

104TH CONGRESS
1ST SESSION

H. R. 2412

To improve the economic conditions and supply of housing in Native American communities by creating the Native American Financial Services Organization, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 1995

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve the economic conditions and supply of housing in Native American communities by creating the Native American Financial Services Organization, 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 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Native American Financial Services Organization Act of
6 1995”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title.

TITLE I—STATEMENT OF POLICY; DEFINITIONS

- Sec. 101. Policy.
- Sec. 102. Statement of purposes.
- Sec. 103. Definitions.

TITLE II—NATIVE AMERICAN FINANCIAL SERVICES ORGANIZATION

- Sec. 201. Establishment of the organization.
- Sec. 202. Authorized assistance and service functions.
- Sec. 203. Native American lending services grant.
- Sec. 204. Audits.
- Sec. 205. Annual housing and economic development reports.
- Sec. 206. Advisory Council.

TITLE III—CAPITALIZATION OF ORGANIZATION

- Sec. 301. Capitalization of the organization.
- Sec. 302. Obligations and securities of the organization.
- Sec. 303. Limit on total assets and liabilities.

TITLE IV—REGULATION, EXAMINATION, AND REPORTS

- Sec. 401. Regulation, examination, and reports.
- Sec. 402. Authority of the Secretary of Housing and Urban Development.

TITLE V—FORMATION OF NEW CORPORATION

- Sec. 501. Formation of new corporation.
- Sec. 502. Adoption and approval of merger plan.
- Sec. 503. Consummation of merger.
- Sec. 504. Transition.
- Sec. 505. Effect of merger.

TITLE VI—AUTHORIZATIONS OF APPROPRIATIONS

- Sec. 601. Authorization of appropriations for Native American Financial Institutions.
- Sec. 602. Authorization of appropriations for organization.

3 **TITLE I—STATEMENT OF**
4 **POLICY; DEFINITIONS**

5 **SEC. 101. POLICY.**

6 (a) IN GENERAL.—Based upon the findings and rec-
7 ommendations of the Commission on American Indian,

1 Alaska Native and Native Hawaiian Housing established
2 by the Department of Housing and Urban Development
3 Reform Act of 1989, the Congress has determined that—

4 (1) housing shortages and deplorable living con-
5 ditions are at crisis proportions in Native American
6 communities throughout the United States; and

7 (2) the lack of private capital to finance hous-
8 ing and economic development for Native Americans
9 and Native American communities seriously exacer-
10 bates these housing shortages and poor living condi-
11 tions.

12 (b) POLICY OF THE UNITED STATES TO ADDRESS
13 NATIVE AMERICAN HOUSING SHORTAGE.—It is the policy
14 of the United States to improve the economic conditions
15 and supply of housing in Native American communities
16 throughout the United States by creating the Native
17 American Financial Services Organization to address the
18 housing shortages and poor living conditions described in
19 subsection (a).

20 **SEC. 102. STATEMENT OF PURPOSES.**

21 The purposes of this Act are—

22 (1) to help serve the mortgage and other lend-
23 ing needs of Native Americans by assisting in the es-
24 tablishment and organization of Native American
25 Financial Institutions, developing and providing fi-

1 nancial expertise and technical assistance to Native
2 American Financial Institutions, including assist-
3 ance concerning overcoming—

4 (A) barriers to lending with respect to Na-
5 tive American lands; and

6 (B) the past and present impact of dis-
7 crimination;

8 (2) to promote access to mortgage credit in Na-
9 tive American communities in the United States by
10 increasing the liquidity of financing for housing and
11 improving the distribution of investment capital
12 available for such financing, primarily through Na-
13 tive American Financial Institutions;

14 (3) to promote the infusion of public capital
15 into Native American communities throughout the
16 United States and to direct sources of public and
17 private capital into housing and economic develop-
18 ment for Native American individuals and families,
19 primarily through Native American Financial Insti-
20 tutions; and

21 (4) to provide ongoing assistance to the second-
22 ary market for residential mortgages and economic
23 development loans for Native American individuals
24 and families, Native American Financial Institu-
25 tions, and other borrowers by increasing the liquidity

1 of such investments and improving the distribution
2 of investment capital available for such financing.

3 **SEC. 103. DEFINITIONS.**

4 For purposes of this Act, the following definitions
5 shall apply:

6 (1) ALASKA NATIVE.—The term “Alaska Na-
7 tive” has the meaning given the term “Native” by
8 section 3(b) of the Alaska Native Claims Settlement
9 Act.

10 (2) BOARD.—The term “Board” means the
11 Board of Directors of the Organization established
12 under section 201(a)(2).

13 (3) CHAIRPERSON.—The term “Chairperson”
14 means the chairperson of the Board.

15 (4) COUNCIL.—The term “Council” means the
16 Advisory Council established under section 206.

17 (5) DESIGNATED MERGER DATE.—The term
18 “designated merger date” means the specific cal-
19 endar date and time of day designated by the Board
20 under section 502(b).

21 (6) DIRECTOR.—The term “Director” means
22 the Director of the Office of Federal Housing Enter-
23 prise Oversight of the Department of Housing and
24 Urban Development.

1 (7) FUND.—The term “Fund” means the Com-
2 munity Development Financial Institutions Fund es-
3 tablished under section 104 of the Riegle Commu-
4 nity Development and Regulatory Improvement Act
5 of 1994.

6 (8) INDIAN TRIBE.—The term “Indian tribe”
7 means any Indian tribe, band, nation, or other orga-
8 nized group or community, including any Alaska Na-
9 tive village or regional or village corporation as de-
10 fined in or established pursuant to the Alaska Na-
11 tive Claims Settlement Act that is recognized as eli-
12 gible for the special programs and services provided
13 by the Federal Government to Indians because of
14 their status as Indians.

15 (9) MERGER PLAN.—The term “merger plan”
16 means the plan of merger adopted by the Board
17 under section 502(a).

18 (10) NATIVE AMERICAN.—The term “Native
19 American” means any member of an Indian tribe.

20 (11) NATIVE AMERICAN FINANCIAL INSTITU-
21 TION.—The term “Native American Financial Insti-
22 tution” means a person (other than an individual)
23 that—

24 (A) qualifies as a community development
25 financial institution under section 103 of the

1 Riegle Community Development and Regulatory
2 Improvement Act of 1994;

3 (B) satisfies the requirements established
4 by the Riegle Community Development and
5 Regulatory Improvement Act of 1994 and the
6 Fund for applicants for assistance from the
7 Fund;

8 (C) demonstrates a special interest and ex-
9 pertise in serving the primary economic develop-
10 ment and mortgage lending needs of the Native
11 American community; and

12 (D) demonstrates that the person has the
13 endorsement of the Native American commu-
14 nity that the person intends to serve.

15 (12) NATIVE AMERICAN LENDER.—The term
16 “Native American lender” means a Native American
17 governing body, Native American housing authority,
18 or other Native American Financial Institution that
19 acts as a primary mortgage or economic develop-
20 ment lender in a Native American community.

21 (13) NEW CORPORATION.—The term “new cor-
22 poration” means the corporation formed in accord-
23 ance with title V.

24 (14) NONQUALIFYING MORTGAGE LOAN.—The
25 term “nonqualifying mortgage loan” means a mort-

1 gage loan that is determined by the Organization, on
2 the basis of the quality, type, class, or principal
3 amount of the loan, to fail to meet the purchase
4 standards of the Federal National Mortgage Asso-
5 ciation or the Federal Home Loan Mortgage Cor-
6 poration in effect on September 30, 1994.

7 (15) ORGANIZATION.—The term “Organiza-
8 tion” means the Native American Financial Services
9 Organization established under section 201.

10 (16) QUALIFYING MORTGAGE LOAN.—The term
11 “qualifying mortgage loan” means a mortgage loan
12 that is determined by the Organization, on the basis
13 of the quality, type, class or principal amount of the
14 loan, to meet the purchase standards of the Federal
15 National Mortgage Association or the Federal Home
16 Loan Mortgage Corporation in effect on September
17 30, 1994.

18 (17) TRANSITION PERIOD.—The term “transi-
19 tion period” means the period beginning on the date
20 on which the merger plan is approved by both the
21 Secretary of Housing and Urban Development and
22 the Secretary of the Treasury and ending on the
23 designated merger date.

1 **TITLE II—NATIVE AMERICAN FI-**
2 **NANCIAL SERVICES ORGANI-**
3 **ZATION**

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

5 (a) CREATION; BOARD OF DIRECTORS; POLICIES;
6 PRINCIPAL OFFICE; MEMBERSHIP; VACANCIES.—

7 (1) CREATION.—

8 (A) IN GENERAL.—There is established
9 and chartered a corporation to be known as the
10 Native American Financial Services Organiza-
11 tion.

12 (B) PERIOD OF TIME.—The Organization
13 shall be a congressionally chartered body cor-
14 porate until the earlier of—

15 (i) the designated merger date; or

16 (ii) the date on which the charter is
17 surrendered by the Organization.

18 (C) CHANGES TO CHARTER.—The right to
19 revise, amend, or modify the Organization char-
20 ter is specifically and exclusively reserved to the
21 Congress.

22 (2) BOARD OF DIRECTORS; PRINCIPAL OF-
23 FICE.—

24 (A) BOARD.—The powers of the Organiza-
25 tion shall be vested in a Board of Directors.

1 The Board shall determine the policies that
2 govern the operations and management of the
3 Organization.

4 (B) PRINCIPAL OFFICE; RESIDENCY.—The
5 principal office of the Organization shall be in
6 the District of Columbia. For purposes of
7 venue, the Organization shall be considered to
8 be a resident of the District of Columbia.

9 (3) MEMBERSHIP.—

10 (A) IN GENERAL.—

11 (i) NINE MEMBERS.—Except as pro-
12 vided in clause (ii), the Board shall consist
13 of 9 members, 3 of whom shall be ap-
14 pointed by the President and 6 of whom
15 shall be elected by the class A stockhold-
16 ers, in accordance with the bylaws of the
17 Organization.

18 (ii) THIRTEEN MEMBERS.—If class B
19 stock is issued under section 301(b), the
20 Board shall consist of 13 members, 9 of
21 whom shall be appointed and elected in ac-
22 cordance with clause (i) and 4 of whom
23 shall be elected by the class B stockhold-
24 ers, in accordance with the bylaws of the
25 Organization.

1 (B) TERMS.—Each member of the Board
2 shall be elected or appointed for a 4-year term,
3 except that the members of the initial Board
4 shall be elected or appointed for the following
5 terms:

6 (i) Of the 3 members appointed by
7 the President—

8 (I) 1 member shall be appointed
9 for a 2-year term;

10 (II) 1 member shall be appointed
11 for a 3-year term; and

12 (III) 1 member shall be ap-
13 pointed for a 4-year term;
14 as designated by the President at the time
15 of the appointments.

16 (ii) Of the 6 members elected by the
17 class A stockholders—

18 (I) 2 members shall each be
19 elected for a 2-year term;

20 (II) 2 members shall each be
21 elected for a 3-year term; and

22 (III) 2 members shall each be
23 elected for a 4-year term.

1 (iii) If class B stock is issued and 4
2 additional members are elected by the class
3 B stockholders—

4 (I) 1 member shall be elected for
5 a 2-year term;

6 (II) 1 member shall be elected
7 for a 3-year term; and

8 (III) 2 members shall each be
9 elected for a 4-year term.

10 (C) QUALIFICATIONS.—Each member ap-
11 pointed by the President shall have expertise in
12 1 or more of the following areas:

13 (i) Native American housing and eco-
14 nomic development programs.

15 (ii) Financing in Native American
16 communities.

17 (iii) Native American governing bodies
18 and court systems.

19 (iv) Restricted and trust land issues,
20 economic development, and small consumer
21 loans.

22 (D) CHAIRPERSON.—The Board shall se-
23 lect a Chairperson from among its members, ex-
24 cept that the initial Chairperson shall be se-
25 lected from among the members of the initial

1 Board who have been appointed or elected to
2 serve for a 4-year term.

3 (E) VACANCIES.—

4 (i) APPOINTED MEMBERS.—Any va-
5 cancy in the appointed membership of the
6 Board shall be filled by appointment by the
7 President, but only for the unexpired por-
8 tion of the term.

9 (ii) ELECTED MEMBERS.—Any va-
10 cancy in the elected membership of the
11 Board shall be filled by appointment by the
12 Board, but only for the unexpired portion
13 of the term.

14 (F) TRANSITIONS.—Any member of the
15 Board may continue to serve after the expira-
16 tion of the term for which the member was ap-
17 pointed or elected until a qualified successor
18 has been appointed or elected.

19 (b) POWERS OF THE ORGANIZATION.—The Organi-
20 zation may—

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

22 (2) adopt bylaws, consistent with this Act, regu-
23 lating, among other things, the manner in which—

24 (A) the business of the Organization shall
25 be conducted;

1 (B) the elected members of the Board shall
2 be elected;

3 (C) the stock of the Organization shall be
4 issued, held, and disposed of;

5 (D) the property of the Organization shall
6 be disposed of; and

7 (E) the powers and privileges granted to
8 the Organization by this Act and other law
9 shall be exercised;

10 (3) make and perform contracts, agreements,
11 and commitments, including entering into a coopera-
12 tive agreement with the Fund;

13 (4) prescribe and impose fees and charges for
14 services provided by the Organization;

15 (5)(A) settle, adjust, and compromise; and

16 (B) with or without consideration or benefit to
17 the Organization, release or waive in whole or in
18 part, in advance or otherwise, any claim, demand, or
19 right of, by, or against the Organization;

20 if such settlement, adjustment, compromise, release,
21 or waiver is not adverse to the interests of the Unit-
22 ed States;

23 (6) sue and be sued, complain and defend, in
24 any tribal, Federal, State, or other court;

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

3 (8) determine the necessary expenditures of the
4 Organization and the manner in which such expendi-
5 tures shall be incurred, allowed, and paid, and ap-
6 point, employ, and fix and provide for the compensa-
7 tion and benefits of officers, employees, attorneys,
8 and agents as the Board determines reasonable and
9 not inconsistent with this section;

10 (9) incorporate a new corporation under State,
11 District of Columbia, or tribal law, as provided in
12 section 501;

13 (10) adopt a plan of merger, as provided in sec-
14 tion 502;

15 (11) consummate the merger of the Organiza-
16 tion into the new corporation, as provided in section
17 503; and

18 (12) have succession until the designated merg-
19 er date or any earlier date on which the Organiza-
20 tion surrenders its Federal charter.

21 (c) INVESTMENT OF FUNDS; DESIGNATION AS DE-
22 POSITARY, CUSTODIAN, OR AGENT.—

23 (1) INVESTMENT OF FUNDS.—Funds of the Or-
24 ganization that are not required to meet current op-
25 erating expenses shall be invested in obligations of,

1 or obligations guaranteed by, the United States or
2 any agency thereof, or in obligations, participations,
3 or other instruments that are lawful investments for
4 fiduciary, trust, or public funds.

5 (2) DESIGNATION AS DEPOSITARY, CUSTODIAN,
6 OR AGENT.—Any Federal Reserve bank or Federal
7 home loan bank, or any bank as to which at the time
8 of its designation by the Organization there is out-
9 standing a designation by the Secretary of the
10 Treasury as a general or other depositary of public
11 money, may—

12 (A) be designated by the Organization as
13 a depositary or custodian or as a fiscal or other
14 agent of the Organization; and

15 (B) act as such depositary, custodian, or
16 agent.

17 (d) ACTIONS BY AND AGAINST THE ORGANIZA-
18 TION.—Notwithstanding section 1349 of title 28, United
19 States Code, or any other provision of law—

20 (1) the Organization shall be deemed to be an
21 agency covered under sections 1345 and 1442 of
22 title 28, United States Code;

23 (2) any civil action to which the Organization is
24 a party shall be deemed to arise under the laws of
25 the United States, and the appropriate district court

1 of the United States shall have original jurisdiction
2 over any such action, without regard to amount or
3 value; and

4 (3) any civil or other action, case, or con-
5 troversy in a tribal court, court of a State, or in any
6 court other than a district court of the United
7 States, to which the Organization is a party, may at
8 any time before the commencement of the trial be
9 removed by the Organization, without the giving of
10 any bond or security and by following any procedure
11 for removal of causes in effect at the time of the re-
12 moval—

13 (A) to the district court of the United
14 States for the district and division in which the
15 action is pending;

16 (B) or, if there is no such district court, to
17 the district court of the United States for the
18 District of Columbia.

19 **SEC. 202. AUTHORIZED ASSISTANCE AND SERVICE FUNC-**
20 **TIONS.**

21 (a) **TECHNICAL ASSISTANCE AND SERVICES.**—The
22 Organization may—

23 (1) assist the Fund in the establishment and
24 organization of Native American Financial Institu-
25 tions;

1 (2) assist the Fund in developing and providing
2 financial expertise and technical assistance to Native
3 American Financial Institutions, including methods
4 of underwriting, securing, servicing, packaging, and
5 selling mortgage and small commercial and
6 consumer loans;

7 (3) develop and provide specialized technical as-
8 sistance on overcoming barriers to primary mortgage
9 lending on Native American lands, including issues
10 related to trust lands, discrimination, high operating
11 costs, and inapplicability of standard underwriting
12 criteria;

13 (4) assist the Fund in providing mortgage un-
14 derwriting assistance (but not in originating loans)
15 under contract to Native American Financial Insti-
16 tutions;

17 (5) work with the Federal National Mortgage
18 Association, the Federal Home Loan Mortgage Cor-
19 poration, and other participants in the secondary
20 market for home mortgage instruments in identify-
21 ing and eliminating barriers to the purchase of Na-
22 tive American mortgage loans originated by Native
23 American Financial Institutions and other lenders in
24 Native American communities;

1 (6) obtain capital investments in the Organiza-
2 tion from Indian tribes, Native American organiza-
3 tions, and other entities;

4 (7) assist the Fund in the operation of the Or-
5 ganization as an information clearinghouse by pro-
6 viding information on financial practices to Native
7 American Financial Institutions; and

8 (8) assist the Fund in monitoring and reporting
9 to the Congress on the performance of Native Amer-
10 ican Financial Institutions in meeting the economic
11 development and housing credit needs of Native
12 Americans.

13 (b) PURCHASES AND SALES OF MORTGAGES AND
14 MORTGAGE-BACKED SECURITIES.—

15 (1) IN GENERAL.—

16 (A) AUTHORIZATION.—If a determination
17 is made in accordance with subparagraph (B),
18 the Organization may, upon receipt of a written
19 authorization from the Secretary of Housing
20 and Urban Development under this paragraph,
21 carry out any activity described in paragraph
22 (3).

23 (B) DETERMINATION.—For purposes of
24 subparagraph (A), a determination made under
25 this section is a determination by the Secretary

1 of Housing and Urban Development that the
2 combined purchases by the Federal National
3 Mortgage Association and the Federal Home
4 Loan Mortgage Corporation of residential Na-
5 tive American nonqualifying mortgage loans
6 originated by Native American Financial Insti-
7 tutions and other lenders on housing consisting
8 of between 1 and 4 dwelling units—

9 (i) in the second year following the es-
10 tablishment of the Organization, total less
11 than \$20,000,000 (unless the Organization
12 can demonstrate to the Secretary of Hous-
13 ing and Urban Development that such pur-
14 chase goal could not be met); or

15 (ii) in any succeeding year, total less
16 than that amount that the Secretary of
17 Housing and Urban Development has de-
18 termined and published as a reasonable
19 Native American mortgage purchase goal
20 (in accordance with paragraph (2)) for
21 such combined purchases by the Federal
22 National Mortgage Association and the
23 Federal Home Loan Mortgage Corporation
24 in such year.

1 (2) FACTORS CONSIDERED.—In determining
2 the purchase goal described in paragraph (1)(B)(ii),
3 the Secretary shall take into account the study by
4 the Fund of Native American lending and invest-
5 ment conducted pursuant to section 117(c) of the
6 Riegle Community Development and Regulatory Im-
7 provement Act of 1994.

8 (3) POWERS OF THE ORGANIZATION.—Upon re-
9 ceiving a written authorization from the Secretary of
10 Housing and Urban Development under paragraph
11 (1), the Organization may, at any time—

12 (A) with respect to residential mortgage
13 loans originated by Native American Financial
14 Institutions that are qualifying mortgage
15 loans—

16 (i) purchase such qualifying mortgage
17 loans;

18 (ii) hold such qualifying mortgage
19 loans for a period of not to exceed 12
20 months; and

21 (iii) resell such qualifying mortgage
22 loans to the Federal National Mortgage
23 Association, the Federal Home Loan Mort-
24 gage Corporation, or other secondary mar-

1 ket participants, as provided in section
2 303(b);

3 (B) with respect to residential mortgage
4 loans originated by the Native American Finan-
5 cial Institutions that are nonqualifying mort-
6 gage loans—

7 (i) purchase such nonqualifying mort-
8 gage loans from the Native American Fi-
9 nancial Institutions for such terms as the
10 Organization determines to be appropriate,
11 including the life of the mortgage loan, if,
12 with respect to any such loan—

13 (I) the Organization has reason-
14 able assurance that the loan will be
15 repaid within the time agreed;

16 (II) the Native American Finan-
17 cial Institution selling the loan retains
18 a participation of not less than 10
19 percent in the mortgage;

20 (III) the Native American Finan-
21 cial Institution selling the loan agrees
22 for such period of time and under
23 such circumstances as the Organiza-
24 tion may require, to repurchase or re-
25 place the mortgage upon demand of

1 the Organization in the event that the
2 loan is in default; or

3 (IV) that portion of the outstand-
4 ing principal balance of the loan
5 which exceeds 80 percent of the value
6 of the property securing such loan is
7 guaranteed or insured by a qualified
8 insurer, as determined by the Organi-
9 zation; and

10 (ii) issue mortgage-backed securities
11 or other forms of participations based on
12 pools of such nonqualifying mortgage
13 loans, as provided in section 303(c); and

14 (C) purchase, service, sell, lend on the se-
15 curity of, and otherwise deal in—

16 (i) residential mortgages that are se-
17 cured by a subordinate lien against a prop-
18 erty consisting of 1 to 4 dwelling units
19 that is the principal residence of the mort-
20 gator; and

21 (ii) residential mortgages that are se-
22 cured by a subordinate lien against a prop-
23 erty consisting of five or more dwelling
24 units.

25 (4) RIGHTS AND REMEDIES.—

1 (A) IN GENERAL.—The rights and rem-
2 edies of the Organization, including any rights
3 and remedies of the Organization on, under, or
4 with respect to any mortgage or any obligation
5 secured thereby, shall be immune from impair-
6 ment, limitation, or restriction by or under any
7 State, District of Columbia, or tribal—

8 (i) law that becomes effective after the
9 acquisition by the Organization of the sub-
10 ject or property on, under, or with respect
11 to which such right or remedy arises or ex-
12 ists or would so arise or exist in the ab-
13 sence of such law; or

14 (ii) administrative or other action that
15 becomes effective after such acquisition.

16 (B) QUALIFICATION.—The Organization
17 may conduct its business without regard to any
18 qualification or similar requirement in the Dis-
19 trict of Columbia, or any State or tribal juris-
20 diction.

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

22 (a) INITIAL GRANT PAYMENT.—If the Fund and the
23 Organization enter into a cooperative agreement for the
24 Organization to provide technical assistance and other
25 services to Native American Financial Institutions, such

1 agreement shall, to the extent that funds are available as
2 provided in section 602, provide that the initial grant pay-
3 ment, anticipated to be \$5,000,000, shall be made when
4 all members of the initial Board have been appointed
5 under section 201.

6 (b) PAYMENT OF GRANT BALANCE.—The payment
7 of the grant balance of \$5,000,000 shall be made to the
8 Organization not later than 1 year after the date on which
9 the initial grant payment is made under subsection (a).

10 **SEC. 204. AUDITS.**

11 (a) INDEPENDENT AUDITS.—

12 (1) IN GENERAL.—The Organization shall have
13 an annual independent audit made of its financial
14 statements by an independent public accountant in
15 accordance with generally accepted auditing stand-
16 ards.

17 (2) DETERMINATIONS.—In conducting an audit
18 under this subsection, the independent public ac-
19 countant shall determine and report on whether the
20 financial statements of the Organization—

21 (A) are presented fairly in accordance with
22 generally accepted accounting principles; and

23 (B) to the extent determined necessary by
24 the Director, comply with any disclosure re-
25 quirements imposed under section 401.

1 (b) GAO AUDITS.—

2 (1) IN GENERAL.—Beginning after the first 2
3 years of the operation of the Organization, unless an
4 earlier date is required by any other statute, grant,
5 or agreement, the programs, activities, receipts, ex-
6 penditures, and financial transactions of the Organi-
7 zation shall be subject to audit by the Comptroller
8 General of the United States under such rules and
9 regulations as may be prescribed by the Comptroller
10 General.

11 (2) ACCESS.—To carry out this subsection, the
12 representatives of the General Accounting Office
13 shall—

14 (A) have access to all books, accounts, fi-
15 nancial records, reports, files, and all other pa-
16 pers, things, or property belonging to or in use
17 by the Organization and necessary to facilitate
18 the audit;

19 (B) be afforded full facilities for verifying
20 transactions with the balances or securities held
21 by depositaries, fiscal agents, and custodians;
22 and

23 (C) have access, upon request to the Orga-
24 nization or any auditor for an audit of the Or-
25 ganization under subsection (a), to any books,

1 accounts, financial records, reports, files, or
2 other papers, or property belonging to or in use
3 by the Organization and used in any such audit
4 and to any papers, records, files, and reports of
5 the auditor used in such an audit.

6 (3) REPORTS.—The Comptroller General of the
7 United States shall submit to the Congress a report
8 on each audit conducted under this subsection.

9 (4) REIMBURSEMENT.—The Organization shall
10 reimburse the General Accounting Office for the full
11 cost of any audit conducted under this subsection.

12 **SEC. 205. ANNUAL HOUSING AND ECONOMIC DEVELOP-**
13 **MENT REPORTS.**

14 Not later than 1 year after the date of enactment
15 of this Act, and annually thereafter, the Organization shall
16 collect, maintain, and provide to the Secretary of Housing
17 and Urban Development, in a form determined by the Sec-
18 retary, such data as the Secretary determines to be appro-
19 priate with respect to the Organization's—

20 (1) mortgages on properties consisting of be-
21 tween 1 and 4 dwelling units;

22 (2) mortgages on properties consisting of five or
23 more dwelling units; and

24 (3) activities relating to economic development.

1 **SEC. 206. ADVISORY COUNCIL.**

2 (a) ESTABLISHMENT.—The Board shall establish an
3 Advisory Council in accordance with this section.

4 (b) MEMBERSHIP.—

5 (1) IN GENERAL.—The Council shall consist of
6 13 members, who shall be appointed by the Board,
7 including 1 representative from each of the 12 dis-
8 tricts established by the Bureau of Indian Affairs
9 and 1 representative from the State of Hawaii.

10 (2) QUALIFICATIONS.—Not less than 6 of the
11 members of the Council shall have financial exper-
12 tise, and not less than 9 members of the Council
13 shall be Native Americans.

14 (3) TERMS.—Each member of the Council shall
15 be appointed for a 4-year term, except that the ini-
16 tial Council shall be appointed, as designated by the
17 Board at the time of appointment, as follows:

18 (A) Four members shall each be appointed
19 for a 2-year term.

20 (B) Four members shall each be appointed
21 for a 3-year term.

22 (C) Five members shall each be appointed
23 for a 4-year term.

24 (c) DUTIES.—The Council shall advise the Board on
25 all policy matters of the Organization. Through the re-
26 gional representation of its members, the Council shall

1 provide information to the Board from all sectors of the
2 Native American community.

3 **TITLE III—CAPITALIZATION OF**
4 **ORGANIZATION**

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

6 (a) CLASS A STOCK.—The class A stock of the Orga-
7 nization shall—

8 (1) be issued only to Indian tribes;

9 (2) be allocated on the basis of Indian tribe
10 population, as determined by the Secretary of Hous-
11 ing and Urban Development in consultation with the
12 Secretary of the Interior;

13 (3) have such par value and other characteris-
14 tics as the Organization shall provide;

15 (4) be vested with voting rights, each share
16 being entitled to 1 vote;

17 (5) be nontransferable; and

18 (6) be surrendered to the Organization if the
19 holder ceases to be recognized as an Indian tribe
20 under this Act.

21 (b) CLASS B STOCK.—

22 (1) IN GENERAL.—The Organization may issue
23 class B stock evidencing capital contributions in the
24 manner and amount, and subject to any limitations

1 on concentration of ownership, as may be established
2 by the Organization.

3 (2) CHARACTERISTICS.—Any class B stock is-
4 sued under paragraph (1) shall—

5 (A) be available for purchase by investors;

6 (B) be entitled to such dividends as may
7 be declared by the Board in accordance with
8 subsection (c);

9 (C) have such par value and other charac-
10 teristics as the Organization shall provide;

11 (D) be vested with voting rights, each
12 share being entitled to 1 vote; and

13 (E) be transferable only on the books of
14 the Organization.

15 (c) CHARGES AND FEES; EARNINGS.—

16 (1) CHARGES AND FEES.—The Organization
17 may impose charges or fees, which may be regarded
18 as elements of pricing, with the objectives that—

19 (A) all costs and expenses of the oper-
20 ations of the Organization should be within the
21 income of the Organization derived from such
22 operations; and

23 (B) such operations would be fully self-
24 supporting.

1 (2) EARNINGS.—All earnings from the oper-
2 ations of the Organization shall be annually trans-
3 ferred to the general surplus account of the Organi-
4 zation. At any time, funds in the general surplus ac-
5 count may, in the discretion of the Board, be trans-
6 ferred to the reserves of the Organization.

7 (d) CAPITAL DISTRIBUTIONS.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the Organization may make such capital
10 distributions (as such term is defined in section
11 1303 of the Federal Housing Financial Safety and
12 Soundness Act of 1992) as may be declared by the
13 Board. All capital distributions shall be charged
14 against the general surplus account of the Organiza-
15 tion.

16 (2) RESTRICTION.—The Organization may not
17 make any capital distribution that would decrease
18 the total capital (as such term is defined in section
19 1303 of the Federal Housing Financial Safety and
20 Soundness Act of 1992) of the Organization to an
21 amount less than the capital level for the Organiza-
22 tion established under section 401, without prior
23 written approval of the distribution by the Director.

1 **SEC. 302. OBLIGATIONS AND SECURITIES OF THE ORGANI-**
2 **ZATION.**

3 (a) IN GENERAL.—

4 (1) AUTHORIZATION.—The Organization may—

5 (A) borrow funds to give security or pay
6 interest or other return; and

7 (B) issue upon the approval of the Sec-
8 retary of the Treasury, notes, debentures,
9 bonds, or other obligations having maturities
10 and bearing such rate or rates of interest as
11 may be determined by the Organization with
12 the approval of the Secretary of the Treasury;
13 if such borrowing and issuing of obligations qualifies
14 as a transaction by an issuer not involving any pub-
15 lic offering under section 4(2) of the Securities Act
16 of 1933.

17 (2) RESTRICTIONS.—

18 (A) IN GENERAL.—Obligations issued by
19 the Organization under this section shall not be
20 obligations of the United States or any agency
21 of the United States.

22 (B) NO GUARANTEES.—Payment of the
23 principal of or interest on such obligations shall
24 not be guaranteed by the United States or any
25 agency of the United States. The obligations is-

1 sued by the Organization under this section
2 shall so plainly state.

3 (b) RESALES OF QUALIFYING MORTGAGE LOANS.—

4 The sale or other disposition by the Organization of quali-
5 fying mortgage loans under section 202(b) shall be on
6 such terms and conditions relating to resale, repurchase,
7 substitution, replacement or otherwise as the Organization
8 may prescribe, except that the Organization may not guar-
9 antee or insure the payment of any mortgage loan sold
10 under section 202(b).

11 (c) SECURITIES BACKED BY NONQUALIFYING MORT-
12 GAGE LOANS.—Securities in the form of debt obligations
13 or trust certificates of beneficial interest, or both, and
14 based upon nonqualifying mortgage loans held and set
15 aside by the Organization under section 202(b)—

16 (1) may be issued upon the approval of the Sec-
17 retary of the Treasury; and

18 (2) shall have such maturities, and shall bear
19 such rate or rates of interest, as may be determined
20 by the Organization with the approval of the Sec-
21 retary of the Treasury;

22 if such issuance qualifies as a transaction by an issuer
23 not involving any public offering under section 4(2) of the
24 Securities Act of 1933.

1 (d) PROHIBITIONS AND RESTRICTIONS; CREATION
2 OF LIENS AND CHARGES.—

3 (1) IN GENERAL.—The Organization may, by
4 regulation or by writing executed by the Organiza-
5 tion—

6 (A) establish prohibitions or restrictions on
7 the creation of indebtedness or obligations of
8 the Organization or of liens or charges upon
9 property of the Organization, including after-ac-
10 quired property; and

11 (B) create liens and charges, which may be
12 floating liens or charges, upon all or any part
13 or parts of the property of the Organization, in-
14 cluding after-acquired property.

15 (2) EFFECT.—Any prohibition, restriction, lien,
16 or charge established under paragraph (2) shall—

17 (A) have such effect, including such rank
18 and priority, as may be provided by regulations
19 of the Organization or by any writing executed
20 by the Organization; and

21 (B) create a cause of action which may be
22 enforced by action in the United States district
23 court for the District of Columbia or in the
24 United States district court for any judicial dis-

1 trict in which any of the property affected is lo-
2 cated.

3 (3) JURISDICTION; SERVICE OF PROCESS.—
4 Process in any action described in paragraph (2)
5 may run to or be served in any judicial district or
6 in any place subject to the jurisdiction of the United
7 States.

8 (e) VALIDITY OF PROVISIONS; VALIDITY OF RE-
9 STRICTIONS, PROHIBITIONS, LIENS, OR CHARGES.—This
10 section and any restriction, prohibition, lien, or charge re-
11 ferred to in subsection (b) shall be fully effective notwith-
12 standing any other law, including any law of or relating
13 to sovereign immunity or priority.

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

15 The aggregate of—

16 (1) the total equity of the Organization, includ-
17 ing all capital from any issuance of class B stock;
18 and

19 (2) the total liabilities of the Organization, in-
20 cluding all obligations issued or incurred by the Or-
21 ganization;

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

1 **TITLE IV—REGULATION,**
2 **EXAMINATION, AND REPORTS**

3 **SEC. 401. REGULATION, EXAMINATION, AND REPORTS.**

4 (a) EFFECTIVE DATE OF SECTION.—This section
5 shall take effect on the date on which the Secretary of
6 Housing and Urban Development makes a determination
7 in accordance with section 202(b) that the Organization
8 may purchase and sell mortgages and mortgage-backed se-
9 curities.

10 (b) IN GENERAL.—The Organization shall be subject
11 to the regulatory authority of the Office of Federal Hous-
12 ing Enterprise Oversight of the Department of Housing
13 and Urban Development with respect to all matters relat-
14 ing to the financial safety and soundness of the Organiza-
15 tion.

16 (c) DUTY OF DIRECTOR.—The Director shall ensure
17 that the Organization is adequately capitalized and oper-
18 ating safely as a congressionally chartered body corporate.

19 (d) POWERS OF DIRECTOR.—The Director shall have
20 all of the exclusive powers granted the Director under sub-
21 sections (b), (d), and (e) of section 1313 of the Housing
22 and Community Development Act of 1992, as determined
23 by the Director to be necessary or appropriate to regulate
24 the operation of the Organization.

25 (e) REPORTS TO DIRECTOR.—

1 (1) ANNUAL REPORT.—Not later than 1 year
2 after the date of enactment of this Act, and annually
3 thereafter, the Organization shall submit to the Di-
4 rector a report describing the financial condition and
5 operations of the Organization. The report shall be
6 in such form, contain such information, and be sub-
7 mitted on such date as the Director shall require.

8 (2) OTHER REPORTS.—In addition to the re-
9 ports submitted under paragraph (1), the Organiza-
10 tion shall submit to the Director any report required
11 by the Director pursuant to section 1314 of the
12 Housing and Community Development Act of 1992.

13 (3) CONTENTS OF REPORT.—Each report sub-
14 mitted under this subsection shall contain a declara-
15 tion by the president, vice president, treasurer, or
16 any other officer of the Organization designated by
17 the Board to make such declaration, that the report
18 is true and correct to the best of such officer's
19 knowledge and belief.

20 (f) FUNDING OFHEO OVERSIGHT.—

21 (1) ASSESSMENT AND COLLECTION.—The Di-
22 rector shall assess and collect from the Organization
23 such amounts as are necessary to reimburse the Of-
24 fice of Federal Housing Enterprise Oversight for the
25 reasonable costs and expenses of the activities un-

1 dertaken by the Office of Federal Housing Enter-
2 prise Oversight to carry out the duties of the Direc-
3 tor under paragraph (2), including the costs of ex-
4 aminations and overhead expenses.

5 (2) REQUIREMENTS.—Annual assessments im-
6 posed by the Director shall be—

7 (A) imposed prior to October 1 of each
8 year;

9 (B) collected at such time or times during
10 each assessment year as determined necessary
11 or appropriate by the Director;

12 (C) deposited into the Federal Housing
13 Enterprises Oversight Fund established by sec-
14 tion 1316(f) of the Housing and Community
15 Development Act of 1992; and

16 (D) available, to the extent provided in ap-
17 propriations Acts, for carrying out the respon-
18 sibilities of the Director under this section.

19 **SEC. 402. AUTHORITY OF THE SECRETARY OF HOUSING**
20 **AND URBAN DEVELOPMENT.**

21 Except for the authority of the Director under section
22 401, the Secretary of Housing and Urban Development
23 shall—

24 (1) have general regulatory power over the Or-
25 ganization; and

1 (2) issue such rules and regulations applicable
2 to the Organization as determined necessary or ap-
3 propriate by the Secretary to ensure that the pur-
4 poses specified in section 102 are accomplished.

5 **TITLE V—FORMATION OF NEW**
6 **CORPORATION**

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

8 (a) IN GENERAL.—In order to continue the accom-
9 plishment of the purposes specified in section 102 beyond
10 the terms of the charter of the Organization, the Board
11 shall, not later than 10 years after the date of enactment
12 of this Act, cause the formation of a new corporation
13 under the laws of any tribe, any State, or the District of
14 Columbia.

15 (b) POWERS OF NEW CORPORATION NOT PRE-
16 SCRIBED.—Except as provided in this section, the new
17 corporation may have any corporate powers and attributes
18 permitted under the laws of the jurisdiction of its incorpo-
19 ration which the Board shall determine, in its business
20 judgment, to be appropriate.

21 (c) USE OF NAFSO NAME PROHIBITED.—The new
22 corporation may not use in any manner the name “Native
23 American Financial Services Organization” or “NAFSO”
24 or any variation of thereof.

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

2 (a) IN GENERAL.—Not later than 10 years after the
3 date of enactment of this Act, the Board shall prepare,
4 adopt, and submit to the Secretary of Housing and Urban
5 Development and the Secretary of the Treasury for ap-
6 proval, a plan for merging the Organization into the new
7 corporation.

8 (b) DESIGNATED MERGER DATE.—

9 (1) IN GENERAL.—The Board shall establish
10 the designated merger date in the merger plan as a
11 specific calendar date on which and time of day at
12 which the merger of the Organization into the new
13 corporation shall take effect.

14 (2) CHANGES.—The Board may change the
15 designated merger date in the merger plan by adopt-
16 ing an amended plan of merger.

17 (3) RESTRICTION.—Except as provided in para-
18 graph (4), the designated merger date in the merger
19 plan or any amended merger plan shall not be later
20 than 11 years after the date of enactment of this
21 Act.

22 (4) EXCEPTION.—Subject to the restriction
23 contained in paragraph (5), the Board may adopt an
24 amended plan of merger that designates a date later
25 than 11 years after the date of enactment of this
26 Act if the Board submits to both the Secretary of

1 Housing and Urban Development and the Secretary
2 of the Treasury a report—

3 (A) stating that an orderly merger of the
4 Organization into the new corporation is not
5 feasible before the latest date designated by the
6 Board;

7 (B) explaining why an orderly merger of
8 the Organization into the new corporation is
9 not feasible before the latest date designated by
10 the Board;

11 (C) describing the steps that have been
12 taken to consummate an orderly merger of the
13 Organization into the new corporation not later
14 than 11 years after the date of enactment of
15 this Act; and

16 (D) describing the steps that will be taken
17 to consummate an orderly and timely merger of
18 the Organization into the new corporation.

19 (5) LIMITATION.—The date designated by the
20 Board in an amended merger plan shall not be later
21 than 12 years after the date of enactment of this
22 Act.

23 (6) CONSUMMATION OF MERGER.—The con-
24 summation of an orderly and timely merger of the
25 Organization into the new corporation shall not

1 occur later than 13 years after the date of enact-
2 ment of this Act.

3 (c) GOVERNMENTAL APPROVALS OF MERGER PLAN
4 REQUIRED.—The merger plan or any amended merger
5 plan shall take effect on the date on which the plan is
6 approved by both the Secretary of Housing and Urban De-
7 velopment and the Secretary of the Treasury.

8 (d) REVISION OF DISAPPROVED MERGER PLAN RE-
9 QUIRED.—If either the Secretary of Housing and Urban
10 Development or the Secretary of the Treasury, or both,
11 disapprove the merger plan or any amended merger
12 plan—

13 (1) each Secretary that disapproves the plan
14 shall notify the Organization of such disapproval and
15 indicate the reasons for the disapproval; and

16 (2) not later than 30 days after the date of no-
17 tification of disapproval under paragraph (1), the
18 Organization shall submit to both the Secretary of
19 Housing and Urban Development and the Secretary
20 of the Treasury for approval an amended merger
21 plan responsive to the reasons for the disapproval in-
22 dicated in such notification.

23 (e) NO STOCKHOLDER APPROVAL OF MERGER PLAN
24 REQUIRED.—The approval or consent of the stockholders

1 of the Organization shall not be required to accomplish
2 the merger of the Organization into the new corporation.

3 **SEC. 503. CONSUMMATION OF MERGER.**

4 The Board shall ensure that the merger of the Orga-
5 nization into the new corporation is accomplished in ac-
6 cordance with—

7 (1) the merger plan approved by the Secretary
8 of Housing and Urban Development and the Sec-
9 retary of the Treasury; and

10 (2) all applicable laws of the jurisdiction in
11 which the new corporation is incorporated.

12 **SEC. 504. TRANSITION.**

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

19 (b) COLLATERALIZATION OF OUTSTANDING OBLIGA-
20 TIONS.—

21 (1) IN GENERAL.—The Organization shall pro-
22 vide for all debt obligations of the Organization that
23 are outstanding on the date before the designated
24 merger date to be secured as to principal and inter-

1 est by obligations of the United States held in trust
2 for the holders of such obligations.

3 (2) REQUIREMENTS, TERMS, AND CONDI-
4 TIONS.—The collateralization and the trust referred
5 to in the preceding sentence shall be subject to such
6 requirements, terms, and conditions as the Secretary
7 of the Treasury determines to be necessary or appro-
8 priate.

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

15 **SEC. 505. EFFECT OF MERGER.**

16 (a) TRANSFER OF ASSETS AND LIABILITIES.—

17 (1) TRANSFER OF ASSETS.—On the designated
18 merger date, all property, real, personal, and mixed,
19 all debts due on any account, and any other interest
20 of or belonging to or due to the Organization shall
21 be transferred to and vested in the new corporation
22 without further act or deed, and title to any prop-
23 erty, whether real, personal, or mixed, shall not in
24 any way be impaired by reason of the merger.

1 (2) TRANSFER OF LIABILITIES.—On the des-
2 ignated merger date, the new corporation shall be
3 responsible and liable for all obligations and liabil-
4 ities of the Organization and neither the rights of
5 creditors nor any liens upon the property of the Or-
6 ganization shall be impaired by the merger.

7 (b) TERMINATION OF THE ORGANIZATION AND ITS
8 FEDERAL CHARTER.—On the designated merger date—

9 (1) the surviving corporation of the merger
10 shall be the new corporation;

11 (2) the Federal charter of the Organization
12 shall terminate; and

13 (3) the separate existence of the Organization
14 shall terminate.

15 (c) REFERENCES TO THE ORGANIZATION IN LAW.—
16 After the designated merger date, any reference to the Or-
17 ganization in any law or regulation shall be deemed to
18 refer to the new corporation.

19 (d) SAVINGS CLAUSE.—

20 (1) PROCEEDINGS.—The merger of the Organi-
21 zation into the new corporation shall not abate any
22 proceeding commenced by or against the Organiza-
23 tion before the designated merger date, except that
24 the new corporation shall be substituted for the Or-

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

3 (2) CONTRACTS AND AGREEMENTS.—All con-
4 tracts and agreements to which the Organization is
5 a party and which are in effect on the day before the
6 designated merger date shall continue in effect ac-
7 cording to their terms, except that the new corpora-
8 tion shall be substituted for the Organization as a
9 party to those contracts and agreements as of the
10 designated merger date.

11 **TITLE VI—AUTHORIZATIONS OF** 12 **APPROPRIATIONS**

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

15 (a) IN GENERAL.—There are authorized to be appro-
16 priated to the Fund, without fiscal year limitation,
17 \$20,000,000 to provide financial assistance to Native
18 American Financial Institutions.

19 (b) NOT MATCHING FUNDS.—To the extent that a
20 Native American Financial Institution receives a portion
21 of an appropriation made under subsection (a), such funds
22 shall not be considered to be matching funds required of
23 the Native American Financial Institution under section
24 108(e) of the Riegle Community Development and Regu-
25 latory Improvement Act of 1994.

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

3 The Secretary of Housing and Urban Development
4 may, to the extent provided in advance in an appropria-
5 tions Act, provide not more than \$10,000,000 to the Fund
6 for the funding of a cooperative agreement to be entered
7 into by the Fund and the Organization for technical as-
8 sistance and other services to be provided by the Organiza-
9 tion to Native American Financial Institutions.

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HR 2412 IH—2

HR 2412 IH—3

HR 2412 IH—4