

# Comments Received on the BIA Contact Guide NNHC Lending Systems Focus Group

## Introduction

All lending on trust lands must pass through the BIA for review and processing. For homeownership, the BIA is a vital partner to supporting tribal and individual efforts to creating homeownership possibilities in their communities. This further supports economic development throughout the reservation.

Lenders and prospective homebuyers need mortgage related title requests for Trust and Restricted lands processed in the timeframe more consistent with industry standards on fee simple lands. This is critical in promoting equal access to mortgage credit, economic development opportunities in Tribal Communities, the availability and affordability of mortgage capital, and support to the tribal member pursuing their dream of homeownership.

The role of the **“Certified” TSR** is the **central legal document** required in all mortgage loan processes to insure clear title and lien position both prior to loan closing and post loan closing. A preliminary/informational TSR lacks the assurance of clear title and lien position prior to a lender funding a loan.

The timeliness of providing the 1<sup>st</sup> Certified TSR is critical as it runs parallel with other loan processing documents. The feedback we have received from lenders is that **60 days+ is the experience**. Some markets report better performance. The timeliness of the **Subsequent Certified TSR** also is critical in that loans are typically sold into loan pools the month following closing. The secondary market for these loan pools requires accurate title reflecting the recorded mortgage within a set timeframe. If that timeframe is not met the lender needs to buy back the loan from the pool at significant cost and penalty.

It is assumed that the 1<sup>st</sup> "Certified" TSR would explore chain of title throughout the history of the property or since the time of the last certified TSR. As this is completed prior to loan funding/closing, it would seem logical that the request for a Subsequent Certified TSR reflecting the mortgage encumbrance would just include a title search since the latest "certified TSR" which in most cases would just span no more than a few months (ie. from the 1<sup>st</sup> Certified TSR to the Subsequent TSR). Further it is assumed for government guaranteed, insured, or direct loans, there is no need for the BIA to re-underwrite those loans during the mortgage package/Subsequent TSR process since the Federal Government has already underwritten these loans once.

Part 1 Types of Title Status Reports	Part 2 Types of Title Status Report Requests
<ul style="list-style-type: none"><li>➤ <b>Informational TSR</b> is a non-certified &amp; non-verified report of ownership &amp; encumbrance as shown by title data in the land title system-of-record, the Trust Asset and Accounting Management System (TAAMS) title module.</li><li>➤ <b>Certified TSR</b> is a report of ownership &amp; encumbrance certified as a true, accurate &amp; up-to-date report of title status as shown by an examination of title documents recorded at the LTRD and update of land title in TAAMS.</li></ul>	<ul style="list-style-type: none"><li>➤ <b>PRELIMINARY – INFORMATIONAL TSR</b><ul style="list-style-type: none"><li>❖ Verification of Land Status (not certified)</li></ul></li><li>➤ <b>1<sup>ST</sup> CERTIFIED TITLE STATUS REPORT</b><ul style="list-style-type: none"><li>❖ Land Status, Lease Recorded</li></ul></li><li>➤ <b>SUBSEQUENT CERTIFIED TSR</b><ul style="list-style-type: none"><li>❖ Land Status, Lease Recorded, Mortgage recorded and/or subsequent documents (modifications, amendments, etc.)</li></ul></li></ul>

Official Trust Services, Land Titles and Records, Branch of Geospatial Support

## Ideas/Suggestions

These vary in cost and complexity but could be instrumental in streamlining the mortgage lending process on Tribal Trust and Restricted Lands.

### Greater use of technology/automation/internet

1. TSR Escalation Process – either Hotline or email once a TSR request has exceeded agreed upon timelines 30 days for 1<sup>st</sup> Certified TSR and 50 days for Subsequent TSR
2. Training of Industry - Tribes, Lenders, Native CDFIs, Realtors, etc., on the BIA Contact Guide to reduce errors in processing. This training could be done online with webinars, YouTube videos, and in person sessions.
3. Training of BIA Realty and LTRO staff in the importance of timely processing and understanding the value proposition or homeownership and availability of capital to Tribal Communities. These roles are very important!
4. Evaluation of whether a Centralized Mortgage Operations Facility would streamline/expedite the processing of Certified Title Search Reports
5. Land Records Management System/Title Plant rather than an Asset Management System (TAAMS)
6. Set up an online secure portal which includes required fields and data entry rules as well as a tracking feature to provide the (Tribe, lender, other) with request submittals and updates on where the request is in the process. (the advantage of this would be reduced phone calls, emails, site visits by requester to BIA offices)
7. Until an automated system is implemented, the hardcopy approach is required and we have provided 3 markups to the BIA Contact Guide.
8. Enhance communication by providing email responses to the requester of a Certified TSR.
9. Related to Servicing the Loan:
  - The directory should include the process on the back end for servicing when a request is made following the tribal member defaulting on a Section 184 loan. Those steps are crucial as this is an area that presents a challenge to the lenders/servicers. Many of the servicers don't have a clue as to what to do and what the BIA requires to get this corrected.

Should they use the form that was used during the originations process to request the updated Certified TSR and the recordation of the Assignment? What are the steps for getting a legal description corrected that was wrong from the point of origination?

- Uniformity in recording the Assignment at the point of origination is another problem. Servicers need to be notified that if a loan is not being assigned to the Secretary of Housing and Urban Development that this is not be done at the point of origination. The program has several lenders that at the point of origination and the closing of the loan before the borrower begins to make payments on the servicer prepares an assignment to

HUD and it gets recorded. The borrower has not defaulted. It looks if though the loan has been assigned to HUD and they are servicing it for us. This type of agreement does not exist as of that point. This is something that needs to be pointed out to the lenders. The Assignment should only be completed if the borrower has defaulted and the delinquency cannot be cured following the issuance of the First Right of Refusal and the expiration of the document.

- It should also be noted that the application process to purchase a home should not begin until the borrower has an approved lease agreement with the legal description as to where the home is going to be built or is an existing structure on the reservation. If it is Allotted Trust Land with fractionated ownership, the directory should note that the agreement to purchase or building a newly constructed home cannot move forward without the requisite approval of the fractionated owners. If the loan defaults the first right of refusal has to be mailed to all tribal members with a fractionated ownership in the property. The TSR, and the lease agreement if considered as a part of this process, must include the fractionated owners' agreement to allow for the placement of a home on the tract of land.

## Questions & Suggestions

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- 1) Post the BIA Contact Guide for Mortgage Processing be on the BIA website and keep it updated
- 2) Post the tribes that have contracted/compactd/ for the Hearth Act and let us know which tribes require mortgages to be first approved with the tribe
- 3) Can we start using the routing slip with all agencies?
- 4) Can we get a list of exact documents the agencies require for allotted trust mortgages?
- 5) Can we get a list of exact documents the agencies require for tribal trust lease hold mortgages?
- 6a) What is an average time line for a mortgage to be recorded at the agency?
- 6b) Let's say the time line is 45 days (for example), what do we do if it exceeds that time frame?  
What do we do?
- 7) How long should we wait to follow up on a TSR after we put in the request with the agency?