trust land must be approved several times. First, the local land office's approval is needed. Then, the tribal land office must give its assent. Next, a BIA bureau is required to give final approval.⁶⁸ Those approvals are not coordinated, and one often cannot proceed until the previous level of approvals has been finalized.⁶⁹

New construction sites require several other approvals. A homebuilder must have the land surveyed by the land office and must have impact studies completed by the Navajo archaeological and environmental agencies.⁷⁰ Moreover, tribal members often have grazing rights to the land. Consequently, the prospective homeowner must obtain many signatures merely to get permission to build on the land.⁷¹ Each

64. See Anonymous #2 interview, *supra* note 62.

65. See Interview by Yair Listokin and Stephanie Wexler with Cathy Coleman, Assistant Vice President, First National Bank of Farmington in Farmington, New Mexico (July 15, 1998) (on file with author); see also Counseling Interviews, *supra* note 45; Interview by Yair Listokin and Stephanie Wexler with Rob Skjonsberg, Officer, Norwest Mortgage of South Dakota in Pierre, SD (July 30, 1998) (on file with author).

66. See Interview by Yair Listokin and Stephanie Wexler with Gloria Chicarello, prospective Navajo home buyer in Window Rock, Ariz. (July 14, 1998) (on file with author).

67. See Table 2.

68. The BIA title unit for Indian lands is often mentioned as a source of delay. See Barbier interview, *supra* note 52.

69. See Drake interview, *supra* note 45.

70. *Id.*

71. *Id.*

approval is time-consuming and requires navigating the bureaucratic minefield described above.

Prospective homebuyers encounter delays at many stages of the approval process. Mortgage lending on Navajo lands is quite new and very complex. Consequently, there is a sharp learning curve for the relevant agencies; the first few approvals may demand considerable effort and time from each bureau. In addition, some of the required approvals at the local chapter and agency levels are hard to procure because the agency council may meet only once a month.⁷² If the prospective homebuyer misses a meeting, he or she may be forced to wait another month for a simple approval.

C. The Lack of a Housing Market and High Infrastructure Costs

The Navajo Nation, like most Indian reservations, lacks a housing market.⁷³ With no mortgages available and few wealthy individuals, housing targeted at homebuyers has never been constructed. As previously noted, many prospective Navajo homeowners seek scattered-site, newly constructed, or rehabilitated homes.⁷⁴ Such homes are often difficult to build, partly because approval for new construction is problem-ridden and time-consuming.

Even after a Navajo obtains the required permissions, new construction in an area without a housing market presents special financing challenges. Without an actual home to appraise and with no comparable homes in the area, a bank will find extreme difficulty when getting an estimate of the home's value. Banks are generally hesitant to lend when the value of the collateral is so uncertain.⁷⁵

Once the Navajo obtain permission to build, they face extremely high construction costs.⁷⁶ Scattered-site development precludes the economies of scale realized with multiple-unit projects. In addition, large travel distances raise costs. It is not uncommon for a contracting company to have to travel 150 miles to the homesite.⁷⁷ The Navajo homebuyer must compensate the contractor for this expense. Finally, many scattered-site homesites are without basic infrastructures such as water,

72. Loman interview, *supra* note 51.

73. See Housing Assistance Council, *Barriers to the Development of Housing for Native Americans* (Mar. 2001) <<http://www.ruralhome.org/pubs/infoshts/aianhd.htm>>.

74. Interview by Yair Listokin and Stephanie Wexler with Mike Burnside, Construction Specialist, NPH in Window Rock, Ariz. (July 14, 1998) (on file with author).

75. See Skjonsberg interview, *supra* note 65.

76. Burnside interview, *supra* note 74.

77. *Id.*

TABLE 2: Agencies and Private Providers Associated with the Navajo Home Buying Process

Navajo Nation/Federal Agencies	Private Providers
Navajo Land Administration	Lender and appropriate insuring agency (i.e., HUD, VA, RHS)
1. Local agency insuring	
2. Central office Lender	Lender and investors (i.e., Fannie Mae)
Navajo Fish and Wildlife Department	Credit reporting agencies
Navajo Archaeology Department	Appraisers
Navajo Historic Preservation Department	Fee inspectors
Navajo Environmental Protection Agency	Plan reviewers
Navajo Transportation, Archeological Department	Surveyors
Navajo Water Code Department	Title insurers
Navajo Forestry Department	Abstract or closing agents
Navajo Minerals Department	Homeowner's insurance agents
Navajo Tribal Utility Authority	Pest inspector
Navajo National Department of Justice	Mechanical inspector
Navajo Judicial System	Building contractors
Navajo Housing Authority	Real estate agents
BIA, Branch of Roads	Cultural resource inventory consultants
BIA, Environmental Quality Office	Environmental assessment consultants
BIA, Title Plant	Biological consultants
BIA, Real Property Management Office	
1. Local agency offices (5)	
2. Central agency office	
Indian Health Services	
Individual grazing permittees	
Local chapter governments	
Local grazing official	
District grazing official	
District Grazing Committee	
County Recorders' Office (11 counties)	
County Roads Department (11 counties)	

BIA = U.S. Department of the Interior, Bureau of Indian Affairs

HUD = U.S. Department of Housing and Urban Development

RHS = Rural Housing Service

VA = Veteran's Administration

Source: Navajo Partnership for Housing (NPH), 1998c. Supplemental materials provided by Roberta Drake to Yair Listokin and Stephanie Wexler, Center for Urban Policy Research, Rutgers University, September 8, 1998.

sewage, and electricity.⁷⁸ Because the nearest utilities are often miles away, connecting to that infrastructure entails a major expense for the homebuyer.⁷⁹ Alternatives such as solar power, wells, and septic tanks are often prohibitively expensive or infeasible.⁸⁰ While it is hard to generalize, construction costs of new single-family detached housing on the Navajo Nation often approach \$100 per square foot—two to three times the off-reservation cost.⁸¹

Adding to cost pressures are the Navajo's housing preferences. Because they want to build on ancestral land that they will occupy for many years, the Navajo often wish to build a home that will meet their needs for a lifetime. Such a home is generally far beyond the means of most Navajo incomes.⁸²

One obvious solution to the problems would be to encourage multiple-unit attached development. This approach would raise economies of scale in building and would reduce per-unit infrastructure costs.⁸³ Such development, however, is not without its problems. For one thing, as noted, many Navajo wish to live on their ancestral land, which is often far from other potential homesites.⁸⁴ In addition, potential developers are frequently reluctant to take a chance on such an inchoate market.

In spite of these obstacles, various initiatives for multiple-unit development are being considered.⁸⁵ At present, however, the prospective homebuyer faces the almost prohibitive expense and difficulty of building his or her own detached home.

D. *Navajo Unfamiliarity with Home Buying and Mortgage Finance Processes*⁸⁶

Historically, Navajo homes were simply passed from generation to generation.⁸⁷ Home buying, especially with a mortgage, is such a new phenomenon on the Navajo Nation that many of the Navajo are understandably unfamiliar with the process. As a result, many qualified

78. See HOUSING U.S. GENERAL ACCOUNTING OFFICE, NATIVE AMERICAN: INFORMATION ON HUD'S HOUSING PROGRAMS FOR NATIVE AMERICANS, GAO/RCED-97-64, at 10 (Mar. 1997).

79. Burnside interview, *supra* note 74.

80. *Id.*

81. *Id.*

82. See Drake interview, *supra* note 45.

83. Burnside interview, *supra* note 74.

84. Drake interview, *supra* note 45.

85. *Id.*

86. See KINGSLEY, ET AL., *supra* note 11, at 231.

87. See Drake interview, *supra* note 45.

individuals do not think about buying a home or obtaining a mortgage, and few mortgage loans are sought on the reservation.⁸⁸

Limited knowledge of mortgage finance continues to plague those few Navajo who do begin the mortgage process. Many prospective homebuyers, for example, professed ignorance of the benefit of having a mortgage interest deduction.⁸⁹ Many were unfamiliar with closing costs and the considerable expense of finalizing a home purchase.⁹⁰ Home-buyer education minimizes the impact of such surprises, but it is expensive and time-consuming.

The tortuous road to Indian homeownership further exacerbates the problem. Procuring a mortgage in Indian country would be difficult even for a sophisticated homebuyer. To the untutored home purchaser, the process is doubly challenging.

E. *Suspicious and Unease Among the Older Navajo Generation*

Prospective Navajo homebuyers often encounter opposition from within the tribe.⁹¹ Because of the ugly history of federal involvement with the tribe, many older Navajo mistrust any new initiative involving government agencies and outside funds.⁹² This mistrust is especially problematic when it comes to mortgage lending because tribal support, which is needed to navigate the legal infrastructure, is often not forthcoming. Some Navajo oppose any program that might make the Navajo Nation vulnerable to alienation of Indian tribal lands.⁹³

A generation gap compounds this tension. Many prospective homebuyers are younger Navajo who have spent time off the reservation. Members of the older Navajo generation, who are generally less educated and more sedentary, view these younger individuals with some suspicion.⁹⁴ Frequently, the young Navajo do not speak the Navajo language.⁹⁵ The combination of generation gap and general unease toward off-reservation programs fuels the distrust of older Navajo for mortgage-financed home-buying on the Navajo reservation.

88. *Id.*

89. *See* Counseling interviews, *supra* note 39.

90. *See id.*

91. Barbier interview, *supra* note 52.

92. *Id.*

93. *See* Drake interview, *supra* note 45; Interview by Yair Listokin and Stephanie Wexler with John Lucero, Officer, Norwest Mortgage of New Mexico in Santa Fe, New Mexico (July 17, 1998) (on file with author).

94. Barbier interview, *supra* note 52.

95. *See* Drake interview, *supra* note 45; Loman interview, *supra* note 51.

Unfortunately for prospective homeowners, uncooperative Navajo have numerous opportunities to obstruct the home-buying process. The older generation dominates the many local councils whose approval is needed for various aspects of mortgage lending.⁹⁶ One woman who wished to build a home sought approvals from her uncooperative local chapter council for nearly four months without success.⁹⁷ Subsequently, she learned that the approvals actually were not necessary. But the lesson was clear: the resistant Navajo, often older and well connected, can sometimes impede the home-buying process.⁹⁸

F. *Poor Credit Ratings or No Formal Credit*

Many Navajo have very poor credit ratings.⁹⁹ Because there is no for-sale housing market on the Navajo Nation, many Navajo are also unaware of the importance of good credit for homebuyers. Although many individuals obtain credit from pawnshops and merchants, the importance of good credit is underemphasized by those creditors. (Such institutions often extend credit at high interest rates with little thought of credit ratings.)¹⁰⁰

Moreover, many Navajo are unaware of their credit situation. At a homebuyer education meeting, most participants were learning about their credit status for the first time.¹⁰¹ For some, their credit rating was low, necessitating a lengthy period of credit improvement before a mortgage could be obtained.

Some Navajo have no credit rating. According to banks, this status is preferable to poor credit.¹⁰² If an individual has no credit history, alternative credit often can be established by using rental payments, utility payments, unreported store credit, and so on.

G. *Low-Income Levels and High Debts*

As detailed earlier, incomes on the Navajo Nation are often very low. Employment opportunities on the reservation are scarce, and workers must often travel long distances to their jobs. One prospective homebuyer, for example, is a construction worker who makes the twelve-hour round trip to Phoenix each week to find work.¹⁰³

96. See Drake interview, *supra* note 45; Loman interview, *supra* note 51.

97. See Drake interview, *supra* note 45.

98. See Interview by Yair Listokin and Stephanie Wexler with Anonymous #1, a Native American housing official in Window Rock, Ariz. (July 14, 1998) (on file with author).

99. See Coleman interview, *supra* note 65.

100. *Id.*

101. See Counseling interviews, *supra* note 39.

102. Skjonsberg interview, *supra* note 65.

103. See Counseling interviews, *supra* note 39.

The Navajo generally have not had high housing costs, but they have borrowed heavily in other areas. It is not uncommon, for example, for a Navajo to have two monthly car or truck payments of more than \$250 each.¹⁰⁴ As a result, the Navajo often have very high debt-to-income ratios.¹⁰⁵ Indeed, some prospective homebuyers approach the maximum debt values even before potential mortgage payments are factored in.¹⁰⁶ With such circumstances, it is easy to see why few Navajo have either the income necessary to afford a new home or the assets required to cover down payment and closing costs.

H. *Lender Business Constraints*

Mortgage lending on the Navajo Nation is currently unprofitable. Because of the difficulties detailed above, each loan requires considerable time and effort on the part of loan officers.¹⁰⁷ In addition, loan values are generally small. This combination guarantees losses until loan volumes and values begin to increase.

VI. New Climate for Homeownership

All of these difficulties can be intimidating. For many years, they were enough to prevent any growth in Navajo home buying and mortgage lending. But the climate is changing, and momentum is growing for mortgage lending to the Navajo.¹⁰⁸ The obstacles have not been eliminated, but new attitudes and initiatives within the federal government, the tribe, and the banks have begun to bring larger-scale mortgage lending closer to reality.¹⁰⁹ The NPH is not only symbolic of this new climate but also is a key participant in facilitating mortgage lending on the Navajo Nation. Indeed, one of the greatest accomplishments of NPH has been taking people through the mortgage process, thereby identifying which obstacles are the most forbidding while generating new ideas for overcoming them.¹¹⁰

104. See Coleman interview, *supra* note 65.

105. *Id.*

106. *Id.*

107. Interview by David Listokin with Dianne Schey, Vice President and Manager, SouthWest Credit Risk Management in Phoenix, Arizona (July 11, 1997) (on file with author).

108. See TIMOTHY J. SMITH, NORTHWEST AREA FOUNDATION, STRATEGIES FOR FINANCING BUSINESS AND ECONOMIC DEVELOPMENT ON INDIAN RESERVATIONS (1989).

109. See U.S. DEP'T OF HOUS. & URBAN DEV., OUR HOME: ACHIEVING THE NATIVE AMERICAN DREAM OF HOMEOWNERSHIP, HUD-1546-PIH (Aug. 1995).

110. Coleman interview, *supra* note 65.

A. Initiatives by the Federal Government and GSEs

As described earlier, the Navajo tribe and other organizations have made important strides in addressing legal obstacles related to collateral for mortgages on the Navajo Nation. Many other changes are required, however, to bring larger scale mortgage lending closer to fruition. Recognizing this need, the federal government has taken important steps to facilitate mortgage financing.

In 1996, Congress passed the Native American Housing Assistance and Self-Determination Act (NAHASDA).¹¹¹ Rather than NAHASDA funds being provided for specific subsidized rental housing units to Indian housing authorities such as the Navajo Housing Authority (NHA), money is transferred under the NAHASDA to NHA in block grants, allowing the NHA near total autonomy in choosing how the money is spent.¹¹² For example, NHA may use NAHASDA monies to build a development where an individual Navajo may purchase a home using private mortgage capital.¹¹³

In addition to the NAHASDA program, an array of government loan programs is changing the character of mortgage lending on the Navajo Nation (Table 3, page 450). The most prominent program is HUD's section 184 loan guarantee, which was established in 1994.¹¹⁴

Under section 184, HUD provides a 100 percent loan guarantee to banks on residential loans made to Indian individuals or housing authorities on tribal lands.¹¹⁵ By providing the loan guarantee, section 184 eliminates much of the inherent risk to those seeking to make loans on Navajo lands. As a result, banks are more likely to loan money despite the aforementioned collateral risks.

Another advantage of the section 184 program is that, in the event of foreclosure and HUD payment of the guarantee to the bank, HUD is committed to finding another Navajo buyer.¹¹⁶ Therefore, the risk of alienation of tribal lands is slim. Yet another plus for section 184 is that there is no strict income limit for eligibility.¹¹⁷ Consequently, sec-

111. Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. § 4101 (Supp. IV 1998).

112. See U.S. GENERAL ACCOUNTING OFFICE, NATIVE AMERICAN HOUSING: INFORMATION ON HUD'S HOUSING PROGRAMS FOR NATIVE AMERICANS GAO/RCED-97-64, (1997). NHA receives an annual allocation of \$86 million. *Id.*

113. Drake interview, *supra* note 45.

114. Thomas Moore & Margaret Tyndall, *HUD 184 Loan Program Helps Native Americans Achieve Homeownership*, FEDERAL RESERVE BANK OF MINNEAPOLIS: COMMUNITY DIVIDEND at 1 (Spring 1998).

115. COMPTROLLER OF THE CURRENCY, ADMINISTRATOR OF NATIONAL BANKS, A GUIDE TO MORTGAGE LENDING IN INDIAN COUNTRY (July 1997).

116. Drake interview, *supra* note 45.

117. See U.S. DEP'T OF HOUS. & URBAN DEV., SECTION 184: INDIAN HOME LOAN GUARANTEE PROGRAM (1998).

TABLE 3: Mortgage Programs to Foster Indian Homeownership

	Direct Mortgages				
	HUD Section 184	HUD Section 248	VA Direct Loan	RHS Native American Pilot Loan	FHLB Affordable Housing Program
Program coverage	HUD loan guarantee (100%) on residential loans made to Native Americans for the construction, purchase, or rehabilitation of one- to four- unit properties on Indian lands	HUD insurance (100%) for lenders making mortgage loans on trust land secured by a lease	VA direct loan to purchase, construct, or improve a home on Native American trust land	RHS loan guarantees made for purchase of existing homes or new construction on tribal land	Federal Home Loan Bank subsidies provided through member institutions for acquisition, rehabilitation, or new construction of housing
Eligibility	Indian family or individual, Indian Housing Authority, Indian tribe	Families whose incomes are too high to qualify for housing through Indian Housing Authority	Native American veterans meeting credit and income qualifications; loans limited to cost of home or \$80,000, whichever is less	Individual members of federally recognized tribes whose homes are located on tribal trust or restricted fee simple lands; not available to individuals with allotments or unrestricted fee simple lands	Very low, low-, and moderate- income families
Other	In event of default, lender foreclosure and reimbursement from HUD allowed; transfer of account to an eligible tribal member, the tribe, or its Indian Housing Authority attempted by HUD	Limited to owner occupants; tribal eviction procedures mandatory	Processing and closing the loan, including making an appraisal, done by VA acting as lender	Jointly developed with Fannie Mae and modeled after RHS Section 502 program	Competitive grant— not limited to Indians

FHLB = Federal Home Loan Bank; HUD, VA, and RHS. See Table 2.

Sources: U.S. Comptroller of the Currency, *A Guide to Mortgage Lending in Indian Country* (July 1997), at 19-26; Federal Home Loan Bank of Seattle *Bringing Private Resources to Native Lands* (1993), at 12-18.

tion 184 can assist a Navajo who is too wealthy to obtain federal housing, such as public housing units, but unable to build a home using out-of-pocket funds. In addition, section 184 loans require only a 5 percent down payment (only 3 percent for the first \$25,000).¹¹⁸ This level is far more attainable for low-income families than is the down payment requirement for most conventional loans. Additionally, unlike the FHA section 203 mortgage, the section 184 loan has no front-end debt ratio, that is the percentage of the borrower's income that can be applied to repay the housing debt.¹¹⁹

The weaknesses of section 184 stem mostly from the program's newness. At present, the HUD review needed to obtain the guarantee introduces yet another level of bureaucracy into an already difficult process.¹²⁰ Many of those interviewed, however, expressed the hope that the section 184 approval process would ultimately be streamlined.¹²¹

Another uncertainty regarding the section 184 program relates to its foreclosure procedures. As noted earlier, until such procedures have been tested, some lingering fears will remain on the part of all concerned that their interests will be forsaken in the event of default and foreclosure. Banks, for example, will be confident that section 184 loans entail no risk to capital only after the foreclosure process has been successfully tested.¹²² In total, however, the section 184 program looks extremely promising and has been a major factor in generating momentum toward mortgage borrowing on the Navajo Nation.¹²³

Other government loan programs that seek to foster Indian mortgage lending are similar to section 184. For full details see Table 3. HUD's section 248 program is nearly identical to section 184. The VA provides loans and grants for low-income Navajo veterans who purchase homes on the reservation. In addition, the RHS's section 502 program provides guarantees for LMI families in rural areas. All of these programs facilitate mortgage lending on the Navajo Nation.¹²⁴

The Government Sponsored Enterprises (GSEs) also play a role in the changing landscape of Navajo mortgage lending. By purchasing HUD section 184 loans, the GSEs expand the pool of capital available

118. See BETH MARCUS, FANNIE MAE, CAPTURE THE DREAM: EXPLORING NEW OPPORTUNITIES IN INDIAN HOUSING, HOW STATES, LENDERS, AND NONPROFITS CAN WORK IN INDIAN COUNTRY.

119. See *id.*

120. Drake interview, *supra* note 45; Loman interview, *supra* note 51.

121. Barbier interview, *supra* note 52; Lucero interview, *supra* note 94.

122. See Coleman interview, *supra* note 66.

123. Lucero interview, *supra* note 93.

124. See *id.*

to Indian homebuyers.¹²⁵ The GSEs contribute in many other ways.¹²⁶ For example, Fannie Mae's Fannie 97 product (using Community Home Buyer's program guidelines) opens the door to conventional mortgages on reservations for the first time.¹²⁷ In addition, Fannie Mae provides legal and logistical support. Fannie Mae was instrumental in developing the standard homesite lease that was acceptable to many Indian tribes, lenders, and HUD. If adopted universally, this document would sharply curtail the bureaucratic hassles associated with lending to Native Americans. In summary, Fannie Mae's commitment of resources and expertise has been an important factor in promoting mortgage lending to the Navajo.¹²⁸ Freddie Mac, too, contributes to Native American mortgage lending through efforts such as purchasing loans originated under sections 184 and 248.¹²⁹

Native Americans have been able to secure some grants for homeownership. First National Bank of Farmington (FNBF) and Norwest Bank, for example, have secured Affordable Housing Program (AHP) monies from the Federal Home Loan Bank System for purposes such as reducing the down payments required of Indian homebuyers.¹³⁰ HUD's Self-Help Opportunities Program (SHOP), which provides funds to individuals engaged in "self-help" (e.g., sweat equity in rehabilitation), and other sources have been tapped for similar purposes.¹³¹

VII. Role of Banks

Clearly, new government and GSE initiatives play an important role in expediting mortgage lending to the Navajo. Ultimately, however, the role of government and of the GSEs is limited. If mortgage lending on the Navajo Nation is to flourish, the primary impetus must come from the two principals involved in any loan—the banks and the Navajo themselves. Indeed, many individuals expressed the belief that some government programs (such as section 184) are only temporary measures that are designed to get the private sector ball rolling.¹³² Once

125. See Marcus, *supra* note 119.

126. See FANNIE MAE, NATIVE AMERICAN HOUSING INITIATIVES (Nov. 1996).

127. *Id.*

128. Lucero interview, *supra* note 93.

129. *Id.*

130. The Federal Home Loan Banks contribute the greater of \$100 million or 10 percent of their collective net income each year to the AHP. AHP monies are allocated on a competitive basis and may be used for aiding affordable rental or homeownership projects. See ROBERTA YOUMANS, FEDERAL HOUSING FINANCE BOARD, FEDERAL HOME LOAN BANK RESOURCES AVAILABLE (1998).

131. Drake interview, *supra* note 45.

132. Coleman interview, *supra* note 65; Lucero interview, *supra* note 93; Skjonsberg interview, *supra* note 65.

some momentum is generated, it will be the responsibility of the banks and the Navajo people to ensure that lending continues to expand.

Banks enter the Navajo mortgage market for a number of reasons. Some seek potential profits; others need to lend to the Navajo to fulfill Community Reinvestment Act (CRA) requirements.¹³³ Most banks seem to be motivated by some combination of the two, along with a genuine desire to assist their community.¹³⁴

For most banks, CRA requirements appear to be an important consideration. As financial regulators have become more attuned to Indian housing needs, they have imposed new CRA performance requirements¹³⁵ and mandates.¹³⁶ CRA scrutiny heightens when banks merge.¹³⁷ In the past, the Navajo took full advantage of that process. One individual at the NHA kept abreast of merger activity and alerted regulators if potential mergees had a limited presence on the Navajo Nation. Unfortunately for the Navajo, that individual has now left the NHA, so regulatory pressure resulting from recent mergers has lessened.¹³⁸ Nevertheless, a desire for CRA credits continues to motivate many lenders on the Navajo Nation.

Another factor encouraging bank involvement with the Navajo is the potential for future profits. For example, Norwest Bank's large size enables it to absorb the high upfront costs associated with developing the Indian mortgage market in pursuit of future profits.¹³⁹ Norwest's profit motive has practical implications. The bank's loan officers in Window Rock, Arizona, and Santa Fe, New Mexico, are actively involved in Navajo lending.¹⁴⁰ As a result, Norwest is touted as one of the most important lenders on the Navajo Nation.¹⁴¹ Indeed, Norwest actually completed some section 184 loans to Navajo without the in-

133. Community Reinvestment Act, 12 U.S.C. 1340 § 2901 (1977). 12 C.F.R. pts. 25, 228, 345, 563e (2000), is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate.

134. Barbier interview, *supra* note 52.

135. 60 Fed. Reg. 22,178–22,189 (May 4, 1995). The CRA has been influential not only in Indian areas, but more generally, it has fostered enhanced lending to low and moderate income and minority borrowers. See LISTOKIN ET AL., *supra* note 3; LISTOKIN ET AL., *infra* note 136.

136. See DAVID LISTOKIN, ET AL., FANNIE MAE FOUNDATION, MAKING NEW MORTGAGE MARKETS: CASE STUDIES OF INSTITUTIONS, HOME BUYERS, AND COMMUNITIES (2000).

137. *Id.* at 39.

138. Barbier interview, *supra* note 52; Drake interview, *supra* note 45.

139. Lucero interview, *supra* note 93.

140. *Id.*

141. Barbier interview, *supra* note 52; Drake interview, *supra* note 45.

volvement of NPH.¹⁴² Few other banks would have even attempted that feat.

Some smaller lenders near the Navajo Nation have shown interest in Navajo mortgage lending to serve their significant Indian customer base, as well as to satisfy CRA obligations. Examples include FNBF, Zion's Bank of Utah, and Gallup Federal Savings Bank of New Mexico.¹⁴³

Thus, for various reasons, some banks are showing a willingness to extend mortgages in Indian country. With section 184 and its sister programs, as well as the new homesite leases, mortgage lending has become a possibility. Banks are *not* willing, however, to do the significant legwork necessary to attract and qualify Indian mortgage applicants.¹⁴⁴ That essential task will fall to the Navajo themselves—in particular, NPH.

VIII. Navajo Partnership for Housing

NPH is a nonprofit section 501(c)(3) housing partnership operating with a mandate to create homeownership opportunities on the Navajo Nation by improving access to private mortgage capital.¹⁴⁵ NPH focuses on fostering homeownership for middle-income Navajo—those earning roughly \$20,000 to \$40,000 annually.¹⁴⁶ This focus contrasts with the historical tendency of Indian housing authorities and other Indian housing providers to serve the poor, and is justified in one of NPH's reports:

A surprising fact is the degree to which middle and upper income Navajos suffer from inadequate housing. It is difficult to find homes for sale, and even more difficult to obtain financing to purchase or repair these homes. As a result of the undeveloped housing market, many people who can afford adequate housing without government subsidies are still unable to purchase a home. Thus, even higher income residents may be forced to live with relatives in overcrowded situations, commute long distances to work, and tolerate unsatisfactory, sometimes unsafe, housing because there is no financing available. . . . NPH aims to address this gap.¹⁴⁷

NPH was incorporated on April 19, 1996, in Window Rock, Arizona—the seat of Navajo tribal government.¹⁴⁸ NPH began conducting

142. See Lucero interview, *supra* note 93. Those loans were in the pipeline before the establishment of the NPH. At present, however, Norwest encourages all prospective home buyers on the Navajo Nation to take advantage of NPH services. *Id.*

143. *Id.*

144. Drake interview, *supra* note 45.

145. NAVAJO PARTNERSHIP FOR HOUSING, INC., 1998–1999 BI-ANNUAL REPORT (1999).

146. Drake interview, *supra* note 45.

147. Navajo Partnership for Housing, Inc., *Navajo Partnership for Housing Business Plan*, St. Michaels, Ariz. (Oct. 1, 1999).

148. Bauer interview, *supra* note 42.

homebuyer orientation sessions in August 1996 and commenced a more elaborate homebuyer education course in February 1997.¹⁴⁹

NPH's annual budget is approximately \$470,000.¹⁵⁰ It has received a \$100,000 grant from the Fannie Mae Foundation, \$65,000 from Wells Fargo Bank, and contributions from several others (e.g., the FNBF, Norwest Bank (Arizona), Bank One (Arizona), Bank of America (New Mexico), and the Federal Home Loan Banks of Dallas and San Francisco).¹⁵¹ Government entities, including the Navajo Nation, HUD, and the New Mexico Mortgage Finance Authority (NMMFA), have also contributed, as have other organizations such as the Neighborhood Reinvestment Corporation (NRC).¹⁵²

NPH has a twenty-one member board with four representatives from government (e.g., NMMFA and NHA); five representatives from business (e.g., bank officials from Norwest Bank, Bank One, and the FNBF); eleven resident representatives (one from each Navajo chapter); and one at-large representative.¹⁵³

NPH has a staff of seven, including an executive director, an administrative assistant, a loan originator, a construction specialist, a project manager, and two homeowner training specialists.¹⁵⁴ All staff members are Navajo and have related experience. For example, one of the homeowner training specialists worked at the NHA and had experience with the HUD section 184 program.¹⁵⁵

IX. Strategies

NPH is affiliated with the Neighborhood Reinvestment Corporation's (NRC) NeighborWorks network.¹⁵⁶ In describing this relationship, NPH's first executive director, Eric Bauer, noted that "NPH is the NRC's first Native American affiliate to focus on affordable housing and is adapting the NRC's Full-Cycle Lending strategies to Indian country."¹⁵⁷

Innovative strategies to foster homeownership, such as the Full-

149. Bauer Memorandum, *supra* note 35.

150. To date, NPH has raised \$1,220,627. Of that, \$469,750 is for administration and \$750,877 is for its revolving loan fund, which will help families with down payment and closing cost assistance. Barbier interview, *supra* note 52.

151. Barbier interview, *supra* note 52.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. See Neighborhood Reinvestment Corporation, *NeighborWorks* (Mar. 11, 2001) <<http://www.landfield.com/faqs/service-clubs/general-faq/section-29.html>>.

157. Bauer interview, *supra* note 42.

Cycle Lending model, typically include elements of attracting, qualifying, and retaining homeowners.¹⁵⁸ NPH is not yet at a stage where it is fully engaged in efforts to retain homeowners because it has helped only a handful of Navajo to realize homeownership. In time, as more Navajo home mortgages are closed, NPH expects to become more involved in postpurchase assistance. But to date, NPH has focused on strategies for attracting and qualifying prospective homebuyers. Before describing those strategies, it is necessary to begin with an overview of the NRC, which has been integral to NPH's efforts to expand homeownership opportunities on the Navajo Nation.

X. Neighborhood Reinvestment Corporation and Programs

In 1978, Congress enacted the Neighborhood Reinvestment Act that created the NRC,¹⁵⁹ a national nonprofit organization with a mandate to revitalize America's older, distressed communities.¹⁶⁰ NRC creates and supports local nonprofit organizations across the country through its NeighborWorks network. Local NeighborWorks affiliates are private, nonprofit organizations governed by boards of directors that are chaired by neighborhood residents and include local government officials and private sector representatives. Provision is made for secondary market sale of NeighborWorks loans.¹⁶¹ Today almost 200 local NeighborWorks affiliates are located in large cities and rural communities.¹⁶² Each organization, like NPH, is autonomous.

Full-Cycle Lending was developed as a part of NRC's national campaign to expand homeownership for lower-income people. Full-Cycle Lending encompasses multiple linked steps, including (1) building

158. NEIGHBORWORKS CAMPAIGN FOR HOME OWNERSHIP/NEIGHBORHOOD REINVESTMENT CORPORATION, WINNING STRATEGIES: BEST PRACTICES IN THE WORK OF HOME OWNERSHIP PROMOTION at 2 (Feb. 1997).

159. See 42 U.S.C. § 5301 (Supp. IV 1998).

160. See Neighborhood Reinvestment Corporation, *NeighborWorks, Neighbor Reinvestment* (Mar. 11, 2001) <<http://www.nw.org/nrc/>>; see also National Housing Foundation, Inc., *Home Counseling* (Mar. 11, 2001) <<http://www.nationalhousing.org/hcpage3.html>>.

161. Thomas Y. Liou & Robert C. Stroh, *Community Development Intermediary Systems in the United States: Origins, Evolution, and Functions*, 9 HOUSING POLICY DEBATE (Fannie Mae Foundation) no. 3 (1998). Neighborhood Housing Services of America (NHTSA) is a sister organization to NRC and acts as a secondary market for NeighborWorks loans. NHTSA purchases various types of loans from NeighborWorks organizations and participating lenders, including housing rehabilitation loans, first purchase mortgages, and interim development financing. *Id.* at 587.

162. See Neighborhood Reinvestment Corporation, *NeighborWorks, Annual Report 1998* (Mar. 11, 2001) <<http://www.nw.org/resources/pub/annual/1998/letchair.html>>.

neighborhood organization partnerships (e.g., bringing together residents, businesses, and local government leaders); (2) offering prepurchase homebuyer education; (3) making available flexible loan products; and (4) offering other services such as postpurchase counseling.¹⁶³

NRC provided the Full-Cycle Lending blueprint for NPH. In addition, most NPH staffers have received extensive NRC training, which they describe as “invaluable.”¹⁶⁴ NRC has provided essential consulting services to NPH, such as advising on the structure of the homebuyer training course. Finally, NRC has lent vital administrative support. For example, when NPH’s first executive director, Eric Bauer, left the organization for a national Indian housing agency, NRC sent a temporary executive director, Steve Barbier, from its own staff.¹⁶⁵ Barbier had already been actively involved with NPH and was able to effectively lead the organization until a new permanent director could be found. As NPH matures, it will require less assistance from NRC. Nonetheless, NRC will continue to play an important role in fostering NPH’s development and supporting its efforts to expand Navajo homeownership.¹⁶⁶

XI. Attracting Applicants

Community outreach, in various forms, is one of the principal methods that NPH uses to inform the Navajo about its homeownership programs.¹⁶⁷ For example, NPH makes presentations concerning its programs at places where many Navajo are employed. The work sites include mining, manufacturing, and utility plants in or near the Navajo Nation. At those locations, NPH conducts orientation sessions during lunch hours and at other convenient times, thus providing an overview of its mission and programs.¹⁶⁸ It also conducts homeownership fairs that describe the benefits of homeownership and inform Navajo about its services.¹⁶⁹ The Navajo tribe has supported NPH’s community outreach efforts. Illustrative is the distribution of flyers to the tribe’s employees informing them of NPH’s programs.

Referrals by community partners and previous clients are another important means of attracting prospective homebuyers to NPH.¹⁷⁰

163. National Reinvestment Corporation, *NeighborWorks, Campaign for Home Ownership* (Mar. 12, 2001) <<http://www.nw.org/network/strategies/campaign/fullcycle>>.

164. See Burnside interview, *supra* note 74; Drake interview, *supra* note 45; Loman interview, *supra* note 51.

165. Barbier interview, *supra* note 52.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. Barbier interview, *supra* note 52.

Lenders such as FNBF, Gallup Federal, Zion National Bank, and Northwest have referred clients to NPH. Those clients include both the bank customers who have expressed an interest in homeownership and the customers whom the banks perceive as prime homebuyer candidates. Government and nonprofit providers of housing and community development have also brought clients to NPH. The NHA, Shiprock Community Development Corporation, RHS, and others have referred Navajo households to NPH.¹⁷¹ In addition, NPH attracts clients through word-of-mouth endorsements; those who have availed themselves of NPH's services recommend their family members do the same.¹⁷²

Finally, NPH uses the media to attract clients. NPH publicizes its programs in the *Navajo Times* and on the Navajo radio station.¹⁷³

XII. Qualifying Applicants

Homebuyer education and counseling are the most important services offered by NPH to help qualify the Navajo for mortgages.¹⁷⁴ Because of the multiple obstacles involved in buying a home on the Navajo Nation and because of the limited home buying and credit knowledge of many Navajo, homeownership would be very difficult without a comprehensive education and counseling program.

NPH's education program is free of charge. It begins with a short (about one hour) orientation meeting. This session introduces attendees to the possibility of homeownership and describes the NPH-guided counseling and borrowing process.¹⁷⁵

NPH conducts orientation meetings throughout the vast Navajo Nation, which reduces the traveling time required for participants to reach the sessions and thereby increases the number of Navajo attending.¹⁷⁶ One particularly successful series of orientation meetings was conducted at an NPH-organized housing fair, which allowed many Navajo to become acquainted with NPH for the first time.¹⁷⁷

After the orientation session, NPH counselors meet individually with each Navajo interested in commencing the home-buying process. At that meeting, the prospective homeowner is encouraged to obtain a credit report and to sign up for NPH's eight-hour homebuyer education course, "Sheltering Our People."¹⁷⁸

171. *Id.*

172. *Id.*

173. *Id.*

174. Drake interview, *supra* note 45.

175. *Id.*

176. *Id.*

177. *Id.*

178. NAVAJO PARTNERSHIP FOR HOUSING, SHELTERING OUR PEOPLE, BRADENTON, FLA., & ST. MICHAELS, ARIZ. (1997).

“Sheltering Our People” is the heart of NPH’s education and counseling program (for a more detailed account of the course, see the appendix). It consists of two four- to five-hour sessions on consecutive Saturday mornings.¹⁷⁹ The course deals with almost every aspect of mortgage financing and home-buying on the Navajo Nation. It outlines some of the issues applicable to borrowers everywhere, such as knowing credit ratings and determining affordability. In addition, it examines aspects of the home-buying process that are special to Indian areas in general and to the Navajo Nation in particular.¹⁸⁰ For example, there is a discussion of loan programs on Indian lands, such as the HUD section 184 program.¹⁸¹ The course includes detailed instruction on obtaining a homesite lease. Furthermore, it deals extensively with construction issues, because many Navajo will be building or rehabilitating single-family homes on their own.

After the group course is finished, NPH counsels homeowners individually, becoming a significant participant in each Navajo’s home-buying efforts.¹⁸² NPH staff members devote many hours to each prospective homebuyer in an effort to overcome the complex obstacles to homeownership on the Navajo Nation.

The first stage of individual counseling covers issues related to credit, assets, and income.¹⁸³ If a Navajo’s financial resources and credit are adequate for obtaining a mortgage, NPH will provide help in approaching likely lenders. More often, however, the prospective homebuyer’s credit, income, or assets are insufficient for procuring financing. In such cases, NPH staff members counsel the Navajo home seeker about strategies for improving his or her credit or financial situation. For example, NPH often recommends more careful budgeting techniques to people with relatively high incomes but few assets. In addition, NPH offers closing cost assistance through funding from the NRC, HUD, and the Federal Home Loan Banks of Dallas and San Francisco.¹⁸⁴

Once an individual’s credit and financial resources are deemed adequate (and sometimes even before), NPH aids the prospective homebuyer in obtaining a homesite lease.¹⁸⁵ This aid involves navigating a dense web of agencies and approvals.¹⁸⁶ NPH directs the homebuyer to

179. Drake interview, *supra* note 45.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. See Barbier interview, *supra* note 52.

185. See Drake interview, *supra* note 45.

186. See *supra* Table 2.

the necessary surveyors and environmental agencies, and if there are problems obtaining an approval, NPH becomes even more involved by contacting the agency directly.

With a homesite lease procured, the homebuyer must secure an appropriate home. That process commonly involves hiring a contractor to build a home on the buyer's site. Again, NPH is intimately involved. Construction advisers at NPH assist homeowners in choosing a style and size of house, hiring a contractor, and monitoring the contractor's performance.¹⁸⁷

Once the prospective buyer has obtained a homesite lease, found a contractor, and agreed on a home style and price, he or she is ready to approach lenders. At this stage, an NPH housing counselor conducts a final review of the file and assembles all credit documents into a package for the lender.¹⁸⁸ Next, NPH helps the prospective homebuyer identify likely lenders and gives advice on rates and terms. Often, NPH's counselor will attempt to arrange some creative financing.¹⁸⁹ The example described below and detailed in table 4 illustrates such a financing package.

The example property is a \$63,337 single family detached home located on the Navajo reservation. Closing costs on this home are \$1,023. The total required funds are, therefore, \$64,360 (\$63,337 + \$1,023). The purchasing household, a family of six, has an annual income of \$34,656 (\$2,888 monthly), or 66 percent of the national median income.¹⁹⁰ On this transaction, NPH and the mortgagee, Norwest Mortgage, Inc., have been able to secure a \$5,000 AHP subsidy and \$10,000 from SHOP funds.¹⁹¹ The borrower makes a \$1,082 down payment and carries a \$48,278 mortgage. The mortgage has an 8 percent interest rate.

The monthly payments are as follows: A total of \$354 monthly is owed for principal and interest. While there are no property taxes on the reservation, hazard insurance of \$27 monthly is required. Therefore,

187. Drake interview, *supra* note 45.

188. *Id.*

189. *Id.*

190. See Drake interview, *supra* note 45. An interesting side note concerning NPH's outreach efforts is that it "had to fight the conception that all Indian housing programs are just for those of low income as opposed to the middle class." See Bauer interview, *supra* note 42. Many people thought that the section 184 program, which the NPH brochure noted in connection with its counseling efforts, was a form of public housing. NPH has worked to correct such misinformation and to draw middle income Navajo, sometimes from off the reservation, into its homeownership counseling sessions. *Id.*

191. See Drake interview, *supra* note 45. The SHOP funds were secured because the purchaser agreed to contribute 200 hours in sweat equity for cleanup, vegetation planting, and other work. *Id.*

monthly fixed housing payments for PITI amount to \$381, or only 13 percent of the borrower's monthly income (\$381/\$2,888). The purchaser faces a high monthly utility expense of \$190. However, even when the latter is added to the PITI payments, the combined monthly fixed housing expense and utility cost of \$571 constitutes just 20 percent of monthly income. In this instance, the NPH counselors wished to keep the housing cost burden as low as possible because the purchaser, a single head of household, had minimal financial reserves.

Once the most promising financing package is identified—in the above example, the combination of a mortgage coupled with AHP and SHOP funds—NPH has largely completed its prequalification and related efforts to expedite approval. With loan approval, the work of NPH's lending specialist is done.¹⁹²

After loan approval, construction begins. The NPH construction specialist remains involved with the contractor and buyer until the home is completed, at which time the permanent mortgage loan is closed and funded.¹⁹³ Finally, NPH conducts a postpurchase site visit, advising the new homeowner on how to maintain and keep the home in the event of financial difficulties.¹⁹⁴

TABLE 4: Example Navajo Home Purchase Facilitated by NPH

Detail	Amount or Percentage
Borrower's annual income	\$34,656.00
Borrower's family size	6
Borrower's income as percent of national median	66%
Purchase price	\$63,336.54
Closing costs	\$1,023.00
Purchase price and closing costs	\$64,360.00
Loan amount	\$48,278.00
Down payment	\$1,081.77
AHP subsidy	\$5,000.00
Other subsidies (source):	\$10,000.00
SHOP funds	
Mortgage payment (principal and interest)	\$354.25
Taxes and insurance	\$26.67
Total monthly housing payment (PITI)	\$380.92
Estimated utility expenses	\$190.00
Housing expense (PITI and utilities)	\$570.92
Housing expense/monthly income	19.77%

Source: Navajo Partnership for Housing (NPH), 1998. Supplemental materials provided by Roberta Drake to Yair Listokin and Stephanie Wexler, Center for Urban Policy Research, Rutgers University, September 8, 1998.

192. See Drake interview, *supra* note 45.

193. *Id.*

194. *Id.*

The NHA has recognized NPH's success in providing housing education on the Navajo Nation and will be using NAHASDA money to double NPH's budget for Fiscal Year 1999.¹⁹⁵ This money will be used to expand the scope and expertise of NPH's counseling programs. Up to nine new staff members will be hired with the increased funds, including two credit counseling specialists and additional construction specialists.¹⁹⁶ The hiring will ameliorate one of NPH's biggest obstacles—an overstretched staff. NPH's vast array of services has required its staff members to juggle several tasks. As a result, specialists often spent time dealing with agencies in areas far removed from their specialties. With the enlarged staff, NPH hopes to be able to provide specialists in every area of the home-buying process, thus allowing each specialist to concentrate on an area of expertise.¹⁹⁷

The doubling of NPH's budget permitted by NAHASDA funds will support NPH's outreach efforts and extend its ties with the NHA.¹⁹⁸ For example, NPH will train individuals in each of NHA's thirteen field offices to act as credit counselors. The thirteen NHA field offices are envisioned as feeder sites for bringing people into the NPH counseling network.¹⁹⁹

To further facilitate the counseling process, NPH is looking to broaden its funding base by tapping additional sources of grants outside the reservation.²⁰⁰ In addition, NPH hopes to begin earning fees from banks. At present, NPH does considerable packaging and prequalification of applicants before matching the individuals to the lenders, in essence bringing the lender a near-completed loan package. Some lenders (in addition to NPH staff people) expressed an interest in compensating NPH for this service.²⁰¹

Increased funding from any source would enable NPH to further broaden its services to the Navajo community. Moreover, diversified funding will protect NPH from the risk of becoming overdependent on any single source. During Fiscal Year 1999, for example, the NPH relied on the NHA for almost half its budget.²⁰² If the NHA reduces or

195. Barbier interview, *supra* note 52.

196. *Id.*

197. See Barbier, *supra* note 52; Drake interview, *supra* note 45.

198. See Barbier, *supra* note 52.

199. *Id.*

200. *Id.*

201. See Coleman interview, *supra* note 65; Drake interview, *supra* note 45.

202. See Barbier interview, *supra* note 52.

eliminates those funds in future years, that change will have a drastic impact on the NPH.

NHA's grant to NPH for broadened counseling services points to an important evolution in NPH's development. Although NPH was started with the twin goals of preparing individuals for homeownership and facilitating housing development, it has made greater strides in the former category.²⁰³ There are hints of an agreement with NHA whereby NPH will focus on the "soft" side of Navajo homeownership—counseling and educating—while NHA does the bulk of the physical housing development. This approach does not mean that NPH is uninterested or uninvolved in housing development; indeed, NPH would benefit greatly from widespread housing development. Development would make the task of shepherding first-time homebuyers through the buying process considerably easier. For example, the availability of ready-to-buy houses would reduce the demands on construction specialists and would curtail the list of approvals required for a homesite lease. In recognition of this advantage, NPH remains involved in some pilot schemes to promote multiple-unit development.²⁰⁴ Nevertheless, NPH has clearly chosen to focus on facilitating the demand side of the housing market, hoping that supply will follow in turn.²⁰⁵

XIII. Accomplishments

NPH's goals for its first three years were as follows:

1. Develop a guide to housing development on the Navajo Nation.
2. Counsel 300 families in preparation for homeownership.
3. Close 20 to 30 home mortgages.
4. Develop 150 housing units.
5. Attract more than \$10 million in private capital for homeownership.²⁰⁶

NPH has been very successful in developing educational materials and in educating prospective homebuyers. Its counseling textbook,

203. See Burnside interview, *supra* note 74.

204. See Burnside interview, *supra* note 74; Barbier interview, *supra* note 52.

205. See Burnside interview, *supra* note 74. Note that this outlook leaves the NPH in a bit of a Catch-22 situation. Lending and homeownership will reach large volumes only if housing development occurs, yet most contractors will be willing to risk large-scale development only if they are convinced that the housing market has the potential for large volumes of transactions. There are two ways out of this bind. One method is to have NHA use NAHASDA money to start development projects. If those projects are successful, private developers will follow. Alternatively, NPH hopes that its low-volume, single-site construction projects will convince would-be developers that real housing demand exists on the Navajo Nation (along with potential large-scale lending), which justifies high volumes of housing production.

206. See Barbier interviews, *supra* note 52.

Sheltering Our People, is an invaluable tool for prospective Navajo homebuyers.²⁰⁷ Furthermore, NPH plans to publish a guide to housing development on the Navajo Nation in the near future.²⁰⁸ The number of prospective homebuyers going through NPH educational and counseling programs is substantial.²⁰⁹ Indeed, at the present rate, NPH will far surpass its counseling goals. Moreover, these numbers will increase as a consequence of the successful NPH housing fair in June 1998.²¹⁰

NPH has made less progress toward its other goals. As of July 1998, it had not developed any housing and it had closed on only one loan (two separate mortgages for a total of under \$100,000).²¹¹ In retrospect, the targets that NPH set for housing development and private capital attraction were unrealistic.²¹² NPH underestimated the difficulty of overcoming the many obstacles associated with lending on Navajo lands.

There is a disparity between the number of people counseled and the number who have closed. This suggests that if NPH manages to close the few loans now pending, and streamlines the process of approval, the loan volume may grow substantially. Very high volume, however, awaits the development of a full-fledged housing market.

The challenge is still daunting. Of the sixty-five active clients (ACs) completing the "Sheltering Our People" program as of July 1998, twenty-three need short or long-term credit repair, while many others await documents or clearances such as title conveyance from NHA, homesite leases (HSL) from BIA, or sign-offs on archaeological and other matters. However, on a more positive note, thirteen of the twenty-one ACs which have been sent to lenders have been approved.²¹³ Thus, the NPH pipeline to homeownership represents greater promise than the one mortgage closed would indicate. As noted later in this article, actual lending has recently increased.

Feedback on NPH's activities is very positive. Nearly every prospective homebuyer associated with NPH, contacted by the authors, asserted that homeownership would be an impossible dream without the NPH.²¹⁴ Lenders voiced similar positive reviews of NPH's counseling services.²¹⁵ Nevertheless, without performance histories for the

207. See NAVAJO PARTNERSHIP FOR HOUSING, SHELTERING OUR PEOPLE, BRADENTON, FLA. & ST. MICHAELS, ARIZ. (1997); Counseling interviews, *supra* note 39.

208. Barbier interview, *supra* note 52.

209. See Table 5.

210. Drake interview, *supra* note 45.

211. *Id.*

212. Barbier interview, *supra* note 52.

213. Drake interview, *supra* note 45.

214. Counseling interviews, *supra* note 39.

215. See Coleman interview, *supra* note 65; Lucero interview, *supra* note 93.

closed NPH loans, a long-term key indicator of counseling success is currently unavailable.

To truly understand NPH's current challenges and potential accomplishments, one must hear the personal stories of the Navajo helped by the organization.²¹⁶

An appendix to this case study recounts the experiences of one Navajo couple. Their experience illustrates the remarkable obstacles confronting NPH and its clients, and shows how NPH is working to address such obstacles.

XIV. Challenges and New Opportunities

NPH is at the vanguard of the new mortgage lending movement on the Navajo Nation. NPH led the first Navajo through the mortgage process while identifying and attempting to address specific obstacles along the way. By involving staff members along the home-buying path, NPH ensures that an individual Navajo will not founder unaided at any point in the process. Sometimes NPH provides the direct solutions, such as offering counseling. In other instances, NPH identifies how other agencies can foster the Navajo home-buying process. As a third-party non-profit organization, NPH is in a position to serve as a link and coordinator among the many parties involved in Navajo home-buying.²¹⁷

NPH's role as coordinator is challenging. NPH staffers have en-

TABLE 5: NPH Homeowner Training, July 1998

	Number	
	Current	Cumulative
Orientations	20	241
Credit profiles received	30	121
Credit reports received	27	101
Individual sessions held	15	87
"Sheltering Our People" session B (certificate received)	21	55
Referrals to lenders for prequalification	7	21
Loans approved	13	13
Loans closed	1	2
Total postoccupancy sessions	0	0

Source: Navajo Partnership for Housing (NPH), 1998. Supplemental materials provided by Roberta Drake to Yair Listokin and Stephanie Wexler, Center for Urban Policy Research, Rutgers University, September 8, 1998.

216. See Interview by Yair Listokin and Stephanie Wexler with Bernice Edsitty, prospective Navajo home buyer in Window Rock, Ariz. (July 14, 1998) (on file with author).

217. Coleman interview, *supra* note 65.

countered difficulties in dealing with other agencies. For example, they frequently run into delays when securing approval of homesite leases from the BIA and tribal housing agencies.²¹⁸ Similarly, NPH complains of repetitive efforts, such as needing duplicate loan reviews for banks and HUD on section 184 loans.²¹⁹

NPH has had some trouble overcoming and working around such barriers. While the NPH staff have individual relationships with officials in those agencies, they have not been able to use their relationships to effect some necessary changes. In short, NPH has done an insufficient amount of networking.

The establishment of the One-Stop Mortgage Center has been a very promising development that should help the coordination necessary to foster lending for Indian homeownership.²²⁰ When former Comptroller of the Currency Eugene Ludwig visited NPH in the fall of 1996, NPH requested assistance in promoting the concept of a one-stop homeownership center for the Navajo Nation. Ludwig endorsed this concept. In August 1998, President Clinton issued an executive order calling on the HUD and Treasury secretaries and others to initiate a process to help streamline the mortgage lending process in Indian country.

NPH has been designated as the home for the One-Stop Mortgage Center on the Navajo Nation.²²¹ The center will document the barriers to home lending and will develop tangible solutions, including better coordination among the many different players in the Indian home-lending process. At a meeting in November 1998, NPH began the process of identifying those barriers and suggesting ways to coordinate with other agencies in addressing them.²²² Suggested solutions included physically collocating BIA, Navajo Land Department (NLD), and NPH at NPH's headquarters in Window Rock, Arizona; fostering concurrent reviews of documents by BIA, NLD, and HUD; expanding NPH counseling activity; and adding BIA staff members to handle title processing backlogs.²²³ Table 6 provides a more thorough list of these recommendations. Implementation of the One-Stop Mortgage Center should greatly advance NPH's ability to further homeownership.

218. See Drake interview, *supra* note 45.

219. See Drake interview, *supra* note 45; Loman interview, *supra* note 51.

220. U.S. DEP'T OF HOUS. AND URBAN DEV., AND U.S. DEP'T OF THE TREASURY, ONE-STOP MORTGAGE INITIATIVE IN INDIAN COUNTRY: A REPORT TO THE PRESIDENT (Oct. 2000).

221. *Id.*

222. See NAVAJO PARTNERSHIP FOR HOUSING, OBSTACLES AND OPPORTUNITIES FOR MORTGAGE LENDING ON THE NAVAJO NATION, WINDOW ROCK, ARIZ. (Nov, 18, 1998).

223. *Id.*

XV. Recommendations and Outlook

Others who seek to foster Indian homeownership, including banks, financial regulators, tribal groups (e.g., NHA tribal government), and federal bureaus (e.g., BIA), can learn from the NPH experience. To that end, we offer the following recommendations²²⁴:

A. *Establish Nonprofit Organizations Similar to NPH*

NPH is an invaluable tool for prospective Navajo homebuyers. Unfortunately, prospective homebuyers on other Indian reservations do not enjoy the benefits of a counseling organization like NPH. Instead, they must navigate the home-buying process on their own with the occasional help of a caring bank or tribal housing official. Housing professionals bemoan the difficulty of completing mortgages in such an environment.²²⁵ To assist prospective homebuyers on other reservations, banks along with governmental and tribal agencies should encourage and support the establishment of organizations similar to NPH. Although considerable effort and expense are required to support such organizations, it is unlikely that Indian homeownership or mortgage lending will ever reach appreciable levels without nonprofit facilitators like NPH.

B. *Reduce Bureaucracy*

Prospective Indian homeowners currently must navigate a bureaucratic minefield. Relevant agencies must work together to reduce bureaucratic hurdles and to eliminate duplicate efforts. Because such cooperation necessitates considerable trust between organizations (one agency will have to depend on the competence of another), conferences and meetings should be arranged to encourage inter-organizational cooperation. The One-Stop Mortgage Center initiative is an ideal way to foster such coordination.

C. *Maintain Adequate Staff*

NPH offers a wide range of services to potential Navajo homebuyers. Although necessary, this diffusion somewhat hampers the organization's focus. If NPH neglected some elements of the mortgage lending process, it is quite possible that obstacles in those areas would slow all

224. It must be noted that the NPH and other relevant agencies are cognizant of these recommended changes. In many cases, the suggested revisions are already being discussed or implemented.

225. See Skjonsberg interview, *supra* note 65.

TABLE 6: Obstacles and Opportunities for Mortgage Lending on the Navajo Nation and the Role of the NPH

Obstacle	Nature of Obstacle	Opportunity for NPH and Other Agency Intervention
Education	Most Navajo families are unfamiliar with the process of purchasing a home using mortgage financing.	Prospective purchasers should avail themselves of NPH's homebuyer education sessions and curriculum ("Sheltering Our People").
Credit	Among NPH active customers, 44% have either short-term or long-term credit issues.	NPH should develop a long-term credit counseling program and should increase education efforts through schools and other institutions.
Availability of land	Individual homesite leases— identifying the HSL can be difficult if the chapter says that no land is available.	Navajo Nation could require all chapters to have approved land use plans that would identify areas in the community available for residential use.
Plot surveys and legal descriptions	Navajo Land Development (NLD) Survey Section has many requests and can take from one week to one year to complete the surveys and legal description.	NLD could allow for private surveys, could establish loan pool for families to hire private registered surveyor, and could pay off pool at time of loan closing.
Land surveys	To obtain a homesite lease, a family must obtain a plot survey and legal description. When the family applies for a loan, it will need to pay for another survey that identifies the location of the improvements.	Agencies should explore combining surveys using the same company to save costs and should roll the cost of both surveys into the permanent loan.
No visible housing market	No private real estate market exists for buying and selling houses.	Agencies should create a real estate listing service and develop transaction documents to allow for the buying and selling of homesites with homes (i.e., real estate contract).

New homesite lease application	Process for obtaining a new HSL averages 10 months.	Agencies should reduce the HSL application processing to four months.
Homesite lease modifications	HSL modification that takes too long from application to preliminary title status report is required for loan application.	Agencies should reduce HSL modification to one month, depending on the existence of a cultural compliance form.
Recording at title plant	Process for issuance of recording number and execution of HSL takes six to eight weeks.	Agencies should make additional help available in the BIA's Southwest Title Plan Office through NAHASDA for all Navajo residential projects.
Duplicative process to record and obtain title status report	Customer cannot obtain title status report until after the executed HSL is received, which adds an additional four to eight weeks of processing time.	Agencies should have Southwest Title Plant issue the title status report and executed HSL.
Linear underwriting	Underwriting is done by the lender, HUD, NLD, and the BIA, in that order.	Agencies should have lenders submit their credit package to the NLD and the BIA concurrent with their submission to HUD.
Financing	Conventional financing has not been available, in part because of lack of construction financing.	NHA is planning a \$3 million conventional guarantee program that will use NAHASDA funds for construction. NPH is setting up a lender construction loan pool for those above 100% of median income.
Appraisals	Few comparable sales exist for the purpose of valuation.	There has to be agreement on methodology to expand appraisals.

(continued)

TABLE 6: Obstacles and Opportunities for Mortgage Lending on the Navajo Nation and the Role of the NPH (*continued*)

Obstacle	Nature of Obstacle	Opportunity for NPH and Other Agency Intervention
Endorsement	HUD 184 currently does not have direct endorsement for the Navajo Nation.	Agencies can save time on loan underwriting through direct endorsement.
Lender training on loan products available for Navajo	Loan products available in Indian country are still relatively new for some lenders.	As a part of the One-Stop Mortgage Center initiative and to ensure uniformity in underwriting and processing time, NPH should have federal agencies and GSEs conduct on-site (Navajo) training on loan products.
Lack of uniformity of loan programs	A significant variation in loan documents is required.	A One-Stop Mortgage Center could review each loan product for uniformity.
Notification of approval	Lenders wait until they have received the recording of the mortgage from the BIA title plant before they release funds, which could add an additional two to four weeks.	The BIA area office could fax its approval to lender before recording.
Homeowners' insurance	Homeowners' insurance can be hard to obtain in some areas.	Agencies should form insurance partnerships to overcome insurance barriers.
Equity	Current BIA regulations allow home equity loans only for home improvement.	Agencies should expand the regulations to emulate home equity loans off the reservation.
Contractors	There is a lack of licensed and bonded Navajo contractors.	NPH should develop a contractor training program to help Navajo contractors obtain licensing and bonding.

Source: *See supra* note 205.

of NPH's other efforts. Nevertheless, the comprehensive approach has its drawbacks. Because NPH is so small, its staff members must be jacks-of-all-trades, expending time and effort in areas far from their fields of expertise. Given the multitude of tasks facing NPH, it is imperative that such an organization have adequate staff.²²⁶

D. Maintain Staff Continuity and Develop Manuals

Lending to Native Americans is very complex. Understanding the homesite lease process or the terms of section 184 loans requires considerable experience and education. As a result, any employee turnover impedes the entire mortgage lending process. It can take many weeks before a new staff person develops enough expertise to expedite his or her part of the mortgage process.²²⁷ To combat the negative effects of employee turnover two changes are in order. First, employers should attempt to minimize staff turnover by not transferring trained employees out of their areas of expertise. If an employee has developed expertise in Indian lending, the organization should not seek to move this staff person to a new sector, however, turnover occurs. To soften its impact, individuals should develop detailed documentation of their role in the Indian lending process; this documentation will shorten the learning curve for new employees.

E. Make Better Use of NPH and Similar Organizations on Other Reservations

Most organizations that effect lending on the Navajo Nation have just begun to fully utilize NPH's expertise. Through nearly two years of trial and error, NPH staff members have acquired an unsurpassed knowledge of the intricacies of lending on the Navajo Nation. Banks, federal entities, and tribal agencies need to use this insight. The One-Stop Mortgage Center will foster such a transfer of information.

F. Foster Housing Development

If entities such as NPH are to focus on counseling and homebuyer assistance, other organizations must fill the need for housing development. With the Navajo, the responsibility falls on NHA. NAHASDA monies will allow NHA the capital required to begin construction. Furthermore, NHA has the clout to procure the permits needed for large-scale developments. Successful development targeted at buyers rather than renters would enable NHA to leverage its NAHASDA capital.

²²⁶. See Barbier interview, *supra* note 52.

²²⁷. *Id.*

With capital expenditures coming back to it through home purchases, NHA would quickly recoup most of its investment and could then use that capital for other purposes. If NHA (and its equivalent at other tribes) succeeds with such a pilot development program, then private, for-profit developers will be encouraged to augment the tribal housing agency's efforts with additional housing projects.

G. *Improve Planning*

Housing development on Indian reservations is hampered by a lack of planning. With no zoning requirements or other regulations, development often proceeds haphazardly.²²⁸ Desultory development raises infrastructure costs. For example, if utility lines in a given area are built only to minimal capacity because no development plan exists for that area, any future development may require a completely new, rather than simply expanded, infrastructure. Better planned development would dramatically reduce the high infrastructure costs currently plaguing construction on Indian lands.

All of these recommendations must be viewed circumspectly; we acknowledge that their implementation is difficult. Nevertheless, if implemented, the recommendations offer great potential. Even though the number of Indian mortgage closings to date seems paltry, progress in Indian home buying and lending is unmistakable. Just a few years ago, the Navajo Nation had never been the site of a conventional mortgage loan; as of mid-1998 more than eighty prospective homeowners are somewhere in the home-buying pipeline. NPH has been a critical factor in improving home-buying prospects. NPH could serve as a model for similar organizations on other Indian reservations. A group of bankers in South Dakota, for example, expressed a need for exactly the type of counseling and educational services provided by NPH.²²⁹

In sum, the NPH has made tremendous progress in addressing barriers to Native American homeownership on tribal lands. A March 5, 2001 article notes that fifty mortgage loans have been closed by NPH and its partners.²³⁰ Compared to just a few years ago, when home mortgage lending virtually did not exist on the Navajo Nation, fifty mortgage loans fostered by NPH and many others, ranging from Navajo tribal leaders to HUD and the GSEs, is a major achievement.

228. See Barbier interview, *supra* note 52.

229. See Skjonsberg interview, *supra* note 65.

230. Editorial, *Fifty Mortgages*, 25 NAT'L MORTGAGE NEWS i23, March 5, 2001 at 4.

APPENDIX A

NPH Homeownership Education

Early on a Saturday morning in July 1998, twelve Navajo (couples and individuals) crowded into the NPH main office in Window Rock, AZ. They were sacrificing their day off to attend the first session of a two-part homebuyer education course offered by NPH titled "Sheltering Our People." The comprehensive course is designed to prepare Navajo for homeownership. It covers all issues related to home-buying on the Navajo Nation. These issues include both barriers unique to Native Americans (e.g., homesite leases) and more standard obstacles confronting LMI households (e.g., poor credit ratings). Consequently, "Sheltering Our People" is a fascinating hybrid of standard counseling topics and issues that apply only to Indians.

The "Sheltering Our People" course uses a manual of the same name. Affordable Housing Specialists of Bradenton, Florida, developed the manual in conjunction with NPH. The course closely follows the manual, enabling participants to review what they have learned after the course is completed. The manual has six chapters: (1) Preparing for Homeownership—"Laying the Foundation"; (2) Family Budgeting—"Setting the Cornerstone"; (3) Credit—"Building Block or Stumbling Block"; (4) Owning a Home on Tribal Land—"Following the Blueprint"; (5) Mortgage Lending—"Raising the Structure"; and (6) Life as Homeowner—"The Finishing Touches."

Participants in the seminar had already attended an orientation session offered by NPH and had obtained their credit reports.²³¹ In addition, they had paid a fee of about \$80 for both the credit report and the homebuyer education course. As a result, every participant approached the course in a serious manner, taking notes and paying close attention throughout the five-hour day. The attendees were addressed by two knowledgeable and personable Navajo instructors, Roberta Drake and Paul Loman.

The first three sections of the NPH course are common to other homebuyer education classes. They closely follow Fannie Mae's *Guide to Homeownership*. The NPH manual, however, explains many financial concepts by using a fictional Navajo couple named John and Bessy LeChee. This example lends some concreteness to the abstract financial principles introduced in the course. In addition, the manual is replete with exercises that allow the seminar participants to learn by doing. These exercises have proven helpful to past seminar participants; indeed, many have expressed a desire for more such exercises.²³²

The first section of the course, Preparing for Homeownership, addresses the advantages and disadvantages of homeownership and discusses the basics of mortgages. The *Sheltering Our People* manual mentions many familiar pluses

231. Nearly all participants had learned about NPH through a housing fair run NPH in June 1998.

232. See Counseling interviews, *supra* note 39.

of owning a home, such as equity building and personal satisfaction enjoyed by the homeowner. On that Saturday, the course instructor, Roberta Drake, spent considerable time explaining the financial benefits of owning a home. For example, many participants had been unaware of the tax deduction allowance for mortgage interest payments. They needed repeated explanations to feel comfortable with this concept. Next, some details of mortgage payments, such as insurance and property taxes, were introduced. Again, many participants were unfamiliar with the concept. The initial section of the course covered the requirements for loan qualification, including housing costs-to-income and total debt-to-income ratios and credit ratings. The section concluded with an exercise that had participants use factor tables to determine their maximum monthly mortgage payments for given interest rates and housing ratios. Although it was difficult at first, by the second or third attempt, most attendees had acquired a good understanding of these previously alien concepts.

Many of the participants described the next section, Family Budgeting, as the most helpful. In this module, the instructor covered many financial basics, such as checking accounts. Because one-third of the participants did not have checking accounts, such instruction was essential. The instructor encouraged those without checking accounts to establish them because they play an important part in the mortgage process. The instructor then explained the need for careful budgeting. That explanation was followed by a budgeting exercise wherein the participants were asked to give a careful accounting of their spending. Many participants were surprised after learning how much they were spending on things like restaurants, videos, and even garbage collection. Attendees professed an interest in maintaining careful budgeting as a way to improve their finances while preparing for homeownership. Indeed, one man suggested that NPH "offer such counseling to Navajo high schools, so that the next generation would be exposed to financial rudiments at a younger age."²³³

After completing the family budgeting module, coursework moved on to cover credit issues in depth. This topic assumes heightened importance because credit problems are prevalent among the Navajo and because many prospective homeowners will spend years following the blueprint established in this section. The credit module covers "the importance of establishing good credit, dealing with derogatory credit and building non-traditional credit history."²³⁴ Perhaps the most helpful element of this module was the instructor's description of his own past credit problems and the manner in which he worked to improve his credit.

The next section, Owning a Home on Tribal Land, was covered on the second Saturday of the seminar. In this section, the course departs from familiar counseling territory and addresses issues unique to the Navajo. A detailed blueprint for working through the entire home-buying process is pre-

233. *Id.*

234. See SHELTERING OUR PEOPLE, *supra* note 176.

sented. The blueprint first describes what is needed to obtain a new or modified Indian homesite lease. Next, the section identifies the players and programs involved in the mortgage process, such as HUD's Section 184 program. Most participants were unaware of a government loan guarantee program targeted at Native Americans. Finally, the participants were given a detailed description of the latter stages of the home-buying process that included advice about working with a contractor.

The section, *Owning a Home on Tribal Land*, is also intriguing for what it does not cover. Unlike most counseling courses, the NPH seminar does not discuss issues such as choosing a real estate broker or negotiating a contract with the seller. These omissions reflect the lack of a housing market on the Navajo Nation.

Once participants were introduced to general guidelines for buying a home on Navajo lands, the course moved on to the details of mortgage lending. Here again, the section closely resembles the typical counseling seminar. This module provides "a step-by-step action plan, which guides you from the beginning of the lending process right to the closing table."²³⁵ Topics include "What is a mortgage?," "Comparing mortgage loans," and "How lenders evaluate my mortgage application." Many participants professed ignorance of points, closing costs, mortgage insurance, and the difference between adjustable and fixed-rate mortgages. The manual treats all these subjects (and many others) in detail, allowing participants to review the relevant sections at each stage of the mortgage process.

The seminar concludes with a section on *Life as a Homeowner*, which covers issues such as maintaining a home and preventing foreclosure. This section provides lists of necessary maintenance chores. Because no Navajo has previously dealt with mortgages, the course details how to prevent foreclosure in the event of unforeseen financial difficulties. The manual advises that the homeowner notify the bank quickly when encountering financial travails.

In summary, the seminar provides a detailed crash course in home buying for Navajo individuals with no previous experience. The importance of the seminar is reflected in evaluations written by past participants. All of the general comments were positive. Most participants described the course as either very informative or educational. The instructors were described as having excellent teaching skills and in-depth knowledge of the home-buying process. They were commended for presenting the materials clearly and in a step-by-step format.

235. *See id.*

APPENDIX B

Home-Buyer Illustration

The following personal account, provided by Ronald Moldanado, illustrates the obstacles to Navajo homeownership and the role of NPH in overcoming those obstacles.

About 5 years ago, my wife and I decided to return to the reservation. Although, there were many reasons, the major one was putting down roots here on the reservation and establishing ourselves in the community. Our dream was to build and own our own home, partially to pass on to our children. With this dream in hand we began the long process of getting a home site. The first obstacle was to get all concerned family members to agree to the area we had chosen. Many didn't want to sign since we had been gone for over 15 years. After many months of talking we collected the necessary signatures. The next step was to present ourselves to the Chapter, ask for a resolution, and gain approval from the grazing officer. With signature and approvals in hand the homesite form was submitted to Land Administration.

Next was trying to get financing. This is where the dream became a nightmare. We requested information from all housing programs on the reservation. (NHA's scattered housing, Rural Farmers Administration home loans, Self help, Mutual Aide, Twilight Dawn, Project Home, etc.) All told us two things, we needed an approved homesite and we made too much money. Banks at the time wouldn't consider a home loan. We were told there was no way to obtain a mortgage on the reservation. During this time. . . the form had been changed to reflect new laws, we needed to collect all the signatures again. We resubmitted the application two more times, with the needed information. The third and final time was a charm, the application was submitted and next our homesite was surveyed. The nightmare was starting to go away.

The silver cloud in our nightmare was the housing fair in Chinle, AZ. The fair was to provide information on a new law, HUD Section 184, which allowed private lenders, banks, credit unions, etc. to lend money in Indian Country. At the fair I spoke to HUD, NHA, Sunwest, Norwest, Twilight Dawn, Project Home, and Fannie Mae. But most importantly, I heard a presentation by Paul Loman, Homeowner Training Specialist from the Navajo Partnership for Housing (NPH). He spoke of training and education for middle-income homebuyers on the reservation. But best of all, NPH would be there with us, every step of the way.

We submitted an application last November, and I am happy to say that with the help of NPH, our dream will soon be a reality. The staff at NPH continue to help us through every phase of the process, from finding a lender, to choosing an architect, construction inspector, etc. and once we are in our new home we will get more education to help us maintain and keep our home. We wouldn't be close to accomplishing our dream without [NPH's] help.²³⁶

236. *The Possible Dream*, NAVAJO PARTNERSHIP FOR HOUSING NEWSL. 2 (1997).