

Attachment 4

Checklist for Tribal Approval for Participation in Mortgage Loan Programs Sponsored by the U.S. Departments of Housing and Urban Development, Agriculture and Veterans Affairs.

1. Evidence that the tribe has enacted legally binding and effective foreclosure procedures and will enforce those procedures upon notice of default from a lender and/or Agency noted above.
2. Evidence that the tribe has enacted legally binding and effective eviction procedures and will enforce those procedures upon notice of default from a lender and/or an Agency noted above.
3. Evidence that the tribe has adopted procedures ensuring that the Federally guaranteed or insured loan will always have first lien priority (if applicable) and will be satisfied before all other property debts (excepting tribal taxes) OR has adopted legislation requiring the tribe to follow state or local priority of lien procedures.
4. A copy of the tribe's lease for use on residential land.
5. Submission of an affirmation signed by the tribe stating that the tribe understands the importance of maintaining and enforcing these procedures.
6. Submission of an affirmation signed by the tribe stating that the tribe agrees that it will permit HUD, USDA and VA and/or the lender or their agents to access mortgaged properties for the purpose of evaluating and servicing loan-related items.

APPENDIX I

Memorandum of Understanding for Participation in Federal Government Loan Programs

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE _____ NATION

AND

{fill in the name of the reviewing/approving Agency}

Whereas, the Secretaries of Housing and Urban Development (HUD), Veterans Affairs (VA) and Agriculture (USDA) are authorized to make, insure and/or guarantee loans to American Indian borrowers for the purchase of one-to-four family residences located on certain Indian lands (as defined in each Federal Agency's authorizing statute), and

Whereas the Federal Agencies require, as a condition of making, insuring or guaranteeing these mortgages, that the tribal organization which has jurisdiction over the borrower enter into a Memorandum of Understanding with the Departments with respect to such loans, and

Whereas, the signature on this Memorandum of Understanding of any one of the Secretaries for the Department of HUD, VA, or USDA, is deemed to be acceptable to each of the other Departments per the Memorandum of Understanding between those Federal Agencies dated _____.

Now therefore, in consideration of the premises and other good and valuable consideration, the parties hereto do agree and establish as follows:

1. DEFINITIONS

American Indian or Native American shall refer to the borrower/mortgagor or Lessee as defined within each Agency's authorizing statute. Depending upon the authorizing statute, this may mean a member of a federally recognized tribe (Native American, Indian, Alaska Native individual or family), the tribe, a Tribally Designated Housing Entity (TDHE) or Indian Housing Authority (IHA).

Borrower shall mean a federally recognized Tribe, Tribally Designated Housing Entity (TDHE), Indian Housing Authorities (IHA) or any American Indian, Native American(s), Indian or Alaska Native who has executed a Mortgage as defined in this document, or any heir(s) successor(s), executor(s), administrator(s) or assign(s) of the Tribe, TDHE, IHA or such American Indian, Native American(s), Indian or Alaska Native as may be eligible to participate in a federally sponsored loan program as defined in each Federal Agency's authorizing statute. Eviction the legal process by which lessees in violation of their lease are removed from occupancy of a given residence.

Federal Agency shall refer to the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Veterans Affairs (VA) and the U.S. Department of Agriculture (USDA).

Federally sponsored loan program refers to the loan programs, sponsored by HUD, VA and USDA whose purpose is to provide homeownership opportunities to Native Americans, American Indians or Alaska Natives on certain Indian lands as defined within each of those Federal Agency's authorizing statutes.

Leasehold interest is the name given to the interest conveyed by the tribe to the borrower under the lease. It consists of the right to the quiet enjoyment of the leased premises for the term of the lease, subject to the requirements of the lease.

Lender shall refer to any institution that the specific Federal Agency has approved to originate or service Mortgages made, insured or guaranteed under its programs. The term "lender" also includes any of the lender's successors or assigns of the lender's right, title to, or interest in, the Mortgage, including any subsequent noteholder and mortgagee and, without the consent from the tribe, any secondary mortgage market investor. In some cases, the lender may be the appropriate Federal Agency which is sponsoring a direct loan program.

Mortgage shall mean a mortgage loan made to an eligible borrower for the purchase or refinance of the borrower's real property interest (which may be a leasehold interest) in the trust land, restricted land or fee simple land, as applicable, and made in accordance with a Federally sponsored loan program and complying with the terms and conditions of the lender's mortgage program. The mortgage loan shall be either a first lien or a second lien, in accordance with the Federally sponsored loan program requirements.

Secretary shall mean the Secretary of the U. S. Department of Housing and Urban Development (HUD) or the Secretary of the Department of Veterans Affairs (VA) or the Secretary of the U.S. Department of Agriculture (USDA).

Tribe shall refer to any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975. For the purpose of this specific Memorandum of Understanding, Tribe refers to the _____ Indian Nation, a federally recognized tribe, of the _____ Indian Reservation as defined in the Tribal constitution, ordinance or other enabling document.

2. AGREEMENT

(a) That the Department of HUD, VA and/or USDA, will make, insure and/or guarantee mortgages available to qualified American Indian borrowers for the purchase, construction or rehabilitation of homes on Indian lands or refinances of such mortgages to the extent funds are available and subject to such terms and conditions as may be established by the Secretary of the applicable Federal Agency.

(b) That the _____ Tribe has established standards and procedures that apply to the conveyance of a leasehold interest in real property by an American Indian borrower/mortgagor to a lender, Federal Agency or their assignee as security for the loan, including procedures for foreclosing the interest, eviction and procedures for resale of the lot or the dwelling (or both) purchased, constructed, rehabilitated or refinanced using the proceeds of the loan. It is agreed that for the purpose of foreclosure and eviction actions, the court of jurisdiction is (__) the State of _____, or (__) the Tribal court , or (___) the Federal Court.

(c) That each American Indian who is under the jurisdiction of the Indian tribe and to whom a lender and/or Federal Agency makes direct, insures or guarantees a loan, holds, possesses or will obtain a leasehold or other acceptable interest in a lot that is located on Indian land and will purchase, construct, rehabilitate or refinance a dwelling on that lot with the proceeds of the loan.

(d) That each such American Indian will convey the above described interest to the lender and its assignees as specified in the borrower/mortgagor's loan documents, by an appropriate instrument, as security for the loan made pursuant to that Federal Agency's authorizing statute.

(e) That the tribe and each borrower/mortgagor who obtains a loan from a lender or Federal Agency under this agreement will permit the lender and/or the Federal Agency, its agents and employees to enter upon the land of the tribe and the borrower/mortgagor for the purpose of carrying out such actions as the lender and/or Secretary determines are necessary to evaluate the advisability of the proposed uses of the proceeds of the loan and to service the mortgage according to the applicable Agency's requirements.

(f) With respect to any leasehold estate financed by a loan, the tribe, as lessor, agrees that it shall not attempt to cancel, modify, amend, terminate, surrender or forfeit such a leasehold estate without the prior written consent by the Lender and the Secretary of the Federal Agency that has made direct, insured or guaranteed the loan, as long as such a loan remains outstanding. With regard to any loan submitted to HUD, VA or USDA for guarantee or insurance, the authorizing Federal Agency shall have the same rights as the lender with regard to that loan and the security. No action with regard to the loan or security that requires consent of the lender shall be taken unless the Federal Agency also consents, so long as the guarantee or insurance remains in effect or the Federal Agency has an interest in the security.

(g) The tribe will to the maximum extent possible, assist the lender and the Federal Agency in its efforts to manage this program in a prudent and cost-effective manner. This will include assisting the lender or Federal Agency in finding qualified substitute purchasers if the initial borrower/mortgagor is unable to fulfill his or her obligations under the law. This may include carrying out evictions, assuring that mortgages and other legal instruments can be properly recorded and otherwise assuring that the program is operated in a responsible and prudent manner.

In Witness whereof, the parties hereto have signed this agreement as follows.

{fill in name of the reviewing/approving Agency} DATE _____

XXXXXXXXXXXXXXXXXXXX
XXXXXXX Tribe DATE _____

Does the above named Tribe have constitutional authority to sign this Memorandum of Understanding without approval of the US Department of the Interior's Bureau of Indian Affairs?

___ Yes ___ No

If no, below is the approval of the Bureau of Indian Affairs.

BIA Approving Official DATE _____