



Exploring the
Challenges
and
Opportunities
for Mortgage Finance
in Indian Country

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Executive Summary

This report explores mortgage lending to American Indian and Alaska Natives particularly activity on federally recognized reservation lands (“reservations”).¹ The analysis touches on the historic and social factors that have helped create the constrained mortgage lending environment on reservation lands. In addition to barriers like geographic isolation, economic distress, and mistrust, which are often found in rural areas, these lands have a nonstandard land ownership situation and an extra layer of federal oversight, as well. A review of mortgage lending data for Native American borrowers confirms activity is constrained on reservations. Such activity includes low origination rates, high denial rates, and a high proportion of loans made for manufactured homes.

Federal programs have the potential to encourage mortgage lending on reservations. Despite these federal programs accounting for the majority of the loans made on reservations, they have not significantly increased mortgage lending activity. More specific improvements for widening access to mortgage lending on reservations could be helpful. In addition to better targeted policies and having more complete data available, increasing the capacity and awareness of all involved parties could help resolve the challenges of mortgage lending on reservations.

1. “Reservation land” refers to land held in trust by the federal government for the 326 federally recognized tribes which have trust lands. The tribes have sovereign control over these lands. This refers to on and off-reservation trust lands, but excludes other census-defined tribal geographies like state recognized reservations or tribal designated statistical areas.

Historical Background

The current state of mortgage lending on tribal lands did not arise in a vacuum. Much of today's constrained mortgage lending activity on reservation lands is a result of the federal-tribal relationship throughout history. The best approach to understanding the current state of mortgage lending on reservation lands is to consider significant Supreme Court decisions and federal policy influencing tribes and land.

- **Marshall Trilogy:** These three landmark cases, *Johnson v. McIntosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832), established the legal foundation for the federal government holding this sovereign land in trust for the benefit of tribes and solidified the federal government's role in regulating aspects of tribal affairs, including mortgage lending.
- **Federal Indian Policy:** Federal policies of forced relocation to isolated rural land held in trust, cultural assimilation, and the undermining of tribal self-determination have led some tribes to face poor economic conditions, land ownership issues, the effects of intergenerational trauma, and a complicated web of bureaucracy.

Lending Challenges on Reservation Lands

The following four factors, stemming directly from history and previous policies, serve to constrain mortgage lending activity on reservation lands.

- **Poverty and Geographic Isolation:** The aggregated poverty rate for reservation lands is 29.2 percent, considerably higher than the 15.5 percent for the nation. Along with economic distress, comes little to no credit history which severely limits the ability to obtain mortgage capital. Also, many Native Americans have never bought a home before and are inexperienced with the process. Besides individuals being poor and not being able to qualify for mortgage loans, being relegated to remote areas makes building more homes and accompanying infrastructure costlier, leading to an inadequate housing stock and overcrowding. Over 70 percent of the counties with at least some reservations lands are found outside of metropolitan areas and 27 percent of these counties have fewer than 10,000 residents.
- **Land Ownership:** Reservation lands cannot be sold or used as collateral for a mortgage loan. This means that lenders making a loan on a reservation land home are at greater risk of losing money if it does not perform, as they cannot seize the property. Instead, a loan on a reservation land home comes with a leasehold interest to the borrower. This does not fit into the standard home loan product and often requires government-backing to limit risk and facilitate lending.

- **Bureaucracy:** In addition to tribal and lender oversight, home loans on reservation lands are under federal oversight, specifically by the Department of Interior's Bureau of Indian Affairs (BIA). The process can be prolonged because multiple entities are involved, each adding their own requirements and government agencies can be understaffed.
- **Mistrust:** Federal policies that sought to assimilate and relocate Native American communities have created mistrust among tribes of not only the federal government, but also other outside entities. Mistrust can limit the creation of agreements between tribes, lenders, and government agencies that could have helped them overcome the nonstandard land ownership and bureaucratic hurdles that exist on reservation lands to facilitate mortgage lending.

Native American Mortgage Lending Activity

A review of Home Mortgage Disclosure Act (HMDA) data finds limited mortgage lending activity² for Native American borrowers, which is largely because of the dearth of activity on reservation lands.³ A large proportion of the reservation land lending involves manufactured homes and denial rates are considerably elevated. Banks, savings, and thrifts originate more reservation land loans than private mortgage companies and credit unions. Small-asset Native American-owned banks play a relatively large role here. A few figures are illustrative:

- **Limited Lending Activity**
 - » About 0.6 percent of HMDA loans in 2015, 43,926 loans out of 7.2 million, went to Native American borrowers who represent 1.6 percent of the U.S. population.
 - » While 9.5 percent of Native Americans live on reservation lands, they receive only a 2 percent share of Native American mortgage loan activity.
 - » About 22.3 loans were originated per 1,000 U.S. residents, compared to 1.9 loans per 1,000 Native American reservation land residents.
- **Low Origination and High Denial Rates**
 - » Over 60 percent of all HMDA applications in 2015 were originated,

2. Mortgage lending activity involves home improvement, refinance and first lien home purchase applications.

3. For this research, reservation land lending reflects activity occurring in census tracts with their center point (centroid) in reservation lands. Census tract and reservation land boundaries do not match, so this means that census tracts with their centroid in reservation lands often contain some non-reservation lands and vice versa for outside reservation land census tracts. The estimates are not perfect counts of reservation land lending – unless citation for the source is provided in the text, but instead represent estimates that reflect the amount of types of activities occurring in these communities. These reservation land estimates generally confirm the findings from other data sources on the dearth of lending in these markets.

49 percent of off-reservation land applications by Native Americans were originated, and just 32 percent of on reservation land applications by Native Americans were originated.

» Almost half of all applications by Native Americans in 2015 on reservation lands – 46 percent, were denied, substantially higher than the 29 percent for all other Native American applicants.

- ***Manufactured Homes***

» Less than 5 percent of all HMDA applications involved a manufactured home, compared to 7 percent for Native American applicants off-reservation land and 39 percent for Native American applicants on reservation land.

» Over half of all loans to Native Americans involving a manufactured home are high-cost, meaning they have interest rates and fees considerably higher than a standard prime rate loan, making them costly to the borrower.

- ***Lender Involvement***

» About one-third of all lenders originated a loan to a Native American applicant – over 2,000 institutions, but only about 165 made a loan on reservation lands.

» Banks, savings, and thrifts originated two-thirds of the loans to Native Americans on reservation lands compared to slightly less than half for all other loans to Native Americans.

» Small-asset Native American-owned, Bay Bank and Bank 2, were among the 20 largest-volume lenders serving reservation lands.

Federal Programs

Several federal government programs were created to positively impact mortgage lending to Native Americans and specifically with Native Americans living on reservation lands, including HUD Section 184 program, VA loan programs, USDA Section 502 loan programs, and HUD Indian Housing Block Group program. In each case, these programs have had limited success on reservation lands.

- **HUD Section 184 Program:** This program provides a 100 percent loan guarantee to private lender loans to enrolled tribal members. Established in 1992, the Section 184 program initially guaranteed loans exclusively on reservation lands, but now it reaches select off-reservation lands, including more than 20 entire states.
 - » Three-quarters of the lending occurs in six western states: Oklahoma (45%), Alaska, Arizona, New Mexico, California, and Nevada.
 - » More than 90 percent of Section 184 loans occur off reservation lands. Fewer than an average of 200 Section 184 guaranteed loans occurred annually on reservation lands during the 2005 to 2016 period.⁴
 - » Lender involvement declined from 280 in 2006 to 122 in 2017.
- **VA Loan Programs:** The standard VA loan guarantee, starting with the G.I. Bill after World War II, is an important product for Native Americans who live off reservation lands. The standard VA loan does not reach reservation lands though. The VA's Native American Veteran Direct Loan (NAVDL) program seeks to address this need with direct loans to Native American veterans on reservation lands for which the VA has a memorandum of understanding agreement with the tribe. Still, few NAVDL loans have occurred on reservation lands.
 - » The VA loan program guaranteed 12 percent of all loans to Native American borrowers.
 - » The VA originated an annual average, over the 2013-2015 period, of 21 NAVDL loans on reservation lands.⁵
 - » More than 90 percent of NAVDL loans are done in Hawaii and American Samoa.
 - » Efforts at expanding NAVDL lending have been able to increase the number of memorandums of understanding between the VA and tribes, making the product available in more areas.
- **USDA Section 502 Loan Programs:** The USDA Section 502 direct and loan guarantee programs, while not specifically targeting Native Americans,

4. Listokin, David, Temkin, Kenneth, Pindus, Nancy, Stanek, David. Urban Institute. Mortgage Lending on Tribal Land: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs. U.S. Department of Housing and Urban Development. January 2017. Accessed July 20, 2017. <https://www.huduser.gov/portal/sites/default/files/pdf/NAHSG-Lending.pdf>

5. Haines, Bill. US Department of Veterans Affairs: Veterans Benefits Administration. 2016. Native American Direct Loan Program. September 2017. https://www.hud.gov/sites/documents/DAY2_BILLHAINES.PDF.

focus on rural communities, which would include many reservation lands and over 1 million Native American residents. The USDA made approximately 7,000 direct and 116,000 loan guarantees in 2016.⁶

- » The USDA guaranteed 752 loans to Native American borrowers annually during the 2013 to 2015 period. This constitutes less than one percent of all USDA 502 guaranteed activity.
- » An average of 12 USDA Section 502 direct loans were made to Native American borrowers on reservation lands each year between 2013 and 2015.
- **HUD Indian Housing Block Grant Program (IHBG):** The IHBG was created by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). This block grant is the largest single source of housing funding dedicated to tribes for use on reservation land and is awarded to tribes using a needs-based formula.
 - » IHBG increased the supply of quality homes by using funds to build, acquire, and substantially rehabilitate homes but it is unclear whether there were any associated mortgages.

Efforts to Address the Challenges

There have been many efforts over the years to expand mortgage lending access to reservation lands. Programs like HUD's 184 loan guarantee and the VA's NAVDL direct loan, along with the USDA's one-stop mortgage center initiative have put forth policies to address the unique characteristics that impact many tribal reservation lands. These ideas and approaches are likely positive, but the data suggest they have yet to greatly improve mortgage lending on reservation lands. A more effective approach should include improvements in education and capacity, better targeted financial policies, and increased access to data. In total, these efforts can improve the operation of mortgage markets and widen access. Policies to address finance and housing markets, however, should work in concert with other policies designed to address underlying economic and social problems to maximize impact.

6. Housing Assistance Council. 2017. USDA Rural Development Housing Funding Activity: FY 2016 Year-End Report. Accessed 10/5/17 from the following url: http://www.ruralhome.org/storage/documents/rd_obligations/fy2016/usda-fy16-yr-report.pdf

Idea 1:

- **Increase Awareness:** This means making lenders and Native Americans more aware of the government lending programs. It is helpful to instill the idea that homeownership may be possible and teach what one needs to do to qualify and successfully fulfill a mortgage loan commitment. If the proper process and product are involved, loans can work on tribal lands and lenders need not be risk averse. This would include educating involved parties about the process that is involved on reservation lands and the different perspectives and customs that shape this process.

Idea 2:

- **Improve Capacity:** Expand the capacity of all parties involved so they can better navigate the mortgage lending markets on reservations. For example, this means expanding tribes' self-governance capacity to be more efficient at mortgage lending efforts; increasing lender capacity, particularly small institutions, to be effective at using existing government programs and navigating the process on reservation lands; and expanding federal regulators capacity so they can perform their oversight duties in a timely manner.

Idea 3:

- **Modify Rules or Expand Incentives:** There is likely room for better targeted policies that could better incentivize mortgage lending. The following are two potential policies.
 - » **Duty to Serve:** The recent "Duty to Serve" requirements mean GSEs must plan to purchase loans originated in reservation lands, among other underserved areas, which could be a powerful incentive for lenders to engage in more lending. The GSEs are developing plans on how they will fulfill these obligations. To do this, there will need to be sound, high-quality mortgage loans to purchase, which requires addressing the current obstacles to reservation land lending. The Duty to Serve requirements then creates an opportunity for tribes, lenders, local non-profits, and CDFIs to come together and find ways to improve mortgage lending on reservation lands.
 - » **Community Reinvestment Act (CRA):** The CRA charges financial regulators with evaluating depository institutions on how well they meet the credit needs of their service area populations. In this process, lenders show they are reaching all parts of their service area by investing in areas most often overlooked by lending. Lenders essentially

receive credit for those efforts, given they occur in their service area. Altering the eligibility requirement so all activity in underserved or distressed reservation lands would qualify, regardless of service area, could help. The regulation essentially makes projects and activity slightly more valued in eligible areas since lenders get credit. Additionally, expanding this and other related CRA definitions could possibly mean more lender activity on reservation lands.

Idea 4:

- ***Improve Collection and Access to Data:*** Almost all publicly available mortgage lending data lacks information on whether an activity occurred on reservation lands, or if it involved certain government programs. This makes it difficult to get an accurate picture of what is and is not occurring on reservation lands. Both improved data and closer scrutiny of that data will help with better understanding reservation land mortgage lending markets.

Discussion for Future Action

Native Americans have made great strides in strengthening their right to self-determination and in reestablishing traditional laws and culture, but major challenges remain. Broken treaties, forced relocation and assimilation, and marginalization have resulted in poverty and isolation, land ownership issues, and bureaucracy that all work together to constrain mortgage lending. The review of HMDA data confirms that mortgage lending activity on reservation lands is a rarity. Government programs have stepped in to serve this population, but the current efforts have not been able to overcome the impediments.

Solutions are out there, specifically related to capacity, education, incentives, and data access. Increasing the capacity of the involved parties would help them to navigate the complex process of mortgage lending on reservation lands. Tribal members, banks, and local governments need to be better informed of available products and how to access them. Regulatory changes could incentivize bank and lenders to invest more in Indian Country. Lastly, having more and better available data available would give further insight into the issues. The ideas proposed here could ensure more equitable access to mortgage finance. For Native people, the trust relationship has meant the guarantee of U.S. federal protection of people and lands would be implemented. While the federal government has had a history of not fulfilling its promises to Native people, the continuing responsibility to do so still stands.

Introduction

Well-developed and functioning capital and credit markets help to stimulate economic development and facilitate vibrant economies. One form of such credit, mortgage lending, gives individuals the opportunity to become homeowners. However, access is not available to all. The barriers that constrain credit and capital markets also limit mortgage lending. On federal Indian reservations, these barriers include borrowers' poor credit histories, lenders' failure to understand tribal government systems, and an inability to use trust land as collateral,¹ all of which have resulted in a paucity of mortgage lending. Overcoming some of these obstacles would make great strides toward financial prosperity, and therefore, increased access to mortgage lending. Stories of success, however, are happening on reservations across the nation, and can be used as models for replication.

This report provides an overview of mortgage lending to Census-defined American Indian Alaska Natives ("Native Americans"). It intends to inform the public and policymakers about the challenges associated with mortgage lending to Native communities, particularly those located on federal reservation lands. It explores the underlying historical and social complexities, including social, housing, and economic deprivation and general disinvestment that influence the economic and housing situation of Native Americans today. Couching the discussion in these terms provides a deeper and more complete understanding of their current mortgage finance circumstances. The paper explores HMDA mortgage loan data, highlighting the absolute dearth of activity on reservation lands. A review of federal resources available to support such lending explores how policymakers have attempted to increase lending on reservation lands. The paper concludes by pointing to some areas where changes might improve the mortgage lending process and ultimately expand Native Americans' opportunities for mortgage finance on reservation lands.

Native Americans and Their Lands

Before a discussion of mortgage lending begins, it is helpful to better understand the population and history of Native Americans. As of 2015, a total of 5.3 million people identified their race as Native American, 2.5 million of whom considered themselves solely Native American. Around 480,000 Native Americans resided on reservation lands, many of whom are enrolled tribal members. Tribal citizenship is determined by a tribal government, which may require proof of lineage from a tribal member or a qualifying blood quantum, a measurement introduced by the U.S. government.² Not all people who self-identify as American Indian Alaska Native are members of tribes. Regardless of tribal membership, all Native Americans are U.S. citizens.

There are 567 federally recognized tribes in the U.S., almost half of which (229) are located in Alaska.³ Most federally recognized tribes in the lower 48 states have reservation land – 325 tribes across 34 states and there is one tribe in Alaska.⁴ Some tribes have multiple reservations, some tribes share reservations, and some tribes have no reservation land like the Cherokee in Oklahoma. Tribes have sovereign control over these lands, meaning they have the authority to self-govern. Due to checkerboarding, an outcome of 19th century policies, federal reservation lands are peppered with fee simple land. As a result, this analysis of loan data includes some activity on non-trust lands as well.

i. AIAN, American Indian, and Native American are used interchangeably in this report and are defined here as all those identifying their race solely as AIAN and those identifying as AIAN along with another race. The Census refers to this category as "AIAN alone or in combination."

Historical Background

Marshall Trilogy

The current mortgage lending challenges on federally recognized reservation land derive, in large part, from the history of Native American land rights and the evolving federal-tribal relationship. Each tribe has its own unique political, economic, and social institutions, but they have in common their sovereignty protected by treaty, and a political relationship with the U.S. federal government. As domestic sovereign nations, tribes have the inherent authority to self-govern and control their land and resources, which includes regulating housing. While the federal government's recognition of Native Americans' right to self-determination has vacillated throughout history, the unique legal foundation and political standing of tribes was largely set by three landmark U.S. Supreme Court cases, collectively known as the "Marshall trilogy." Much of the content and structure of this history is derived from a previous document published by the Housing Assistance Council in 2006.⁵

Johnson v. McIntosh (1823) invoked the Doctrine of Discovery to decide that the U.S. federal government acquired paramount title to lands inhabited by American Indians, thus invalidating/nullifying their aboriginal possession of the land and recognizing a mere right of occupancy of their lands.⁶

In **Cherokee Nation v. Georgia** (1831), the Supreme Court determined that the relationship of the tribes to the United States resembles that of a ward to its guardian, and not that of a foreign nation. With tribes viewed as domestic dependent nations, the U.S. asserted trusteeship over reservation lands, holding a trust responsibility to manage and protect tribes as beneficiaries.⁷

Worcester v. Georgia (1832) reestablished the limited internal sovereignty of tribes. The Court ruled that tribes were distinct political communities with the right to self-government

and only the federal government, not the states, had authority over Native American tribes.⁸

The way in which these decisions have been interpreted establishes the legal foundation of the trust relationship, thus solidifying the federal government's role in regulating certain aspects of property related to Indian tribes. In addition to establishing the unique political status of tribes, the decisions defined the federal trust status of reservations.

Federal Indian Policy

Hundreds of years of federal policy careening between extinguishing or reaffirming tribal sovereignty has significantly impacted Native American communities and has played a role in producing the modern-day difficulties with accessing mortgage lending on reservation lands. To help contextualize this complicated, and often asymmetric relationship, we briefly present five epochs highlighting the intersection of Native Americans and their relationship and experience with the U.S. federal government.ⁱⁱ

Removal and Establishment of the Reservation System (1830-1880) During the 18th and 19th centuries, treaties were a commonly used method to reconcile contrasting values and objectives between the U.S. and tribal governments. These legally binding contracts acknowledged each other's sovereign status and established these nations' political and property relations. While the federal government has not always abided by treaty terms, treaties still retain the force of law, defining mutual obligation between the U.S. and Native nations.⁹ Treaties were beneficial to both parties early on, as they guaranteed allies for the colonists who were in a very weak position and they guaranteed peace and security for Native nations. However, as land became more sought after, later treaties morphed into lopsided agreements, mostly benefitting colonists who wrote treaties in their own language with the force

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ii. For a more detailed presentation of historical events facing Native Americans, see Housing Assistance Council, Lending on Native American Lands (Washington, DC: Housing Assistance Council, 2006) accessed September 28, 2017, <http://www.ruralhome.org/storage/documents/Nativeamerguideforusda.pdf>.

of their governments, courts, and laws underpinning them. This scenario gave colonists the upper hand because they gained the power to set the rules, using bribery, threats, trickery, and coercion to pressure tribes to sign land cessation treaties.¹⁰

In 1830, President Jackson authorized the Indian Removal Act, accelerating the displacement of tribal communities with fertile land in the southeastern U.S. to the primarily semi-arid plains west of the Mississippi River, beyond U.S. state boundaries.¹¹ This unprecedented legislation was fiercely debated. Those opposed to removal argued for Native nations' sovereign rights. Several Native nations fought against removal by sending delegations, petitioning government agencies, and publishing accounts in public forums. Proponents of removal ultimately succeeded, asserting that Native Americans hindered the economic progress of cotton production and that removal was humanitarian.¹²

The westward pushing settler population soon left no buffer between "American civilization" and Indian Territory. In an effort to finally solve the "Indian problem," Congress passed the Indian Appropriations Act in 1851, which created the Indian reservation system. Numerous tribes were relegated to these designated parcels of land on a portion of their former territory through the government sanctioned consolidation. Political leaders at this time expressed their desire for Indians to be concentrated, domesticated, and incorporated. The reservation system was one way to fulfil that goal.¹³ Forced removal and the establishment of reservations led to increased bureaucracy and the federal government's further entanglement in tribal members' affairs.

Assimilation and Allotment of Reservation Land
(1880-1934) Once tribes were confined to Indian

Territory, Native Americans were forbidden to leave, which limited their economic viability. Earning a living on the reservation was made almost impossible, so tribal members became dependent on the government.¹⁴

Drawing from the assumption laid out in *Cherokee Nation v. Georgia* that tribes are dependent, domestic nations, the U.S. exerted its power to pass the General Allotment (Dawes) Act of 1887, where tribal land was divided into plots of around 40 to 160 acres¹⁵ and designated for individual tribal members as private property in order to foster self-sufficiency and end the dependency of the tribes on the federal government. The federal government encouraged Native Americans to use their land for farming but did not consider the weather and soil conditions of the land that made farming almost impossible. Allotment was unsuccessful for other reasons as well:

*The allotment policy did not institute private property among the Indians; instead it overturned a functioning property rights system that was already in place. . . . Allotment failed because it privatized the land among individuals without understanding the existing family and tribal structure or the property rights structure that accompanied it.*¹⁶

This system of allotment perpetuated the federal government's paternalistic view of tribes. Theoretically, the allotted land would be held in trust for 25 years and at the end of that time, it would revert to the individual as fee simple land. However, in certain regions, when the BIA deemed an Indian as not "competent,"¹⁷ which occurred often, the land could be ceded to the federal government and sold to non-Indians. In one case, to resist allotment of his reservation, Chief Lone Wolf of the Kiowa tribe sued the U.S. government for violating the Medicine Lodge Creek Treaty of 1867. However, the Supreme Court ruled that Congress had the authority

to abrogate Indian treaties whenever it wished,¹⁸ so allotment continued. As a result of the allotment process and of opening reservations to non-Indian settlement, tribes lost two-thirds of their landholdings without compensation.¹⁹ The federal government divested Native Americans of almost 90 million acres, decreasing Indian landholding from 136 million acres in 1887 to 48 million acres in 1934 when the act was repealed.²⁰ Land dispossession through the system of allotment stripped Native Americans of property wealth, crippling the economic status of generations to come.

Indian New Deal (1934-1953) The tides began to change with the passing of the Indian Reorganization Act (IRA) of 1934, which encouraged tribes to organize their own governments and create tribal courts. It repealed the Dawes Act and halted the transfer of trust land to fee simple land. While the policy of allotment ended, the land ownership patterns created by the Dawes Act remained, resulting in fragmented tribal reservation lands being intermixed with non-tribal landholdings and jurisdictions. Fractional property ownership, whereby a piece of land is passed down to multiple heirs, also adds to differences between “trust” and fee simple land.

Termination and Displacement (1953-1970) The U.S., recovering from World War II, slashed the Bureau of Indian Affairs’ budget. Legislation was passed to remove the federal government’s obligations to provide education, health, or other services to tribal communities. While the political relationship between tribal governments and the federal government would be terminated, Native Americans would gain U.S. citizenship. More than 100 tribes were targeted to lose federal recognition during this period. Their reservation lands were broken up and sold, in part, because many

of these tribes had valuable natural resources that could be taxed, privatized and developed.²¹ Termination was a major setback to Native Americans as they lost their rights of protection and provisions from the federal government, leaving them without financial support.

While many tribal members’ reservation lands were being dismantled, the BIA’s Urban Indian Relocation Program was setting up centers in 12 metropolitan areas, resulting in enticing and coercing 160,000 Native Americans moving off reservations.²² In 1940, only about 8 percent of American Indians and Alaska Natives lived in metropolitan areas, but that rate grew to 45 percent by 1970.²³ Currently, the rate is close to seventy percent. While the BIA later provided job assistance and vocational training, early on it offered little financial support or orientation on how to handle moving from reservations to cities, which differed greatly in their ways of living. Consequently, many Native Americans who had relocated could not find jobs and those that did, found low-paying, entry-level jobs that could offer only limited upward mobility. In addition to being placed in unsanitary housing units, relocated Native Americans also experienced racial and social prejudice, harassment, and violence.²⁴ And being in an unfamiliar landscape, far from their families and support systems, limited the social capital they needed to cope.

Another issue impacting tribal sovereignty was the passage of Public Law 83-280, which transferred legal authority from the federal government to state governments,²⁵ giving Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin the power to exercise criminal and civil jurisdictional control over reservations. This change in authority was enacted without the consent of or consultation with the Native American tribes affected.²⁶ Federal funding and

technical support for tribal self-government and tribal courts were discontinued, limiting the ability of tribes to self-govern, leaving these states without the ability to operate court systems²⁷ and adding confusion to which level of government had jurisdiction on reservation lands.

Self-Determination (1970-present) After centuries of subjugation to federal control, a new era emerged. A renewed sense of Native American pride and resistance took hold during the civil rights movements of the 1960s. The Red Power movement, a Native American social movement with a confrontational and civic disobedience approach, demanded respect for treaty rights and restoration of tribal self-determination. The protests also focused on addressing the marginalization and extreme poverty that affected many federal reservations.

Years of occupations and protests slowly made important gains in furthering tribal self-determination. Activists wanted to reinstate the idea of coexistence as separate, independent peoples. In the 1970s, Indian organizations adopted a comprehensive legal and political strategy, persuading Congress to pass legislation in favor of Native Americans, strengthening tribal autonomy and affirming tribal rights. After rallying to defend their status as separate nations,²⁸ most of the terminated tribes regained federal recognition.²⁹ The Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638) was enacted, authorizing “Indian Tribes and Tribal Organizations to contract for the administration and operation of certain Federal programs which provide services to Indian Tribes and their members.”³⁰ This law reaffirmed congressional support of tribal sovereignty and self-determination.

In addition, in 1988 the Self-Governance Demonstration Project began to allow tribes to design and implement

their own programs, free from government regulation. In 1996, the Native American Housing and Self-Determination Act (NAHASDA) was enacted to recognize the rights of tribal self-governance and provide federal housing assistance to tribes. Around this same time, Elouise P. Cobell and other Native American representatives filed a class action lawsuit against the Department of Interior and the Department of the Treasury, claiming the federal government violated its trust duties to individual Indian trust beneficiaries and failed to be a good guardian. While the plaintiffs did not win, the Cobell v. Salazar case was settled out of court in 2009, resulting in \$1.4 billion to be paid to the plaintiffs and \$1.9 billion to be used to repurchase fractionated land and return it to reservations and tribal ownership.³¹ Native Americans have been gaining more authority and control over their lives in recent years, but the fight for increased self-determination continues.

Barriers to Mortgage Lending on Federally Recognized Reservations

This history of subjugation, expropriation, assimilation, and the undermining of tribal self-determination has had far-reaching consequences. It has undeniably contributed to systemic issues that have disadvantaged Native Americans and impeded mortgage lending on reservation lands. These include poverty and isolation, land tenure complications, bureaucratic oversight, and mistrust. These issues are interrelated and reinforcing. While it is a complex challenge, tackling any one of these obstacles could ameliorate the other dimensions of restricted mortgage lending on reservation lands.

Poverty and Geographic Isolation

Perhaps the greatest structural problem hampering the homeownership rate is that Native Americans are one of the most impoverished Census-defined racial group in the country, in large part, because a significant proportion live on reservation lands. In addition, a historic lack of investment in economic development efforts and abrogation of federal government duties and responsibilities contributed to high rates of unemployment and a cycle of generational poverty.³² Persistent poverty is measured when an area has had poverty rates of at least 20 percent for three decades. While only 10 percent of the country's counties are in persistent poverty, over 30 percent of reservation land counties are affected. The highest rate of poverty in the U.S., at 53 percent, is Oglala Lakota County in South Dakota, which is entirely within the Pine Ridge Indian Reservation.³³ The effects of poverty help explain why lenders expressed that the greatest hurdle to lending on tribal land is underwriting challenges based on borrower circumstances, like low incomes and blemished or nonexistent credit history.³⁴

One contributing factor to the stifled tribal economy is that tribes have not received all the income derived from their gas, oil, and other land resources due to federal mismanagement of funds. In 1991, the Secretary of the Interior's Annual Statement and Report to Congress stated, "the BIA's management of tribal and Individual Indian Trust Funds lacks effective management/internal controls, reliable systems, and management information. Tribal and individual accounts lack credibility and have never been reconciled in the entire history of the trust fund."³⁵ While there have been efforts to address this mismanagement of appropriated resources (Cobell v. Salazar), it is unclear to what degree the processes and systems have been corrected to prevent problems from happening in the future. Even in recent years, Congress has not adequately funded entities that serve Native Americans. Certain BIA regional offices have long had inadequate staffing capacity and the IT system lags industry standards.³⁶ The federal oversight and lack of funding perpetuate the ongoing economic difficulties tribal members face.

A Closer Look: Location Matters

While many tribes are in remote, rural areas, some tribes like the Agua Caliente Band of Cahuilla Indians own valuable land close to metropolitan areas. Owning reservation lands in relatively affluent Palm Springs, CA allows the tribe to benefit economically from a thriving housing market. The demand is high, as the allotted land can be leased in 99-year increments to non-tribal members. As a result, the 500 Agua Caliente tribal members lease out land for 7,700 homes, the most of any tribe.

Rosalie Murphy, "Half of Palm Springs Sits on Rented Land. What Happens if the Leases End?" *The Desert Sun*, September 22, 2016, accessed September 25, 2017, <http://www.desertsun.com/story/money/real-estate/2016/09/22/palm-springs-agua-caliente-land-lease/87944598/>.

Another reason that mortgage lending is restricted on reservation lands is there is an inadequate housing stock. The most recent HUD estimates show a need for 68,000 new units- 33,000 to eliminate overcrowding and 35,000 to replace deteriorated stock.³⁷ This is largely due to being in rural and remote areas with much of this land historically being perceived as having little or no value.³⁸ Over 70 percent of counties with reservation land are found in non-metropolitan areas and 27 percent of these counties have populations under 10,000. For example, the Standing Rock Reservation in North and South Dakota is four hours from Sioux Falls, SD and seven hours from Minneapolis, MN and contains land in four of these low-population counties totaling just 15,103 people.

Living in remote areas with small populations and few connections to outside markets restricts the scale and type of economic activity possible. Profit margins are slim, so private developers have little incentive. It can be very expensive to build new homes and accompanying infrastructure on reservation lands due to shortages of skilled labor, contractors, planners, and building supplies. This means onsite stick-built housing may be too costly, making lower-cost options like manufactured homes more appealing. While these homes can be financed outside the regular mortgage market, manufactured homes often come with higher interest rates.

Remoteness also makes marketing efforts that share available services and materials with potential customers more difficult, as phone and internet access may be undependable. Rural communities tend to be served by relatively few commercial banks and financial service providers. The banks may only offer high-fee banking accounts that are too costly for an individual and can cause their customers' credit scores to fall. The banks may also charge high interest rates for loans. In Native communities, the familiarity with financial products related to mortgage lending is limited, as they "do not routinely gain experience in managing finances and may not be profit-driven or focused on individual accumulation of income and wealth."³⁹ The mortgage process is confusing and overwhelming for any first-time homebuyer, but it can be even more daunting for Native Americans, who have been historically shut out of the homebuying sphere. Often an applicant is the first in their family to go through the homebuying process and does not have the benefit of parental advice.⁴⁰ Relatedly, Native Americans may not see the value in owning a home or taking on the debt and responsibility of doing so.

Land Ownership

A dearth of available quality homes to purchase in the first place makes many Native Americans on reservations resort to living in overcrowded and substandard housing. But the lack of affordable housing for Native Americans has been exacerbated by the land tenure status of trust land. The collective tribe, instead of an individual, has ownership and authority of reservation land but it is held in trust by the federal government. The federal government holds the beneficial title to about 55 million acres in trust⁴¹ for the use of Native Americans. This land cannot be encumbered or alienated without federal approval by the BIA. Because the title to the land is held in trust, the land cannot be used to securitize a home loan. Instead, a tribe can issue a leasehold interest to the borrower to be used as collateral.⁴² In general terms, banks are at a greater risk if a loan does not perform because, in some circumstances, the lender cannot seize the land from a tribe to recoup monies. Also, the restriction of resale of a foreclosed property to only the tribe, tribally designated housing entity, or other tribal member severely limits the lender's options and effectively lowers the collateral's value.

The land tenure status on trust lands makes keeping track of property titles onerous as well. The title search process can be prolonged by land claim disputes for many reasons, including missing title data, defective or illegal transfers, and fractional land ownership. Because tribal members historically have not had wills, probate courts divide individual trust land among the heirs, resulting in multiple people holding undivided interests in a trust parcel. Decisions made about the parcel must get approval from a majority of the heirs, which can involve hundreds of individuals, greatly slowing down the process.⁴³ The nonstandard land ownership

situation on reservation lands means that mortgage products and the processes around them often do not conform to standard loan products and practices, possibly making lending on these lands less attractive to lenders.

Bureaucracy

Obtaining a mortgage on trust land is made more complicated by additional federal oversight and delayed processes. In addition to the lender, the tribal court and the BIA administer and approve foreclosure, eviction, and priority of lien procedures. The BIA manages the lease approval process and keeps track of property titles using its Trust Asset and Accounting Management System (TAAMS). Mortgages on trust land require the BIA to produce a certified title status report (TSR), which is a legal description of recorded liens and encumbrances and verifies that the loan applicant has acquired a leasehold interest on the tribal land and has total ownership.⁴⁴ However, it is more complicated to obtain a title on trust land because the TAAMS system used is also intertwined with other systems that manage probates and monetary payouts and includes family trees and maps of the property.

In addition, there are added requirements to get a mortgage loan on reservation land, including environmental and archeological clearances, which add time to the process. Lease lengths that are shorter than the term of a mortgage loan also add transaction costs.⁴⁵ The approval process can also be delayed by the BIA's significant workload and inadequate funding.⁴⁶ In some regions, it has taken the BIA over two years to approve the lease and issue a title status report.⁴⁷ The multiple layers of bureaucracy required to wade through serve to prolong the process and ultimately restrict lending. While the BIA remains the legal steward of most reservation lands, Native Americans who want

a mortgage must face the extra bureaucracy that comes with living on reservation lands.

Mistrust

Native Americans have a well-documented history of exploitation and mistreatment, and some tribes are hesitant to work with the federal government. At the same time, some lenders do not lend on trust land because they are unwilling to alter practices to accommodate tribal law. These circumstances make it difficult to reach agreements in the mortgage lending process as working together may be viewed as a risky proposition by both sides.ⁱⁱⁱ

Financial institutions and investors perceive higher risk levels for lending to tribes that have not established or clearly defined the legal infrastructure to enforce contracts and agreements. In a HUD survey of tribes and tribally designated housing entities, one of the three major barriers to attracting lenders is uncertainty about recovery of mortgaged property in the event of foreclosure.⁴⁸ Lenders are also deterred if a tribal court is not fully independent from other branches of the tribal government, since that could result in political interference in business and legal matters. A lack of knowledge about tribal procedures⁴⁹ makes lenders wary about lending on trust land as well. To resolve these concerns, tribes must have the resources to be able to adopt legal infrastructures, incorporate separation of powers in their governance structures, and educate lenders on their laws and regulations.

On the other hand, bank requirements could also be more flexible and allow exceptions for borrowers living on reservations, given their financial circumstances. Lenders may project certain expectations that do not work with tribal members' way of thinking and operating. These subtle differences make it difficult

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iii. Tribal members' mistrust of government promises is still warranted today. Senators from Oregon and Washington state and an Oregon congressman say the current administration is not fulfilling the federal government's obligation to build new homes for Indians whose homes were flooded by the building of dams along the Columbia River in the 1930s. "Columbia River Tribes Hit by White House Decision on Housing: Congressional Delegation Seek Reconsideration," KTVZ TV, October 31, 2017, <http://www.ktvz.com/news/columbia-river-tribes-hit-by-white-house-decision-on-housing/649185086>.

to cooperate and can cause misunderstandings and further mistrust. To build common ground, banks can be trained in culturally sensitive ways to communicate with tribal members and engage with Native Americans on their terms. Building a trusting relationship takes time but can benefit both sides.

Native American Mortgage Lending Trends

The data bear out the effects of these impediments to Native American mortgage lending. Activity on federal reservation land, where such barriers are greatest, is particularly limited. The following review explores recent mortgage lending trends describing the current situation and provides a foundation for informed decision-making about increasing mortgage lending access for Native Americans.

Data

This analysis utilizes Home Mortgage Disclosure Act (HMDA) loan data covering mortgage lending activity from 2006 to 2015, with a focus on the latest three-year period. Lending to Native American populations is not fully captured in HMDA data because HMDA tends to exclude information from extremely small-asset lenders and lenders operating entirely outside of metropolitan areas.⁵⁰ While this exclusion can have a large impact on Native American lending data because the volume of lending is already very small, HMDA data represent the most comprehensive data source on mortgage lending activity and is widely used in mortgage lending studies.⁵¹ This study incorporates HMDA indicators on the applicant and lender, census tract, and race/ethnicity of the potential borrowers to

describe American Indian and Alaska Native mortgage lending activity.

Approach

This study seeks to understand the consequences of current policies related to mortgage finance by first estimating the volume of Native American lending activity occurring on and off reservation lands, and then comparing it on such measures as volume, origination and denial rates, property type, and lender involvement. The analysis is descriptive in nature and seeks to identify unique patterns and trends of lending on reservation lands.

An important component of this study involves estimating the amount of lending activity that occurs on reservation lands specifically. However, HMDA data are reported at the census tract level and federal reservation and census tract boundaries do not match perfectly. To help remedy this mismatch, the analysis categorizes census tracts into three groups based on the proximity of their center points to reservation lands. The census tract classifications^{iv} used in this analysis are “on reservation lands,” “within 25 miles of reservation lands,” and “all others” (lands beyond 25 miles) (see Map 1).^v Federally recognized reservation or trust lands are the central geographic classification. A secondary classification was chosen because many tribal members with connections to the tribe stay close to the reservation but just off because of difficulties with getting housing on reservation land. The distance of 25 miles was chosen because it is within a reasonable driving distance, as the average American drives approximately 29 miles per day, only slightly farther than the 25 miles chosen for this analysis.⁵² Very few census tracts contain reservation lands. Only 273 of the more than 73,000 census tracts in the U.S. are

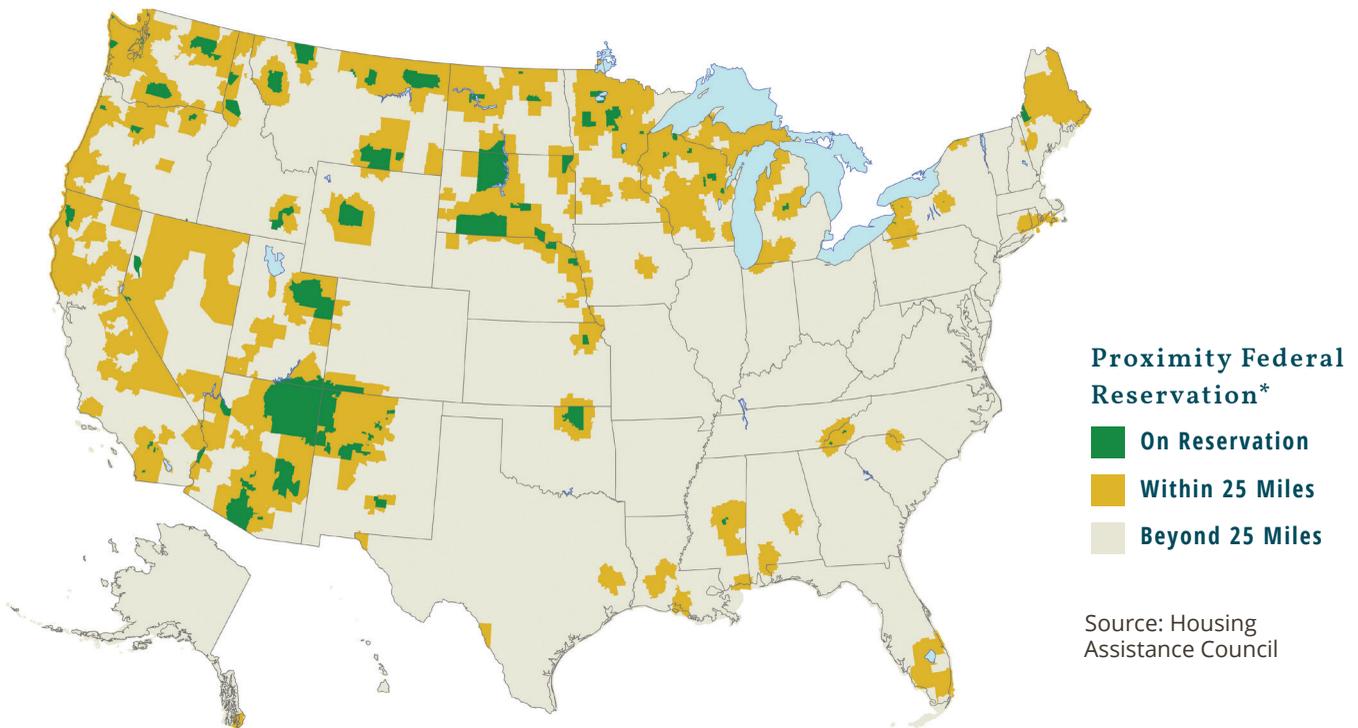
- iv. See the appendix for more details on how this study identified and classified census tracts according to proximity to federal reservations.
- v. The analysis used ArcGIS to classify all census tracts based on their center points (centroid) proximity to federal reservation and off-reservation lands. Again, see the appendix for more details.

classified as being on federal reservation lands, while almost 13,000 census tracts are within 25 miles of reservation lands.

The on-reservation lands classification used in this analysis is only an approximation of tribal sovereign lands. Census tract and reservation boundaries do not match, and some census tracts contain both reservation and non-reservation lands. Previous research has noted this limitation in using HMDA data to explore reservation land lending.⁵³ Another complicating issue is that reservation trust lands are interspersed with fee simple land, commonly referred

to as checkerboarding. This means that even when the census tracts and tribal tracts match up, fee simple land might also be included in the area. As a result, these categories are approximations, not perfect matches, and the amount of lending activity occurring in them represents an estimate, not an absolute count. This analysis looks at only federally recognized reservation lands in the 48 contiguous states and Alaska. While there are 229 Alaska Native communities, only the Annette Island Reserve in Alaska is considered a federally recognized reservation. Other American Indian and Alaska Native-designated lands were excluded.^{vi}

Map 1. Census Tracts by Proximity to Reservation Lands



*All census tracts are classified based on their centroids / center points relationship to reservation lands. For example, census tracts labeled "On Reservations" have their centroids / center point within federal reservation or off-reservation trust lands.

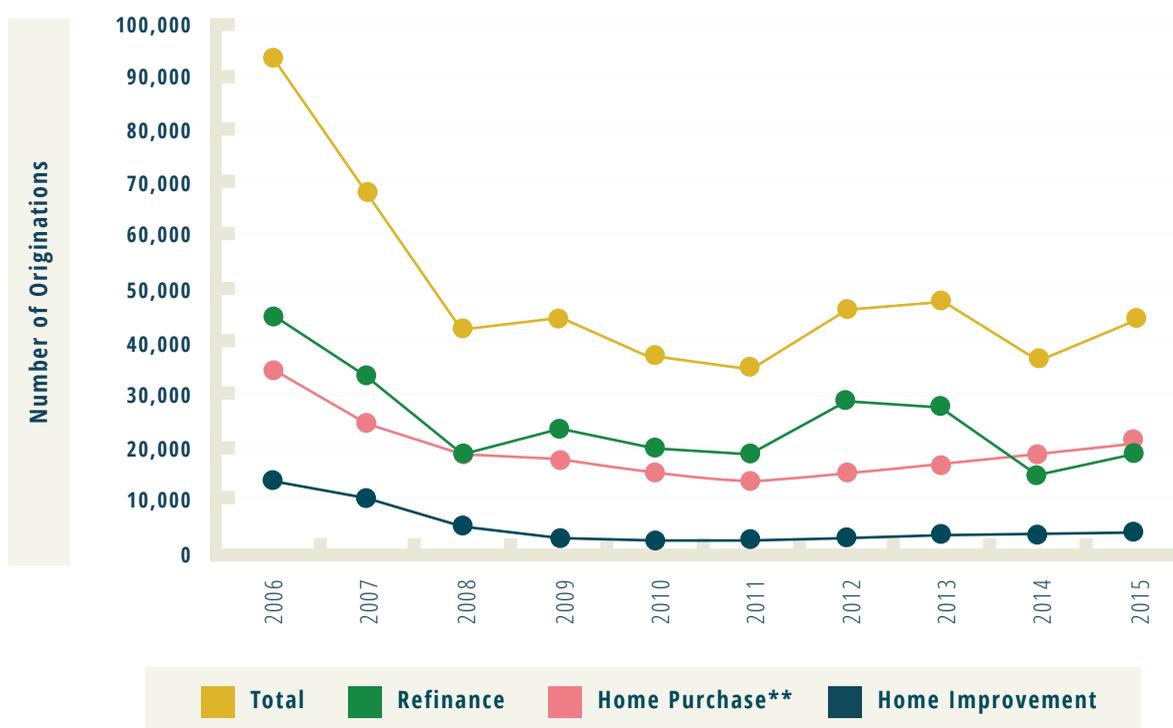
vi. Alaska Native Villages may become trust lands due to some recent legal cases. See the following article for more: Donald Mitchell, "Taking Alaska Land into Federal Trust: How Did it Happen? What Can be Done?," Alaska Dispatch News, June 29, 2016, accessed October 11, 2017, <https://www.adn.com/commentary/article/taking-alaska-tribal-land-trust-how-did-it-happen-what-can-be-done/2015/09/02/>.

Analysis

Limited Native American Activity Overall

While lenders made a total of 7,248,155 home loans in 2015, only 43,926 home loans were made to Native American borrowers.^{vii, viii} The majority of these Native loans were conventional loans. The number of loans made to Native American borrowers in 2015 represented a drop of more than 50 percent from 2006, when lenders originated 93,603 home loans to Native American borrowers. While the decline in loans obtained by Native Americans was similar to the larger market patterns during this ten-year period, reflecting the Great Recession and the economic fallout associated with the foreclosure crisis, it was a slightly larger decline. The economic distress of the nation led to historically low interest rates, which helped stabilize refinance activity for both the market overall and Native American borrowers specifically. The actual percentage of all home loans originated to Native American borrowers remained relatively consistent between 2006 and 2015, representing between 0.5 and 0.8 percent of all home lending activity nationwide.

Figure 1.
The number of home loans made to Native Americans has decreased since 2006



*Loans selected are loans where the applicant (exclude co-applicant) self-identified as either American Indian or Alaska Native alone or in combination with other races.

**Home purchase loans are limited to first lien loans.

Source: HAC tabulations of HMDA data releases 2007 to 2016.

vii. For this study, the term “home loans” refers to first lien, home purchase, refinance, and home improvement loans. The analysis includes only first lien home purchase loans because secondary lien status loans often refer to piggyback loans that were combined with a first lien loan to purchase a home. Including both loans would result in a double counting of the data.

viii. Loan data are classified based on the applicant solely, not the co-applicant.

This consistently small share of overall lending activity is related to the size of Native American populations, as Native American populations totaled 5.3 million or just 1.6 percent of the total U.S. population in 2015. However, population size alone does not fully explain the extremely low levels of Native American lending because Native American populations proportion was still more than twice as large as the 0.6 percent Native American share of all mortgage lending in 2015. Another reason for the low Native American lending volume is related to the rural vs. non-rural difference. Over 36 percent of Native American populations, compared to 20 percent of the entire U.S. population, lives in rural communities where lending activity is more constrained.^{ix} The relationship is a bit more complex, though, because Native American borrowers are underrepresented when it comes to rural lending as well, making up 3 percent of the rural population but only 1 percent of the loans. An additional reason for the reduced lending volume is that one out of every four rural Native American residents lives on reservation lands, which have had historically low rates of mortgage lending. In sum, Native American populations is underrepresented in mortgage lending because they make up a small share of the U.S. population and are more likely to live in rural areas. But the primary reason is because a large proportion resides on

reservation lands, where lending is severely stymied due to land ownership issues, lower incomes, a higher incidence of credit problems, and perceived anti-Native discrimination.⁵⁴

Lending on Reservation Lands Lags Off-Reservation Lands

Analyzing Native American lending patterns based on proximity to reservation lands, brings to light the large differences in activity, particularly the dearth of lending on reservation lands. Like the general U.S. population, most of Native American populations lives in metropolitan areas, indicating the overwhelming majority of Native American mortgage lending occurs on fee simple land. More than 70 percent of lending to Native American borrowers occurred farther than 25 miles away from American Indian lands. On reservation lands, lenders originated an annual average of just 919 loans to Native American borrowers between 2013 and 2015. That equates to an average of 1.9 loans per 1,000 Native American reservation residents, as compared to the nation's 22.3 loans per 1,000 U.S. residents. Loans made on reservations underrepresent the population. While 9 percent of Native American populations lives on reservations, the number of loans made there only represents 2 percent of lending to Native American borrowers.

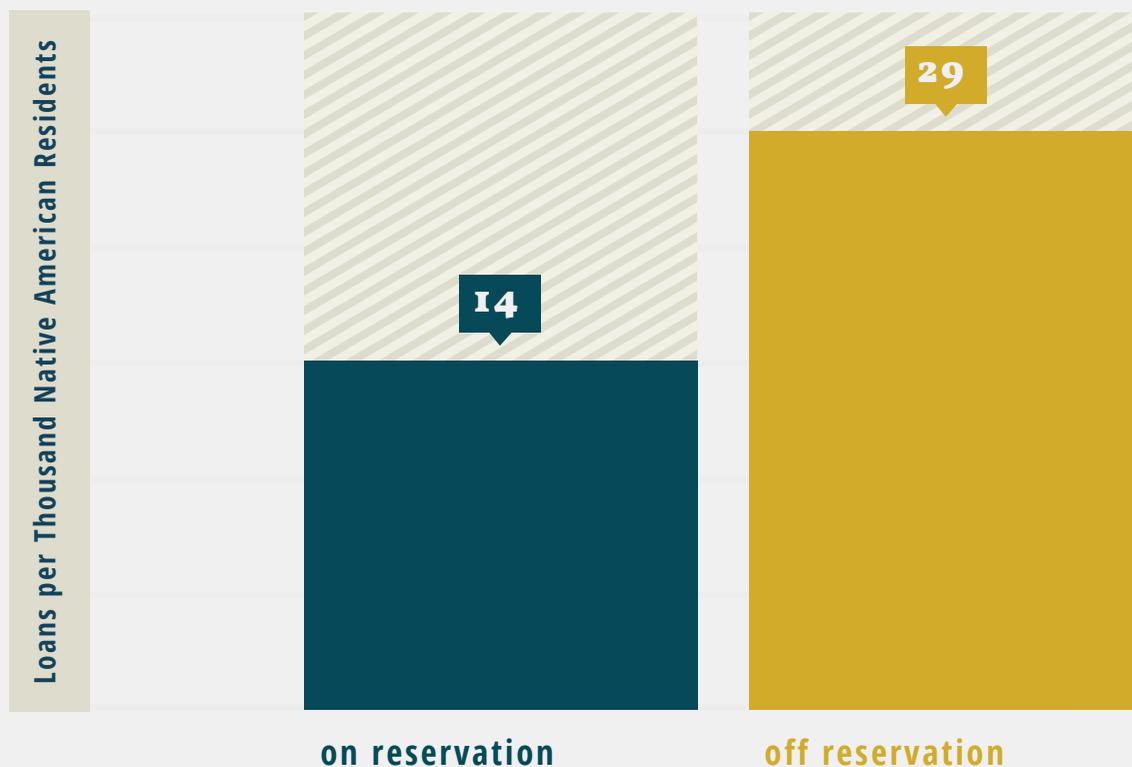
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ix. In 2015, approximately 14.5 percent of all loans went to rural and small-town borrowers, but they made up 19.5 percent of the population.

Closer Look: Exploring Adjoining (On- and Off-) Reservation Census Tracts

To more closely explore the possible impact of trust lands on lending, the analysis compared two census tracts that are geographically close to each other and have comparable characteristics – poverty, educational attainment, and Native American population – but different trust land status, with one tract lying entirely inside a reservation and the other falling entirely outside the reservation. The example below compares Native American lending activity in matched census tracts located on- and off-Osage reservation lands in Oklahoma and shows a higher rate of lending activity done in the off-reservation land tracts.

Lower lending levels on Osage reservation than similar tract off-reservation

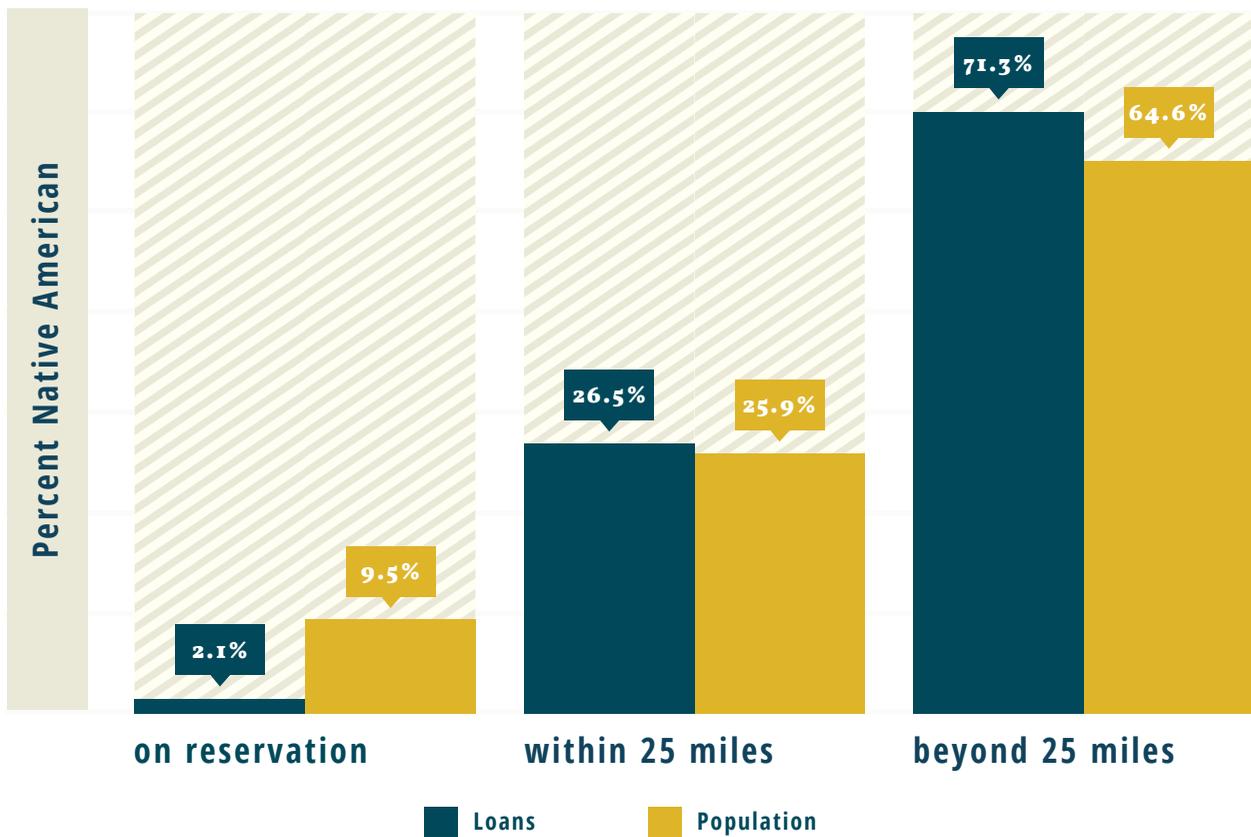


Source: HAC summation of HMDA reported loans 2013 through 2015 in the following census tracts (state-county-census tract fips codes with on reservation first and off-reservation second) 40113940007 and 40117957200

High Denial Rates on Reservation Lands

The limited number of loans originated on American Indian lands corresponds with both low origination rates and high denial rates. Lenders approved an annual average of just 35 percent of applications to Native Americans on reservation lands between 2013 and 2015, considerably lower than the 50 percent origination rate associated with Native American applicants off reservations. The Native American origination rate in general, and particularly for on reservation land applications, looks even worse when considering the origination rate for all HMDA-reported applications, regardless of race/ethnicity, was 62 percent in 2015. The dearth of loan originations to Native Americans reflects not only a lack of activity, but also extremely low rates of success for those who do apply.

Figure 2.
Disproportionately Low Share of Native American Mortgage Lending Occurs on Reservation Lands



Source: HAC tabulation of HMDA data covering calendar year lending activity 2013-2015, annual averages used. HAC tabulation of ACS 2008-2012 population data.

Between 2013 and 2015, Native American application denial rates averaged 20 percentage points higher on Native American lands than off – 48 percent compared to 28 percent. Lenders denied approximately one out of every two applications on reservations. To put that denial rate in perspective, lenders denied just 19 percent of all HMDA-reported applications in 2015. These on- and off-reservation land differences in denial rates exist even when considering only rural applications to Native Americans, indicating geography alone does not explain the differences.

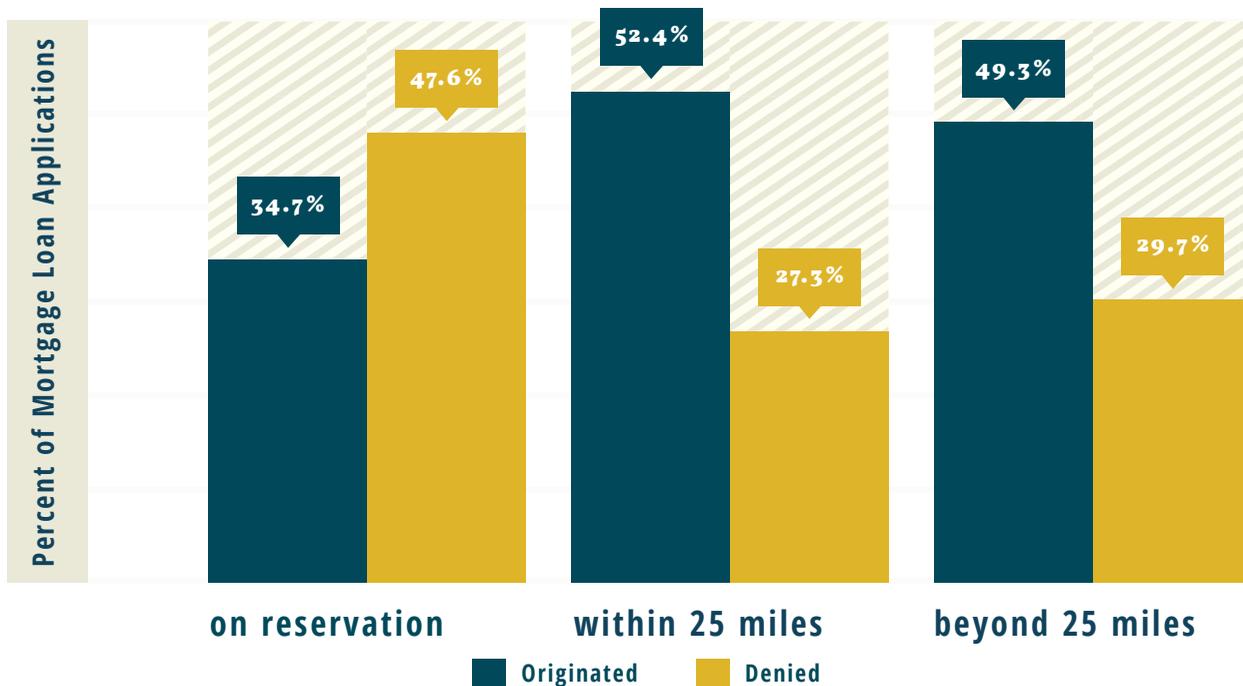
High Denial Rates, Regardless of Property Type

Denial rates for applications on reservation lands are higher than fee simple land, regardless of property type, although rates are higher for manufactured

homes than one-to-four family units, 53 percent and 44 percent, respectively. Comparatively, off-reservation, lenders denied 49 percent of manufactured home loan applications and 28 percent of one-to-four family property applications to Native Americans. Overall, application denial rates were higher for Native American populations, as the denial rate for all 2015 HMDA report applications involving a one-to-four family property was only 19 percent.

Credit history was the most often cited reason for Native American application denials, which is the case for loan denials in general. However, the degree to which it was cited is extremely high. Lenders gave credit history as a reason on reservation lands at a rate of 80 percent, as compared to 45 percent of all other Native American-denied applications, and just 35 percent for all loan denials.

Figure 3.
More applications are denied than originated on reservations*



*Includes all refinance and home improvement loans along with first lien, home purchase loans. Loans selected where the applicant self-identified as either American Indian or Alaska Native alone or in combination with other races. Geographies identified by locating census tract data in relation to federal reservation and off-reservation trust land boundaries with ArcGIS.

Source: HAC tabulation of HMDA data covering calendar year lending activity 2013-2015, annual averages used.

Manufactured Home Lending Common on Reservation Lands

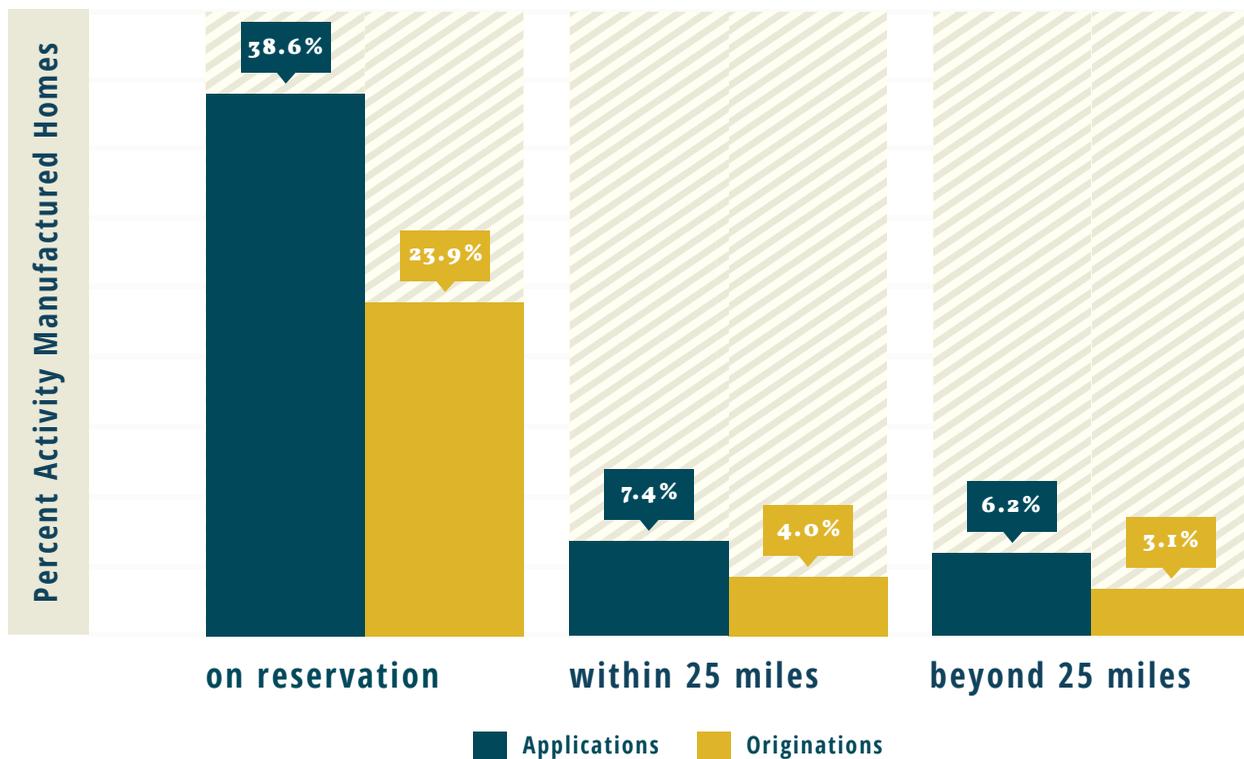
A relatively high percentage of applications to Native Americans on reservation lands involve manufactured homes, considering most reservation lands are in rural areas where manufactured homes are more common. While 9.5 percent of all rural applications are for manufactured homes, it is about 39 percent of all Native American applications on reservation lands. Only 7 percent for Native American applications off the reservation involved manufactured homes. The high proportion of manufactured home applications on reservation lands mirrors the prevalence of this kind of housing in these communities. Over 56,000 units, or 17 percent of the occupied housing stock, on reservation lands is manufactured housing. The high rates of

manufactured homes on reservation lands reflect the scarcity of high-quality built homes. This distribution of housing units is consistent with the fact that 14 percent of all rural occupied units are manufactured homes.

Chattel Loans with High Interest Rates

In many cases, manufactured home loans are in the form of personal property or chattel loans, which are similar to automobile loans. A side effect of the increased number of manufactured home applications is an elevated proportion of HMDA-reported loans with high interest rates and fees (often called high cost loans). Approximately 18 percent of originations to Native Americans on reservation lands is high-cost, compared to just 8 percent for Native American loans off-reservation lands.

Figure 4.
Manufactured home lending activity is common on reservations



Source: HAC tabulation of HMDA data covering calendar year lending activity 2013-2015, annual averages used.

Limited Lender Involvement and Little Industry Concentration

Approximately 37 percent of all lenders reporting HMDA loans originated at least one loan to a Native American in 2015, which was similar to 2013 and 2014. Of these lenders, about 165 lenders originated a loan to a Native American borrower on reservation lands, resulting in fewer than 1,000 mortgage loans originated per year. Most of these lenders serving American Indian lands, 87 out of 165, originated only one loan. The four largest-volume lenders in the U.S., as measured by amount of assets, each originated at least one loan to a Native American borrower on reservation lands as well.^x

Annually, the ten largest-volume lenders originated one out of every three loans made to Native American borrowers between 2013 and 2015. The concentration is higher on reservation lands, where the ten largest-volume lenders originated nearly six out of every ten loans made to Native American borrowers.

Access to credit can be measured by the number of bank branches, which is severely limited on reservation lands. Of the 86,566 full service bank offices in the United States in 2016, 156 were in reservation census tracts. This amounts to 6,376 reservation residents per full-service bank office, compared to 3,571 people per branch office for the entire U.S; the ratio is almost doubled on reservations. There has been a decline in the number of bank offices between 2009 and 2016 and many of the closed branches were located in rural areas, disproportionately affecting reservation areas.⁵⁵ This could be an issue in the future as more bank offices close and lenders rely increasingly on online services, because broadband is limited in these areas.⁵⁶

Unique Sources of Lending on Reservation Lands

About half of all mortgage loans to Native American borrowers were originated by banks,^{xi} similar to overall lending patterns between 2013 and 2015. Banks were responsible for an even higher proportion of originations on reservation lands though, about two-thirds. More specifically, small and intermediate asset banks^{xii} played a larger role on reservation lands. Approximately 35 percent of bank activity on reservation lands involved small and intermediate asset lenders, a relatively high figure compared to their 23 percent share of all bank lending. The role of non-bank lenders, particularly private mortgage companies, has been growing considerably over the last three years and Native American lending patterns are no different. There was a 17-percentage point increase in the amount of Native American lending by private mortgage companies in just three years, from 2013 to 2015. Private mortgage companies accounted for nearly 60 percent of all home purchase activity on reservation lands in 2015.

There are two groups of lenders that play a large role in originating mortgage loans on reservations. First, companies specializing in manufactured home financing, such as Vanderbilt Mortgage and 21st Mortgage are consistently listed in the top ten reservation lenders. These two companies originated approximately 108 loans of the almost 1,000 mortgage loans made to Native American borrowers on reservations in 2015. A majority of the mortgage loans originated in Oglala Lakota County were originated by manufactured lenders, for example.⁵⁷ Second, Mid America Mortgage, under the name 1st Tribal Lending, which specializes in the HUD Section 184 product, originated 101 loans to Native American borrowers on reservations in 2015, about 10% of the total number of loans made on reservations.

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- x. The four largest asset lenders reporting HMDA loans for 2013, 2014, and 2015 were JP Morgan Chase Bank, Bank of America, Wells Fargo Bank, and CitiBank, NA.
 - xi. This refers to lending activity by banks and savings and thrifts and their affiliates.
 - xii. This analysis uses the Community Reinvestment Act regulator bank exam thresholds to define small asset lenders. These asset size exam thresholds change annually and can be found at <https://www.ffiec.gov/CRA/examinations.htm>.

Closer Look: Tribally Owned Institutions

Bay Bank, owned by the Oneida tribe in Green Bay, WI, is dedicated to serving the mortgage needs of its Native American borrowers through the Section 184 loan program. This relatively small lender with assets totaling \$89 million makes loans on individually and tribally owned trust land and serves a wide range of income levels. About 45 percent of the home loans Bay Bank originated were on reservation land in 2015.

* Jeff Bowman and Tanya Krueger, "Helping Native Americans Become Homeowners through Section 184," Rural Voices, Fall 2017, <http://ruralhome.org/storage/documents/rural-voices/rv-fall-2017.pdf#page=28>.

Not surprisingly, two of the 20 largest-volume lenders on reservation lands are American Indian-owned institutions. There are roughly 19 Native owned financial institutions in the country, and they tend to be relatively small, totaling just \$2.5 billion in assets.⁵⁸ American Indian-owned Bay Bank and Bank 2 are both consistently listed among the most active reservation lenders. These two small-asset lenders, with just \$89 and \$102 million in assets in 2013, respectively, are located near federally recognized reservations and have strong relationships with their communities and the BIA. In 2015, these two institutions originated 52 of the fewer than 1000 loans made on reservation lands.

Federal Resources for Native Mortgage Finance

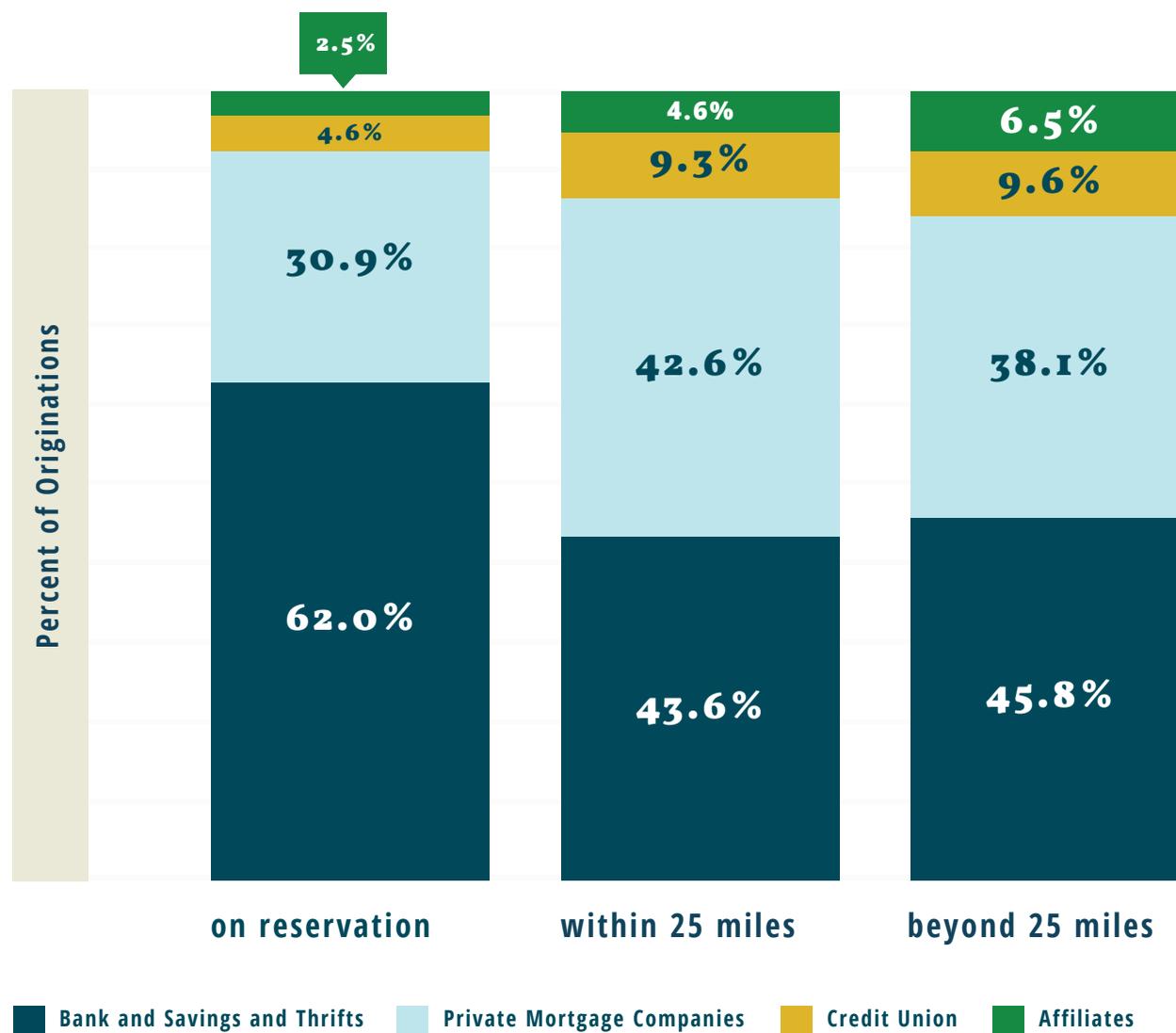
The federal government plays an important role in supporting affordable housing, with some of these efforts specifically targeting Native American communities. Beyond standard programs that provide assistance to lower income populations and rural areas, certain resources are reserved for tribal members and activity on reservation land. The following section gives an overview of these resources, including the HUD Section 184 program, Veterans Affairs (VA) Home Loan programs, USDA Rural Housing Loan program, and the HUD Indian Housing Block Grant program.^{xiii}

See chart on page 29.

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xiii. FHA is not discussed in this report as it is not widely used on reservation land.

Figure 5.
Banks originate a higher proportion of home loans on reservations than other type of lenders



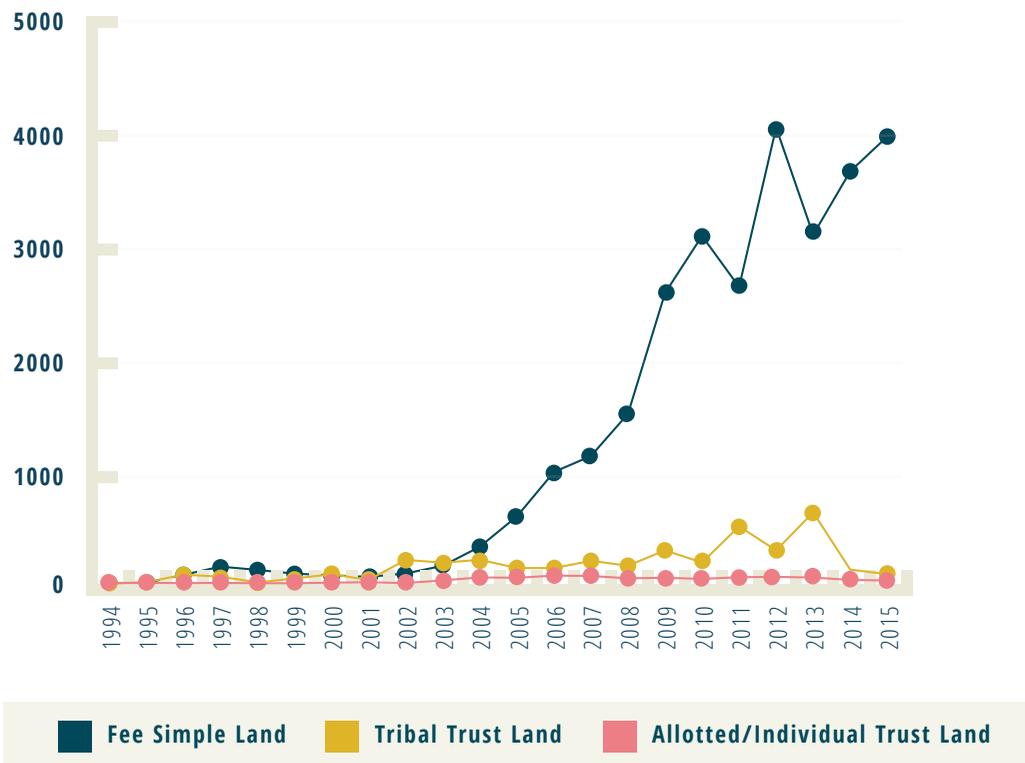
Source: HAC tabulation of HMDA data covering calendar year activity, 2013-15, annual average.

HUD Section 184 Program

HUD's Section 184 program was established in 1992 and designed to be highly flexible and adaptable to the specific circumstances of each tribal setting. Eligible borrowers include federally recognized Indian tribes, Indian Housing Authorities/Tribally Designated Housing Entities, and currently enrolled tribal members who will occupy a property as a principal residence. The program provides a 100 percent loan guarantee as an incentive for private lenders who would otherwise be averse to lending on reservation lands. This government guarantee reduces the risk of lenders not recouping funds in the case of a foreclosure. In addition, after a lender conducts its due diligence, it is not responsible for navigating tribal court as HUD pursues the foreclosure. As the FDIC notes, the guarantee "increases the marketability and value of the Native assets and strengthens the financial standing of Native Communities."⁵⁹

While a Section 184 loan is government-guaranteed, since it is made by a private lender, it is considered made by a conventional lender. In HDMA, it is reported with other conventional loans and cannot be distinguished. However, HUD figures state that 3,011 Section 184 mortgage loans have been made to American Indians on reservation lands since 1994, as compared to 25,221 of these loans made on fee simple land. The numbers vary considerably from year to year though. In 2002, the number of such loans made on reservation lands jumped from 31 to 207 and in 2011 reached a high point of 465.⁶⁰ However, the number of conventional lenders that make Section 184 loans has dropped precipitously in recent years. In 2006, about 130 banks and 150 other lenders, including mortgage companies, credit unions, and housing authorities, participated in the program,⁶¹ but by April 2017, there was a total of only 122 approved lenders.⁶²

Figure 6.
HUD Section 184 Loans by Land Type



Source: Analysis of HUD data by Richard Todd of Federal Reserve Bank of Minneapolis.

The Section 184 program was initially restricted to federal reservation and off-reservation trust lands. In 2005, however, the program was expanded to include Native American tribal members living on fee simple land in designated Indian-operating areas. These “Indian areas” that exist outside of tribal trust lands are petitioned for by a tribe. Under HUD guidelines, “if a tribe or tribal housing authority submits to HUD documentation and clear and convincing evidence that the tribe has a historical connection to the area or tribal members reside in these areas, these entities could provide homeownership opportunities beyond the reservations.”⁶³

With this broadening of eligibility, HUD reports that more than 90 percent of the Section 184 loans and dollars loaned are originated off-reservation land, on fee simple land. The fee simple lending totaled \$128 million out of the \$216 million in Section 184 loans from 1994 to 2004, about 60 percent. From 2005 to May 2015, Section 184 fee simple loans totaled \$4.1 billion out of the total \$4.5 billion, about 90 percent. Three-quarters of the lending is concentrated in just six western states, Oklahoma, Alaska, Arizona, New Mexico, California, and Nevada, with about 45 percent done in Oklahoma alone,⁶⁴ which is all fee simple land, except for the Osage Reservation. While many more tribal members have received mortgage loans through the Section 184 program, it has done little to increase access to lending on reservation lands.

The literature on the program suggests the tribe, itself, plays an important role in successful lending. Specifically, the Federal Reserve Bank of San Francisco researched the impact of Section 184 loans on loan application outcomes for Native Americans on tribal trust land. Through examining HMDA mortgage data^{xiv} from 2000 to 2006, they found that the

program significantly increased loan approval rates for Native Americans on trust land, but that the effect disappeared when controlling for tribe fixed effects. That is, the characteristics of the tribe involved may be more important than the program itself to mortgage approval rates, specifically a willingness to put forward the effort and resources that make the program successful.⁶⁵ As the Federal Reserve notes in their study of trust land lending and Section 184 program,

steps to overcome some of the other barriers to mortgage lending – such as creating a strong tribal housing agency that can help borrowers through the home ownership process and fostering good working relationships with the BIA and local lenders – may be a precondition for promoting homeownership...⁶⁶

This suggests the government guarantee offered through Section 184 alone is not the decisive factor to increasing access to home lending on reservations.

U.S. Department of Veterans Affairs Home Loan Programs

The U.S. Department of Veterans Affairs (VA) provides veterans with several housing benefits. Among these benefits is the home loan guarantee program, which is available to all eligible veterans. The VA also offers a specific program for Native American veterans on reservation lands, the Native American Direct Loan program. Both programs make available to Native American veterans significant resources in obtaining a home mortgage; thus, they play a critical role in lending to the Native American community.

VA Home Loan Guarantee

The VA home loan guarantee program provides federal government loan guarantees to qualifying

xiv. The Federal Reserve Bank of San Francisco assumed that all conventional loans occurring on trust land are Section 184 loans.

private market home loans originated to veterans and their families. Since its inception in 1944, it has assisted more than 22 million households, including many American Indian or Alaska Native veterans, in purchasing homes.⁶⁷ The VA loan guarantee means lower lender risk (no foreclosure loss), which translates into lower borrower costs (lower interest rates, no mortgage insurance, and no down payment).

The VA loan guarantee program has increased its loan volume significantly as the Great Recession reduced conventional loan activity. The number of loans increased from about 135,000 loans pre-recession in 2005 to over 500,000 loans in 2015. Native American borrowers accounted for 5,695 of these loans in 2015. The VA guaranteed loans played a relatively large role in mortgage lending to Native American populations in general. While VA guaranteed loans represented 8 percent of all loans originated annually between 2013 and 2015, they represented an even larger 12 percent share of all loans to Native American borrowers. VA loan guarantees, however, are generally not done for mortgages on trust land because they rely on private market loans and lenders do not make many, if any, loans on trust lands.⁶⁸ To address this issue, the VA developed a direct loan product – the Native American Direct Loan.

Native American Direct Loan

The Native American Direct Loan (NADL) program, which began in 1992, focuses on assisting veterans that live on federal reservation lands, Alaska Native villages, and Hawaiian Homelands. The NADL program differs from the standard VA loan in a fundamental way. It is not a guarantee made by private lenders, but a direct loan made by the VA. The NADL requires that tribes establish memoranda of understanding (MOUs) with the VA beforehand. These legal agreements

spell out how the program will be operated and the responsibilities of both the Indian nation and the federal government. Because lending on trust land does not follow standard procedure, these documents clarify how the process should work to satisfy both parties. The MOUs specify that the tribe must enter into a lease agreement with the borrower for the land on which the NADL mortgaged home is located, and it must recognize that the lender (VA) has the same rights as a mortgage holder if the borrower defaults.⁶⁹ Beyond these differences, the standard VA and NADL loans have similar favorable loan terms, including no down payment requirement and relatively low interest rates.

While more than 90 federally recognized tribes or Pacific Island territories have an MOU with the VA,⁷⁰ there has been little NADL lending activity. The NADL program reports originated an average of 21 loans annually between 2013 and 2015,⁷¹ although it did have high points in 2003 with 120 loans and in 2010 with 103 loans. It is noteworthy that most of these loans are made in Hawaii and the Pacific Island territories, where they are most successful. As of calendar year 2011, 90 percent of these loans were made in American Samoa and Hawaii. The disproportionate use of the program outside of the lower 48 is possibly due to higher income levels, adequate credit, and established infrastructure in Hawaii.⁷² With an average of only 21 NADL loans originated annually for a potential eligible population of 20,013 Native American veterans on trust land, this amounts to about one loan per thousand^{xv} Native Americans, as opposed to the much higher rate of 23.4 loans per thousand for the entire U.S. population. The VA has continued to expand activity though and is likely to keep efforts up.⁷³ While this program does increase access to homeownership, its power is limited in that only a small percentage of Native American populations is eligible as a veteran.

xv. This analysis estimated 31 VA loans on reservation land during the 2013 to 2015 period. The higher number likely reflects the inclusion of some fee-simple land transactions in the reservation land totals. The numbers, while different, both show the extremely limited nature of the activity.

xvi. The comparison here is using the “AIAN alone” veteran population not the “alone and in combination” population which is used throughout this study. The reason is that this was all that is available for the veteran estimates. Because most of the reservation land population is AIAN alone the figure is likely very reliable, but it might overstate the amount of lending since it could omit a portion of the “in combination” population.

U.S. Department of Agriculture Rural Housing Loan Programs

The U.S. Department of Agriculture (USDA) provides home loan assistance for rural residents with very low-, low- and moderate-incomes through Rural Development. Section 502 mortgage loans offer two types of assistance: direct home loans to very low- and low-income households and loan guarantees for low- and moderate-income households. Although these programs do not specifically target Native American populations, they stand out in their support for mortgage lending in rural communities. Most reservation land is in rural areas, meaning the Section 502 programs have the potential to expand homeownership to a significant portion of Native American populations living on reservations. Section 502 loan programs are restricted to USDA-defined rural areas,^{xvii} which include the overwhelming majority of the more than 1.83 million rural Native American population. Given that these USDA programs assisted over 129,000 households in purchasing homes during fiscal year 2017, these products represent an important home ownership resource to rural populations.⁷⁴

USDA Section 502 Direct Home Loan

The USDA Section 502 direct home loan program began in 1949. It provides very low- and low-income households (less than 80 percent of area median income) with subsidized loans directly from the federal government for homes that are modest in size, design, and cost.⁷⁵ In addition to the income requirement, borrowers must both be without adequate housing and not qualify for a mortgage loan from other sources. Section 502 direct loan terms can be up to 33 and 38 years, no down payment is required, and the interest rate is subsidized to as low as 1 percent. Similar to the

VA's direct loan product, the NADL, the USDA may enter into an MOU with the tribe that spells out the lending process rights and responsibilities of the involved parties.

The volume of USDA Section 502 direct loans has declined significantly over the years. In the early 1970s, there were over 100,000 direct loans each year, but by fiscal year 2017, that number was down to 6,573.⁷⁶ This means the volume of Section 502 direct lending today is a mere 7 percent of 1970s levels, a change that, among other things, reflects a shift to the guaranteed program. USDA data shows that between 2013 and 2015 an annual average of 6,912 USDA Section 502 direct loans were made, of which 102 went to Native American borrowers and only 12 were on trust lands.

USDA Section 502 Loan Guarantee

The USDA Section 502 home loan guarantee program, which began operating permanently in 1992, provides federal government loan guarantees to qualifying private market home loans. Among the requirements, the borrower must be below moderate-income (less than 115 percent of the area median income) and live in a USDA-defined rural community. The Section 502 loan guarantee, like the VA loan guarantee, serves to lower lender risk, and in doing so, make affordable loans available where they otherwise might not be. The loan guarantee is available to a broader income range than direct loans, with the stipulation that the borrower must be unable to qualify for other mortgage loans. The guarantee provides a fixed rate, 30-year mortgage, where costs and expenses can be rolled into the monthly payment to make it affordable.⁷⁷

The USDA Section 502 loan guarantee program is much larger than the direct loan program. In fiscal year 2017, there were 122,910 Section 502 loan guarantees

xvii. The USDA rural definition is quite complex. See the following paper for a closer explanation and a comparison of it to other approaches defining rural: <http://www.ruralhome.org/storage/documents/ruraldefinition.pdf>.

totaling \$15 billion. The dollar amount of Section 502 activity increased dramatically after the Great Recession began in 2007, from less than \$5 billion a year in guarantees for 2006 to \$15 billion by 2009.⁷⁸ Because HMDA contains only-lender provided data, it covers USDA 502 guarantee loans but not Section 502 direct loans. Between 2013 and 2015, HMDA data reports an annual average of 127,348 USDA Section 502 loan guarantees were made, of which 752 went to Native American borrowers. This represents just 2 percent of all loans made to Native Americans, but accounts for 4 percent of rural Native American lending, which is similar to the program's overall share of rural lending, which is 5 percent. There are no resources that provide a count of USDA Section 502 loan guarantees involving properties on trust lands. This study's analysis of HMDA data using the approximated reservation land areas identified between 15 and 20 guarantees on trust lands each of the last three years, but this number likely overstates the numbers by including some properties on fee-simple land.^{xviii} In either case, the number of USDA loans for both programs is very small, similar to the VA's NADL activity, which highlights the seemingly universal difficulty in facilitating mortgage lending on trust lands. The HMDA data highlights the limited USDA Section 502 guaranteed lending to Native American borrowers in general, with activity on reservation lands uncommon.

In October 2000, the One Stop Mortgage Center Initiative in Indian Country began the collaboration of the BIA, USDA, HUD, and VA to streamline mortgage lending in Indian Country by building capacity to promote homeownership, improving homebuyer education and financial skills programs, and increasing private sector involvement. The initiative produced model documents including leases and MOUs and developed model tribal lending procedures for lien

priority, eviction and foreclosure, and leasing in order to facilitate lending and help overcome land ownership issues.⁷⁹ The Initiative strived to create standardized models as a potential solution for accessing federal loan programs. Unfortunately, the standard approach was difficult to implement, given that there are hundreds of tribes, each with their own ways of doing things that do not easily fit within a standardized set of rules or a market-based approach to housing.

HUD Indian Housing Block Grant program

HUD's Indian Housing Block Grant (IHBG) program is the largest single source of housing funding dedicated to tribes for use on reservation lands. While it does not focus solely on home ownership and mortgage financing, its contributions to developing housing on reservation lands must be acknowledged. This block grant involves the consolidation of multiple housing assistance programs into a single source of funding.⁸⁰ HUD awards IHBG funds to tribes or their designated housing entities using a needs-based formula. Tribes have great discretion in how they use program funds to promote "affordable housing opportunities and housing-related activities to low and moderate-income members."⁸¹

In 2016, HUD awarded \$660 million to American Indian tribes. Tribes used 33 percent of IHBG monies for development activities between 2008 and 2013. With those funds, they built 7,450 affordable homes, acquired 3,650 homes, and substantially rehabilitated 21,612 homes.⁸² However, the resulting increase in the supply of quality homes might not be captured in HMDA data if there were no associated mortgages.

The IHBG was created initially by the Native American Housing Assistance and Self-Determination Act

xviii. Given the small number of HMDA records identified each of the three years, it is possible that they may all be on fee-simple land that is interspersed among reservation lands. The estimate confirms that any Section 502 loan guarantee activity is very small.

(NAHASDA) of 1996, which recognized tribal sovereignty and reaffirmed self-determination.⁸³ NAHASDA was last reauthorized in 2008 but the authorization expired in 2013. While the program is still being funded, inflation has cut funding by nearly a third in the past two decades and planning is made difficult without this

guarantee of funding. While NAHASDA improves the housing conditions of many American Indians, stagnant federal funding for the largest investment dedicated to housing development on reservation lands stifles its potential.

Closer Look: The Important Role of Rental Housing

While home ownership is important, rental units make up a significant portion of the housing stock on reservation lands. There are an estimated 102,135 renter-occupied housing units on American Indian lands, representing 31 percent of all households living there. This rental rate is slightly higher than the 28 percent rate in similar rural and small-town areas. There is also considerable variation in the role rental units play in local housing markets from reservation to reservation. While rentals constitute an average of 31 percent of all households living on American Indian lands, they make up at least 50 percent in 125 out of 325 reservations. For example, 50 percent of the Standing Rock Reservation's 2,240 occupied units are rented, compared to just 20 percent of the Oneida Reservation's 8,564 occupied units.

In general, renters on reservation lands are less likely to be cost-burdened than those living off-reservation, 40 percent and 52 percent, respectively. However, some tribes have higher rates; more than half of the renters on 62 of the 325 reservations are cost-burdened. On the other side of the spectrum, some tribally designated housing entities that own rental properties on reservation lands make units available to tribal members rent-free. This likely makes up the estimated 16 percent of occupied rental units on American Indian lands that are classified as having "no cash rent." For some properties, particularly the HUD rent-to-own Mutual Help Homeownership Opportunity Program, the appropriate classification as renter or owner is unclear in HMDA data.

Efforts to Address the Challenges on Reservation Lands

The current policies and programs encouraging mortgage lending on federal reservation lands have not substantially increased the number of loans, as demonstrated by the data. A comprehensive strategy that encompasses all facets is necessary. The economic circumstances of the population, land ownership issues, and bureaucratic governmental oversight have all contributed to constrained mortgage lending on reservation land. Bearing these impediments in mind, it is helpful to reevaluate the current approach and consider new solutions that could minimize the barriers to entry and widen Native American access to mortgage lending. Concrete examples of these ideas demonstrate how they are already being put into practice.

Underlying Considerations

There are 326 federally recognized landholding tribes in the United States, each with their own laws and governments. Therefore, mortgage lending rules and procedures cannot be standardized, as they cannot possibly meet the diverse needs of tribes. As such, policies must be made flexible to serve each tribe. In addition, buy-in is key to any policy's success, so tribal members should be offered a seat at the table and be the ones to lead the discussion, sharing their perspectives, ideas, and concerns, and ultimately come up with solutions.

Idea 1: Increase Awareness

A possible area of focus could involve better educating all involved parties about mortgage lending on reservations, especially available products and how the process works. Having a more complete understanding

of the process and the specific roles of all players may help the involved parties be more understanding and willing to work together. The following points touch on areas where more education would be helpful.

- Educate borrowers. Potential loan applicants need to be made aware of all the loan products for which they qualify and guided to identify the most cost-effective one for their financial situation. Additionally, financial education would make potential homebuyers more capable of obtaining and keeping current a mortgage loan.
 - » 1st Tribal Lending, a subsidiary of Mid America Mortgage, conducts tribal outreach about the Section 184 program through [YouTube videos](#).⁸⁴
 - » The [USDA](#)⁸⁵ requires all Section 502 borrowers go to homebuyer counseling and there are also several [HUD-certified](#)⁸⁶ housing counseling agencies.
 - » [Native Community Finance](#), a certified Native CDFI on Laguna Pueblo lands, helps level the playing field by using a culturally appropriate approach. NCF provides financial education for improving individual credit histories and managing household budgets and offers home ownership counseling.⁸⁷ Native Community Finance also offers an innovative approach to developing [new construction](#) on tribal trust land by offering a short-term, interest-only loan during the construction project in partnership with the New Mexico Mortgage Finance Authority, and when construction is complete, the loan is repaid and NCF transfers the lien on the property to the bank who supplies the mortgage.⁸⁸

- Educate lenders. Lenders need to be better informed on how to navigate the process including tribal lending laws, MOU's and working with the BIA. Successful lenders could share their insight with others as well.
 - » The Office of the Comptroller of the Currency publishes resources, papers, and educational materials for lenders, one of which, is a [guide to mortgage lending in Indian Country](#) that provides an overview and answers questions specific to banks.⁸⁹
 - » Lenders can make use of mechanisms and processes that are already in place for land with similar issues as tribal trust land like the community land trust's [ground lease rider](#) used for land that cannot be used as collateral.⁹⁰
- Educate stakeholders who partner with tribes. An understanding about tribal norms, processes, expectations, and customs would facilitate collaboration and ultimately the establishment of a strong home mortgage market. Consideration should be given to such things as the appropriate way to engage with a tribe, a willingness to work within the tribal framework, and an understanding of how culture influences the process.
 - » The National Congress of American Indians (NCAI) has developed a [protocol](#) to facilitate partnering with tribes to address housing needs.⁹¹

Idea 2: Improve Capacity

Another area of focus could be improving the capacity of all involved parties, so they can work more effectively with existing programs and each other. Given the land ownership issue, bureaucratic complexities,

and economic distress and geographic isolation associated with many reservation lands, the institutional capacity required to make a loan in a typical suburban community would be insufficient on reservation lands. It is a daunting task to get the Bureau of Indian Affairs, Department of Housing and Urban Development (or other government agency involved with the loan product), tribe, lender, and borrower all to understand and agree on an efficient process for mortgage lending that works well for each party. This means that even if lender concerns are mitigated through government guarantees or memoranda of understanding, the involved parties must have enough institutional capacity to make the loan origination happen in an efficient and timely manner. The following points touch on areas where dedicated efforts might be most fruitful.

- Expand the capacity of lenders to work with programs that increase lending on reservation lands.
 - » For example, [Bay Bank](#), a small Native-owned institution in Wisconsin, is one of the largest processors of Section 184 loans on reservation lands. It has staff members dedicated to underwriting and servicing these kinds of mortgage loans. Because of their experience and understanding of the process, HUD allows the Bay Bank staff to approve certain documents themselves, rather than sending them to HUD for review. This streamlines the process and allows for more efficiency.⁹²
- Expand the capacity of local nonprofits and CDFIs to better access available resources.
 - » For instance, Native Community Finance CDFI is approved to [package USDA Section 502 direct mortgage loans](#), making this form of credit more widely available to over 22 tribes in New Mexico.⁹³

- Expand the capacity of the BIA's Division of Land Title and Records (DLTR) and its Land Titles and Records Offices (LTRO) or outsource its title processing and data cleaning duties.
 - » The Confederated Salish and Kootenai tribal staff on the Flathead Reservation in Montana have developed a successful working knowledge of the realty functions performed by the BIA so they can make use of Public Law 93-638, [*compacting the management of the land titles and records on the reservation*](#). TSRs are produced quickly because the staff in the local LTRO is personally familiar with the allotments, including who the owner is and its location. Moreover, the process is more efficient because the staff has local signatory authority and more control. It is also important that the Northwest Regional Office LTRO proactively certified all the tracts and ownership on the reservation, which saves time as there is no need to go back to the original trust patent.⁹⁴
- Expand the capacity of tribes to exercise self-determination. Tribal members must be able “to bring decisions with local impact under local control and to structure capable, culturally legitimate institutions of self-government that can make and manage those decisions.”⁹⁵ This cannot be overstated. Restoring tribal self-determination and self-governance has the power to begin resolving deeply rooted and intergenerational problems like Native Americans’ limited access to homeownership.
 - » The passing of NAHASDA and creation of Indian Housing Block Grants recognized the right of tribal self-governance and empowered tribes to control their own affairs.

- » The Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012 allows tribes with the governmental capacity to take over the regulatory role of approving land lease deals for tribal property from the BIA by creating a leasing code of their own. Brian Pierson, leader of Godfrey & Kahn SC’s Native American law practice notes, “a carefully structured leasing code could create the ability for tribal members to freely exchange real estate assets or to borrow off their homes in times of need.”⁹⁶ Titles still need to be recorded at an LTRO office.

Idea 3: Modify Rules or Expand Incentives

Modified regulations could help improve rates of mortgage lending on American Indian lands. Too often bureaucracy and oversight are impediments to lending that must be overcome. In the case of lending on American Indian lands where lenders may be apprehensive about providing access to credit, regulations need to serve as incentives for lenders to operate in such communities. There are many regulations that could be explored to see if modifications might improve American Indian lands access to credit. Encouraging investments in policies like the Community Reinvestment Act (CRA) and Duty to Serve could help expand housing markets and obviate risk. The following are a few possibilities.

- Take Advantage of Newly Implemented [*Duty to Serve*](#).⁹⁷
 - » The recently implemented Duty to Serve requirements for Fannie Mae and Freddie Mac (the GSEs) offer a potential mechanism to increase liquidity and encourage lending in

American Indian lands. Among other obligations, Duty to Serve targets lending activities in rural areas – specifically high-needs (distressed and underserved) rural areas that include American Indian lands – and lending involving manufactured homes. The GSEs are required to plan how to increase their purchase of loans from within these markets, and to periodically review progress. To ensure the efforts are successful, tribal governments should be regularly consulted, as it is their communities that should benefit from increased activity.

- » In order to meet the needs of Native Americans through tailored lending, Fannie Mae plans to rebrand, and market the Native American Conventional Lending Initiative (NACLI) single-family loan program, which offers flexible underwriting, and then purchase between 140 and 240 NACLI loans between 2018 and 2020.⁹⁸
- Improve the *Community Reinvestment Act's* ability to encourage investment on reservation lands. The CRA requires depository institutions to meet the credit needs of all segments of their service areas, especially distressed and underserved census tracts.⁹⁹ A lender's service area is defined by where its branches and offices are located. Since American Indian lands rarely have branches or offices located nearby, they are largely not included in any service areas. Thus, lenders do not have a clear CRA-related incentive to serve these lands. Financial regulators evaluate lenders every two to five years to determine whether they are meeting their obligations. Achieving a passing CRA grade is important, particularly for

large lenders that will be seeking regulatory approval in the future for such things as branch openings and institution acquisition. As part of this evaluation, regulators look for and highly value lender service area activity, including retail and community development lending, that occurs in distressed and underserved areas.

- » A potential step to encourage CRA-related activity in American Indian lands would be to automatically consider activity to low-income reservation residents to be accepted and viewed as serving high-need areas, regardless of whether locations are part of a lender's service area. Explicitly placing a high CRA value on sound lending activity to this population without limitations would give these lands additional value for a large lender. Including an acknowledgement on CRA examinations for lenders that invest in projects on tribal trust lands could also allow lenders to be recognized explicitly for such efforts.
- Use creative approaches. Policies providing additional support to other market-based approaches could potentially help alleviate lender concerns about providing access to credit on reservation lands.
 - » The Sisseton Wahpeton Oyate tribe in South Dakota invests in a *risk mitigation pool* that can be used to purchase a home on reservation lands, in case a loan does not perform. It acts as a form of insurance to reduce the lender's risk.¹⁰⁰

Idea 4: Improve Collection and Access to Data

A major impediment to addressing these concerns is the lack of publicly available, high-quality, detailed data. The public scrutiny of home lending activities on American Indian lands is hampered. With more data and transparency, more definitive conclusions could be made, and more precise policy responses drafted. The following are a few specific areas to address.

- Make more data publicly available.
 - » HMDA data should identify whether a loan occurred on or off reservation lands.
 - » HMDA loan records should specifically identify Section 184 loans from within the conventional loan category.
 - » Direct loans from government agencies like the VA and USDA should be reported to HMDA.
- Improve data accuracy. Previous research has found discrepancies in the number of loans reported in studies and in HMDA data. This backs up some of the findings in this report and speaks to the need for better data.¹⁰¹
 - » When the sample size is small, the estimate has high variability, hindering estimate precision. The best way to address this concern is to use multiple measures and be vigilant in noting where there are concerns with data.

Discussion for Future Action

Native Americans have made great strides in strengthening their right to self-determination and in reestablishing traditional laws and culture, but major challenges remain. Broken treaties, forced relocation and assimilation, and marginalization have resulted in poverty and isolation, land ownership issues, and bureaucracy that all work together to constrain mortgage lending. The review of HMDA data confirms that mortgage lending activity on reservation lands is a rarity. Government resources have stepped in to serve this population, but the current efforts have not been able to overcome the impediments.

Solutions are attainable, specifically related to capacity, education, incentives, and data access. Firstly, increasing the capacity of the involved parties would help them navigate the complex process of mortgage lending on reservation lands. Next, tribal members, banks, and local governments need to be better informed of available products and how to access them. Additionally, regulatory changes could incentivize banks and lenders to invest more in Indian Country. Lastly, having more and better available data available would give further insight into the issues. The ideas proposed here could ensure more equitable access to mortgage finance. For Native Americans, the trust relationship has meant the guarantee of U.S. federal protection of people and lands would be implemented. While the federal government has had a history of not fulfilling these obligations, the continuing responsibility to do so still stands.¹⁰²

Appendix

Census Tract Reservation Land Classification Approach

Tribal Tracts Defined

The process of classifying census tracts in relation to their proximity to federal reservation and off-reservation lands started out using the 481 census-defined “tribal tracts.” Tribal tracts subdivide federal reservation and off-reservation trust lands into smaller entities, like census tracts, based on populations and recognized boundaries.^{xix} Tribal tracts subdivide the 326 federal reservation lands. Thirty-two tribal tracts have an ACS 2008-12 estimated population of zero. The authors removed the 32 zero population tribal tracts from the analysis.

Using ArcGIS to Evaluate Census Tracts

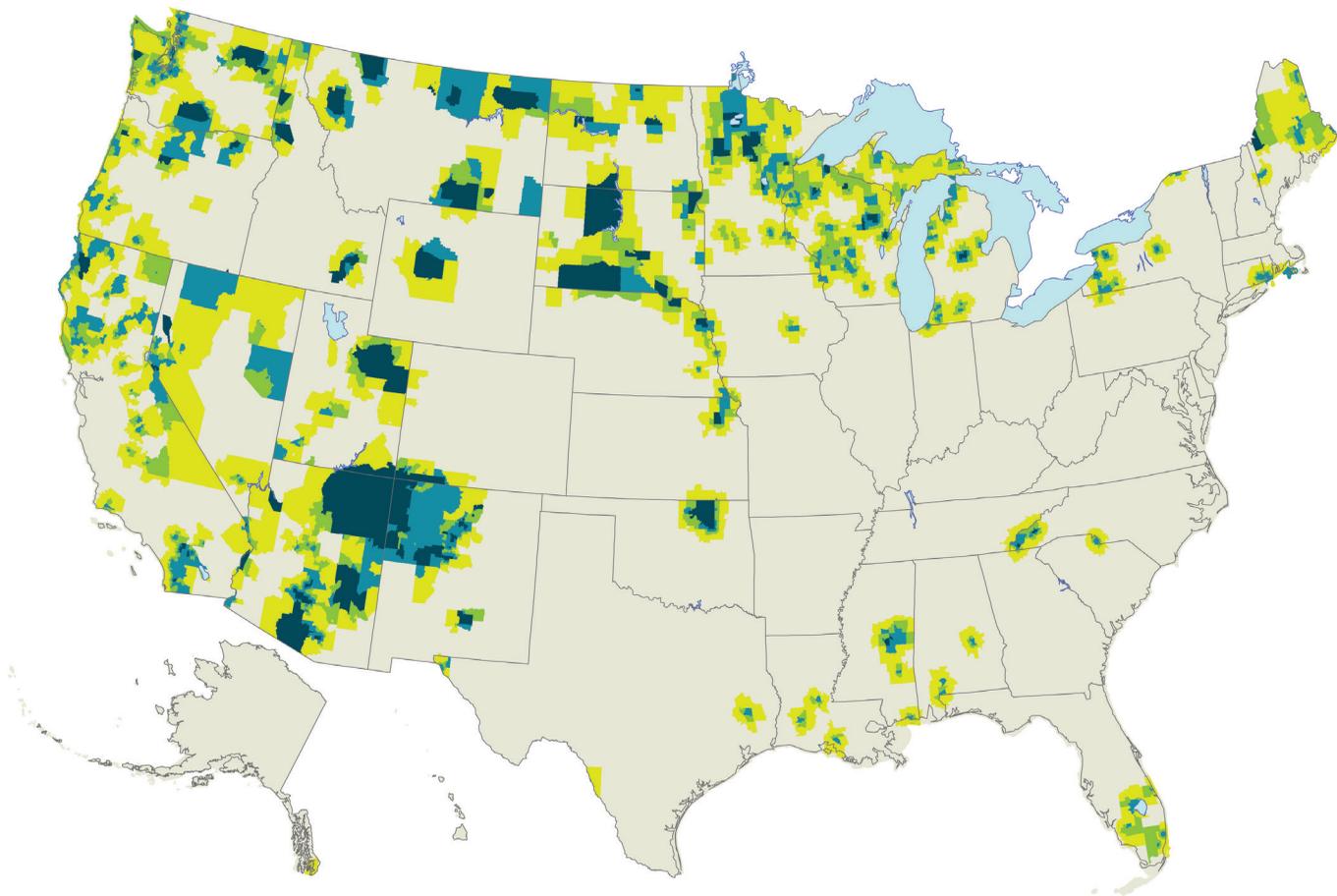
Using ArcGIS, the authors classified 2010 census tracts based on their proximity to reservation lands. The approach identified and then labeled census tracts with their center point (centroid) located within a tribal tract’s boundaries, as “on-reservation” lands. This result in 273 on-reservation census tracts. The identified census tracts are not entirely made up of reservation lands because the boundaries of census tracts and federally recognized reservations do not match. In almost all cases, the larger portions of the land areas of these “on-reservation” census tracts consist of reservation lands. The ACS 2008-12 estimated population of 993,407 on these “on-reservation lands”

census tracts is very similar to the federal reservation trust land and off-reservation trust land population estimate of 1,011,661.

To get a better understanding for how lending activity compares on- and off-reservation lands, the authors divided all other census tracts into two groups based on proximity to reservation lands. The approach identified 12,873 census tracts with their centroid within 25 miles outside a reservation boundary. Different distances were explored (see Map A1), and an effort was made to identify those census tracts that were reasonably close to reservation lands, a distance that could be easily driven, and also were close enough so that on-reservation and off-reservation areas would be relatively similar. The selected census tracts essentially represent the areas and populations close to reservation lands. The remaining census tracts are considered “all other.” A comparison of the median percent of census tract populations that are Native American (reservation lands (53.9 percent), within 10 miles of reservation lands (1.3 percent), and all other areas (0.6 percent)) shows a decreasing relative presence, as expected. Map A1 shows all proximity broken down by multiple categories.

xix. See the United States Census Bureau webpage, accessed August 14, 2017, https://www.census.gov/geo/reference/gtc/gtc_tr_ct.html.

Map A1.
**Census Tracts by Proximity to Reservation Lands -
Expanded Categories**



**Census Tract
Proximity Federal Reservation***

■ On Reservation	■ Within 5 Miles	■ Greater than 5 to 10 Miles
■ Greater than 10 to 25 Miles	■ Beyond 25 Miles	

Source: Housing Assistance Council

*All census tracts are classified based on their centroids / center points relationship to reservation lands. For example, census tracts labeled "In Reservations" have their centroids / center point within federal reservation or off-reservation trust lands.

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