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"Housing for Native Americans: Review of Federal Programs, Barriers, and Opportunities"

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Thank you, Chair Smith, Ranking Member Rounds, and members of the Committee, for the opportunity to testify today on behalf of the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis. The Center for Indian Country Development, or CICD, supports tribes in reaching their full economic potential through actionable research and community collaboration to advance solutions in Indian Country.

Tribal nations in the United States have a range of housing experiences and challenges. The shared features of housing markets in Indian Country derive from the long history of government-to-government relationships between the U.S. government and tribes. These relationships are codified in the more than 370 treaties signed by both the United States and American Indian tribes.[1] Many of these treaties guarantee American Indian tribes' rights to maintain a home and a homeland. The promises in these treaties live on in the trust and treaty responsibility that the federal government maintains toward the 574 federally recognized tribes in the United States. And yet, many of those promises remain unfulfilled.

This testimony will lay out the scale of housing needs in Indian Country and describe some approaches to increasing housing availability for American Indians. *Indian Country* refers to the tribal lands that are under the control of sovereign Native nations. About 22 percent of people that identify as American Indians—whether alone or in combination with another race or ethnicity—live in Indian Country, and another 25 percent live nearby.[2] Thus, a majority of American Indians live away from Indian Country, often in urban and suburban areas.[3] However, many American Indians spend time living both on or near reservations and in more urban locales,[4] so our focus today on the housing issues in Indian Country is relevant to more of the nation's 5.2 million American Indians and Alaska Natives than Indian Country's population numbers alone might suggest.[5]

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[1] *Broken Promises: Continuing Federal Funding Shortfall for Native Americans,* Briefing Report*,* U.S. Commission on Civil Rights, December 2018, page 1.
[2] Nancy G. Pindus, Thomas Kingsley, Jennifer Biess, Diane Levy, Jasmine Simington, and Christopher Hayes, *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, January 2017 (hereafter HUD Tribal Area Study), page 18.
[3] Randall Akee, "Sovereignty and improved economic outcomes for American Indians: Building on the gains made since 1990," in *Boosting Wages for U.S. Workers in the New Economy: Ten Essays on Worker Power, Worker Well-Being, and Equitable Wages*, Washington Center for Equitable Growth, January 2021, page 163.
[4] Diane K. Levy, Jennifer Biess, Abby Baum, Nancy Pindus, and Brittany Murray, *Housing Needs of American Indians and Alaska Natives in Urban Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, January 2017 (hereafter HUD Urban Area Study), page x.
[5] HUD Tribal Area Study, page 18.

Indian Country faces a severe housing shortage and substandard housing conditions

Homes on tribal lands are in short supply, and often in physically substandard condition. Around 16 percent of American Indians and Alaska Natives in tribal areas live in households that are considered overcrowded—a rate about seven times higher than that of the general U.S. population.[6] Available housing is often physically substandard: 23 percent of American Indians living in Indian Country reside in homes that have at least one physical problem, compared to about 5 percent of other Americans.[7] For example, American Indian households in Indian Country are 3.7 times as likely as other households to lack complete plumbing.[8] A 2017 study from the U.S. Department of Housing and Urban Development (HUD) estimated that reservations needed an additional 68,000 units of housing to eliminate overcrowding and replace severely inadequate units.[9] Using a plausible range of possible construction and infrastructure development costs, Indian Country needs tens of billions of dollars worth of new housing.[10]

Overcrowding in Indian Country has serious consequences; HUD research has shown that it has a negative effect on family health and contributes to domestic violence and poor school performance.[11] It also complicates attempts to gauge homeownership levels. Traditional measures of homeownership divide the number of owner-occupied housing units by the number of occupied housing units. In 2010, the 67 percent homeownership rate in Indian Country was comparable to the overall U.S. homeownership rate.[12] But considering that Indian Country housing units are more likely to be overcrowded and contain multiple families, the share of people who own the homes they live in is almost certainly much lower in Indian Country than in the United States overall. This is supported by data showing lower homeownership rates in areas of Indian Country that were likely to have higher-quality supply of housing and thus lower overcrowding rates.[13]

Homeownership rates for Native Americans in Indian Country stayed relatively steady from 2000 to 2010,[14] contrasting with survey data showing that 90 percent of Native American renters in tribal areas

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[6] HUD Tribal Area Study, page 67.
[7] HUD Tribal Area Study, Foreword.
[8] Shiloh Deitz and Katie Meehan, "Plumbing Poverty: Mapping Hot Spots of Racial and Geographic Inequality in U.S. Household Water Insecurity," *Annals of the American Association of Geographers*, 109:4, 2019, pages 1092–1109.
[9] HUD Tribal Area Study, page 76.
[10] CICD calculations using 2019 Home Mortgage Disclosure Act data. Lacking reliable data on construction costs, we examine average home prices and assume that 68,000 new units are needed. These and other HMDA-derived calculations in this document exclude Alaska and Hawaii. The cost of constructing new housing may, of course, be substantially different than the average value of existing homes.
[11] HUD, *Fiscal Year 2017 Congressional Justifications*, page 11-4.
[12] L.S. Pettit et al., *Continuity and Change: Demographic, Socioeconomic, and Housing Conditions of American Indians and Alaska Natives*, HUD Office of Policy Development and Research, January 2014, page 54.
[13] Miriam Jorgensen and Randall Akee, *Accessing Capital and Credit in Native Communities*, Native Nations Institute, 2017, page 46.
[14] See footnote 12.

want to own their home,[15] and with long-term economic gains among Native American households. In the last few decades, tribal economies have grown considerably. Native Americans living on reservations saw inflation-adjusted, per-capita income growth of 32.5 percent in the 1990s and 10.5 percent in the 2000s, both well above the corresponding rates for the U.S. as a whole.[16]

How did housing conditions in Indian Country get to this point, and why have housing problems persisted despite overall economic gains?

There are many reasons for the housing issues in Indian Country. Given the unique status of Native nations and their relationship with the United States, many of these reasons are tied to the federal government's past actions and present polices. This section of the testimony will discuss how the following factors contribute to Indian Country's housing issues:

- The prevalence of trust land in Indian Country;
- Barriers in access to consumer credit;
- Underfunding or underutilization of Indian Country programs; and
- Conflicting or complicating requirements across federal programs.

Legal status of land in Indian Country can be a challenge for housing

In Indian Country, the status of land poses unique challenges to homeownership and housing development. About 60 million acres of American Indian lands are held in trust by the federal government and managed by the Bureau of Indian Affairs (BIA).[17] Titles of land held in trust cannot be conveyed or sold without the consent of the federal government. For years, tribal organizations and lenders that do business in Indian Country have noted that clearing title for trust land is much more time-consuming than doing so for non-trust land.

In most cases, obtaining a home mortgage on trust land requires a certified title status report (TSR) from the BIA. However, borrowers consistently report delays in the delivery of certified TSRs that result in longer mortgage timeframes for trust land than for fee-simple land. As recently as 2019, a tribal leader testified before the United States Senate Committee on Indian Affairs that residential mortgages on his reservation were taking more than a year to clear the TSR process, despite past commitments to a 30-day timeline. CICD has heard anecdotes about months- or years-long TSR-caused delays.

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[15] HUD Tribal Area Study, page 86.
[16] Estimates are for reservations excluding the Navajo Nation. From Randall Akee and Jonathan Taylor, *Social and Economic Change on American Indian Reservations: A Databook of the U.S. Censuses and the American Community Survey 1990–2010*, The Taylor Policy Group, Inc., May 2014.
[17] *Tribal Leaders Handbook on Homeownership*, Federal Reserve Bank of Minneapolis and Enterprise Community Partners, 2018, page 79.

Barriers in access to credit limit homeownership opportunities

In addition to the TSR process, home buyers on trust land must often use a leasehold mortgage. Residential mortgage lenders typically require that a mortgagor pledge as collateral their fee-simple (ownership) interest in the land underlying the financed real estate. This option is not available in the tribal residential mortgage context if the mortgagor leases—rather than owns—the underlying tribal land. In that case, the residential mortgage lender would require that the mortgagor pledge leasehold interest in the land (and any leased buildings).

As well as being procedurally distinct from mortgages in most of the United States, mortgages are often more expensive in Indian Country. In 2019, Native American borrowers on reservations who took out high-priced mortgages received an average interest rate of 7.0 percent, compared to 5.5 percent for White, non-Native American borrowers with high-priced mortgages who live near reservations.[18] As a result of this interest-rate differential, White, non-Native American borrowers living near reservations could pay considerably less in interest over the lifetime of the mortgage. For example, on a $200,000 loan, the interest savings would be $70,000.[19]

Legal complexities lead many Indian Country mortgages to be nonconforming—that is, outside the typical requirements of resale to the government-sponsored enterprises (GSEs) like Fannie Mae and Freddie Mac. With this weaker market for mortgage resale or conversion into mortgage-backed securities, loans in Indian Country for traditional, stick-built construction are more likely to have higher interest rates. Under "duty-to-serve" requirements, the GSEs are actively working to address this particular barrier to better mortgage access in Indian Country.

Potentially to avoid the complexities of leasehold mortgages, Native Americans on tribal lands turn to manufactured housing at a higher rate than other Americans.[20] Loans for manufactured housing, which are often chattel (personal property) loans rather than mortgage loans, typically carry higher interest rates than mortgages for traditional, stick-built homes.[21] Our economists' analysis suggests the increased use of manufactured housing in Indian Country—which may be in part caused by the Indian Country housing challenges discussed in this testimony—accounts for one-quarter to one-third of the disparity in mortgage costs that Native Americans face.[22]

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[18] A "high-priced" loan is defined as having an interest rate at least 1.5 percentage points more than the average prime offer rate.

[19] CICD calculation assuming a 30-year mortgage.

[20] Donna Feir, *The Higher Price of Mortgage Financing for Native Americans*, CICD Working Paper 2019-06, Federal Reserve Bank of Minneapolis, 2019.

[21] Laurie Goodman and Bhargavi Ganesh, "Four ways financing differs for manufactured homes," *Urban Wire: Housing and Housing Financ*e blog, Urban Institute, July 27, 2018.

[22] See footnote 20.

Appropriations for the Indian Housing Block Grant, a major source of housing funding in Indian Country, have been largely flat since its inception

The Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) bundled previously separate sources of funding into the Indian Housing Block Grant (IHBG) and gave tribes primary responsibility over the use of this federal assistance. From its initial FY1998 allocation of $600 million, which was insufficient to meet the backlog of housing development needs, the IHBG increased to $650 million in FY2001 and has remained relatively flat in nominal dollars since.[23] Had the initial $600 million appropriation kept pace with inflation, tribes would have had roughly $3.4 billion more in 2021 dollars to invest in housing through FY2019.[24]

Congress added $100 million in competitive funding to the IHBG appropriation in 2018 and in the past year has made significant investments of funding for NAHASDA. Pandemic relief through the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) and the American Rescue Plan Act of 2021 provided an additional $650 million.[25] While this greatly increases the amount of IHBG dollars available in the short-term, it should be considered in the context of the estimated tens of billions of dollars needed for new housing in Indian Country or the housing assistance that cost-burdened households need.[26]

HUD's Section 184 program is a powerful tool but take-up on tribal lands is limited

The HUD Indian Home Loan Guarantee Program, commonly known as Section 184, encourages lenders to finance Native American home buying by guaranteeing Native Americans' mortgages. The program was originally available only to mortgages for homes on trust lands, but HUD revised its Section 184 guidance in response to years of low usage and now allows for lending off of trust land.

The program is utilized much less frequently on tribal trust lands as compared to non-tribal lands or tribally owned, non-trust lands.[27] In fact, the annual number of Section 184 mortgages made on trust lands has not shown sustained growth since the early 2000s.[28] Because Section 184 loans have federal guarantees and nominally present no risk to the lender, their limited use on trust land likely results more from lenders' levels of expertise in working with the program, their business strategies, or other factors

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[23] Written testimony of Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development, United States Senate Committee on Indian Affairs, "The President's Fiscal Year 2017 Indian Country Budget," March 9, 2016, page 2.

[24] CICD staff calculation. Note that this does not include $100 million in FY2018 and FY2019 for a new, competitive companion to the IHBG.

[25] CICD staff analysis of federal tribal housing appropriations in the Coronavirus Aid, Relief, and Economic Security Act; Consolidated Appropriations Act, 2021; and the American Rescue Plan Act of 2021.

[26] See analysis at footnote 9.

[27] Written Testimony of Patrice H. Kunesh, Director, Center for Indian Country Development, Federal Reserve Bank of Minneapolis, United States Senate Committee on Indian Affairs, "Lending Opportunities: Opening the Door to Homeownership in Indian Country," October 16, 2019 (hereafter CICD Lending Opportunities), page 8.

[28] CICD Lending Opportunities, page 8.

rather than borrowers' financial characteristics. Based on CICD conversations with some lenders, when in the early years of the program traditional lenders invested in the necessary staff capacity to efficiently deploy the Section 184 program, loans using the Section 184 guarantee seemed to be profitable for lenders. However, lenders without the needed expertise may believe that the administrative costs of the program outweigh the benefits.

The complexity of building in Indian Country constrains efforts to grow housing supply

As discussed above, homes are in short supply and often in substandard condition on tribal lands. Meanwhile, the high cost and complexity of building and financing homes in Indian Country stymies efforts to increase housing availability. In addition, the long history of disinvestment and unfulfilled federal commitments has left many Native nations with inadequate infrastructure, thus limiting access to necessities like transportation and clean water.[29] As a result, building new housing in Indian Country often requires expensive investments in infrastructure above and beyond the cost of housing construction alone. Seven out of ten tribal leaders identified the cost of infrastructure development as one of the top three barriers to new housing development in Indian Country, higher than the number that identified the availability of labor (39 percent) or a lack of funds (34 percent).[30]

Tribal governments developing new housing often use multiple federal funding streams. A project may blend resources from both Indian Country-specific and non-Native-focused programs and agencies like the BIA, U.S. Department of Agriculture (USDA), U.S. Department of the Treasury, HUD, or others. This frequent braiding of resources introduces additional administrative burden and complexity, as programs vary on everything from income limits to requirements for lead abatement. Different federal funding sources may require different environmental reviews, historic preservation compliance, and cultural surveys, and each individual review adds time and expense to housing construction.[31]

Where are some opportunities to improve access to homeownership in Indian Country?

While no quick fixes will radically improve housing conditions in Indian Country overnight, plenty of innovations are showing promise for a brighter future. This section describes the following recommendations from CICD, which are based on our engagement with tribal and community leaders over the years:

- Expand the financial capacity of Native community development financial institutions and other tribal institutions;
- Eliminate barriers to expanded use of federal homeownership programs in Indian Country;

[29] U.S. Commission on Civil Rights, *Broken Promises report*, page 1. (See footnote 1 for full reference.)
[30] HUD Tribal Area Study, page 127.
[31] U.S. Commission on Civil Rights, *Broken Promises report*, page 149. (See footnote 1 for full reference.)

- Simplify housing development on tribal land; and
- Improve the availability of data on Indian Country and Indian Country programs.

Expand the financial capacity of Native community development financial institutions and other tribal institutions

Native community development financial institutions, or Native CDFIs, offer well-tailored and culturally appropriate lending products in Indian Country. Encouragingly, the number of Native CDFIs has quadrupled in the past two decades, driven by tribal community members' and leaders' interest in taking charge of their own financial futures. The presence of Native CDFIs in a community is correlated with credit score improvements for those communities' hardest-to-serve borrowers.[32]

The potential impact of Native CDFIs is limited by the availability of long-term capital, however. In a Minneapolis Fed survey of Native CDFIs in 2017, respondents reported that a lack of access to financial resources meant there was significant unmet demand for their products and services, including for homebuyers.[33] The limited access to secondary markets for mortgages described above constrains the capital and liquidity available to Native CDFIs.

In the spirit of expanding the availability of financial resources, depository institutions can consider working with Native CDFIs or other tribal institutions to develop pathways to homeownership. In September 2020, the Board of Governors of the Federal Reserve System unanimously voted to approve an Advance Notice of Proposed Rulemaking (ANPR) on the Community Reinvestment Act (CRA).[34] The CRA ANPR explicitly addresses a range of capital and credit challenges in Indian Country and, in particular, discusses options for encouraging more community development activity through mission-oriented financial intermediaries, including Native CDFIs.

A pilot conducted under the USDA Single Family Housing Direct Home Loans program, also known as Section 502, demonstrates the potential for leveraging Native CDFIs' strengths, such as deep community relationships and a pipeline of potential homebuyers, within existing programs. The Section 502 program, while not targeted at Indian Country, can support rural homeownership in Indian Country by guaranteeing mortgages for borrowers who cannot easily find conventional mortgage financing. In one year, two Native CDFIs working in partnership with the USDA deployed about $2 million worth of mortgage loans

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[32] Michou Kokodoko, Valentina Dimitrova-Grajzl, Peter Grajzl, and Joseph Guse, "Native CDFIs improve credit outcomes for Indian Country residents," Federal Reserve Bank of Minneapolis, April 28, 2021.
[33] Michou Kokodoko, *Findings from the 2017 Native CDFI Survey: Industry Opportunities and Limitations*, CICD Working Paper 2017-04, Federal Reserve Bank of Minneapolis, November 28, 2017, page 16.
[34] Board of Governors of the Federal Reserve System, Community Reinvestment Act Proposed Rulemaking web page.

across two South Dakota reservations. The pilot deployed about 50 percent more loans than had been made on the same reservations over the prior decade.[35]

Eliminate barriers to expanded use of federal homeownership programs in Indian Country

The federal government offers multiple federal homeownership programs for Indian Country and rural America, including the Section 184 and Section 502 programs and the U.S. Department of Veterans Affairs' Native American Direct Loan program. However, institutional challenges limit the usage of these programs to meet their intended purpose of expanding homeownership among Native Americans and in rural areas. Eliminating these barriers and expanding the usage of these programs, particularly by the traditional lenders that provide the majority of mortgages, is crucial to growing homeownership in Indian Country.

Some of these barriers result from lenders' hesitancy to work on leasehold mortgages, delays in the TSR process, or insufficient technical expertise among lenders to navigate complex federal programs. Other issues cut across programs. For example, tribal housing professionals describe a lack of appraisers familiar with best practices for valuing properties on tribal lands. Since multiple agencies have programs that would be improved by addressing these issues, CICD recommends that these agencies work together—ideally, in partnership with representatives from the lending community, tribal governments, and GSEs—to find solutions and provide guidance for housing professionals in Indian Country working across multiple funding streams, and leverage resources from mainstream financial institutions.

Simplify housing development on tribal land

Helping tribes regain stewardship of their lands is critical to continued housing development. The Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012 created a process for tribes to assume additional control of trust land management. Tribes across the United States have used the HEARTH Act to set up their own processes for furthering development on trust lands. Our *Tribal Leaders Handbook on Homeownership* details case studies of how the HEARTH Act can make a big difference for tribes.[36]

For tribes with relatively few financial resources, however, the HEARTH Act has more limited benefits. Sufficient funding is not available through the HEARTH Act itself to fund the administrative capacity necessary for taking over trust-land management from the BIA, and the cost is simply too high for many tribes. The BIA's website lists only 56 tribes as of 2020 that have received approval for at least one aspect of tribal leasing regulations; about a third of these approvals apply to transactions for residential developments.[37]

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[35] CICD analysis of data obtained from the South Dakota Native Homeownership Coalition.
[36] See footnote 17.
[37] BIA, U.S. Department of the Interior, HEARTH Act of 2012.

Improving the BIA's TSR process for tribes that are not able to access the HEARTH Act's opportunities would simplify the process of development on trust lands. For example, TSRs must be certified as up-to-date before development can take place, but parties looking to build on trust land or simply transfer ownership cannot currently turn to a website to file or track important TSR-related documents or requests. Significant steps in the process still rely on in-person interactions and must be carried out using paper. With better collection and reporting of data, and other practical improvements, federal policy and practice could change to reduce TSR-related delays. In 2020, CICD produced specific recommendations on options to shorten the TSR process to improve homeownership.[38]

Better interagency coordination and a focused effort to simplify requirements for projects in Indian Country that use multiple funding streams could increase the impact of federal dollars intended to support housing construction and development. Further work could build on the legacy of attempts like the One Stop Mortgage Initiative and legislation like NAHASDA to support tribal sovereignty and streamline complexities.

Improve the availability of data on Indian Country and Indian Country programs

Because better data lead to better policy decisions, there is a clear need for an improved knowledge infrastructure when it comes to Indian Country. Data on programs that serve Native Americans are difficult to find in publicly available venues. For example, both policymakers and prospective homeowners lack data on the timeliness of the TRS process. On a positive note, recent legislation will require HUD to report its progress on accelerating lender applications under section 184. More readily available data on USDA's Section 502 loan program and the U.S. Department of Veterans Affairs Native American Direct Loan would also facilitate more efficient use and procedural improvements to those programs.

More generally, data on Indian Country and Native Americans are often insufficient to assess effects of programs and policies or even to track changes in population-level well-being. With sample sizes too small to facilitate accurate estimates, American Indians and Alaska Natives are too often "asterisked" or grouped in an "other" category in published reports. To address this, CICD will soon release a regularly updated dashboard of labor market conditions for American Indians and Alaska Natives throughout the country.

Illuminating economic conditions in Indian Country will require a large shared effort, and in some cases significant commitments of financial resources to obtain sufficient statistical samples. This would have the welcome effect of helping community members, researchers, tribal leaders, and federal policymakers track and assess the impact of public policy and other interventions.

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[38] James Robert Colombe, "Shortening the TSR timeline: A proposal to end delays that hinder Native homeownership," Federal Reserve Bank of Minneapolis, September 9, 2020.

Conclusion

Underinvestment in critical infrastructure, restricted access to credit, and an inadequate housing supply hinder Native Americans from the intergenerational wealth-building that homeownership makes possible in the United States, and even from the basic benefits of stable, adequate housing.

Recent history shows that Indian Country is beginning to write a new chapter based on increased support for tribal sovereignty and economic growth. The financial gaps between Native Americans and the rest of the U.S. population remain large, but the expanding capacity among tribal governments, Native-led financial institutions, and community-based nonprofits shows that the potential for growth is immense. With stronger and easier-to-navigate federal policy, housing and economic development in Indian Country will not only continue but accelerate.