

105TH CONGRESS
1ST SESSION

S. 818

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 SENATE OF THE UNITED STATES

MAY 23, 1997

Mr. CAMPBELL (for himself and Mr. INOUE) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

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 1997”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Findings.
- Sec. 3. Policy.
- Sec. 4. Purposes.
- Sec. 5. Definitions.

TITLE I—NATIVE AMERICAN FINANCIAL SERVICES
ORGANIZATION

- Sec. 101. Establishment of the Organization.
- Sec. 102. Authorized assistance and service functions.
- Sec. 103. Native American lending services grant.
- Sec. 104. Audits.
- Sec. 105. Annual housing and economic development reports.
- Sec. 106. Advisory Council.

TITLE II—CAPITALIZATION OF ORGANIZATION

- Sec. 201. Capitalization of the Organization.

TITLE III—REGULATION, EXAMINATION, AND REPORTS

- Sec. 301. Regulation, examination, and reports.
- Sec. 302. Authority of the Secretary of Housing and Urban Development.

TITLE IV—FORMATION OF NEW CORPORATION

- Sec. 401. Formation of new corporation.
- Sec. 402. Adoption and approval of merger plan.
- Sec. 403. Consummation of merger.
- Sec. 404. Transition.
- Sec. 405. Effect of merger.

TITLE V—AUTHORIZATIONS OF APPROPRIATIONS

- Sec. 501. Authorization of appropriations for Native American Financial Institutions.
- Sec. 502. Authorization of appropriations for Organization.

1 SEC. 2. FINDINGS.

2 Congress finds that—

3 (1) clause 3 of section 8 of article I of the Unit-
4 ed States Constitution recognizes the special rela-
5 tionship between the United States and Indian
6 tribes;

7 (2) Congress has carried the responsibility of
8 the United States for the protection and preserva-
9 tion of Indian tribes and the resources of Indian

1 tribes through the endorsement of treaties, and the
2 enactment of other laws, including laws that provide
3 for the exercise of administrative authorities;

4 (3) despite the availability of abundant natural
5 resources on Indian lands and a rich cultural legacy
6 that accords great value to self-determination, self-
7 reliance, and independence, American Indians, Alas-
8 ka Natives, and Native Hawaiians suffer rates of
9 unemployment, poverty, poor health, substandard
10 housing, and associated social ills to a greater de-
11 gree than any other group in the United States;

12 (4) the economic success and material well-
13 being of American Indian, Alaska Native, and Na-
14 tive Hawaiian communities depends on the combined
15 efforts of the Federal Government, tribal govern-
16 ments, the private sector, and individuals;

17 (5) the lack of employment opportunities and
18 affordable homes in the communities referred to in
19 paragraph (4) is grounded in the almost complete
20 absence of available private capital and private cap-
21 ital institutions to serve those communities;

22 (6) the lack of capital referred to in paragraph
23 (5) has resulted in a multigenerational dependence
24 on Federal assistance that is—

1 (A) insufficient to address the magnitude
2 of needs; and

3 (B) unreliable in availability;

4 (7) a review of the history of the United States
5 bears out the fact that solutions to social and eco-
6 nomic problems that have been crafted by the Fed-
7 eral Government without the active involvement of
8 local communities and the private sector fail at un-
9 acceptably high rates; and

10 (8) the twin goals of economic self-sufficiency
11 and political self-determination for American Indi-
12 ans, Alaska Natives, and Native Hawaiians can best
13 be served by making available to address the chal-
14 lenges faced by those groups—

15 (A) the resources of the private market;

16 (B) adequate capital; and

17 (C) technical expertise.

18 **SEC. 3. POLICY.**

19 (a) **IN GENERAL.**—Based upon the findings and rec-
20 ommendations of the Commission on American Indian,
21 Alaska Native and Native Hawaiian Housing established
22 by the Department of Housing and Urban Development
23 Reform Act of 1989, Congress has determined that—

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

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

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

17 **SEC. 4. PURPOSES.**

18 The purposes of this Act are—

19 (1) to help serve the mortgage and other lend-
20 ing needs of Native Americans by assisting in the es-
21 tablishment and organization of Native American
22 Financial Institutions, developing and providing fi-
23 nancial expertise and technical assistance to Native
24 American Financial Institutions, including assist-
25 ance concerning overcoming—

1 (A) barriers to lending with respect to Na-
2 tive American lands; and

3 (B) the past and present impact of dis-
4 crimination;

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

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

18 **SEC. 5. DEFINITIONS.**

19 In this Act:

20 (1) **ALASKA NATIVE.**—The term “Alaska Na-
21 tive” has the meaning given the term “Native” by
22 section 3(b) of the Alaska Native Claims Settlement
23 Act.

1 (2) BOARD.—The term “Board” means the
2 Board of Directors of the Organization established
3 under section 101(a)(2).

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

6 (4) COUNCIL.—The term “Council” means the
7 Advisory Council established under section 106.

8 (5) DESIGNATED MERGER DATE.—The term
9 “designated merger date” means the specific cal-
10 endar date and time of day designated by the Board
11 under section 402(b).

12 (6) DEPARTMENT OF HAWAIIAN HOME
13 LANDS.—The term “Department of Hawaiian Home
14 Lands” means the agency that is responsible for the
15 administration of the Hawaiian Homes Commission
16 Act, 1920 (42 Stat. 108 et seq.).

17 (7) FUND.—The term “Fund” means the Com-
18 munity Development Financial Institutions Fund es-
19 tablished under section 104 of the Riegle Commu-
20 nity Development and Regulatory Improvement Act
21 of 1994 (12 U.S.C. 4703).

22 (8) INDIAN TRIBE.—The term “Indian tribe”
23 means any Indian tribe, band, nation, or other orga-
24 nized group or community, including any Alaska Na-
25 tive village or regional or village corporation as de-

1 fined in or established pursuant to the Alaska Na-
2 tive Claims Settlement Act that is recognized as eli-
3 gible for the special programs and services provided
4 by the Federal Government to Indians because of
5 their status as Indians.

6 (9) MERGER PLAN.—The term “merger plan”
7 means the plan of merger adopted by the Board
8 under section 402(a).

9 (10) NATIVE AMERICAN.—The term “Native
10 American” means any member of an Indian tribe or
11 a Native Hawaiian.

12 (11) NATIVE AMERICAN FINANCIAL INSTITU-
13 TION.—The term “Native American Financial Insti-
14 tution” means a person (other than an individual)
15 that—

16 (A) qualifies as a community development
17 financial institution under section 103 of the
18 Riegle Community Development and Regulatory
19 Improvement Act of 1994 (12 U.S.C. 4702);

20 (B) satisfies the requirements established
21 by subtitle A of title I of the Riegle Community
22 Development and Regulatory Improvement Act
23 of 1994 (12 U.S.C. 4701 et seq.) and the Fund
24 for applicants for assistance from the Fund;

1 (C) demonstrates a special interest and ex-
2 pertise in serving the primary economic develop-
3 ment and mortgage lending needs of the Native
4 American community; and

5 (D) demonstrates that the person has the
6 endorsement of the Native American commu-
7 nity that the person intends to serve.

8 (12) NATIVE AMERICAN LENDER.—The term
9 “Native American lender” means a Native American
10 governing body, Native American housing authority,
11 or other Native American Financial Institution that
12 acts as a primary mortgage or economic develop-
13 ment lender in a Native American community.

14 (13) NATIVE HAWAIIAN.—The term “Native
15 Hawaiian” has the meaning given that term in sec-
16 tion 201 of the Hawaiian Homes Commission Act,
17 1920 (42 Stat. 108).

18 (14) NEW CORPORATION.—The term “new cor-
19 poration” means the corporation formed in accord-
20 ance with title IV.

21 (15) ORGANIZATION.—The term “Organiza-
22 tion” means the Native American Financial Services
23 Organization established under section 101.

1 (16) SECRETARY.—The term “Secretary”
2 means the Secretary of Housing and Urban Develop-
3 ment.

4 (17) TRANSITION PERIOD.—The term “transi-
5 tion period” means the period beginning on the date
6 on which the merger plan is approved by the Sec-
7 retary and ending on the designated merger date.

8 **TITLE I—NATIVE AMERICAN FI-**
9 **NANCIAL SERVICES ORGANI-**
10 **ZATION**

11 **SEC. 101. ESTABLISHMENT OF THE ORGANIZATION.**

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

14 (1) CREATION.—

15 (A) IN GENERAL.—There is established
16 and chartered a corporation to be known as the
17 Native American Financial Services Organiza-
18 tion.

19 (B) PERIOD OF TIME.—The Organization
20 shall be a congressionally chartered body cor-
21 porate until the earlier of—

22 (i) the designated merger date; or

23 (ii) the date on which the charter is
24 surrendered by the Organization.

1 (C) CHANGES TO CHARTER.—The right to
2 revise, amend, or modify the Organization char-
3 ter is specifically and exclusively reserved to
4 Congress.

5 (2) BOARD OF DIRECTORS; PRINCIPAL OF-
6 FICE.—

7 (A) BOARD.—The powers of the Organiza-
8 tion shall be vested in a Board of Directors.
9 The Board shall determine the policies that
10 govern the operations and management of the
11 Organization.

12 (B) PRINCIPAL OFFICE; RESIDENCY.—The
13 principal office of the Organization shall be in
14 the District of Columbia. For purposes of
15 venue, the Organization shall be considered to
16 be a resident of the District of Columbia.

17 (3) MEMBERSHIP.—

18 (A) IN GENERAL.—

19 (i) NINE MEMBERS.—Except as pro-
20 vided in clause (ii), the Board shall consist
21 of 9 members, 3 of whom shall be ap-
22 pointed by the President and 6 of whom
23 shall be elected by the class A stockhold-
24 ers, in accordance with the bylaws of the
25 Organization.

1 (ii) THIRTEEN MEMBERS.—If class B
2 stock is issued under section 201(b), the
3 Board shall consist of 13 members, 9 of
4 whom shall be appointed and elected in ac-
5 cordance with clause (i) and 4 of whom
6 shall be elected by the class B stockhold-
7 ers, in accordance with the bylaws of the
8 Organization.

9 (B) TERMS.—Each member of the Board
10 shall be elected or appointed for a 4-year term,
11 except that the members of the initial Board
12 shall be elected or appointed for the following
13 terms:

14 (i) Of the 3 members appointed by
15 the President—

16 (I) 1 member shall be appointed
17 for a 2-year term;

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

20 (III) 1 member shall be ap-
21 pointed for a 4-year term;

22 as designated by the President at the time
23 of the appointments.

24 (ii) Of the 6 members elected by the
25 class A stockholders—

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

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

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

7 (iii) If class B stock is issued and 4
8 additional members are elected by the class
9 B stockholders—

10 (I) 1 member shall be elected for
11 a 2-year term;

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

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

16 (C) QUALIFICATIONS.—Each member ap-
17 pointed by the President shall have expertise in
18 1 or more of the following areas:

19 (i) Native American housing and eco-
20 nomic development programs.

21 (ii) Financing in Native American
22 communities.

23 (iii) Native American governing bodies
24 and court systems.

1 (iv) Restricted and trust land issues,
2 economic development, and small consumer
3 loans.

4 (D) MEMBERS OF INDIAN TRIBES.—Not
5 less than 2 of the members appointed by the
6 President shall each be a member of an Indian
7 tribe who is enrolled in accordance with the ap-
8 plicable requirements of that Indian tribe.

9 (E) CHAIRPERSON.—The Board shall se-
10 lect a Chairperson from among its members, ex-
11 cept that the initial Chairperson shall be se-
12 lected from among the members of the initial
13 Board who have been appointed or elected to
14 serve for a 4-year term.

15 (F) VACANCIES.—

16 (i) APPOINTED MEMBERS.—Any va-
17 cancy in the appointed membership of the
18 Board shall be filled by appointment by the
19 President, but only for the unexpired por-
20 tion of the term.

21 (ii) ELECTED MEMBERS.—Any va-
22 cancy in the elected membership of the
23 Board shall be filled by appointment by the
24 Board, but only for the unexpired portion
25 of the term.

1 (G) TRANSITIONS.—Any member of the
2 Board may continue to serve after the expira-
3 tion of the term for which the member was ap-
4 pointed or elected until a qualified successor
5 has been appointed or elected.

6 (b) POWERS OF THE ORGANIZATION.—The Organi-
7 zation—

8 (1) shall adopt bylaws, consistent with this Act,
9 regulating, among other things, the manner in
10 which—

11 (A) the business of the Organization shall
12 be conducted;

13 (B) the elected members of the Board shall
14 be elected;

15 (C) the stock of the Organization shall be
16 issued, held, and disposed of;

17 (D) the property of the Organization shall
18 be disposed of; and

19 (E) the powers and privileges granted to
20 the Organization by this Act and other law
21 shall be exercised;

22 (2) may make and perform contracts, agree-
23 ments, and commitments, including entering into a
24 cooperative agreement with the Secretary;

1 (3) may prescribe and impose fees and charges
2 for services provided by the Organization;

3 (4) may, if such settlement, adjustment, com-
4 promise, release, or waiver is not adverse to the in-
5 terests of the United States—

6 (A) settle, adjust, and compromise; and

7 (B) with or without consideration or bene-
8 fit to the Organization, release or waive in
9 whole or in part, in advance or otherwise, any
10 claim, demand, or right of, by, or against the
11 Organization;

12 (5) may sue and be sued, complain and defend,
13 in any tribal, Federal, State, or other court;

14 (6) may acquire, take, hold, and own, and to
15 deal with and dispose of any property;

16 (7) may determine the necessary expenditures
17 of the Organization and the manner in which such
18 expenditures shall be incurred, allowed, and paid,
19 and appoint, employ, and fix and provide for the
20 compensation and benefits of officers, employees, at-
21 torneys, and agents as the Board determines reason-
22 able and not inconsistent with this section;

23 (8) may incorporate a new corporation under
24 State, District of Columbia, or tribal law, as pro-
25 vided in section 401;

1 (9) may adopt a plan of merger, as provided in
2 section 402;

3 (10) may consummate the merger of the Orga-
4 nization into the new corporation, as provided in sec-
5 tion 403; and

6 (11) may have succession until the designated
7 merger date or any earlier date on which the Orga-
8 nization surrenders its Federal charter.

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

11 (1) INVESTMENT OF FUNDS.—Funds of the Or-
12 ganization that are not required to meet current op-
13 erating expenses shall be invested in obligations of,
14 or obligations guaranteed by, the United States or
15 any agency thereof, or in obligations, participations,
16 or other instruments that are lawful investments for
17 fiduciary, trust, or public funds.

18 (2) DESIGNATION AS DEPOSITARY, CUSTODIAN,
19 OR AGENT.—Any Federal Reserve bank or Federal
20 home loan bank, or any bank as to which at the time
21 of its designation by the Organization there is out-
22 standing a designation by the Secretary of the
23 Treasury as a general or other depository of public
24 money, may—

1 (A) be designated by the Organization as
2 a depositary or custodian or as a fiscal or other
3 agent of the Organization; and

4 (B) act as such depositary, custodian, or
5 agent.

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

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

12 (2) any civil action to which the Organization is
13 a party shall be deemed to arise under the laws of
14 the United States, and the appropriate district court
15 of the United States shall have original jurisdiction
16 over any such action, without regard to amount or
17 value; and

18 (3) in any case in which all remedies have been
19 exhausted in accordance with the applicable ordi-
20 nances of an Indian tribe, in any civil or other ac-
21 tion, case, or controversy in a tribal court, court of
22 a State, or in any court other than a district court
23 of the United States, to which the Organization is
24 a party, may at any time before the commencement
25 of the trial be removed by the Organization, without

1 the giving of any bond or security and by following
2 any procedure for removal of causes in effect at the
3 time of the removal—

4 (A) to the district court of the United
5 States for the district and division in which the
6 action is pending; or

7 (B) if there is no such district court, to the
8 district court of the United States for the Dis-
9 trict of Columbia.

10 **SEC. 102. AUTHORIZED ASSISTANCE AND SERVICE FUNC-**
11 **TIONS.**

12 The Organization may—

13 (1) assist in the planning establishment and or-
14 ganization of Native American Financial Institu-
15 tions;

16 (2) develop and provide financial expertise and
17 technical assistance to Native American Financial
18 Institutions, including methods of underwriting, se-
19 curing, servicing, packaging, and selling mortgage
20 and small commercial and consumer loans;

21 (3) develop and provide specialized technical as-
22 sistance on overcoming barriers to primary mortgage
23 lending on Native American lands, including issues
24 related to trust lands, discrimination, high operating

1 costs, and inapplicability of standard underwriting
2 criteria;

3 (4) provide mortgage underwriting assistance
4 (but not in originating loans) under contract to Na-
5 tive American Financial Institutions;

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

14 (6) obtain capital investments in the Organiza-
15 tion from Indian tribes, Native American organiza-
16 tions, and other entities;

17 (7) act as an information clearinghouse by pro-
18 viding information on financial practices to Native
19 American Financial Institutions;

20 (8) monitor and report to Congress on the per-
21 formance of Native American Financial Institutions
22 in meeting the economic development and housing
23 credit needs of Native Americans; and

24 (9) provide any of the services described in this
25 section directly, or under a contract authorizing an-

1 other national or regional Native American financial
2 services provider to assist the Organization in carry-
3 ing out the purposes of this Act.

4 **SEC. 103. NATIVE AMERICAN LENDING SERVICES GRANT.**

5 (a) INITIAL GRANT PAYMENT.—If the Secretary and
6 the Organization enter into a cooperative agreement for
7 the Organization to provide technical assistance and other
8 services to Native American Financial Institutions, such
9 agreement shall, to the extent that funds are available as
10 provided in section 502, provide that the initial grant pay-
11 ment, anticipated to be \$5,000,000, shall be made when
12 all members of the initial Board have been appointed
13 under section 101.

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

18 **SEC. 104. AUDITS.**

19 (a) INDEPENDENT AUDITS.—

20 (1) IN GENERAL.—The Organization shall have
21 an annual independent audit made of its financial
22 statements by an independent public accountant in
23 accordance with generally accepted auditing stand-
24 ards.

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

5 (A) are presented fairly in accordance with
6 generally accepted accounting principles; and

7 (B) to the extent determined necessary by
8 the Secretary, comply with any disclosure re-
9 quirements imposed under section 301.

10 (b) GAO AUDITS.—

11 (1) IN GENERAL.—Beginning after the first 2
12 years of the operation of the Organization, unless an
13 earlier date is required by any other statute, grant,
14 or agreement, the programs, activities, receipts, ex-
15 penditures, and financial transactions of the Organi-
16 zation shall be subject to audit by the Comptroller
17 General of the United States under such rules and
18 regulations as may be prescribed by the Comptroller
19 General.

20 (2) ACCESS.—To carry out this subsection, the
21 representatives of the General Accounting Office
22 shall—

23 (A) have access to all books, accounts, fi-
24 nancial records, reports, files, and all other pa-
25 pers, things, or property belonging to or in use

1 by the Organization and necessary to facilitate
2 the audit;

3 (B) be afforded full facilities for verifying
4 transactions with the balances or securities held
5 by depositaries, fiscal agents, and custodians;
6 and

7 (C) have access, upon request to the Orga-
8 nization or any auditor for an audit of the Or-
9 ganization under subsection (a), to any books,
10 accounts, financial records, reports, files, or
11 other papers, or property belonging to or in use
12 by the Organization and used in any such audit
13 and to any papers, records, files, and reports of
14 the auditor used in such an audit.

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

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

21 **SEC. 105. ANNUAL HOUSING AND ECONOMIC DEVELOP-**
22 **MENT REPORTS.**

23 Not later than 1 year after the date of enactment
24 of this Act, and annually thereafter, the Organization shall
25 collect, maintain, and provide to the Secretary, in a form

1 determined by the Secretary, such data as the Secretary
2 determines to be appropriate with respect to the activities
3 of the Organization relating to economic development.

4 **SEC. 106. ADVISORY COUNCIL.**

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

7 (b) MEMBERSHIP.—

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

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

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

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

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

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

3 (c) DUTIES.—The Council shall advise the Board on
4 all policy matters of the Organization. Through the re-
5 gional representation of its members, the Council shall
6 provide information to the Board from all sectors of the
7 Native American community.

8 **TITLE II—CAPITALIZATION OF** 9 **ORGANIZATION**

10 **SEC. 201. CAPITALIZATION OF THE ORGANIZATION.**

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

13 (1) be issued only to Indian tribes and the De-
14 partment of Hawaiian Home Lands;

15 (2) be allocated—

16 (A) with respect to Indian tribes, on the
17 basis of Indian tribe population, as determined
18 by the Secretary in consultation with the Sec-
19 retary of the Interior, in such manner as to
20 issue 1 share for each member of an Indian
21 tribe; and

22 (B) with respect to the Department of Ha-
23 waiian Home Lands, on the basis of the num-
24 ber of current leases at the time of allocation;

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

3 (4) be issued in such manner as voting rights
4 may only be vested upon purchase of those rights
5 from the Organization by an Indian tribe or the De-
6 partment of Hawaiian Home Lands, each share
7 being entitled to 1 vote; and

8 (5) be nontransferable.

9 (b) CLASS B STOCK.—

10 (1) IN GENERAL.—The Organization may issue
11 class B stock evidencing capital contributions in the
12 manner and amount, and subject to any limitations
13 on concentration of ownership, as may be established
14 by the Organization.

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

17 (A) be available for purchase by investors;

18 (B) be entitled to such dividends as may
19 be declared by the Board in accordance with
20 subsection (c);

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

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

1 (E) be transferable only on the books of
2 the Organization.

3 (c) CHARGES AND FEES; EARNINGS.—

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

7 (A) all costs and expenses of the oper-
8 ations of the Organization should be within the
9 income of the Organization derived from such
10 operations; and

11 (B) such operations would be fully self-
12 supporting.

13 (2) EARNINGS.—All earnings from the oper-
14 ations of the Organization shall be annually trans-
15 ferred to the general surplus account of the Organi-
16 zation. At any time, funds in the general surplus ac-
17 count may, in the discretion of the Board, be trans-
18 ferred to the reserves of the Organization.

19 (d) CAPITAL DISTRIBUTIONS.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the Organization may make such capital
22 distributions (as such term is defined in section
23 1303 of the Federal Housing Enterprise Financial
24 Safety and Soundness Act of 1992 (12 U.S.C.
25 4502)) as may be declared by the Board. All capital

1 distributions shall be charged against the general
2 surplus account of the Organization.

3 (2) RESTRICTION.—The Organization may not
4 make any capital distribution that would decrease
5 the total capital (as such term is defined in section
6 1303 of the Federal Housing Enterprise Financial
7 Safety and Soundness Act of 1992 (12 U.S.C.
8 4502)) of the Organization to an amount less than
9 the capital level for the Organization established
10 under section 301, without prior written approval of
11 the distribution by the Secretary.

12 **TITLE III—REGULATION,**
13 **EXAMINATION, AND REPORTS**

14 **SEC. 301. REGULATION, EXAMINATION, AND REPORTS.**

15 (a) IN GENERAL.—The Organization shall be subject
16 to the regulatory authority of the Department of Housing
17 and Urban Development with respect to all matters relat-
18 ing to the financial safety and soundness of the Organiza-
19 tion.

20 (b) DUTY OF SECRETARY.—The Secretary shall en-
21 sure that the Organization is adequately capitalized and
22 operating safely as a congressionally chartered body cor-
23 porate.

24 (c) REPORTS TO SECRETARY.—

1 (1) ANNUAL REPORTS.—Not later than 1 year
2 after the date of enactment of this Act, and annually
3 thereafter, the Organization shall submit to the Sec-
4 retary 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 Secretary shall require.

8 (2) CONTENTS OF REPORTS.—Each report sub-
9 mitted under this subsection shall contain a declara-
10 tion by the president, vice president, treasurer, or
11 any other officer of the Organization designated by
12 the Board to make such declaration, that the report
13 is true and correct to the best of the knowledge and
14 belief of that officer.

15 **SEC. 302. AUTHORITY OF THE SECRETARY OF HOUSING**
16 **AND URBAN DEVELOPMENT.**

17 The Secretary shall—

18 (1) have general regulatory power over the Or-
19 ganization; and

20 (2) issue such rules and regulations applicable
21 to the Organization as the Secretary determines to
22 be necessary or appropriate to ensure that the pur-
23 poses specified in section 4 are accomplished.

1 **TITLE IV—FORMATION OF NEW**
2 **CORPORATION**

3 **SEC. 401. FORMATION OF NEW CORPORATION.**

4 (a) IN GENERAL.—In order to continue the accom-
5 plishment of the purposes specified in section 3 beyond
6 the terms of the charter of the Organization, the Board
7 shall, not later than 10 years after the date of enactment
8 of this Act, cause the formation of a new corporation
9 under the laws of any tribe, any State, or the District of
10 Columbia.

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

17 (c) USE OF NAFSO NAME PROHIBITED.—The new
18 corporation may not use in any manner the name “Native
19 American Financial Services Organization” or “NAFSO”
20 or any variation thereof.

21 **SEC. 402. ADOPTION AND APPROVAL OF MERGER PLAN.**

22 (a) IN GENERAL.—Not later than 10 years after the
23 date of enactment of this Act and after consultation with
24 the Indian tribes that are stockholders of class A stock
25 referred to in section 201(a), the Board shall prepare,

1 adopt, and submit to the Secretary for approval, a plan
2 for merging the Organization into the new corporation.

3 (b) DESIGNATED MERGER DATE.—

4 (1) IN GENERAL.—The Board shall establish
5 the designated merger date in the merger plan as a
6 specific calendar date on which, and time of day at
7 which, the merger of the Organization into the new
8 corporation shall take effect.

9 (2) CHANGES.—The Board may change the
10 designated merger date in the merger plan by adopt-
11 ing an amended plan of merger.

12 (3) RESTRICTION.—Except as provided in para-
13 graph (4), the designated merger date in the merger
14 plan or any amended merger plan shall not be later
15 than 11 years after the date of enactment of this
16 Act.

17 (4) EXCEPTION.—Subject to the restriction
18 contained in paragraph (5), the Board may adopt an
19 amended plan of merger that designates a date later
20 than 11 years after the date of enactment of this
21 Act if the Board submits to the Secretary a report—

22 (A) stating that an orderly merger of the
23 Organization into the new corporation is not
24 feasible before the latest date designated by the
25 Board;

1 (B) explaining why an orderly merger of
2 the Organization into the new corporation is
3 not feasible before the latest date designated by
4 the Board;

5 (C) describing the steps that have been
6 taken to consummate an orderly merger of the
7 Organization into the new corporation not later
8 than 11 years after the date of enactment of
9 this Act; and

10 (D) describing the steps that will be taken
11 to consummate an orderly and timely merger of
12 the Organization into the new corporation.

13 (5) LIMITATION.—The date designated by the
14 Board in an amended merger plan shall not be later
15 than 12 years after the date of enactment of this
16 Act.

17 (6) CONSUMMATION OF MERGER.—The con-
18 summation of an orderly and timely merger of the
19 Organization into the new corporation shall not
20 occur later than 13 years after the date of enact-
21 ment of this Act.

22 (c) GOVERNMENTAL APPROVALS OF MERGER PLAN
23 REQUIRED.—The merger plan or any amended merger
24 plan shall take effect on the date on which the plan is
25 approved by the Secretary.

1 (d) REVISION OF DISAPPROVED MERGER PLAN RE-
2 QUIRED.—If the Secretary disapproves the merger plan or
3 any amended merger plan—

4 (1) the Secretary shall—

5 (A) notify the Organization of such dis-
6 approval; and

7 (B) indicate the reasons for the dis-
8 approval; and

9 (2) not later than 30 days after the date of no-
10 tification of disapproval under paragraph (1), the
11 Organization shall submit to the Secretary for ap-
12 proval, an amended merger plan responsive to the
13 reasons for the disapproval indicated in that notifi-
14 cation.

15 (e) NO STOCKHOLDER APPROVAL OF MERGER PLAN
16 REQUIRED.—The approval or consent of the stockholders
17 of the Organization shall not be required to accomplish
18 the merger of the Organization into the new corporation.

19 **SEC. 403. CONSUMMATION OF MERGER.**

20 The Board shall ensure that the merger of the Orga-
21 nization into the new corporation is accomplished in ac-
22 cordance with—

23 (1) a merger plan approved by the Secretary
24 under section 402; and

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

3 **SEC. 404. TRANSITION.**

4 Except as provided in this section, the Organization
5 shall, during the transition period, continue to have all of
6 the rights, privileges, duties, and obligations, and shall be
7 subject to all of the limitations and restrictions, set forth
8 in this Act.

9 **SEC. 405. EFFECT OF MERGER.**

10 (a) **TRANSFER OF ASSETS AND LIABILITIES.**—On
11 the designated merger date, all property, real, personal,
12 and mixed, all debts due on any account, and any other
13 interest, of or belonging to or due to the Organization,
14 shall be transferred to and vested in the new corporation
15 without further act or deed, and title to any property,
16 whether real, personal, or mixed, shall not in any way be
17 impaired by reason of the merger.

18 (b) **TERMINATION OF THE ORGANIZATION AND ITS**
19 **FEDERAL CHARTER.**—On the designated merger date—

20 (1) the surviving corporation of the merger
21 shall be the new corporation;

22 (2) the Federal charter of the Organization
23 shall terminate; and

24 (3) the separate existence of the Organization
25 shall terminate.

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

5 (d) SAVINGS CLAUSE.—

6 (1) PROCEEDINGS.—The merger of the Organi-
7 zation into the new corporation shall not abate any
8 proceeding commenced by or against the Organiza-
9 tion before the designated merger date, except that
10 the new corporation shall be substituted for the Or-
11 ganization as a party to any such proceeding as of
12 the designated merger date.

13 (2) CONTRACTS AND AGREEMENTS.—All con-
14 tracts and agreements to which the Organization is
15 a party and which are in effect on the day before the
16 designated merger date shall continue in effect ac-
17 cording to their terms, except that the new corpora-
18 tion shall be substituted for the Organization as a
19 party to those contracts and agreements as of the
20 designated merger date.

1 **TITLE V—AUTHORIZATIONS OF**
 2 **APPROPRIATIONS**

3 **SEC. 501. AUTHORIZATION OF APPROPRIATIONS FOR NA-**
 4 **TIVE AMERICAN FINANCIAL INSTITUTIONS.**

5 (a) IN GENERAL.—There are authorized to be appro-
 6 priated to the Fund, without fiscal year limitation,
 7 \$20,000,000 to provide financial assistance to Native
 8 American Financial Institutions.

9 (b) NOT MATCHING FUNDS.—To the extent that a
 10 Native American Financial Institution receives a portion
 11 of an appropriation made under subsection (a), such funds
 12 shall not be considered to be matching funds required of
 13 the Native American Financial Institution under section
 14 108(e) of the Riegle Community Development and Regu-
 15 latory Improvement Act of 1994 (12 U.S.C. 4707(e)).

16 **SEC. 502. AUTHORIZATION OF APPROPRIATIONS FOR OR-**
 17 **GANIZATION.**

18 The Secretary may, subject to the availability of ap-
 19 propriations, provide not more than \$10,000,000 for the
 20 funding of a cooperative agreement to be entered into by
 21 the Secretary and the Organization for technical assist-
 22 ance and other services to be provided by the Organization
 23 to Native American Financial Institutions.

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