Predatory Lending
in
Native American Communities

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Introduction

Predatory lending is one of many economic problems facing Native American families and communities. It is difficult to define and perhaps better described by its characteristics and effects of destabilizing families and communities. The National Community Reinvestment Coalition (NCRC) defines a predatory loan as "An unsuitable loan designed to exploit vulnerable and unsophisticated borrowers." Predators in the lending process utilize a variety of practices that include excessive rates and fees, the sale of unaffordable loans, and fraud. The impact of predatory lending is significant. Predatory lenders rob families and communities of their assets. Many Native American communities are geographically and cultural removed, are unwary of these financial practices, and are a target of unscrupulous lenders. Native Americans can therefore fall victim to predatory lending more often than the general population.

Home Lost
A compelling case comes from the Creek Nation where tribal members purchased a home, securing a loan through the housing authority of the Creek Nation. The couple was required to pay $62/month, a payment determined by their income. When they fell behind on three month's payments, they approached a predatory lender even though the tribe offered to work through a solution. The lender offered a loan that paid off the remainder of the tribal loan, raising their monthly payment to $380. The couple could not make the first payment and consequently lost their home.

This project was undertaken to examine the extent of predatory lending in Native American communities, the actions being initiated by tribes or other organizations to prevent predatory lending, and to suggest model regulatory codes for use by Native American communities. This research builds on previous studies of predatory lending and draws from a range of existing data sources. In addition, survey data was collected in the summer of 2002 to identify various factors that allow predatory lending to flourish and to provide case studies. Actions that can be taken to prevent predatory practices are suggested at the end of this report. Among the actions examined, education and regulatory codes were at the forefront. Although there are many options available to tribes, education is clearly the first step towards a permanent solution. Tribes can also pass anti-predatory lending regulatory code to restrict such actions in their community.

This report summarizes research regarding predatory lending in Native American communities and is organized into three main sections:

- A discussion of the extent of predatory lending in Native American communities.
- A discussion of actions being pursued to combat predatory practices.
- A suggested model regulatory code that could be used to limit predatory lending.

Project Approach/Methods

This project draws upon existing literature and data sources on predatory lending, and also collected new data from eighteen tribes on the extent of predatory lending in their communities. A review of current literature on this topic was completed as well as a review of NCRC's home mortgage data analysis. The home mortgage data analysis brings together information from the Home Mortgage Disclosure Act (HMDA) and the 1990 Census for census tracts by tribal reservation or jurisdictional area. The quantitative results illustrate major differences between Native communities and non-Native communities in the percentage of conventional home purchases from "sub-prime"[1] and manufactured home lenders. These differences are illustrated for the years 1998, 1999, and 2000, and for selected regional areas of the United States.

The author of this report also contacted a number of subject matter experts and gathered sample data from eighteen selected tribes to supplement the more general information (see Appendix B for a list of tribes contacted). This purposeful sample was used to build

[1] "Sub-prime" lending as defined by NCRC is "a loan to a borrower with less than perfect credit." "Sub-prime" loans are loans with a higher interest rate than loans granted to individuals with perfect credit.

qualitative data further supporting the quantitative data provided by NCRC. Tribes in Montana, Oklahoma, California, North Dakota, Arizona, and New Mexico were included in the survey, completed during the summer of 2002. Most of the respondents represented tribal housing authorities and tribal administrations. This purposeful sample, although limited in scope, provided information illustrating the extent of predatory lending in Native communities.

This research helps to identify, address, and provide strategies to eliminate the underlying barriers that prevent Native Americans from controlling their assets. While the survey research yielded interesting observations, there is still a pressing need for further analysis of existing data, expansion of the sample size, and ongoing research on this topic. Future research on this topic is recommended.

Major Findings

A review of existing literature, NCRC's home mortgage data analysis, and interview data revealed a significant problem with predatory lending in Native American communities and suggested these communities appear to be perfect targets for predatory lenders. Native American communities are often geographically and culturally isolated and have community members that are wary of mainstream options and institutions. They operate in a less than perfect competitive market. In some cases, the development of their financial infrastructure mirrors that of their physical infrastructure of poor roads, housing, and utilities access. These financial and physical infrastructures are sub-standard.

The most hopeful sign is that education and advocacy through tribal leaders and government officials appears to be having an impact on the reduction of predatory practices. It is hoped that the analysis in this report can further aid in the reduction of predatory lending by providing other alternatives and sharing best practices in Native American communities. Nonprofits, housing authorities, credit unions, thrift institutions, and tribal administrations can begin the process of sharing data, approaches, and best practices to further limit predatory practices in their communities.

In our review, three promising practices surfaced. These solutions utilize natural advantages associated with Native American tribal communities. The promising practices are the following:

- **The exercise of tribal sovereignty, enacting laws and promoting legislation to influence the entire lending process in Native communities and restrict predatory lending.** One of the most powerful solutions that is currently being introduced to tribes is the development and implementation of regulatory codes that can strongly influence predatory behaviors in Native communities. This exercise of Native American sovereignty could be the key to creating an environment that drives out predators.

- **The continued development of tribal institutions such as the housing authorities and credit associations to buffer, educate, support, and serve their citizens.** These institutions can act as the foundation to attract and develop the required competitive market institutions, and can educate tribal members to help them protect against predatory practices. Tribal housing authorities can provide financial literacy education, homebuyer education, and credit counseling, among other financial services.

- **Sharing of information through community networks.** This third solution leverages a natural asset of Native communities, the close ties of kinship and information networks. What Native American communities lack in financial and physical structural infrastructure may be offset by the advantages of their family and community networks. These family and community networks should be used to share information to battle predatory lenders.

Extent of Predatory Lending

Predatory Lending Defined

"Predatory lending" is often used to broadly describe certain loan terms and loan practices that can occur in the lending process. These terms and practices vary from outright fraud to inappropriate risk-based terms and conditions. There is no single definition of predatory lending that is agreed upon and used by regulators, states, and tribes. However, there are some characteristics that are found in most predatory practices.

The terms and practices of predatory loans vary but can be generally characterized by these behaviors:

- **Incomplete information**. Predatory lenders often withhold information related to fees, charges, and terms of the loan from the borrower. This prevents the borrower from making an informed decision.
- **Lack of freedom of choice.** The ability of the borrowers to freely choose not to take a loan or to choose from competing products is limited for various reasons.
- **Targeting a less informed population.** A lender may target a vulnerable population that may have little experience with mainstream financial institutions or may have low education levels.
- **Well-defined sales practices.** Intentional or systematic patterns of selling over priced loans to a population whose mental, physical, or intellectual status makes them vulnerable to lender sales tactics. This also includes systematic selling to those who are vulnerable through economic or educational conditions.[2]

[2] Neighborhood Reinvestment Corporation.

Predatory Lending vs. Sub-Prime Lending

To effectively examine the problem of predatory lending, the difference between sub-prime and predatory lending must be understood. Sub-prime lending is defined by NCRC as "a loan to a borrower with less than perfect credit." In order to compensate for the added risk associated with sub-prime loans, lending institutions charge higher interest rates. In contrast, a prime loan is a loan made to a creditworthy borrower at prevailing interest rates. Loans are classified as A, A-, B, C, and D loans. “A” loans are prime loans that are made at the going rate while “A- ” loans are loans made at slightly higher interest rates to borrowers with only a few blemishes on their credit report. So-called “B”, “C”, and “D” loans are made to borrowers with significant imperfections in their credit history. “D” loans carry the highest interest rate because they are made to borrowers with the worst credit histories, including bankruptcy.[3]

For this study, the following definition of predatory lending provided by NCRC is used: "An unsuitable loan designed to exploit vulnerable and unsophisticated borrowers. Predatory loans are a subset of sub-prime loans. A predatory loan has one or more of the following features:

1) charges more in interest and fees than is required to cover the added risk of lending to borrowers with credit imperfections,

2) contains abusive terms and conditions that trap borrowers and lead to increased indebtedness,

3) does not take into account the borrower's ability to repay the loan, and

Car Loans

The Salish-Kootenai of Montana are experiencing problems with automobile dealers. A local car dealership is responsible for the majority of predatory lending present in the community. The dealer inflates the price of the car and then adds exorbitant fees causing the price of the car to be 30-40% above actual retail.

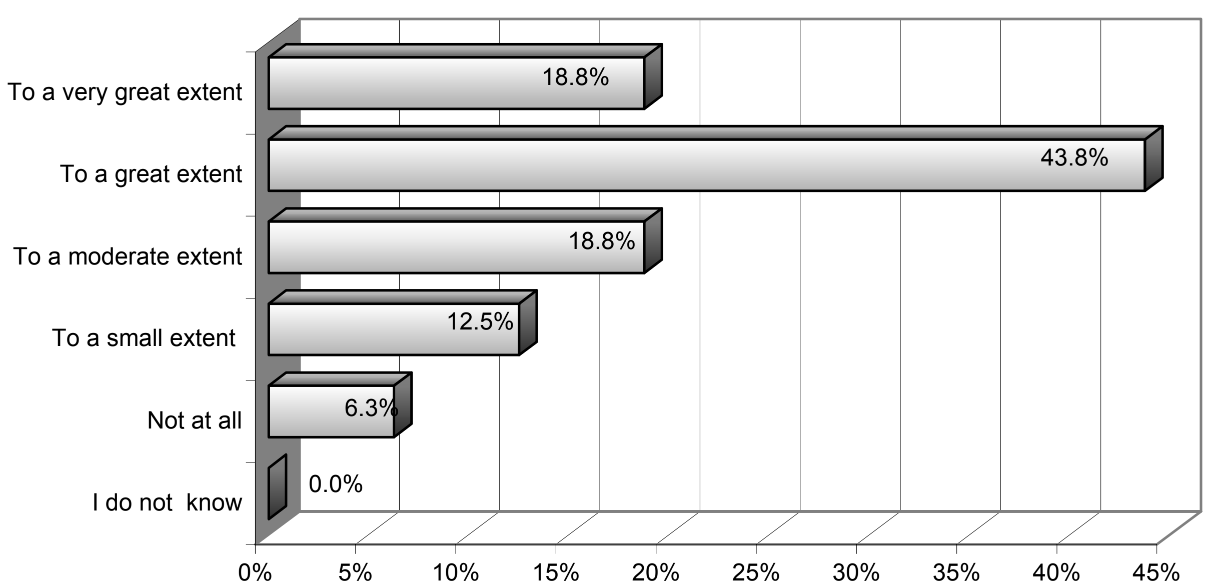
[3] National Community Reinvestment Coalition, 2002.

4) often violates fair lending laws by targeting women, minorities and communities of color."[4]

The Extent of the Problem: Predatory Lending in the Community or Tribe

Predatory lending in Native American communities is quickly becoming more than a passing concern. As can be seen in Figure 1, the majority of respondents (80 percent) to our phone survey in summer of 2002 indicated that to a "moderate," "great," or "very great" extent predatory lending is a problem in their communities. While this survey sample size was limited, it is still disturbing to see such a high level of concern (greater than 80 percent). Further data should be gathered to determine if this is a consistent trend across all Native communities. As predatory lending practices increase, many tribes state that they have only recently identified predatory practices as a major concern within their community. Still in the early stages of detection within tribes, approximately 32 percent of survey respondents stated that their tribal governments have not yet acted to curb predatory practices (see Figure 5).

Figure 1: To what extent is predatory lending a problem in your community?



[4] National Community Reinvestment Coalition, 2002.

Predatory Lending - Specific Practices

Predatory practices within communities manifest themselves through a variety of tactics. This review examined practices such as the use of high equity, packing, flipping, balloon payments, excessive prepayment penalties, and the requirement of credit insurance. These practices are not limited to home loans. Many tribes surveyed also reported a problem with car loans, pawnshops, and house repair. These practices are described in Table 1 below.

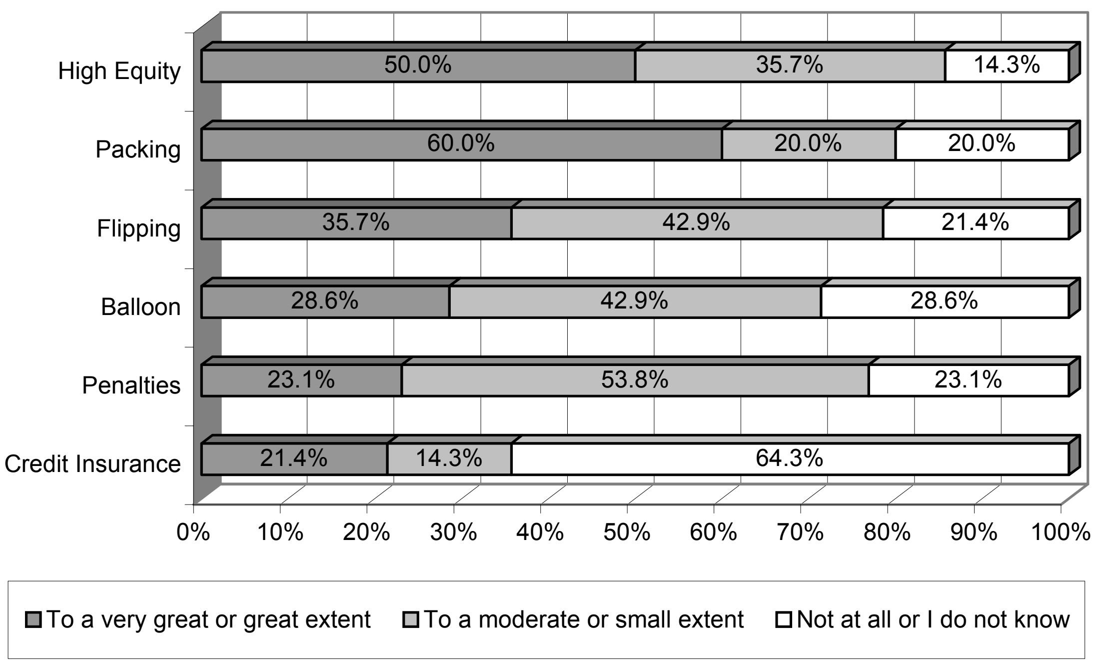
Table 1: Predatory Practices[5]

Practice	Definition
High Equity	Defined broadly as loans based on equity rather than borrower's ability to pay the loan.
Packing	Defined broadly as adding unnecessary fees to the loan.
Flipping	Defined as "repeated loan refinancing with little of no benefit to the borrower."
Balloon	Defined as "a loan payment that can equal all of the remaining loan balance or a large fraction of the remaining balance…borrowers with high cost loans cannot pay the balloon when it is due and usually end up refinancing their loan."
Penalties	Defined as "lender assesses prepayment penalties when a borrower either pays the remaining loan balance before the end of the loan term or refinances with another bank."
Credit Insurance	Defined as "If a borrower dies or becomes unemployed, credit insurance pays the outstanding loan balance…predatory lenders persuade borrowers to pay for all of their credit insurance up front via a single premium payment. In other words, the premium for credit insurance is added to the loan amount."

[5] The source of information for this table is the National Community Reinvestment Coalition's Anti-Predatory Lending Toolkit (2002).

As can be seen in Figure 2, our interviews with tribes indicate that two predatory practices are most often cited: the practice of basing a loan on equity rather than borrower ability to repay the loan (High Equity); and the practice of adding unnecessary fees to the loan (Packing). Fifty percent of respondents reported that problems with high equity loans occurred in their communities. Sixty percent reported that they had experienced loans packed with unnecessary fees. "Flipping," "Balloon Payments," and "Penalties" were also very common.

Figure 2: To what extent are the following practices occuring in your community?



Predatory Lending Process

The process for providing a loan can be grouped into four major activities, illustrated in Table 2. The first activity focuses on marketing, or defining a target population to focus sales efforts on. The second activity focuses on the sales efforts. The third activity is the loan execution, and the fourth activity is the ongoing operations and maintenance of the loan after closing. Predatory practices may occur at any time during this process. At each step of the process, there are multiple participants involved and predatory lenders may focus on only a few select activities.

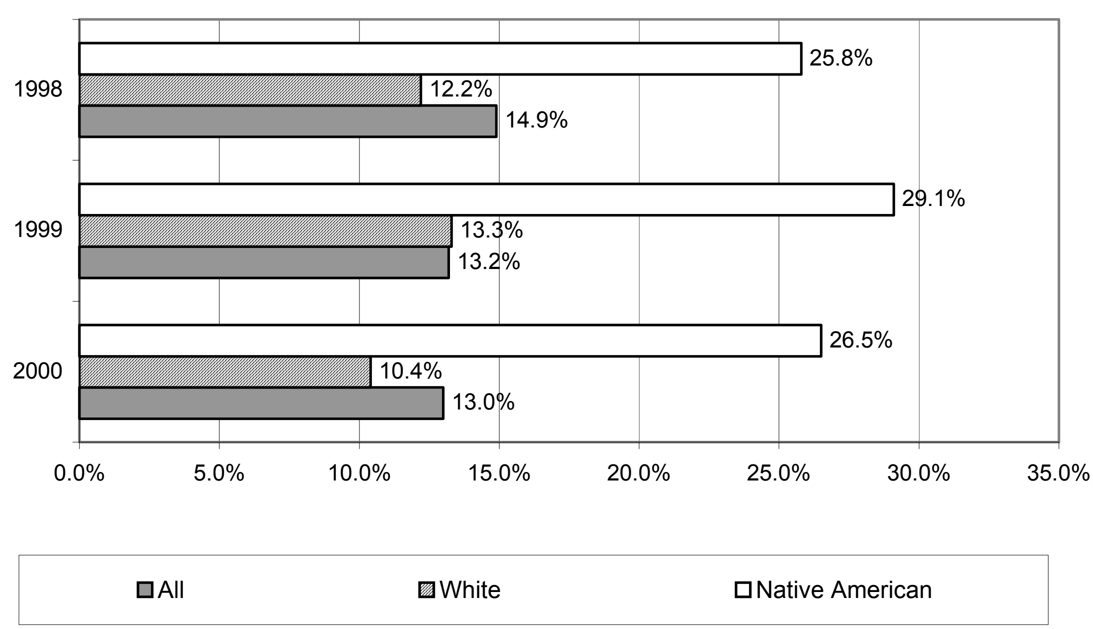
Table 2: Predatory Lending Process

Predatory Lending Process			
Marketing	Sales	Loan Execution	Loan Operations and Maintenance
Step 1. The lender may identify a Native American community and target its sales efforts. Targets are generally defined by high equity and low income.	**Step 2.** Brokers, lenders, and construction agents implement aggressive sales tactics to influence Native Americans.	**Step 3.** Loan contracts are structured and executed to extract the greatest return for the lender.	**Step 4.** The lender may collect burdensome payments and fees.
Predatory Lending Practices and Scams			
Aggressive solicitations within targeted neighborhoods.	Structuring payments that borrower cannot afford.	Imposing unwarranted high annual interest rates.	Flipping – property flipping or loan flipping.
Home improvement deception and swindling.	Falsifying loans.	Imposing excessively high points or padded closing costs.	Imposing daily interest rate when loans are late.
Kickbacks to mortgage brokers.	Addition of insincere co-signers.	Imposing unaffordable balloon payments on unwary consumers.	Practicing abusive collection practices.
Racial steering to high rate lenders.	Forging signatures.	Imposing negative amortization.	Imposing excessive prepayment penalties.
Aggressive deceptive marketing.	Charging higher rates than borrower's credit warrants.	Basing loans on inflated appraisal costs.	Foreclosure abuses.
Reverse redlining (targeting of communities).	Shifting unsecured debt into mortgages.	Use of padded or bogus recording fees.	Failure to report good payment on borrower's credit report.
	Loans in excess of 100% loan value.	Changing loan terms at closing, not fully disclosing terms to unwary clients.	Failure to report accurately loan balance and pay off amount.
	Failure to fully explain terms and conditions.	Unbundling terms to unwary clients.	
		Requiring credit insurance.	
		Falsely identifing loans and lines of credit.	
		Imposing mandatory arbitration clauses that are not favorable to the customer.	

Predatory Lending - National High Cost Home Purchase Lending

The National Community Reinvestment Coalition (NCRC) has produced quantitative research illustrating the stark reality of predatory lending in Native American communities. The NCRC analysis, using Home Mortgage Disclosure Act (HMDA) data from the years 1998, 1990, and 2000, revealed that Native Americans had a significantly higher share of loans from high-cost lenders than whites in all three years studied.[6] In 2000, Native Americans were 1.93 times more likely than whites to receive a conventional home mortgage loan from sub-prime or manufactured home lenders. As can be seen in Figure 3, in 2000 26.5 percent of all conventional home loans to Native Americans were from sub-prime and manufactured home lenders, as opposed to only 10.4 percent of loans to white borrowers. This trend could also be seen in 1999 and 1998.

Figure 3: High cost home purchase lending targeted to Native Americans - Percent of conventional home purchases from sub-prime and manufactured home lenders



Data source: National Community Reinvestment Coalition

[6] Due to data collection problems for the years studied, information from the Associates Corporation was excluded from one set of tables and included in another. Citigroup, which now owns Associates, states that it informed regulatory agencies that the Associates data on lending in Indian Country during 2000 was inaccurate. In this narrative, we present the data from the table excluding the Associates.

In 1999, Native Americans were 1.48 times more likely, and in 1998, were 1.67 times more likely than whites to receive loans from higher cost sub-prime and manufactured home lenders. To explain the difference between Native Americans and other borrowers, lenders may argue that Native Americans simply have a higher risk profile and an appropriate premium needs to be charged. This may be true in some cases, but the large difference between Native American and other borrowers raises questions. Many Native American borrowers do not have the range of options available to them that other borrowers do.

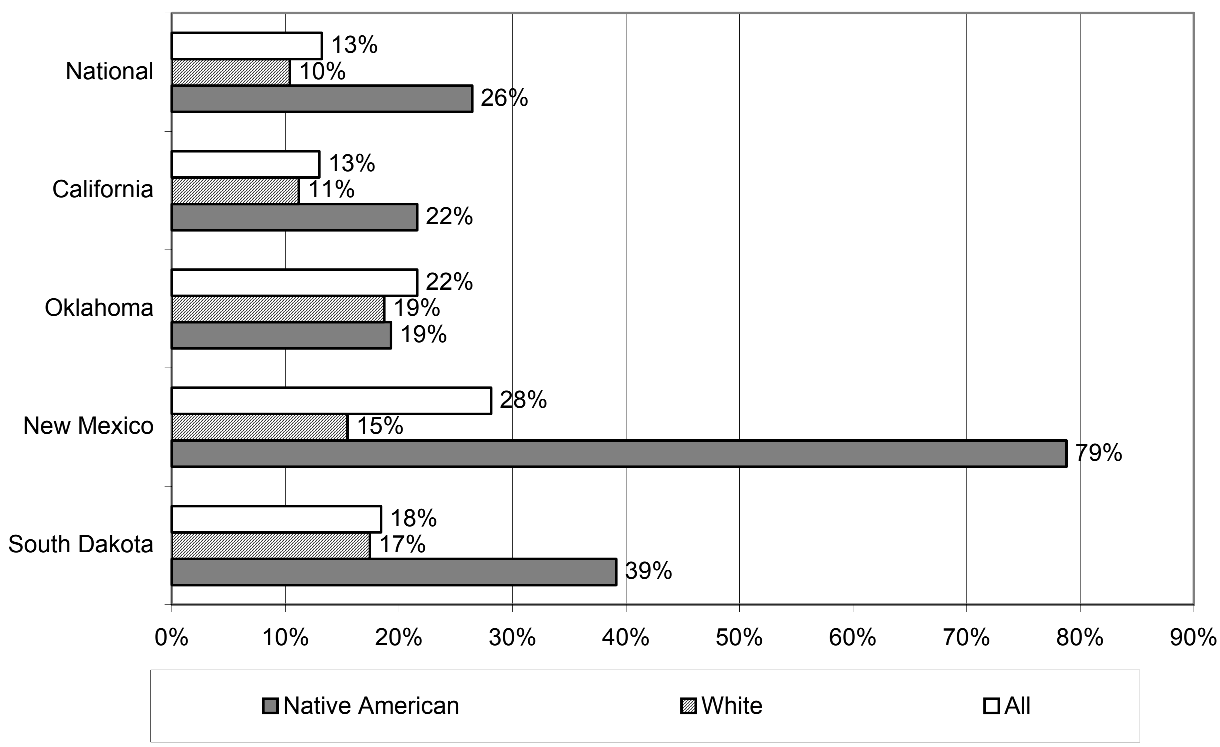
In addition, generally lenders have a western view of financial services and utilize a standard points system to evaluate risk. These evaluation systems may be appropriate. However, there appears to be an opportunity for both non-Native and Native financial institutions to attempt to understand their customer better and alter the evaluation techniques that best align to Native lifeways. These techniques may be more qualitative than quantitative and may be weighted more toward an applicant's character and potential to repay rather than payment history. In addition, a concerted effort must be made to provide financial literacy training, credit counseling, and access to equitable, ethical, financial services to provide Native American borrowers with the same range of options as other borrowers.

Predatory Lending - Regional High Cost Home Purchase Lending

Data analysis by NCRC also reveals that the disparities between Native American and other borrowers are more common in some regions of the country than others. In 2000, Native Americans in New Mexico received 79 percent of their conventional loans in the form of a sub-prime loan or manufactured home loan as compared to only 16 percent of white Americans (see Figure 4). While not as extreme, a corresponding trend existed in South Dakota, where 39 percent of Native Americans received their loans from sub-prime or manufactured home lenders, compared to only 17 percent of whites. A similar disparity can be seen in California, and across the nation. This data suggests that Native

American communities are clearly vulnerable to predatory lenders. This research also indicates major regional differences, and it appears that the greatest differences occur in more rural states where Native communities may be more isolated and have less financial options.

Figure 4: High cost home purchase lending targeted to Native Americans - Percent of conventional home purchases from sub-prime and manufactured home lenders in 2000



Data source: National Community Reinvestment Coalition

Predatory Lending - Survey of Native American Tribes

The National American Indian Housing Council (NAIHC) is a national organization that assists tribes and tribal housing entities in providing culturally appropriate, decent, safe, sanitary, and affordable housing in Indian communities and Alaska Native villages. According to a survey of clients done by the NAIHC in 2001 and provided to the Federal Reserve Board, 65 percent of respondents said that predatory lending was a problem in their communities. This survey identified practices such as mortgage interest rates as high as 25 percent and mobile home loan rates as high as 24 percent.

Double Amputee Loses Home
One parent of a double amputee reported owning his home outright after 30 years' of mortgage payments, but losing it due to terms of a home improvement loan from an unscrupulous lender. (Source: NAIHC)

Senator Paul Sarbanes (D-MD) and the Senate Banking Committee held hearings on this issue in late 2001. NAIHC Acting Executive Director Luke Toyebo, Jr. stated, "We hope the Senate will look seriously at how banks are serving populations in remote areas, and who, for that reason, are less experienced and more easily taken advantage of in financial practices." Respondents to the survey provided many examples of abusive practices. "The survey paints a grim picture that we know to be true," said Toyebo.

The NAIHC survey, which included approximately 10 percent of federally recognized tribes, revealed the following:

- Sixty five percent (65 percent) of respondents said their members were victims of predatory lending practices.
- Respondents reported examples of housing finance interest rates as high as 25 percent.
- Respondents reported that there are tribal members in their state who can only get HUD loans, and who say they don't anticipate getting conventional home loans for 10 to 15 more years.

- Outright discrimination was reported, with respondents stating "many lending institutions do not even consider working with Native people."
- Respondents reported that mobile home loans and home improvement loans are commonly offered at rates of 18 to 24 percent.
- Home improvement loans of 24 percent were noted. Window replacements were reported costing 300-500 percent over local cost with added-on financing from well-known sub-prime lenders of 22.99 percent.[7]

National Conditions and Trends

Financial markets have expanded over time to extend credit to borrowers who earlier would not have been qualified. This expansion of the sub-prime markets is dramatic. The number of sub-prime loans increased roughly ten fold from 80,000 in 1994 to nearly 790,000 in 1999, and the dollar volume of sub-prime loans increased roughly five fold from $35 billion in 1994 to nearly $160 billion in 1999.[8]

This expansion has provided wider access to loans for those that may not have qualified in the past. At the same time it has opened the door for certain sub-prime lenders to take advantage of vulnerable borrowers. These sub-prime loans are extended by primarily non-deposit institutions such as finance companies.

Elderly Targets

The elderly are specific targets of predatory lenders. The Creek Nation reports that an elderly gentleman who owned his home was in need of a loan to build a wheelchair ramp for his handicapped son who lived in the house. Both gentlemen were on a fixed income and therefore became a target for predatory lenders. In order to receive a loan, the predatory lender required that they mortgage their house. Within months of the origination of the loan, the gentlemen lost their house because they were unable to make the loan payments.

As this expansion of sub-prime markets continues, the differences between communities with well-developed financial infrastructures and those without becomes much more

[7] National American Indian Housing Council (2001).
[8] Dooley (2002).

apparent. A weak financial infrastructure in a Native American community provides opportunities for predators. Many tribes are working to develop their own credit institutions, including CDFI's and credit unions, to provide other options to community members. This, coupled with financial literacy education, may prove to be an important strategy for limiting predatory practices.

Strength of Predatory Lending

Although stricter laws and lending practices are being enforced, sub-prime lenders are flourishing in this time of economic uncertainty.[9] According to an article recently published in the Wall Street Journal, Morgan Stanley & Co. surveyed branch managers and loan officers of Household International, Inc., Washington Mutual Inc., Wells Fargo & Co., Citigroup Inc., Countrywide Credit Industries Inc., and independent mortgage brokers in June and July of 2002. Respondents reported that an average of 33 percent in new-loan growth was expected throughout the 2002 fiscal year. Those interviewed reported that economic uncertainty is bringing more sub-prime customers rather than decreasing the numbers of loans. Federal Reserve Governor Donald Kohn warned that sub-prime borrowers might have trouble servicing debt because of potentially weak economic conditions. Another Federal Reserve governor, Susan Bies, stated in June 2002 that the lending market has the potential of becoming a source of trouble for the banking industry. The current low interest rates and strong real estate markets are driving record demand for mortgages. The reach and effect of abusive practices have increased along with the dramatic growth of the sub-prime industry.

[9] Dooley (2002).

Predatory Lending Targets

As the extent of predatory lending is being discovered, the question of where predatory lenders are getting their information comes to the forefront. Predatory lenders require specific information as to who has recently taken out a new mortgage, paid off their home in full and transferred a deed to their name, or recently declared bankruptcy and may need money. The Chickasaw Nation identifies "scandal sheets" as one culprit for spreading such information. The courthouse has information on everyone that has filed for bankruptcy, received their deed after paying off a loan, and/or mortgaged their home. This information is public, and local businesses and lenders may access this information. This then opens a window for predatory lenders to target those in need of a loan or those with high equity.

Mutual Help Home

After a Choctaw paid off his Mutual Help Home, a lender sought him out convincing him to take out a loan to pay off his credit cards. The loan granted carried 5 points, a 17% interest rate, and $3,300 in credit insurance. Eleven months later, he refinanced the loan at a rate of 15% interest with 9 points, with no credit insurance and no refund for the previously purchased insurance. When the gentleman passed away, the housing authority stepped in to pay the loan so that his widow would not lose their home. Fannie Mae later turned in the lender.

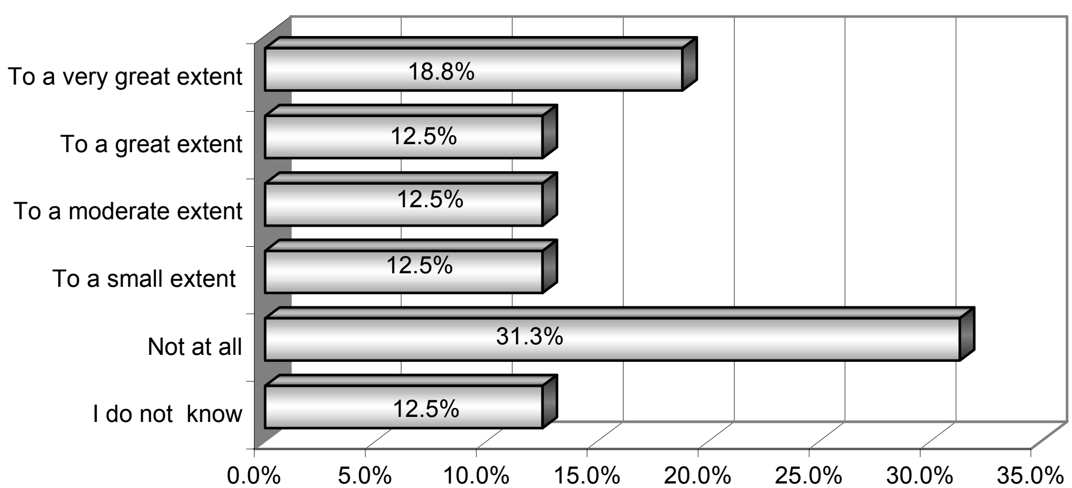
Although the elderly are heavily targeted, first-time homebuyers are pursued as well as lower-income and minority community members, according to the Fannie Mae Foundation. Many tribes surveyed believe they are targeted because of the lack of financial lending institutions available on reservations and the difficulty in getting fair loans for mobile homes. These problems provide a breeding ground for predatory lenders and unfair practices.

Another target of predatory lenders are Mutual Help Home owners. Often when these owners pay off their loans, predatory lenders contact them within weeks of the deed transfer. Unfortunately, many owners fall prey to additional loans and sometimes lose their newly acquired homes, such as the case in the Choctaw Nation.

Actions to Prevent Predatory Practices

It is clear that predatory lending is occurring in Native American communities. The question arises about what is being done by tribal governments to curb predatory lending. Our survey indicates that tribes have increasingly recognized the impact of predatory lending on their communities. However, more than 50 percent of our respondents indicate that tribes have not acted or acted only with limited initiatives (see Figure 5). Over thirty percent of respondents suggested that their tribe had not yet acted to limit predatory practices in their community. Only 18.8 percent suggested that tribes had acted to a very great extent to limit predatory practices. For those practices used, education was more often cited (53.3 percent) than other alternative to combat predatory lending (see Figure 6). No other practices were noted as significant (see Figure 6). Clearly, the use of legislation, regulatory codes, and enforcement remain as options for further limiting predatory practices.

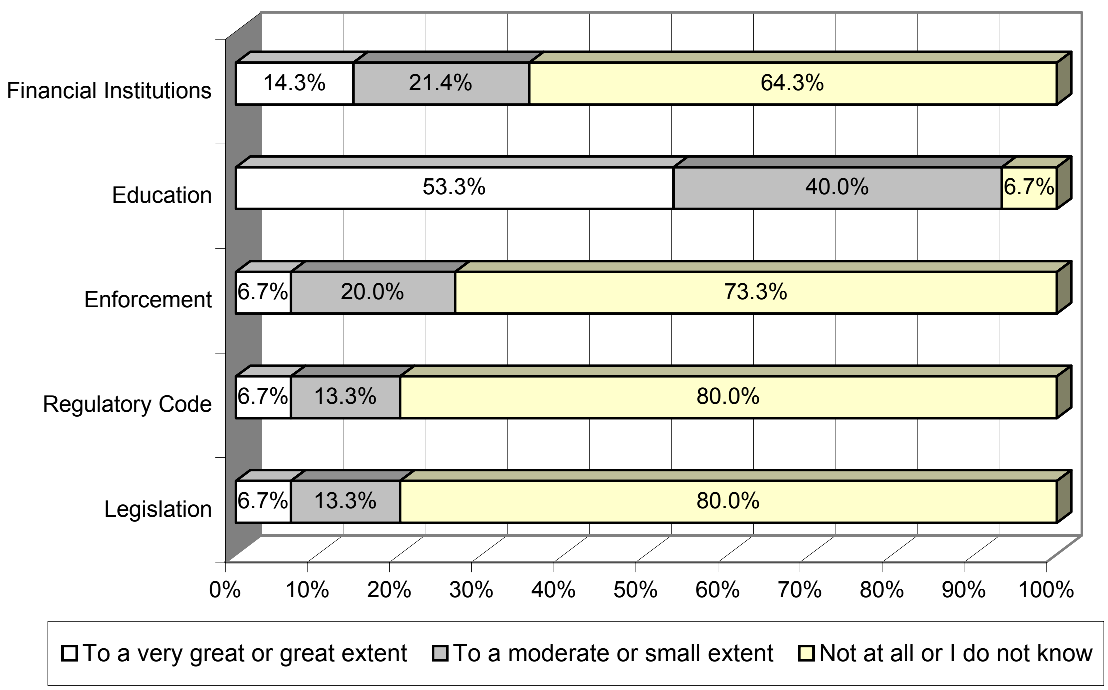
Figure 5: To what extent is tribal government active in limiting predatory practices in your community?



Actions that can be taken by Tribal Organizations

Financial trends predict that sub-prime and consequently predatory lending will continue to become more prevalent. In order to combat this trend, Native American communities are beginning to introduce educational programs, counseling, and in some cases, regulatory codes into their systems of government. Through the implementation of these steps as well as the help of groups such as the Fannie Mae Foundation and Freddie Mac Foundation, Native American communities may begin to see a decrease in these devastating practices.

Figure 6: What actions are being taken in your community to limit predatory practices?



As awareness to predatory lending is rising, tribes are becoming more cognizant of the barriers they face. Five broad action areas are described below for tribes seeking solutions to the problem of predatory lending. Based on our research, these actions were most often thought to be effective solutions. The following actions were recommended:

- Improve access to financial institutions.
- Improve education and outreach.
- Build tribal institutional capacity.
- Leverage industry and nonprofit organizational knowledge.
- Exercise tribal sovereignty.

However, as seen in Figure 6, few tribes are currently pursuing many of these strategies. While 53.3 percent of respondents interviewed suggested that education was used to a great or very great extent, only one tribe suggested that they were using regulatory code. Similarly, only a small number of tribes indicated that they were using enforcement or legislation to limit predatory practices.

The tribes interviewed for this report stated that housing authorities are in the forefront of taking proactive measures against predatory lending activity. Housing authorities provide education, financial literacy, credit counseling and other services, and also provide credit options to tribal members. Tribes have also found that research and partnerships with nonprofit organizations and governmental agencies such as NCRC, the National American Indian Housing Council (NAIHC), First Nations Development Institute, Fannie Mae Foundation, and Freddie Mac Foundation have been an invaluable asset to them.

Several issues are seen as barriers to the prevention of predatory lending, including lack of resources to develop tribal codes, lack of information about the extent of the problem, and lack of consensus on the part of tribal leaders on how to address the problem. However, tribes in reality have access to a broad array of tools and practices. In the following tables these issues and actions are noted. These tables include possible actions through tribes as well as local nonprofit organizations. When appropriate, stories and quotes from the tribes interviewed are included. The lists provided are not exhaustive but illustrate possible solutions. Each Native community is unique; clearly, issues and resulting actions in each community may be different.

Table 3: Improve Access to Financial Institutions

Many tribes are located in remote areas where access to financial institutions and mainstream financial services is not ready available. Tribal citizens have minimal access, exposure, awareness, or understanding of the plethora of financial instruments that may be available to them. The development of local institutions that can be trusted, and building local bank/consumer relationships, can be quite useful in minimizing predatory lending.	
Issues	**Successful Practices**
According to the Native American Lending Study, 15% of Native American people must travel more than 100 miles to the nearest bank or ATM. The same report suggested that only 14 percent of Indian land located in the United States has a financial institution in the community, and nearly 55 percent of non-tribally affiliated financial institutions do not offer conventional home mortgages on or near Indian lands, and over 70 percent do not offer home equity loans. *People are used to the high rates. This provides a continuing market due to ignorance and minimal access to traditional banking institutions/lenders.* ***Cherokee***	***Partnerships and endorsements with financial institutions.*** *We are currently working to build relationships with financial institutions.* ***Yurok*** *Fannie Mae is trying to develop more financial institutions that will benefit tribes like the* ***Chickasaw****.* ***Increasing the number of financial institutions.*** Develop relationship with supportive industry partners such as in the Bank of America Indian Country 2010 initiative. *Partner with Norwest Bank (Wells Fargo) to build four new branch banks with ATMs.* ***Navajo Nation*** Many tribes are developing community development financial institutions (CDFIs) to provide financial services in their communities. Currently there are nearly 100 CDFIs in Indian Country. For more information, visit www.oweesta.org.

Table 4: Improve Education and Outreach

The lack of education and knowledge of financial services is a primary barrier that hinders communities' actions against predatory practices. Tribal citizens are not educated on what may constitute predatory practices, and in some cases, the housing authorities and tribal governments have not educated themselves on the issue. Several tribes including the Chickasaw, Yurok, Pueblo of Acoma, Three Affiliated Tribes, Creek Nation, Confederated Tribes of Grand Ronde, and the Hupa claimed that lack of education was one of the main reasons predatory lending has become such a problem. Education is a critical element in mitigating and eliminating the practice of predatory lending and in helping families make informed choices.	
Issues	**Successful Practices**
The key is to get the public educated so that they look for the hidden fees, and know about getting documentation and proof. ***Chickasaw*** *Lack of education, people don't know what to look for.* ***Yurok*** *Education or lack of. There is a limited amount of education. Many are not familiar with these practices and we have nothing to compare with.* ***Pueblo of Acoma*** *Lack of education and knowledge. Many people will take whatever rate they can get quickly in order to purchase a house, car, or other items.* ***Hupa*** *There is lack of knowledge. Ignorance to the problem is very high. The Creek Nation would not even know about the problem, except for Mutual Help Home owners paying off their loans and then losing their houses within months of doing this.* ***Creek Nation*** *Education, many are unaware the problem exists.* ***Three Affiliated Tribes*** *Ignorance is the biggest problem.* ***Confederated Tribes of Grand Ronde*** *The Northern Cheyenne cite a lack of communication as being a significant issue.* ***Northern Cheyenne***	***Credit Counseling*** *Some practices are going down because credit counseling is becoming mandatory and more questions are being asked when a big payment is required.* ***Chickasaw*** ***Financial Literacy Education*** *Money is being spent to help improve financial literacy with budget and credit counseling.* ***Cherokee*** Many tribes are providing financial literacy education in tribal colleges, IDA programs, and housing authorities. ***Outreach*** *The housing authority goes to community lunches with the elderly and educates them on predatory lending.* ***Choctaw*** *Fannie Mae is trying to develop more financial institutions that will benefit tribes like the Chickasaw.* ***Chickasaw*** *Not only are tribal members being educated, but housing authority employees have attended conferences on predatory lending.* ***Yurok*** ***Life Skills*** According to the respondents from the Creek Nation, education plays a big role. The Creek are using media and internal education to prevent predatory lending. They are also developing a program for high school seniors to give them life skill information on how to avoid predatory lenders. The tribe is also active in strategizing for workshops to help inform other tribal housing authorities of the problem of predatory lending. ***First Time Home Buyers*** *Colleges and the housing authority are both offering opportunities to learn about loans and possible predatory practices. The housing authority offers a first-time homebuyers course. They also offer loan programs that make it fairly easy to get a good loan as long as you shop around a little.* ***Salish Kootenai***

Table 5: Build Tribal Institutional Capacity

Tribal communities can build institutional capacity by leveraging the work of their housing authorities, commerce, or business development departments. The creation of tribal loan programs and community development financial institutions is also a promising practice. Individual Development Account programs (IDAs) and credit counseling centers may help the community identify predators and develop the skills to combat them. Many tribal colleges are also offering financial literacy programs, and such programs are also being offered by community organizations.

Tribal citizens and employees have expressed concern that tribal governments are not dealing with predatory lending issues. These perceptions provide insight into the importance of effective self-governance that is respected and that will act to enforce laws and enact legislation. Sovereignty is impaired without sound institutions.

Issues	Successful Practices
Predatory lending is not a priority yet for the tribal government. ***Yavapai Apache*** *They are not aware that it is a problem. For them the bigger issue is trying to get loans for their tribal members.* ***Pasqua Yaqui*** *Right now it is not a high priority for the tribal government.* ***Three Affiliated Tribes*** *The tribal government is starting to get more involved now. It wasn't highlighted in the past because no one would come forward and admit to these problems, possibly due to embarrassment.* ***Chickasaw Nation*** Politics is often the primary barrier. The tribal government will bail out members if they get in trouble, but they have not tried to prevent predatory practices. In some rural communities, tribal governments need to develop the perception of trust matched by performance.	***Tribally Owned Loan Programs*** *The* ***Hupa*** *tribe has its own loan program to combat these practices.* *Partner with the nonprofit Coastal Enterprise, Inc. to promote housing and business development.* ***Penobscot Nation*** *Develop credit union that becomes the bridge between banks and tribal borrowers.* ***Hopi Credit Association*** ***Community Development Financial Institutions*** ***The Lakota Fund*** *is a private nonprofit community development financial institution for the Lakota people of the Oglala Lakota Nation in southwestern South Dakota. The Fund was started in 1986 and has made over a million dollars in loans to almost 300 tribal members to develop small businesses and microenterprises through its two lending programs. For more information: www.lakota.org.* **Financial Literacy Education** ***First Nations Development Institute****, in collaboration with local community trainers, has used their culturally appropriate financial literacy curriculum to provide training to over 30 tribal communities and train 500 community trainers.*

Table 6: Exercise Tribal Sovereignty

<table>
<tr><td colspan="2">Native American tribes can exercise their sovereignty by enacting legislation. The operating rules within the tribal reservations or jurisdictional areas can be clarified through various legislative actions including Consumer Protection Acts and Uniform Commercial Codes. These “Laws of Operation” can be further augmented by legislation to regulate the lending process in Native communities. Anti-predatory lending legislation should be passed.

By enacting legislation, tribes can address a range of issues related to access to credit, equitable access to financial institutions, lending on trust land, and predatory lending.</td></tr>
<tr><th>Issues</th><th>Successful Practices</th></tr>
<tr><td>The Pueblo of Acoma expressed the issue of trust land as a major barrier. “We are dealing with trust lands. Titles and ownership deeds are often not available which makes getting reasonable loans difficult.”

The Salish Kootenai describes jurisdictional issues as a barrier, one of which is determining specific authority that a tribe holds on a reservation. Resolving these jurisdictional issues would allow the tribe to prosecute the offending businesses.

The Yavapai Apache identified stereotyping as a cause for predatory lending while the Seminole identified racism on all levels, including white to Indians, Indians to white, and Indians to black. It was reported that some lenders would not consider lending to Native Americans.</td><td>Consumer Protection Act

We have developed the Consumer Protection Act that limits overall financing on vehicles to approximately 18%. Navajo

Performance Monitoring

The Creek Nation monitors who it does business with, which cuts down on the incidents of predatory lending. The Mutual Help Homes people, however, often go to predatory lenders after paying off their MHH loans to the tribe. Creek Nation

Development of Uniform Commercial Code (UCC)

The following tribes are developing or have a Uniform Commercial Code: Eastern Cherokee, Navajo Nation, Crow Tribe, Hupa Valley Tribe, Lummi Nation, Northern Cheyenne, Mille Lacs Band of Ojibwe, Rosebud Sioux, Standing Rock Sioux, and Winnebago.</td></tr>
</table>

Table 7: Leverage Industry and Nonprofit Knowledge

<table>
<tr><td colspan="2">Many nonprofit organizations, associations, and regulatory agencies can be utilized to provide technical support, advice, and guidance. They have the institutional knowledge and capacity to share current best practices with tribes and Native communities. Regulatory institutions can provide greater enforcement to curb predatory lending (as seen with recent enforcement actions against Household Finance and Citibank). Nonprofits like the National Community Reinvestment Coalition (NCRC), National American Indian Housing Council (NAIHC), and First Nations Development Institute can continue to provide information and best practices to curb predatory lending.</td></tr>
<tr><th>Issues</th><th>Successful Practices</th></tr>
<tr><td>Greater Enforcement

• Fair Housing and Equal Opportunity Act

• Real Estate Settlement Procedure Actions

• Home Owners Equity Protection Act

Leveraging the Knowledge of Regulatory Oversight such as Federal Deposit Insurance Corporation (FDIC), Federal Reserve, and Office of the Comptroller.

Curbing Predatory Home Mortgages – U.S. Department of Treasury and HUD</td><td>Nonprofits

Develop a financial literacy curriculum to help Native Communities. First Nations Development Institute with Fannie Mae Foundation

Advocate for more than 400 tribes in assisting in the development of decent, safe, sanitary, and cultural appropriate housing. National American Indian Housing Council (NAIHC)

Develop and advocate legislation that curbs predatory lending. Develop model anti-predatory lending bills for tribal councils and provide hands-on training. National Community Reinvestment Coalition (NCRC)

Note: See Appendix A for an example of model regulatory code.

Regulatory Agencies

Amend regulations that provide for greater mortgage application and loan discloser and broadens scope of loans subject to the Home Ownership and Equity Protection Act (HOEPA). Federal Reserve Board

Issue directives to strengthen the examinations and supervisor of institutions that have significant sub-prime lending programs. Federal Deposit Insurance Corporation, Board of Governors for the Federal Reserve Office of the Comptroller of the Currency and the Office of Thrift Supervision.

Collect data, develop findings, and recommend actions to address predatory lending practices. Department of Housing and Urban Development and U.S. Treasury Department.</td></tr>
</table>

Suggested Model Regulatory Code

According to NCRC, legislative actions against predatory lending have recently been initiated across the United States at the federal, state, and community levels. Legislation has been proposed by Congress and several states to combat predatory lending. Recently, those combating predatory lending experienced some victories when anti-predatory lending legislation passed in New York, California, Georgia, and North Carolina.

Tribes also have an opportunity to curb abusive behaviors by the use of anti-predatory lending legislation. Given the difficulty of gaining consensus on a national level, tribes can design and implement their own legislation to limit predatory practices in their own communities. Attached in Appendix A is some model anti-predatory lending legislation that could be used by tribes. This legislation was developed as part of NCRC's Anti Predatory Lending Toolkit, March 2002 edition, and can be found on their website at www.ncrc.org.

Native American tribes can exercise their sovereignty, develop legislation, and enforce regulatory codes to mitigate predatory lending in their communities. The success of these initiatives is predicated on the strength and effectiveness of the tribal institutions of the judicial, administrative, and legislative branches. As explained in *"Sovereignty and Nation-Building: The Development Challenge in Indian Country Today"* by Stephen Cornell and Joseph P. Kalt of the Harvard Project on American Indian Economic Development, the success of Native American change efforts hinges on four interrelated requirements:

- Assertion of tribal sovereignty.
- Effective institutions that build confidence by being stable and competent.
- Strategic direction to focus government programs and initiatives.
- Decisions and actions to carry out strategies for change or development that are based on Native lifeways.

Consistent with this view, development of regulatory code must be backed by effective institutions such as independent tribal courts and effective tribal legal frameworks.

Conclusion

Although predatory lending is a problem in many Native American communities, there are many opportunities for tribal governments and tribal institutions to act to curb predatory practices. Tribal governments can exercise tribal sovereignty, enacting laws and promoting legislation to influence the entire lending process in Native communities and restrict predatory lending. Tribes can also continue to develop their tribal institutions, such as housing authorities and credit associations, to buffer, educate, support, and serve their citizens by providing financial literacy training, credit counseling, and even credit options such as mortgage financing. Finally, there is a need to consistently share information through community networks to make sure all tribal community members are educated about the practices that predatory lenders use. Predatory lending practices strip Native communities of their assets. It is only through these strategies to combat predatory practices will tribal assets be protected and tribal communities be safe from unscrupulous lenders.

Resources

There are many organizations that are actively working to combat predatory lending across the nation. More information on each of these organizations is available on their websites.

National Community Reinvestment Coalition
http://www.ncrc.org/

National American Indian Housing Council
http://naihc.net/

Fannie Mae Foundation
http://www.fanniemae.com/

First Nations Development Institute and First Nations Oweesta Corporation
www.firstnations.org

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Appendix A

Model Anti-Predatory Lending Code

The source for this information is the National Community Reinvestment Coalition's Anti-Predatory Lending Toolkit, March 2002 edition. For more information, please visit NCRC's website at www.ncrc.org

NCRC Model Anti-Predatory Lending Legislation

Section 1. Title.

This Chapter shall be known as the Homeowner Protections from Predatory Lending Act of 2003.

Section 2. Legislative findings.

The Legislature finds and declares that unscrupulous mortgage lenders often engage in "predatory lending," practices in which lenders make unsuitable loans designed to exploit vulnerable unsophisticated borrowers. These "predatory loans" are a subset of sub-prime lending and loans and have one or more of the following features:

(a) Charges more in interest and fees than is required to cover the added risk of lending to borrowers with credit imperfections;

(b) Contains abusive terms and conditions that trap borrowers and lead to increased indebtedness;

(c) Does not take into account the borrower's ability to repay the loan; or

(d) Violates fair lending laws by targeting women, senior citizens, minorities and communities of color.

Section 3. Definitions.

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company, pursuant to the federal "Bank Holding Company Act of 1956" (12 U.S.C. §1841 et seq.).

(2) "Annual percentage rate" means the annual percentage rate for a loan calculated pursuant to the federal "Truth in Lending Act" (15 U.S.C. §1601 et seq.), and the regulations promulgated by the Federal Reserve Board.

(3) "Bona fide loan discount points" means loan discount points knowingly paid by a borrower for the purpose of reducing, and which result in a reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry practices for mortgage market transactions.

(4) "Borrower" means any natural person or persons obligated to repay a loan, including without limitation, a co-borrower, cosigner, or guarantor.

(5) "Credit insurance" means any credit life, credit disability, credit unemployment, accident, health, or loss-of-income insurance or any other line or subline of insurance which may become accepted as credit insurance by the insurance and lending industries or any debt cancellation or suspension agreement or contract (whether or not the debt cancellation or suspension agreement or contract coverage is insurance under applicable law) or any similar product.

(6) "Creditor" means a person who extends consumer credit that is subject to a finance charge or that is payable by written agreement in more than four installments and to whom the obligation is payable.

(7) "High cost home loan" means any loan or extension of credit, including an open-end line of credit but excluding a reverse mortgage transaction, as defined in 12 C.F.R. §226.33, as from time to time amended:

(a) The principal amount of the loan does not exceed the lesser of the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association, or $300,000;

(b) The borrower is a natural person;

(c) The debt is incurred by the borrower primarily for personal, family, or household purposes;

(d) The loan is secured by a security interest or mortgage on real estate upon which there is erected or to be erected a one-to-four family dwelling; and

(e) The terms of the loan equal or exceed one or more of the "thresholds," as that term is defined in this Act.

(8) "Home loan" means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property or a manufactured home located in (specify state, county, city, etc.), regardless of where made, including the renewal or refinancing of any such loan. Without limiting the generality of the foregoing, the term specifically includes a home equity line of credit, a commercial or small business loan secured by a residential property or manufactured home, or other similar agreement.

(9) "Junior mortgage" means a home loan secured by a deed of trust or mortgage on real property if the deed of trust or mortgage is junior in priority to another deed of trust or mortgage on the real property.

(10) "Lender" means any person who makes a home loan or acts as a mortgage broker with respect to a home loan.

(11) “Loan consummation” means the time that a consumer becomes contractually obligated on a credit transaction.

(12) “Mortgage broker” means any person who functions as intermediary for a fee between the borrower and the creditor in the making of a home loan.

(13) “Originate” means to arrange, negotiate, or make a consumer loan.

(14) “Prepayment penalty” means any charge or penalty for paying all or part of the principal before the date on which the principal is due and includes computing a refund of unearned interest by a method that is less favorable to the borrower than the actuarial method, as defined by Section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. §1615(d), as from time to time amended.

(15) “Points and fees” means:

(a) All items required to be disclosed under 12 C.F.R. §§226.4 14 (a) and 226.4 (b), as amended, except interest or the time-price differential;

(b) All charges for items listed under 12 C.F.R. §226.4 (c) (7), as amended, if the creditor receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the creditor, or third party or parties;

(c) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a home loan in its own name through an advance of moneys and subsequently assigns the home loan to the person advancing the moneys;

(d) The cost of all premiums financed by the creditor, directly or indirectly, for any credit life, credit disability, credit unemployment, credit property, or other credit life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract; except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the creditor;

(e) The maximum prepayment fees or penalties that may be charged or collected under the terms of the loan documents;

(f) All prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made by the same creditor or an affiliate of the creditor;

(g) For open-ended loans, the points and fees are calculated by adding the total fees charged at closing plus the maximum additional fees that can be charged pursuant to the loan documents during the term of the loan.

(h) The term “points and fees” does not include any of the following:

i. Taxes, filing fees, recording charges, and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;

ii. Charges paid to a person other than the creditor, an affiliate of the creditor, a mortgage broker, or an affiliate of a mortgage broker, as follows: fees for flood certification; fees for pest infestation and flood determinations; appraisal fees, fees for inspections performed prior to loan closing; credit report fees; survey fees; attorney fees if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow fees if not otherwise included under paragraph (a) of this subsection; title insurance premiums; or fire insurance or flood insurance premiums if the conditions in section 226.4 (d) (2) of Title 12 of the Code of Federal Regulations are met.

(16) "Rate" means the interest rate charged on the home loan, based on an annual simple interest yield.

(17) "Threshold" means any one of the following:

(a) The annual percentage rate of the loan equals or exceeds:

i. By more than 4 percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor, if the home loan is a first mortgage; or

ii. By more than 5 percentage the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor, if the home loan is a junior mortgage.

(b) The total points and fees equals or exceeds 3 percent of the total loan amount or $400, whichever amount is greater; provided, the following discount points shall be excluded from the calculation of the total points and fees payable by the borrower:

i. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

ii. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

If the terms of the home loan provide for an initial or introductory period during which the annual percentage rate is lower than that which will apply after the end of such initial or introductory period, then the annual percentage rate to be considered for purposes of this definition is the rate which applies after the initial or introductory period. If the terms of the home loan provide for an annual percentage rate that varies in accordance with an index plus a margin, then the annual percentage rate to be considered for purposes of this definition is the rate that is in effect on the date of loan consummation. In the case of a home loan with a regular interest rate that varies in accordance with an index plus a margin, but with an initial or introductory interest rate established in some other manner, the annual percentage rate to be considered is the rate that would have been in effect on the date of loan consummation were the regular rate determined by the index plus the margin to apply, that is, the fully-indexed rate on the date of loan consummation

(18) "Total loan amount" means the principal of the loan minus those points and fees as defined in subsection (15) of this section that are included in the principal amount of the loan. For open-ended loans, the total loan amount shall be calculated using the total line of credit allowed under the home loan.

Section 4. Limitations on home loans.

A home loan shall be subject to the following limitations:

(1) **No financing of credit insurance.** No creditor making a home loan may finance, directly or indirectly, the premiums for any credit life, credit disability, credit property, or credit unemployment insurance, or any other life or health insurance premiums, or any payments for any debt cancellation or suspension agreement or contracts. Insurance premiums that are not included in the home loan principal and that are calculated and paid on a monthly basis shall not be considered to have been financed by the creditor for purposes of this subsection.

(2) **No flipping.** No creditor shall knowingly or intentionally engage in the unfair act or practice of flipping a consumer home loan. For the purposes of this section, "flipping" is the making of a consumer home loan to a borrower which refinances an existing consumer home loan when the new loan does not have a tangible benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's

circumstances. Home loan refinancings are presumed to be flippings if the primary tangible benefit to the borrower is an interest rate lower than the interest rate on debts satisfied or refinanced in connection with the home loan, and it will take more than four (4) years for the borrower to recoup the costs of the points and fees and other closing costs through savings resulting from the lower interest rate. The provisions of this subsection shall apply regardless of whether the interest rate, points, fees and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds as defined in subsection (17) of section 3 of this Act.

(3) **No default recommendations.** No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a consumer home loan that refinances all or any portion of that existing loan or debt.

(4) **No excessive late fees.** A creditor shall not charge a late payment fee except according to the following rules:

(a) The late payment fee may not be in excess of four percent (4%) of the amount of the payment past due.

(b) The late payment fee may be assessed only for a payment past due for fifteen (15) days or more.

(c) The late payment fee may not be charged more than one (1) time with respect to a single late payment. If a late payment charge is deducted from a payment made on the loan, and the deduction causes a subsequent default on a subsequent payment, no late payment charge may be imposed for the default. If a late payment charge has been imposed one (1) time with respect to a particular late payment, a late payment fee may not be imposed with respect to any future payment that would have been timely and sufficient, but for the previous default.

(d) A late payment fee may not be charged unless the creditor notifies the borrower within forty-five (45) days following the date the payment was due that a late payment charge has been imposed for a particular late payment. No late payment charge may be collected from any borrower if the borrower informs the creditor that nonpayment of an installment is in dispute and presents proof of payment within forty-five (45) days after receipt of the creditor's notice of the late charge.

(e) A creditor shall treat each payment as posted on the same date as it was received by the creditor, servicer, or creditor's agent, or at the address provided to the borrower by the creditor, servicer, or the creditor's agent for making payments.

(5) **No refinancing of special mortgages.** No creditor may make a home loan if the new loan refinances an existing home loan that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government, or

nonprofit organization, that either bears nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the mortgage.

(6) **No call provisions.** A home loan may not contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This subsection does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

(7) **No fee for balance or payoff.** A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a release upon prepayment. A creditor must provide payoff balance not later than seven (7) business days after the request is received by the creditor.

(8) **No fee for product where product not provided.** A creditor shall not charge a fee for a product or service where the product or service is not actually provided, or misrepresent the amount charged by or paid to a third party for a product or service.

(9) **No above market charges for services.** No third party shall charge or receive any unreasonable compensation for loan-related goods, products, and services. For the purpose of this section, "unreasonable compensation" is a price for loan-related goods, services, and products that is 50 percent higher than the average price in a metropolitan area or the non-metropolitan areas of a state. The average price can be determined by obtaining quotes for services from three or more third parties. Loan-related goods, products and services include fees for tax payment services, fees for flood certification, fees for pest infestation determinations, mortgage brokers' fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges and insurance premiums, including, for example, fire, title, life, accident and health, disability, unemployment, flood and mortgage insurance.

(10) **No false statements or representations.** A creditor, appraiser, or real estate agent shall not make or cause to be made, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a home loan including, without limitation, a false, deceptive, or misleading statement or representation regarding the borrower's ability to qualify for any mortgage product, or regarding the value of the dwelling.

A statement or representation is deceptive or misleading if it has the capacity to deceive or mislead a borrower or potential borrower. The commissioner shall consider the following factors in deciding whether a statement or representation is deceptive or misleading:

(a) The overall impression that the statement or representation reasonably creates.

(b) The particular type of audience to which the statement is directed.

(c) Whether it may be reasonably comprehended by the segment of the public to which the statement is directed.

(11) **No influencing appraisers.** A creditor shall not directly or indirectly compensate, coerce, or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate covered by a home loan or is being offered as security according to an application for a home loan.

(12) **No blanks in loan documents.** A home loan document in which blanks are left to be filled in after the contract is signed by the borrower is not enforceable under the law.

(13) **Required language accommodation.** If the discussions between the creditor and the borrower on a home loan are conducted primarily in a language other than English, the creditor shall, before closing, provide an additional copy of all information required to be disclosed to the borrower under the federal Truth in Lending Act, translated into the language in which the discussions were conducted, or make available an objective third party interpreter who can explain the loan transaction and translate the loan documents and disclosures into the language in which the discussions were conducted.

(14) **Required disclosure of yield spread premiums.** In the making of a home loan, the amount of yield spread premium and other compensation paid to mortgage brokers shall be disclosed to the borrower no later than 3 days prior to closing the home loan.

Section 5. Limitations on high cost home loans.

A high cost home loan shall be subject to the following limitations:

(1) **No financing of points and fees.** No creditor making a high cost home loan shall directly or indirectly finance:

(a) Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced;

(b) Any points and fees; or

(c) Any other charges payable to third parties.

(2) **No benefit from refinancing existing high cost home loan with new high cost home loan.** A creditor may not charge a borrower points, fees, or other charges in connection with a high-cost home loan if the proceeds of the high cost home loan are used to refinance an existing high-cost home loan held by the same creditor or an affiliate of the creditor.

(3) **Limit on prepayment penalties.**

i. A high cost loan shall not include a prepayment fee or penalty after the first 24 months after the date of consummation of the loan.

ii. A covered loan may include a prepayment fee or penalty up to the first 24 months after the date of consummation of the loan if:

iii. The person who originates the covered loan has also offered the consumer a choice of another product without a prepayment fee or penalty.

iv. The person who originates the covered loan has disclosed in writing to the consumer at least three business days prior to loan consummation the terms of the prepayment fee or penalty to the consumer for accepting a covered loan with the prepayment penalty and the rates, points, and fees that would be available to the consumer for accepting a covered loan without a prepayment penalty.

v. The person who originates the covered loan has limited the amount of the prepayment fee or penalty to an amount not to exceed the payment of six months' advance interest, at the contract rate of interest then in effect, on the amount prepaid in any 12-month period in excess of 20 percent of the original principal amount.

vi. A covered loan will not impose the prepayment fee or penalty if the covered loan is accelerated as a result of default.

vii. The person who originates the covered loan will not finance a prepayment penalty through a new loan that is originated by the same person.

(4) **No balloon payment.** No high cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. For a payment schedule that is adjusted to account for the seasonal or irregular income of the consumer, the total installments in any year shall not exceed the amount of one year's worth of payments on the loan. This prohibition does not apply to a bridge loan. For purposes of this paragraph, ''bridge loan'' means a loan with a maturity of less than 18 months that only requires payments of interest until the time when the entire unpaid balance is due and payable.

(5) **No steering.** No creditor making a high cost home loan may steer a borrower into a loan with higher costs than the lowest-cost category of loans for which the borrower could qualify with that creditor or any of its affiliates. No mortgage broker arranging a high cost home loan may steer a borrower into a loan with higher costs than the lowest-cost array of loans available to that borrower from the creditors with whom the mortgage broker regularly does business.

(6) **No negative amortization.** No high cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

(7) **No advance payments.** No high cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(8) **No increased interest rate upon default.** Except with regard to interest rate changes in a variable-rate loan in which the increase is otherwise consistent with the provisions of the loan documents and in which the event of default or the acceleration of the indebtedness does not trigger the change in the interest rate, no high cost home loan may contain a provision that increases the interest rate after default.

(9) **No modification or deferral fees.** A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high cost home loan or to defer any payment due under the terms of a high-cost home loan.

(10) **No mandatory arbitration clause.** No high cost loan may be subject to a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process. Non-binding arbitration and mediation would be acceptable forms of attempted dispute or conflict resolution.

(11) **No lending without home ownership counseling.** A creditor may not make a high cost home loan without first receiving certification from a counselor approved by the United States Department of Housing and Urban Development or the creditor's regulatory agency of jurisdiction that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

(12) **No lending without due regard to repayment ability.**

(a) A creditor may not make a high cost home loan unless the creditor reasonably believes at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan. In the case of a covered loan that is structured to increase to a specific designated rate, stated as a number or formula, at a specific predetermined date not exceeding 37 months from the date of application, this evaluation shall be based upon the fully indexed rate of the loan calculated at the time of application. In the case of multiple consumers, a creditor shall not include or add a borrower to the high cost loan, unless the individual or added borrower separately confirms in writing to the creditor that the borrower expects and commits to substantially contribute to payments.

The consumer shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, do not exceed 50 percent of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other reasonable means.

(b) No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, exceed 50 percent of the consumer's monthly gross income.

(c) In the case of a stated income loan, the reasonable belief requirement in paragraph (a) shall apply, however, for stated income loans that belief may be based on the income stated by the consumer, and other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of this type. A person shall not knowingly or willfully originate a covered loan as a stated income loan with the intent, or effect, of evading the provisions of this subdivision.

(13) **No attempted evasion.** A creditor who originates a high cost loan shall not avoid, or attempt to avoid, the application of this division by doing the following:

(a) Dividing any loan transaction into separate parts for the purpose of evading the provisions of this Act.

(b) Any other such acts or practices with the intent of evading the provisions of this Act.

(14) **Restrictions on home-improvement contracts.** A creditor may not pay a contractor under a home-improvement contract from the proceeds of a high cost home loan unless:

(a) The creditor is presented with a completion contract dated and signed by all parties to the home-improvement contract showing that the home improvements have been completed; and

(b) The instrument is payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the creditor, and the contractor prior to the disbursement.

(15) **Required notice.** A creditor or broker shall not sell, transfer or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:

"NOTICE: THIS IS A HOME LOAN SUBJECT TO SPECIAL RULES AND CONDITIONS AS REQUIRED BY LAW. PURCHASERS OR ASSIGNEES OF THIS LOAN SHALL BE LIABLE FOR ALL CLAIMS AND DEFENSES WITH RESPECT TO THE LOAN THAT THE BORROWER COULD ASSERT AGAINST THE CREDITOR OR BROKER OF THE LOAN."

(16) **Required reporting of payments.** Any lender who makes a high cost home loan shall report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit reporting agency at least annually during such period as the lender holds or services the loan.

Section 6. Right to cure.

(1) **Right to reinstate.** If a creditor asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument, the borrower or anyone authorized to act on the borrower's behalf shall have the right at any time, up to the time title is transferred by means of foreclosure, judicial proceeding and sale, or otherwise, to cure the default and reinstate the high cost home loan by tendering the amount or performance as specified in this section. Cure of default as provided in this section shall reinstate the borrower to the same position as if the default had not occurred and shall nullify, as of the date of the cure, any acceleration of any obligation under the security instrument or note arising from the default.

(2) **Grounds for reinstatement.** Before any action filed to foreclose upon the property or other action is taken to seize or transfer ownership of the property, a notice of the right to cure the default shall be delivered to the borrower informing the borrower of the following:

(a) The nature of default claimed on the high-cost home loan, and of the borrower's right to cure the default by paying the sum of money required to cure the default; except that a creditor or servicer shall not refuse to accept any partial payment made or tendered in response to such notice. If the amount necessary to cure the default will change during the twenty-day period after the effective date of the notice due to the application of a daily interest rate or the addition of late fees, as allowed by this Act, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the twenty-day period.

(b) The date by which the borrower must cure the default to avoid acceleration and initiation of foreclosure, or other action to seize the property, which date shall not be less than twenty days after the date the notice is effective, and the name, address, and telephone number of a person to whom the payment or tender shall be made;

(c) That if the borrower does not cure the default by the date specified, the creditor may take steps to terminate the borrower's ownership in the property by requiring payment in full of the high-cost home loan and commencing a foreclosure proceeding or other action to seize the property; and

(d) The name and address of the creditor and the telephone number of a representative of the creditor whom the borrower may contact if the borrower disagrees with the creditor's assertion that a default has occurred or the correctness of the creditor's calculation of the amount required to cure the default.

(3) **Fees.** To cure a default under this section, a borrower shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default as provided for in this section, other than the fees specifically allowed by this section. The borrower may be liable for attorney fees that are reasonable and actually incurred by the creditor, based on a reasonable hourly rate and a reasonable number of hours; except that the borrower shall not be liable for any attorney fees relating to the borrower's default that are incurred by the creditor prior to or during the twenty-day period set forth in this section.

Section 7. Enforcement and remedies.

(1) Any violation of this Act constitutes an unfair or deceptive trade practice.

(2) Any person found by a preponderance of evidence to have violated this Act shall be liable to the borrower for the following:

(a) Actual damages sustained by the borrower as a result of the violation. The borrower shall not be required to demonstrate reliance in order to receive actual damages.

(b) Statutory damages equal to the finance charges agreed to in the home loan agreement plus twenty percent of the amount financed for all violations;

(c) Punitive damages if the violation was malicious or reckless;

(d) Reasonable costs and attorney fees.

In addition, the court may, as the court deems appropriate, grant injunctive, declaratory, and other equitable relief in an action to enforce compliance.

(3) The intentional violation of this Act, including the absence of acting in good faith, renders the home loan agreement void. A creditor intentionally violating any provision in this Act shall have no rights to collect, receive, or retain any principal, interest, or other charges whatsoever with respect to the loan, and the borrower may recover any payments made under the agreement. Loan terms that violate the protections of Act are unenforceable, and the courts may issue orders to reform any terms to bring the loan into compliance.

(4) The brokering of a home loan that violates the provisions of this Act shall constitute a violation of such provisions.

(5) The rights of recission granted under 15 U.S.C. §1601, et seq., for violations of this Act and all other remedies provided in this Act shall be available to a borrower by way of recoupment against a party foreclosing on the home loan or collecting on the loan, at any time during the term of the loan.

(6) A borrower may also assert a violation of this Act as a defense, bar, or counterclaim to any default action, collection action, or judicial or nonjudicial foreclosure action in connection with a home loan.

(7) The remedies provided under this Act are cumulative. The protections and remedies provided under this Act are in addition to other protections and remedies that may be otherwise available under law. Nothing in this Act is intended to limit the rights of any injured person to recover damages or pursue any other legal or equitable action under any other applicable law or legal theory.

(8) Any entity that purchases or is otherwise assigned a home loan shall be liable for all claims and defenses with respect to the loan that the borrower could assert against the creditor or broker of the loan.

(9) A creditor that makes a home loan and that, when acting in good faith, fails to comply with the provisions of this Act will not be deemed to have violated this Act if the creditor establishes that either:

(a) Within thirty days after the loan closing, and prior to receiving any notice from the borrower or any governmental agency of such noncompliance, the creditor made appropriate restitution to the borrower and made appropriate adjustments to the loan; or

(b) Within sixty days after the loan closing, prior to receiving any notice from the borrower of such noncompliance, and the noncompliance was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, the creditor made appropriate restitution to the borrower and made appropriate adjustments to the loan. examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(10) Any city, county, city and county, or other appropriate governmental agency may sue on behalf of the public interest or on behalf of resident damaged by violations of this Act.

(11) High cost home loans shall be governed by this Act notwithstanding any other provision of law to the contrary.

Section 8. Severability.

The provisions of this Act shall be severable, and if any phrase, clause, sentence, paragraph, or provision of this Act, or the application thereof to any person or circumstance, is for any reason adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act nor the application of such phrase, clause, sentence, paragraph, or provision to other persons or circumstances, but shall be confined in its operation to the phrase, clause, sentence, paragraph, or provision thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. If any provision of this Act is declared to be inapplicable to any specific category, type, or kind of loan or points and fees, the provisions of this Act shall nonetheless continue to apply with respect to all other loans and points and fees.

Section 9. Effective date and applicability.

(1) **Effective date.** This Act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after enactment.

(2) **Applicability.** This Act shall apply to home loans and high cost home loans offered or originated or consummated on or after the applicable effective date of this Act.

Appendix B

Tribes Interviewed for Research Report

	Tribe	Region/State	Department
1	Yavapai Apache	New Mexico Area	Housing Department
2	Assiniboine-Fort Peck	Montana	Housing Department
3	Cherokee	Oklahoma	Housing Department
4	Chickasaw	Oklahoma	Housing Department
5	Choctaw	Oklahoma	Housing Department
6	Confederated Tribes of Grand Ronde[1]	Oregon	Housing Department
7	Creek	Oklahoma	Housing Department
8	Crow	Montana	Housing Department
9	Hupa	California Area	Housing Department
10	Navajo	New Mexico Area	Housing Department
11	Northern Cheyenne	Montana	Economic Development and Housing
12	Pasqua Yaqui	New Mexico Area	Housing Department
13	Sioux - Pine Ridge	South Dakota	Housing Department
14	Pueblo of Acoma	New Mexico Area	Housing Department
15	Seminole	Oklahoma	Housing Department
16	Sioux - Standing Rock	South Dakota	Housing Department
17	Wind River- Arapaho	Oklahoma	Chamber of Commerce
18	Yurok	California Area	Housing Department

[1] Not all data was collected from the Confederated Tribes of Grand Ronde so some charts only include 16 tribes.