

103^D CONGRESS
2^D SESSION

H. R. 5277

To address the need for private financing of home ownership and economic development on and near reservation lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1994

Mr. RICHARDSON (for himself and Ms. FURSE) (both by request) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

A BILL

To address the need for private financing of home ownership and economic development on and near reservation lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 101. POLICY.**

4 Based upon the findings and recommendations by the
5 Commission on American Indian, Alaska Native and Na-
6 tive Hawaiian Housing established by Public Law 101-
7 235, the Congress has determined that housing shortages
8 and deplorable living conditions are at crisis proportions
9 in Native American communities throughout the United

1 States. The lack of private capital to finance housing and
2 economic development for Native Americans and Native
3 American communities seriously exacerbates this problem.
4 To begin to address this crisis, it is the policy of the
5 United States to improve the economic conditions and sup-
6 ply of Housing in Native American communities through-
7 out the United States by creating the Native American
8 Financial Services Organization. It is anticipated that
9 when the Native American Financial Services Organiza-
10 tion is no longer a Congressionally chartered body cor-
11 porate, it will function as a tribal, State or District of Co-
12 lumbia corporation.

13 **SEC. 102. SHORT TITLE AND STATEMENT OF PURPOSES.**

14 (a) **SHORT TITLE.**—This Act may be cited as the
15 “Native American Financial Services Organization Act of
16 1994”.

17 (b) **PURPOSES.**—It is the purpose of this Act—

18 (1) to help serve the mortgage and other lend-
19 ing needs of Native Americans by assisting in the es-
20 tablishment and organization of Native American
21 Financial Institutions, developing and providing fi-
22 nancial expertise and technical assistance to Native
23 American Financial Institutions, including assist-
24 ance on how to overcome barriers to lending on Na-

1 tive American lands, and the past and present im-
2 pact of discrimination;

3 (2) to promote access to mortgage credit in Na-
4 tive American communities in the Nation by increas-
5 ing the liquidity of financing for housing and im-
6 proving the distribution of investment capital avail-
7 able for such financing, primarily through Native
8 American Financial Institutions;

9 (3) to promote the infusion of public capital
10 into Native American communities throughout the
11 United States and to direct sources of public and
12 private capital into housing and economic develop-
13 ment for Native American individuals and families,
14 primarily through Native American Financial Insti-
15 tutions; and

16 (4) to provide ongoing assistance to the second-
17 ary market for residential mortgages and economic
18 development loans for Native American individuals
19 and families, Native American Financial Institu-
20 tions, and other borrowers by increasing the liquidity
21 of such investments and improving the distribution
22 of investment capital available for such financing.

23 **SEC. 103. DEFINITIONS.**

24 (a) The term “Board of Directors” means the board
25 of directors of the Organization.

1 (b) The term “Chairperson” means the chairperson
2 of the Board of Directors.

3 (c) The term “designated merger date” means the
4 specific calendar date and time of day designated by the
5 Board of Directors under section 502(b).

6 (d) The term “Fund” means the Community Devel-
7 opment Financial Institutions Fund established by the
8 Community Development Banking and Financial Institu-
9 tions Act of 1994.

10 (e) The term “Indian Tribe” means any Indian tribe,
11 band, nation, or other organized group or community, in-
12 cluding any Alaska Native village or regional or village
13 corporation as defined in or established pursuant to the
14 Alaska Native Claims Settlement Act, which is recognized
15 as eligible for the special programs and services provided
16 by the United States to Indians because of their status
17 as Indians.

18 (f) The term “merger plan” means the plan of merg-
19 er adopted by the Board of Directors according to section
20 502(a).

21 (g) The term “Native American” means any member
22 of an Indian Tribe.

23 (h) The term “Native American Financial Institu-
24 tion” means a person (other than an individual) that—

1 (1) qualifies as a “community development fi-
2 nancial institution” under the Community Develop-
3 ment Banking and Financial Institutions Act of
4 1994;

5 (2) satisfies the requirements established by the
6 Community Development Banking and Financial In-
7 stitutions Act of 1994 and the Fund for applicants
8 for assistance from the Fund;

9 (3) demonstrates a special interest and exper-
10 tise in serving the primary economic development
11 and mortgage lending needs of the Native American
12 community; and

13 (4) demonstrates that it has the endorsement of
14 the Native American community it intends to serve.

15 (i) The term “new corporation” means the corpora-
16 tion formed according to section 501.

17 (j) The term “nonqualifying mortgage loan” means
18 a mortgage loan deemed by the Organization to be of such
19 quality, type, class or principal amount as to not meet the
20 purchase standards of the Federal National Mortgage As-
21 sociation or the Federal Home Loan Mortgage Corpora-
22 tion in effect on September 30, 1994.

23 (k) The term “Organization” means the Native
24 American Financial Services Organization.

1 (l) The term “qualifying mortgage loan” means a
2 mortgage loan deemed by the Organization to be of such
3 quality, type, class or principal amount as to meet the pur-
4 chase standards of the Federal National Mortgage Asso-
5 ciation or the Federal Home Loan Mortgage Corporation
6 in effect on September 30, 1994.

7 (m) The term “transition period” means the period
8 of time between the approval of the merger plan by both
9 the Secretary of Housing and Urban Development and the
10 Secretary of the Treasury and the designated merger date.

11 **SEC. 201. ESTABLISHMENT OF THE ORGANIZATION.**

12 (a) CREATION; BOARD OF DIRECTORS; POLICIES;
13 PRINCIPAL OFFICE; MEMBERSHIP; TERM; VACANCIES.—

14 (1) There is established and chartered a body
15 corporate to be known as the Native American Fi-
16 nancial Services Organization (“Organization”). The
17 Organization shall have existence as a Congression-
18 ally chartered body corporate until the designated
19 merger date, at which time its charter shall termi-
20 nate, unless such charter is earlier surrendered by
21 the Organization. The right to revise, amend or
22 modify the Organization charter is specifically and
23 exclusively reserved to the Congress.

24 (2) The powers of the Organization shall be
25 vested in a Board of Directors. The Board of Direc-

1 tors shall determine the policies that govern the op-
2 erations and management of the Organization. The
3 principal office of the Organization shall be in the
4 District of Columbia. For purposes of venue, Orga-
5 nization shall be considered a resident of the District
6 of Columbia.

7 (3)(A) The Board of Directors of the Organiza-
8 tion shall consist of nine persons, three of whom
9 shall be appointed by the President of the United
10 States to serve at the President's pleasure and six
11 of whom shall be elected by the class A stockholders,
12 all in accordance with the bylaws of the Organiza-
13 tion. If class B stock is issued under section 301(b),
14 the Board of Directors shall consist of 13 persons,
15 and the four additional members shall be elected by
16 the class B stockholders in accordance with the by-
17 laws of the Organization. Each member of the
18 Board of Directors shall be elected or appointed for
19 a term of four years, except that the members of the
20 initial Board of Directors shall have the following
21 terms: of the three members appointed by the Presi-
22 dent, one will have a two-year term, one will have a
23 three-year term, and one will have a four-year term,
24 all as designated by the President at the time of
25 their appointments; of the six members elected by

1 the class A stockholders, two will have two-year
2 terms, two will have three-year terms, and the re-
3 maining two will have four-year terms; and if class
4 B stock is issued and four additional members are
5 elected by the class B stockholders, one will have a
6 two-year term, one will have a three-year term, and
7 the remaining two will have four-year terms. All
8 members appointed by the President shall have ex-
9 pertise in one or more of the following areas—Na-
10 tive American housing and economic development
11 programs, financing in Native American commu-
12 nities, Native American governing bodies and court
13 systems, restricted and trust land issues, economic
14 development, and small consumer loans.

15 (B) The Board of Directors shall select a
16 Chairperson from among its members, except that
17 the initial Chairperson shall be selected from among
18 the members of the initial Board of Directors who
19 have been appointed or elected to four-year terms.

20 (C)(i) Any appointed directorship that becomes
21 vacant shall be filled by appointment by the Presi-
22 dent of the United States, but only for the unexpired
23 portion of the term.

24 (ii) Any elected directorship that becomes va-
25 cant shall be filled by appointment by the Board of

1 Directors, but only for the unexpired portion of the
2 term.

3 (D) Any member of the Board of Directors may
4 continue to serve after the expiration of the term of
5 office to which the director was appointed or elected
6 until a successor has been appointed or elected, and
7 qualified.

8 (b) POWERS OF THE ORGANIZATION.—The Organi-
9 zation shall have power—

10 (1) to adopt, alter, and use a corporate seal;

11 (2) to adopt bylaws, consistent with this Act,
12 regulating, among other things, the manner in
13 which—

14 (A) the business of the Organization shall
15 be conducted;

16 (B) the elected directors of the Organiza-
17 tion shall be elected;

18 (C) the stock of the Organization shall be
19 issued, held, and disposed of;

20 (D) the property of the Organization shall
21 be disposed of; and

22 (E) the powers and privileges granted to
23 the Organization by this Act and other law
24 shall be exercised and enjoyed;

1 (3) to make and perform contracts, agreements,
2 and commitments, including entering into a coopera-
3 tive agreement with the Fund;

4 (4) to prescribe and impose fees and charges
5 for services provided by the Organization;

6 (5) to settle, adjust, and compromise, and with
7 or without consideration or benefit to the Organiza-
8 tion to release or waive in whole or in part, in ad-
9 vance or otherwise, any claim, demand, or right of,
10 by, or against the Organization, provided that such
11 settlement, adjustment, compromise, release or waiv-
12 er shall not be adverse to the interests of the United
13 States;

14 (6) to sue and be sued, complain and defend, in
15 any tribal, State, Federal, or other court;

16 (7) to acquire, take, hold, and own, and to deal
17 with and dispose of any property;

18 (8) to determine its necessary expenditures and
19 the manner in which the same shall be incurred, al-
20 lowed, and paid, and appoint, employ, and fix and
21 provide for the compensation and benefits of offi-
22 cers, employees, attorneys, and agents as the Board
23 of Directors determines reasonable and not incon-
24 sistent with the provisions of this section;

1 (9) to incorporate a new corporation under
2 State, District of Columbia, or tribal law, as pro-
3 vided in section 501;

4 (10) to adopt a plan of merger, as provided in
5 section 502;

6 (11) to consummate the merger of the Organi-
7 zation into the new corporation, as provided in sec-
8 tion 503; and

9 (12) to have succession until the designated
10 merger date or any earlier date on which the Orga-
11 nization surrenders its Federal charter.

12 (c) INVESTMENT OF FUNDS; DESIGNATION AS DE-
13 POSITARY, CUSTODIAN, OR AGENT FOR ORGANIZATION OF
14 ANY FEDERAL RESERVE BANK, FEDERAL HOME LOAN
15 BANK, OR ANY BANK DESIGNATED AS DEPOSITARY OF
16 PUBLIC MONEY.—Moneys of the Organization not re-
17 quired to meet current operating expenses shall be in-
18 vested in obligations of, or obligations guaranteed by, the
19 United States or any agency thereof, or in obligations,
20 participations or other instruments that are lawful invest-
21 ments for fiduciary, trust or public funds. Any Federal
22 Reserve bank or Federal home loan bank, or any bank
23 as to which at the time of its designation by the Organi-
24 zation there is outstanding a designation by the Secretary
25 of the Treasury as a general or other depository of public

1 money, may be designated by the Organization as a depos-
2 itary or custodian or as a fiscal or other agent of the Orga-
3 nization, and is hereby authorized to act as such deposi-
4 tary, custodian, or agent.

5 (d) ACTIONS BY AND AGAINST THE ORGANIZATION;
6 JURISDICTION; REMOVAL OF ACTIONS; ATTACHMENT OR
7 EXECUTION ISSUED AGAINST THE ORGANIZATION.—Not-
8 withstanding section 1349 of title 28 of the United States
9 Code or any other provision of law—

10 (1) the Organization shall be deemed to be an
11 agency included in sections 1345 and 1442 of such
12 title 28;

13 (2) all civil actions to which the Organization is
14 a party shall be deemed to arise under the laws of
15 the United States, and the district courts of the
16 United States shall have original jurisdiction of all
17 such actions, without regard to amount or value;
18 and,

19 (3) any civil or other action, case or controversy
20 in a tribal court, court of a State, or in any court
21 other than a district court of the United States, to
22 which the Organization is a party may at any time
23 before the trial thereof be removed by the Organiza-
24 tion, without the giving of any bond or security, to
25 the district court of the United States for the dis-

1 district and division embracing the place where the
2 same is pending, or, if there is no such district
3 court, to the district court of the United States for
4 the District of Columbia, by following any procedure
5 for removal of causes in effect at the time of that
6 removal.

7 **SEC. 202. AUTHORIZED ASSISTANCE AND SERVICE FUNC-**
8 **TIONS.**

9 (a) TECHNICAL ASSISTANCE AND SERVICES.—The
10 Organization is authorized to—

11 (1) assist the Fund in the establishment and
12 organization of Native American Financial Institu-
13 tions;

14 (2) assist the Fund in developing and providing
15 financial expertise and technical assistance to Native
16 American Financial Institutions, including methods
17 of underwriting, securing, servicing, packaging, and
18 selling mortgage and small commercial and
19 consumer loans;

20 (3) develop and provide specialized technical as-
21 sistance on how to overcome barriers to primary
22 mortgage lending on Native American lands, includ-
23 ing issues related to trust lands, discrimination, high
24 operating costs, and inapplicability of standard un-
25 derwriting criteria;

1 (4) assist the Fund in providing mortgage un-
2 derwriting assistance (but not originate loans) under
3 contract to Native American Financial Institutions;

4 (5) work with the Federal National Mortgage
5 Association, the Federal Home Loan Mortgage Cor-
6 poration, and participants in the secondary market
7 for home mortgage instruments in identifying and
8 eliminating barriers to their purchase of Native
9 American mortgage loans originated by Native
10 American Financial Institutions and other lenders;

11 (6) obtain capital investments in the Organiza-
12 tion from Indian tribes, Native American organiza-
13 tions, and others;

14 (7) assist the Fund in its operation as an infor-
15 mation clearinghouse, providing information on fi-
16 nancial practices to Native American Financial In-
17 stitutions; and

18 (8) assist the Fund in monitoring and reporting
19 to the Congress on the performance of Native Amer-
20 ican Financial Institutions in meeting the economic
21 development and housing credit needs of Native
22 Americans.

23 (b) PURCHASES AND SALES OF MORTGAGES AND
24 MORTGAGE-BACKED SECURITIES.—In the event that the
25 Secretary of Housing and Urban Development determines

1 that the combined purchases by the Federal National
2 Mortgage Association and the Federal Home Loan Mort-
3 gage Corporation of residential one- to four-family Native
4 American nonqualifying mortgage loans originated by Na-
5 tive American Financial Institutions and other lenders (1)
6 in the second year following the establishment of the Orga-
7 nization total less than \$20,000,000, unless it can be dem-
8 onstrated to the Secretary of Housing and Urban Develop-
9 ment that such purchase goal could not be met, or (2)
10 in any succeeding year, total less than that amount which
11 the Secretary of Housing and Urban Development has de-
12 termined and published as a reasonable Native American
13 mortgage purchase goal for such combined purchases by
14 the Federal National Mortgage Association and the Fed-
15 eral Home Loan Mortgage Corporation in such year; the
16 Organization shall thereafter be permitted to make such
17 purchases. In determining such goal, the Secretary shall
18 take into account the Fund's study of Native American
19 lending and investment required by the Community Devel-
20 opment Banking and Financial Institutions Act of 1994.
21 The Organization, upon receiving written confirmation
22 from the Secretary of Housing and Urban Development,
23 is thereafter authorized, without restriction as to time,
24 to—

1 (1) with respect to residential mortgage loans
2 originated by Native American Financial Institutions
3 which are qualifying mortgage loans—

4 (A) purchase such qualifying mortgage
5 loans;

6 (B) hold such qualifying mortgage loans
7 for a period of time not to exceed twelve
8 months; and

9 (C) resell such qualifying mortgage loans
10 to the Federal National Mortgage Association,
11 the Federal Home Loan Mortgage Corporation
12 or other secondary market participants, as pro-
13 vided in section 303(b);

14 (2) with respect to residential mortgage loans
15 originated by the Native American Financial Institu-
16 tions which are nonqualifying mortgage loans—

17 (A) purchase such nonqualifying mortgage
18 loans from the Native American Financial In-
19 stitutions for such term as the Organization
20 deems appropriate including the life of the
21 mortgage loan, provided that—

22 (i) the Organization has reasonable
23 assurance that the loan will be repaid with-
24 in the time agreed;

1 (ii) the Native American Financial In-
2 stitution selling the loan retains a partici-
3 pation of not less than 10 per centum in
4 the mortgage;

5 (iii) the Native American Financial
6 Institution selling the loan agrees for such
7 period of time and under such cir-
8 cumstances as the Organization may re-
9 quire, to repurchase or replace the mort-
10 gage upon demand of the Organization in
11 the event that the loan is in default; or

12 (iv) that portion of the outstanding
13 principal balance of the loan which exceeds
14 80 per centum of the value of the property
15 securing such loan is guaranteed or in-
16 sured by a qualified insurer as determined
17 by the Organization; and

18 (B) issue mortgage-backed securities or
19 other forms of participants based on pools of
20 such nonqualifying mortgage loans, as provided
21 in section 303(c);

22 (3) to purchase, service, sell, lend on the secu-
23 rity of, and otherwise deal in (i) residential mort-
24 gages that are secured by a subordinate lien against
25 a one- or four-family residence that is the principal

1 residence of the mortgagor; and (ii) residential mort-
2 gages that are secured by a subordinate lien against
3 a property comprising five or more family dwelling
4 units; and

5 (4) rights and remedies of the Organization, in-
6 cluding without limitation on the generality of the
7 foregoing any rights and remedies of the Organiza-
8 tion on, under, or with respect to any mortgage or
9 any obligation secured thereby, shall be immune
10 from impairment, limitation, or restriction by or
11 under (1) any law (except laws enacted by the Con-
12 gress expressly in limitation of this sentence) which
13 becomes effective after the acquisition by the Orga-
14 nization of the subject or property on, under, or with
15 respect to which such right or remedy arises or ex-
16 ists or would so arise or exist in the absence of such
17 law, or (2) any administrative or other action which
18 becomes effective after such acquisition. The Organi-
19 zation is authorized to conduct its business without
20 regard to any qualification or similar statute in the
21 District of Columbia, or any State or tribal jurisdic-
22 tion.

23 **SEC. 203. NATIVE AMERICAN LENDING SERVICES GRANT.**

24 To the extent funds are available as provided in sec-
25 tion 602, and the Fund and the Organization enter into

1 a cooperative agreement for the Organization to provide
2 technical assistance and other services to Native American
3 Financial Institutions, such agreement shall provide that
4 the initial grant payment, anticipated to be \$5,000,000,
5 shall be made when the initial Organization Board of Di-
6 rectors takes office. The payment of the balance of
7 \$5,000,000 shall be made to the Organization not later
8 than one year from the date of the initial grant payment.

9 **SEC. 204. AUDITS.**

10 (a) INDEPENDENT AUDITS.—

11 (1) The Organization shall have an annual
12 independent audit made of its financial statements
13 by an independent public accountant in accordance
14 with generally accepted auditing standards.

15 (2) In conducting an audit under this sub-
16 section, the independent public accountant shall de-
17 termine and report on whether the financial state-
18 ments of the Organization (A) are presented fairly
19 in accordance with generally accepted accounting
20 principles, and (B) to the extent determined nec-
21 essary by the Director of the Office of Federal
22 Housing Enterprise Oversight of the Department of
23 Housing and Urban Development, comply with any
24 disclosure requirements imposed under section 401.

25 (b) GAO AUDITS.—

1 (1) Beginning after the first two years of the
2 Organization's operation, unless earlier required by
3 any other statute, grant or agreement, the pro-
4 grams, activities, receipts, expenditures, and finan-
5 cial transactions of the Organization shall be subject
6 to audit by the Comptroller General of the United
7 States under such rules and regulations as may be
8 prescribed by the Comptroller General.

9 (2) To carry out this subsection, the represent-
10 atives of the General Accounting Office shall have
11 access to all books, accounts, financial records, re-
12 ports, files and all other papers, things, or property
13 belonging to or in use by the Organization and nec-
14 essary to facilitate the audit, and they shall be af-
15 forded full facilities for verifying transactions with
16 the balances or securities held by depositaries, fiscal
17 agents, and custodians. The representatives of the
18 General Accounting Office shall also have access,
19 upon request to the Organization or any auditor for
20 an audit of the Organization under subsection (a),
21 to any books, accounts, financial records, reports,
22 files, or other papers, things, or property belonging
23 to or in use by the Organization and used in any
24 such audit and to any papers, records, files, and re-
25 ports of the auditor used in such an audit.

1 (3) A report on each such audit shall be made
2 by the Comptroller General to the Congress.

3 (4) The Organization shall reimburse the Gen-
4 eral Accounting Office for the full cost of any such
5 audit as billed therefor by the Comptroller General.

6 **SEC. 205. ANNUAL HOUSING AND ECONOMIC DEVELOP-**
7 **MENT REPORTS.**

8 The Organization shall collect, maintain, and provide
9 to the Secretary of Housing and Urban Development, in
10 a form determined by the Secretary, such data relating
11 to its mortgages on housing consisting of one to four
12 dwelling units and of more than four dwelling units and
13 to its activities relating to economic development as the
14 Secretary deems appropriate.

15 **SEC. 206. ADVISORY COUNCIL.**

16 (a) ESTABLISHMENT.—The Board of Directors shall
17 establish an Advisory Council.

18 (b) MEMBERSHIP.—The Advisory Council shall con-
19 sist of thirteen members, one representative from each of
20 the twelve districts established by the Bureau of Indian
21 Affairs and one from Hawaii. Each member shall be ap-
22 pointed by the Board of Directors. No fewer than six of
23 the members of the Advisory Council shall have financial
24 expertise. No fewer than nine of the Advisory Council shall
25 be Native Americans. Each member shall be appointed for

1 a term of four years; except that the initial council shall
2 be appointed as follows: four members will have a two-
3 year term, four members will have a three-year term, and
4 the remaining five members will have a four-year term,
5 all as designated by the Board of Directors at the time
6 of their appointments.

7 (c) DUTIES.—The Advisory Council shall advise the
8 Board of Directors on all policy matters of the Organiza-
9 tion. Through the regional representation of its members,
10 the Council shall provide information to the Board from
11 all sectors of the Native American community.

12 **SEC. 301. CAPITALIZATION OF THE ORGANIZATION.**

13 (a) CLASS A STOCK.—The Class A stock of the Orga-
14 nization shall be issued to Indian Tribes. The allocation
15 shall be by population as determined by the Secretary of
16 Housing and Urban Development in consultation with the
17 Secretary of the Interior. The class A stock shall have
18 such par value and other characteristics as the Organiza-
19 tion provides. The class A stock shall be vested with voting
20 rights, each share being entitled to one vote. The class
21 A stock is nontransferable only and it shall be surrendered
22 to the Organization in the event the holder is no longer
23 recognized as an Indian Tribe under this Act.

24 (b) CLASS B STOCK.—The Organization is author-
25 ized to issue class B stock evidencing capital contributions

1 in the manner and amount, and subject to any limitations
2 on concentration of ownership, as may be established by
3 the Organization. When authorized to be issued, the class
4 B stock shall be available for purchase by investors, and
5 shall be entitled to such dividends as may be declared by
6 the Board of Directors in accordance with subsection (c).
7 The class B stock shall have such par value and other
8 characteristics as the Organization provides. The class B
9 stock shall be vested with voting rights, each share being
10 entitled to one vote. The class B stock is transferable only
11 on the books of the Organization.

12 (c) CHARGES AND FEES; EARNINGS.—

13 (1) The Organization may impose charges or
14 fees, which may be regarded as elements of pricing,
15 with the objective that all costs and expenses of the
16 operations of the Organization should be within its
17 income derived from such operations and that such
18 operations would be fully self-supporting.

19 (2) All earnings from the operations of the Or-
20 ganization shall be annually transferred to the gen-
21 eral surplus account of the Organization. At any
22 time, funds in the general surplus account may, in
23 the discretion of the Board of Directors, be trans-
24 ferred to reserves.

25 (d) CAPITAL DISTRIBUTIONS.—

1 (1) Except as provided in paragraph (2), the
2 Organization may make such capital distributions
3 (as such term is defined in section 1303 of the Fed-
4 eral Housing Enterprises Financial Safety and
5 Soundness Act of 1992) as may be declared by the
6 Board of Directors. All capital distributions shall be
7 charged against the general surplus account of the
8 Organization.

9 (2) The Organization may not make any capital
10 distribution that would decrease the total capital (as
11 such term is defined in section 1303 of the Federal
12 Housing Enterprises Financial Safety and Sound-
13 ness Act of 1992) of the Organization to an amount
14 less than the capital level for the Organization estab-
15 lished under section 401 without prior written ap-
16 proval of the distribution by the Director of the Of-
17 fice of Federal Housing Enterprise Oversight of the
18 Department of Housing and Urban Development.

19 **SEC. 302. OBLIGATIONS AND SECURITIES OF THE ORGANI-**
20 **ZATION.**

21 (a) OBLIGATIONS.—The Organization is authorized
22 to borrow money, to give security, to pay interest or other
23 return, and to issue upon the approval of the Secretary
24 of the Treasury, notes, debentures, bonds, or other obliga-
25 tions having maturities and bearing such rate or rates of

1 interest as may be determined by the Organization with
2 the approval of the Secretary of the Treasury, provided
3 that such borrowing and issuing of obligations qualifies
4 as a transaction by an issuer not involving any public of-
5 fering under section 4(2) of the Securities Act of 1933.
6 Obligations issued by the Organization under this section
7 shall not be obligations of, nor shall payment of the prin-
8 cipal of or interest on such obligations be guaranteed by,
9 the United States or any agency thereof, and the obliga-
10 tions shall so plainly state.

11 (b) RESALES OF QUALIFYING MORTGAGE LOANS.—
12 The sale or other disposition by the Organization of quali-
13 fying mortgage loans under section 202(b)(1) shall be
14 upon such terms and conditions relating to resale, repur-
15 chase, substitution, replacement or otherwise as the Orga-
16 nization may prescribe, except that the Organization may
17 not guarantee or insure the payment of any mortgage loan
18 sold under section 202(b)(1).

19 (c) SECURITIES BACKED BY NONQUALIFYING MORT-
20 GAGE LOANS.—Securities in the form of debt obligations
21 or trust certificates of beneficial interest, or both, and
22 based upon nonqualifying mortgage loans held and set
23 aside by the Organization under section 202(b)(2), may
24 be issued upon the approval of the Secretary of the Treas-
25 ury and shall have such maturities and shall bear such

1 rate or rates of interest as may be determined by the Or-
2 ganization with the approval of the Secretary of the Treas-
3 ury provided that such issuing of securities qualifies as
4 a transaction by an issuer not involving any public offering
5 under section 4(2) of the Securities Act of 1933.

6 (d) PROHIBITIONS AND RESTRICTIONS; CREATION
7 OF LIENS AND CHARGES; RANK AND PRIORITY; CAUSES
8 OF ACTION TO ENFORCE; JURISDICTION; SERVICE OF
9 PROCESS.—The Organization may, by regulation or by
10 writing executed by the Organization, establish prohibi-
11 tions or restrictions upon the creation of indebtedness or
12 obligations of the Organization or of liens or charges upon
13 property of the Organization, including after-acquired
14 property, and create liens and charges, which may be
15 floating liens or charges, upon all or any part or parts
16 of the property of the Organization, including after-ac-
17 quired property. Such prohibitions, restrictions, liens, and
18 charges shall have such effect, including without limitation
19 on the generality of the foregoing such rank and priority,
20 as may be provided by regulations of the Organization or
21 by writings executed by the Organization, and shall create
22 causes of action which may be enforced by action in the
23 United States District Court for the District of Columbia
24 or in the United States district court for any judicial dis-
25 trict in which any of the property affected is located. Proc-

1 ess in any such action may run to and be served in any
2 judicial district or any place subject to the jurisdiction of
3 the United States.

4 (e) VALIDITY OF PROVISIONS; VALIDITY OF RE-
5 STRICTIONS, PROHIBITIONS, LIENS, OR CHARGES.—The
6 provisions of this section and of any restriction, prohibi-
7 tion, lien, or charge referred to in subsection (b) shall be
8 fully effective notwithstanding any other law, including
9 without limitation on the generality of the foregoing any
10 law of or relating to sovereign immunity or priority.

11 **SEC. 303. LIMIT ON TOTAL ASSETS AND LIABILITIES.**

12 The aggregate of—

13 (1) the total equity of the Organization, includ-
14 ing all capital from any issuance of class B stock;
15 and

16 (2) the total liabilities of the Organization, in-
17 cluding all obligations issued or incurred by the Or-
18 ganization,

19 shall not at any time exceed \$20,000,000.

20 **SEC. 401. REGULATION, EXAMINATION, REPORTS—OFHEO.**

21 (a) EFFECTIVE DATE OF SECTION.—The provisions
22 of this section shall be effective on the date the Secretary
23 of Housing and Urban Development makes the determina-
24 tion in accordance with the provisions of section 202(b),

1 that the Organization is authorized to purchase and sell
2 mortgages and mortgage-backed securities.

3 (b) IN GENERAL.—The Organization shall be subject
4 to the regulatory authority of the Office of Federal Hous-
5 ing Enterprise Oversight of the Department of Housing
6 and Urban Development with respect to all matters relat-
7 ing to the financial safety and soundness of the Organiza-
8 tion.

9 (c) DUTY OF DIRECTOR OF OFHEO.—The duty of
10 the Director of the Office of Federal Housing Enterprise
11 Oversight shall be to ensure that the Organization is ade-
12 quately capitalized and operating safely as a Congression-
13 ally chartered body corporate.

14 (d) POWERS OF DIRECTOR OF OFHEO.—The Direc-
15 tor of the Office of Federal Housing Enterprise Oversight
16 shall have all of the exclusive powers granted the Director
17 under section 1313 (b), (d), and (e) of the Housing and
18 Community Development Act of 1992, as determined by
19 the Director to be necessary or appropriate to regulate the
20 operations of the Organization.

21 (e) REPORTS TO DIRECTOR OF OFHEO.—

22 (1) The Organization shall submit to the Direc-
23 tor of the Office of Federal Housing Enterprise
24 Oversight annual reports of the financial condition
25 and operations of the Organization which shall be in

1 such form, contain such information, and be submit-
2 ted on such dates as the Director shall require.

3 (2) The Organization shall also submit to the
4 Director any other reports required by the Director
5 pursuant to section 1314 of the Housing and Com-
6 munity Development Act of 1992.

7 (3) Each report shall contain a declaration by
8 the president, vice president, treasurer, or any other
9 officer designated by the Board of Directors of the
10 Organization to make such declaration, that the re-
11 port is true and correct to the best of such officer's
12 knowledge and belief.

13 (f) FUNDING OF HEO OVERSIGHT.—

14 (1) The Director of the Office of Federal Hous-
15 ing Enterprise Oversight shall assess and collect
16 from the Organization such amounts as are nec-
17 essary to reimburse the Office for the reasonable
18 costs and expenses of the activities undertaken by
19 the Office to carry out the duty of the Director
20 under paragraph (2), including the costs of examina-
21 tions and overhead expenses.

22 (2) Annual assessments imposed by the Direc-
23 tor shall be—

24 (A) imposed prior to October 1 of each
25 year;

1 (B) collected at such time or times during
2 each assessment year as determined necessary
3 or appropriate by the Director;

4 (C) deposited into the Federal Housing
5 Enterprises Oversight Fund established by sec-
6 tion 1316(f) of the Housing and Community
7 Development Act of 1992; and

8 (D) available, to the extent provided in ap-
9 propriations Acts, for carrying out the Direc-
10 tor's responsibilities under this section.

11 **SEC. 402. REGULATION OF THE SECRETARY OF HUD.**

12 Except for the authority of the Director of the Office
13 of Federal Housing Enterprise Oversight as provided in
14 section 401, the Secretary of Housing and Urban Develop-
15 ment shall have general regulatory power over the Organi-
16 zation and shall make such rules and regulations applica-
17 ble to the Organization as determined necessary or appro-
18 priate by the Secretary of Housing and Urban Develop-
19 ment to ensure that the purposes of this Act are accom-
20 plished.

21 **SEC. 501. FORMATION OF NEW CORPORATION.**

22 (a) IN GENERAL.—In order to continue the accom-
23 plishment of the purposes of this Act beyond the terms
24 of the Federal charter of the Organization, the Board of
25 Directors shall, not later than 10 years after the date of

1 enactment of this Act, cause the formation of a new cor-
2 poration under the laws of any Tribe, any State of the
3 United States or the District of Columbia.

4 (b) POWERS OF NEW CORPORATION NOT PRE-
5 SCRIBED.—Except as provided in this section, the new
6 corporation may have whatever corporate powers and at-
7 tributes permitted under the laws of the jurisdiction of its
8 incorporation which the Board of Directors shall deter-
9 mine, in its business judgment, to be appropriate.

10 (c) USE OF NAFSO NAME PROHIBITED.—The new
11 corporation may not use in any manner the names “Native
12 American Financial Services Organization”, “NAFSO” or
13 any variation of either thereof.

14 **SEC. 502. ADOPTION AND APPROVAL OF MERGER PLAN.**

15 (a) IN GENERAL.—Not later than ten years after the
16 date of enactment of this Act, the Board of Directors shall
17 prepare, adopt, and submit to the Secretary of Housing
18 and Urban Development and the Secretary of the Treas-
19 ury for approval, a plan for merging the Congressionally
20 chartered Organization into the nonfederally chartered
21 new corporation.

22 (b) DESIGNATED MERGER DATE.—

23 (1) The Board of Directors shall establish the
24 designated merger date in the merger plan as a spe-
25 cific calendar date and time of day at which the

1 merger of the Organization into the new corporation
2 shall be effective.

3 (2) The Board of Directors may change the
4 designated merger plan by adopting an amended
5 plan of merger.

6 (3) Except as provided in paragraph (4), the
7 designated merger date in the merger plan or any
8 amended merger plan shall be not later than eleven
9 years after the date of enactment of this Act.

10 (4) The Board of Directors may adopt an
11 amended plan of merger that designates a date later
12 than eleven years after the date of enactment of this
13 Act if the Board of Directors submits to both the
14 Secretary of Housing and Urban Development and
15 the Secretary of the Treasury a report—

16 (A) stating that an orderly merger of the
17 Organization into the new corporation is not
18 feasible before the last date designated by the
19 Board of Directors;

20 (B) explaining why an orderly merger of
21 the Organization into the new corporation is
22 not feasible before the last date designated by
23 the Board of Directors;

24 (C) describing the steps that have been
25 taken to consummate an orderly merger of the

1 Organization into the new corporation not later
2 than eleven years after the date of enactment of
3 this Act; and

4 (D) describing the steps that will be taken
5 to consummate an orderly and timely merger of
6 the Organization into the new corporation.

7 (5) In no case shall any date designated by the
8 Board of Directors in an amended merger plan be
9 later than 23 years after the date of enactment of
10 this Act.

11 (6) In no case shall the consummation of an or-
12 derly and timely merger of the Organization into the
13 new corporation occur later than thirteen years after
14 the date of enactment of this Act.

15 (c) GOVERNMENTAL APPROVALS OF MERGER PLAN
16 REQUIRED.—The merger plan or any amended merger
17 plan shall not be effective until it has been approved by
18 both the Secretary of Housing and Urban development
19 and the Secretary of the Treasury.

20 (d) REVISION OF DISAPPROVED MERGER PLAN RE-
21 QUIRED.—If either the Secretary of Housing and Urban
22 Development or the Secretary of the Treasury, or both,
23 disapprove the merger plan or any amended merger plan,
24 the disapproving Secretary or Secretaries shall so notify
25 the Organization and indicate the reasons for that dis-

1 approval, and the Organization shall submit to the Sec-
2 retary or Secretaries an amended merger plan responsive
3 to such reasons within thirty days from the date of notifi-
4 cation of disapproval.

5 (e) NO STOCKHOLDER APPROVAL OF MERGER PLAN
6 REQUIRED.—No approval or consent of the stockholders
7 of the Organization shall be required to accomplish the
8 merger of the Organization into the new corporation.

9 **SEC. 503. CONSUMMATION OF MERGER.**

10 The Board of Directors shall cause the merger of the
11 Organization into the new corporation to be accomplished
12 according to the merger plan approved by the Secretary
13 of Housing and Urban Development and the Secretary of
14 the Treasury and all applicable requirements of the law
15 of the jurisdiction of incorporation of the new corporation.

16 **SEC. 504. TRANSITION.**

17 (a) CONTINUATION OF RIGHTS, DUTIES, AND RE-
18 STRICTIONS.—Except as provided in this section, the Or-
19 ganization shall, during the transition period, continue to
20 have all of the rights, privileges, duties, and obligations,
21 and be subject to all of the limitations and restrictions,
22 set forth in this Act.

23 (b) COLLATERALIZATION OF OUTSTANDING OBLIGA-
24 TIONS.—The Organization shall provide for all debt obli-
25 gations of the Organization which are outstanding on the

1 day before the designated merger date to be secured as
2 to principal and interest by obligations of the United
3 States held in trust for the holders of such obligations.
4 The collateralization and the trust shall be subject to such
5 requirements, terms and conditions as the Secretary of the
6 Treasury deems necessary or appropriate.

7 (c) ISSUANCE OF NEW OBLIGATIONS DURING TRAN-
8 SITION PERIOD.—As needed to carry out the purposes for
9 which it was formed, the Organization may, during the
10 transition period, continue to issue obligations under sec-
11 tion 303, provided that any new obligation issued during
12 the transition period shall mature before the designated
13 merger date.

14 **SEC. 505. EFFECT OF MERGER.**

15 (a) TRANSFER OF ASSETS AND LIABILITIES.—

16 (1) At the designated merger date, all property,
17 real, personal, and mixed, and all debts due on
18 whatever account, and all other choses in action and
19 all and every other interest of or belonging to or due
20 to the Organization shall be transferred to and vest-
21 ed in the new corporation without further act or
22 deed, and title to any property, whether real, per-
23 sonal, or mixed, shall not in any way be impaired by
24 reason of the merger.

1 (2) At the designated merger date, the new cor-
2 poration shall be responsible and liable for all obliga-
3 tions and liabilities of the Organization and neither
4 the rights of creditors nor any liens upon the prop-
5 erty of the Organization shall be impaired by the
6 merger.

7 (b) TERMINATION OF THE ORGANIZATION AND ITS
8 FEDERAL CHARTER.—At the designated merger date, the
9 surviving corporation of the merger shall be the new cor-
10 poration, the Federal charter of the Organization shall
11 terminate, and the separate existence of the Organization
12 shall terminate.

13 (c) REFERENCES TO THE ORGANIZATION IN ACTS OF
14 CONGRESS.—From and after the designated merger date,
15 any reference to the Organization in any Act of Congress
16 or in any rule or regulation promulgated under any Act
17 of Congress shall not be deemed to refer to the new cor-
18 poration.

19 (d) SAVINGS CLAUSE.—

20 (1) The merger of the Organization into the
21 new corporation shall not abate any proceeding com-
22 menced by or against the Organization before the
23 designated merger date, except that the new cor-
24 poration shall be substituted for the Organization as

1 a party to any such proceeding as of the designated
2 merger date.

3 (2) All contracts and agreements to which the
4 Organization is a party and which are in effect on
5 the day before the designated merger date shall con-
6 tinue in effect according to their terms, except that
7 the new corporation shall be substituted for the Or-
8 ganization as a party to those contracts and agree-
9 ments as of the designated merger date.

10 (3) Nothing in this Act affects the trust respon-
11 sibility of the United States or any legal obligation
12 or remedy arising therefrom.

13 **SEC. 601. AUTHORIZATION OF APPROPRIATIONS FOR NA-**
14 **TIVE AMERICAN FINANCIAL INSTITUTIONS.**

15 There is authorized to be appropriated, without fiscal
16 year limitation, to the Fund \$20,000,000 to provide finan-
17 cial assistance to Native American Financial Institutions.
18 To the extent that a Native American Financial Institu-
19 tion receives a portion of such appropriation, such monies
20 shall not be considered as matching funds required of the
21 Native American Financial Institution under the Commu-
22 nity Development Banking and Financial Institutions Act.

1 **SEC. 602. AUTHORIZATION OF APPROPRIATIONS FOR OR-**
2 **GANIZATION.**

3 The Secretary of Housing and Urban Development
4 is authorized, to the extent and in the amounts provided
5 in advance in appropriation Acts, to provide up to
6 \$10,000,000 to the Fund for the funding of a cooperative
7 agreement to be entered into by the Fund and the Organi-
8 zation for the technical assistance and other services to
9 be provided by the Organization to the Native American
10 Financial Institutions.

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