



February 24, 2021

Office of Regulatory Affairs & Collaborative Action—Indian Affairs (RACA)  
U.S. Department of the Interior  
1849 C Street NW, Mail Stop 4660  
Washington, DC 20240

**RE: Notice of Proposed Rulemaking – Indian Land Title and Records [25 CFR 150, RIN 1076-AF56]**

Dear Director Elizabeth Appel:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) entitled “Indian Land Title and Records,” which was published in the *Federal Register* on December 11, 2020 by the Bureau of Indian Affairs (BIA). An efficient, streamlined process for managing leases and mortgage-related documents is critical to bringing capital and access to mortgage credit to Native Homebuyers and to Tribal Communities working to build their economies. NeighborWorks America greatly appreciates the BIA’s efforts to update its rules related to Land Records and Title Documents as part of a larger effort to modernize these systems and expand homeownership and wealth-building opportunities on Tribal lands.

NeighborWorks appreciates the attention the BIA is paying to this issue through this rulemaking. However, we note that only eighteen comments were submitted during the formal comment window. Unfortunately, due to the timing of the notice around the December holidays and the start of the new year, this issue simply did not garner the engagement it deserves. We respectfully request that the BIA reopen the comment period in order to create additional opportunity for stakeholders to participate and offer meaningful feedback.

Please note that these comments have not been submitted to or approved by NeighborWorks America’s board and do not necessarily represent the views of its board members, either collectively or as individuals. These comments have been formed based on the ongoing work of NeighborWorks America with our network of nearly 250 NeighborWorks-chartered local and regional nonprofits. Our network includes several Native-led organizations and Native Community Development Financial Institutions, as well as many others specifically serving Native communities. In addition, we engage actively in multiple coalitions of organizations focused on serving the unique needs of Native communities. NeighborWorks also provides thought leadership and facilitation for the Federal Reserve Bank of Minneapolis’ Center for Indian Country Development Lending Systems Focus Group, an industry-wide effort to enhance the availability of mortgage loans on Tribal Trust Land.

For over 40 years, the Neighborhood Reinvestment Corp. (doing business as NeighborWorks America), a Congressionally-chartered, national, nonpartisan nonprofit, has created opportunities for people to

improve their lives and strengthen their communities by providing access to homeownership and safe, affordable rental housing, increasing financial capability, and promoting community and economic development. We have been working consistently in promoting mortgage-based homeownership on Tribal Trust and Restricted Lands for over 25 years particularly on the Navajo Nation. Building on this work, in 2019, NeighborWorks began a holistic process to develop and define intentional strategies for serving the unique needs of Native communities, a process informed by Native stakeholders at the national and local level.

The mortgage industry relies on timing, consistency, and customer service to function and grow, and there should be minimal loan processing differences between fee simple land and Tribal Trust and Restricted Lands. Between 1995 and 2018, only about 13% of the 43,000+ loans made through HUD's Section 184 Loan Program's loans were originated on Tribal Trust Land. Although there are many factors affecting those numbers, a significant challenge to sustainable lending is a lack of consistency in supporting Indian Land Title and other systems.

#### Specific Comments:

- We commend the Bureau for its efforts to utilize technology to maximize staffing capacity within Land Title and Records Offices (LTRO). We strongly suggest that the Bureau extend similar consideration for Realty Services by developing a secure portal that allows for the electronic submittal of all files related to the mortgage process (leases, Title Status Reports, Environmental Assessments, and Mortgage Packages). The pandemic has accentuated the urgent need for this capability.
- The NPRM does not specify any timeframes for the BIA to carry out its LTRO functions, nor does it provide any clarity on recourse or accountability when LTRO documentation is not provided in a timely manner by agency officials. The most common complaint we have heard regarding the BIA LTRO process are delays in providing documents, such as Certified Title Status Reports, that are needed in the normal course of business in mortgage lending. These delays are one of the most-cited reasons for banks' and other lending institutions' reluctance to engage in mortgage lending in tribal communities. The Mortgage Processing Manual the BIA released in 2019 does provide procedures and timeframes, but addressing the issue of delays and possible recourse for affected parties should be addressed in the regulations to provide greater clarity and accountability for all involved.
- NeighborWorks supports including lenders and title companies as permitted recipients of title status reports and title documents. As proposed, these entities *may* fall under the meaning of "legally authorized representatives," but it would be beneficial to make this eligibility explicit. While we generally share the BIA's interest in restricting third-party access to Indian land records, we believe it is appropriate and warranted in this instance. We recommend that § 150.303 be modified to read "(or their authorized representatives, including lenders, title insurers and their agents and abstracters)."

- Written evidence of the authorization should be required, and it can easily be included in the lender's loan application. If lenders do not know who will insure title when the application is made, the authorization could be to the named lender and (generically) the underwriter of insurance on matters related to title to, and/or liens on, the land and improvements.
- Similarly, there should be a process for authorized personnel from HUD, VA and USDA RD to be able to receive copies of title documents without going through the FOIA process.

The Department of Interior's Bureau of Indian Affairs plays a critical role in the lives of Native people and, in particular, their economic future. We thank you for your attention to these issues, and would welcome the opportunity to further engage on our shared goal of expanding opportunity on Tribal lands, both through the formal rulemaking process as well as through other channels.

Sincerely,

A handwritten signature in blue ink, appearing to read 'KJO', enclosed within a blue oval. The signature is stylized and somewhat abstract.

Kirsten Johnson-Obey  
Senior Vice President, Public Policy and Legislative Affairs