



September 25, 2018

Ms. Tara Sweeney  
Assistant Secretary – Indian Affairs  
U.S. Department of the Interior  
1849 C Street, N.W.  
MS-4660-MIB  
Washington, DC 20240

Dear Ms. Sweeney,

First, please let me congratulate you on your appointment as the Assistant Secretary for Indian Affairs. As a former Deputy Solicitor for Indian Affairs, I know the pressing demands on your time and complex issues needing your attention. I would appreciate a moment of your time to share one more pressing issue – and a proposed resolution – for your consideration.

I am the Director of the [Center for Indian Country Development](#) (CICD) at the Federal Reserve Bank of Minneapolis. For the past few years, we have been working in partnership with the [National Native Homeownership Coalition](#), a 200+ membership of housing industry professionals focused on providing the opportunity for choice for Native Americans wishing to buy, build, and finance homeownership on Tribal Trust and Restricted Lands. We recently published the [Tribal Leaders Handbook on Homeownership](#), a comprehensive guide to housing development and finance for leaders, lenders, homebuyers and housing advocates.

We have identified several impediments that have delayed and derailed the flow of capital to Indian Country and therefore opportunities for investments and economic development.

### **The Data Consistently Show Very Few Home Mortgages on Trust Lands**

The urgency of this is reflected in the data. According to the Home Mortgage Disclosure Act (HMDA) information, in 2015 there were over 16,000 purchase mortgages where the primary applicant self-identified as Native American. During that same year, according to the Bureau of Indian Affairs (BIA), there were approximately 350 recorded mortgages. That means that about *only 2% of all Native home purchases appear to have been on tribal trust and restricted lands.*

The need also is illustrated in data from the U.S. Department of Housing and Urban Development (HUD) HUD 184 loan guarantee program, a lending program designed specifically to promote affordable housing in Indian Country (see Chart 1 appended to this letter). We reviewed data from 1994 through 2015 showing all HUD 184 loans on trust and fee lands. The findings show the stark contrast of the high demand for and ease of mortgage lending on fee land versus the terribly low number of loans on trust land. Indeed, since 2003, *about 90% of the 184 mortgage loans have been on fee lands.* This means that the federal program designed specifically to promote affordable housing in Indian Country is bypassing reservation homelands.

Several of the most important elements of the mortgage lending process on trust lands require BIA involvement: 1) securing a residential lease; 2) obtaining the 1st Certified Title Status Report (TSR), which ensures the title is clear of liens for loan underwriting; and 3) obtaining Subsequent Certified TSR as part of the mortgage package, which ensures that the mortgage encumbrance is in first position and ready for sale to the secondary market. Each of these elements involves unique processes that can be cumbersome and lengthy – and discouraging for both lenders and homebuyers.



For example, federal agencies such HUD will not issue a loan guarantee until the lender receives the 2nd certified TSR. This is critical because secondary market investors either charge fines or require the lenders to buy back mortgages that do not have a guarantee within 12 months. Therefore, BIA not being able to process 2<sup>nd</sup> certified TSRs efficiently through Realty Services and LTRO will continue to have a chilling effect on lender participation.

Our Coalition Lending Systems group, which consists of many housing industry partners, has identified several strategies for addressing the gap between originating, processing, and closing loans on trust lands, compared to the process on fee lands.

## **Policy Proposal – Issue a Directive for Realty Services**

Perhaps the most pressing need is a policy clarification for the Indian Affairs Manual. Specifically, we recommend the issuance of a Directive for Realty Services that mirrors the 2012 LTRO Directive. This would clarify that homeownership related leases and TSR requests are the priority for Realty Services as it is for LTRO.

Previous memos from 1999, 2005, and 2006 (attached) provided such direction, but they were temporary guidance to this effect. Permanent guidance would demonstrate an institutional commitment to the important work of both Realty Services and the LTRO. Further this Directive would be consistent with 51 IAM 4 Examination and Certification of Land Title April 30, 2012.

Attached is a list of the terms we believe are most salient for such a Directive. These model the 1999, 2005, and 2006 Interim Policy Memos.

We greatly value the efforts and participation of Sharlene Roundface and Beth Wenstrom in the Coalition's Lending Systems work group, as well as their willingness to understand and engage the various homeownership stakeholders. We continue to work with them on a number of issues such as customer tracking and reporting, a hotline to enhance communication regarding delayed documents, training webinar for industry partners to improve quality of the packages submitted to the BIA, and potentially HEARTH Act training.

These efforts and others are critical to creating the internal systems for BIA staff in all regions to be able to effectively and uniformly process leases and TSRs, which in turn will enhance homeownership and economic development activities throughout Indian Country.

Thank you very much for your consideration and we look forward to working with you on this project.

Sincerely,

*Patrice H. Kunesh*

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cc: Eugenia Tyner-Dawson, Senior Policy Advisor to the Assistant Secretary Indian Affairs, U.S.  
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## Proposed Directive – most salient terms

**1.1 Purpose.** The purpose of the policy is to standardize and clarify how the Department of the Interior treats the processing of titles and leases for home ownership purposes.

### **1.2 Scope.**

This policy applies to all requests for processing titles and leases for home ownership purposes on Indian Trust and restricted lands.

### **1.3 Policy.**

It is the policy of the Bureau of Indian Affairs that processing of titles and leases for homeownership purposes should be the number one priority of all realty transactions. The Department is committed to supporting the mortgage lending process and assisting American Indians and Alaska Native become homeowners by efficiently processing of these documents in a timely manner.

To the greatest extent possible, processing these actions should not exceed 30 days. When a title or lease generates issues, which could extend processing for longer than 30 days, that specific case must be brought to the attention of the Area Director. The Area Director shall seek to address the outstanding issues in the most expedient manner possible.

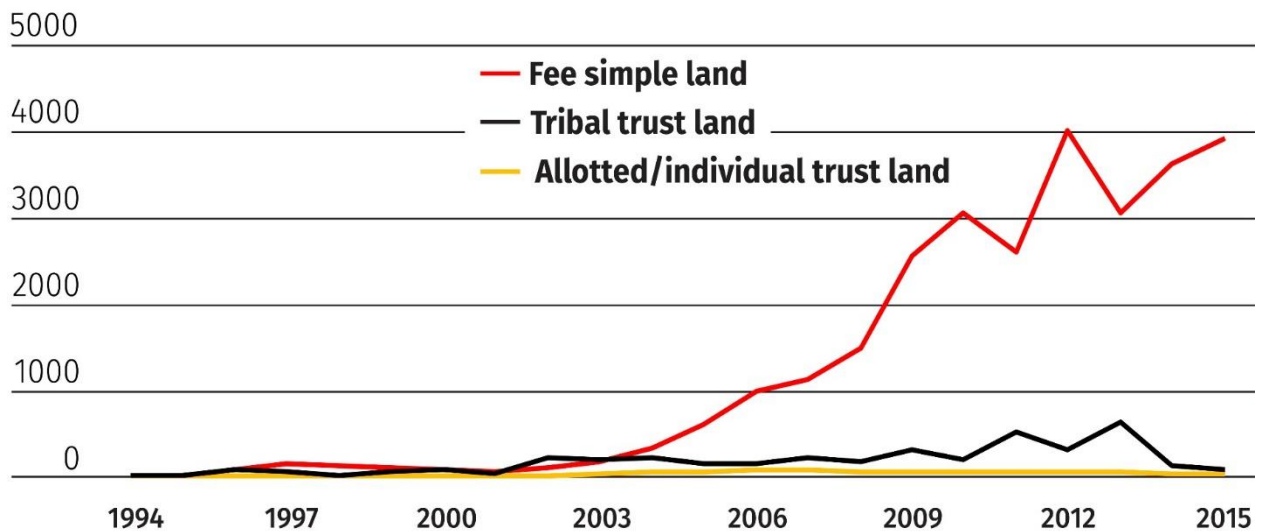
This includes maintaining the data systems in TAAMS and other systems to track the processing of documents related to home ownership.

It is also desirable for Area Directors to work with the Tribes and/or lending institutions in their geographic areas on special mortgage processing arrangements, which insure quick processing of lending documents.

When a Federal agency (e.g., HUD, IHS, USDA) prepares a categorical exclusion checklist for a housing related project, the BIA will use this categorical exclusion for the environmental document. Categorical exclusion can be used in lieu of an environmental assessment to fulfill the NEPA requirements (516 DM 10;5 M.(3)).

## Chart 1: Number of HUD 184 Loans by Type of Land (1995-2015)

### Number of HUD 184 Loans by Type of Land (1995-2015) Fee Land Loans Dominate Since 2005



Source: CICD staff calculations based on data provided by the U.S. Department of Housing and Urban Development