LIHTC 101:
An Introduction to the Low Income Housing Tax Credit Program
More than $350 million in equity to build or rehabilitate 3,700+ housing units and $35 million in economic development for Travois clients.
Travois housing clients

- 50+ tribal clients
- 141 tax credit projects
- 3,773 units
- $517,550,000 in total project costs
- $371,617,000 in private equity (does not need to be paid back)
- $28,000,000 + in other grants

© 2010 Travois
Montana

Felsman Addition

Elmo Homes
Washington (cont.)

Tulalip Homes II
Minnesota

White Earth Homes I

Red Lake Homes II
Maine

Cuspes Park
Oklahoma

Iscani Phase I
Oklahoma

Wichita Community Center & Management Offices – Phase I
Oklahoma

Iscani Phase II
Arizona
Yavapai-Apache Nation (3 projects)

Duplex unit

Triplex unit

Single-family unit

Single-family unit

© 2010 Travois
Arizona (cont.)

Yavapai # 3 Housing Operations Building & Community Meeting Space

© 2010 Travois
New Mexico

Laguna Pueblo – Green Acres
Texas

Ysleta Del Sur Pueblo
What can be built with housing tax credits?

- New construction /rehabilitation
- Single family duplexes/apts.
- Scattered site/subdivision
- Community facilities family/elderly

Serving:
- Homeowners/renters
- Low income/extremely low income
- Disabled and other special needs
- Tribal members/workforce/students
Design your own homes

White Earth Homes IV rendering — 30 units

© 2010 Travois
Improve energy efficiency

**Colville Homes I** – solar hot water heater

**Shoulder Blade Complex** — Northern Cheyenne solar array

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The Low Income Housing Tax Credit program

- Developed by Congress in 1986 to finance the development of affordable rental housing for low-income households
- Administered by the Treasury Department (IRS)
- Section 42 of the Internal Revenue Code (IRC) defines the LIHTC Program
The LIHTC program generates tax credits for investors. The credit is a dollar-for-dollar reduction in tax liability.
  - Not a tax deduction (i.e. a reduction of income to arrive at taxable income)

- The credits offset an investor’s taxes on a dollar for dollar basis for a 10-year period.

- LIHTCs have become the primary tool for developing affordable housing.
Developers “sell” tax credits to investors to raise capital, thereby reducing their contribution to the project.

- Allows developers to offer affordable rents to low-income families.

- Must compete for LIHTC allocations.
  - States may hold one or two competitive application rounds per year.
How LIHTCs work for tribes

- Directly addresses housing needs

- Depending on market conditions, the LIHTC program can generate up to 60 to 90% of direct equity for housing projects, which significantly reduces the amount of tribal funds required to develop a project.

  - The reduction in tribal funds required for the project allows tribes to target lower income families and charge extremely low (affordable) rents.
The Low Income Housing Tax Credit program (cont.)

- Two types of credits are awarded to qualifying projects:
  - 9% credits – New construction and rehabilitation
  - 4% credits – Bond projects or acquisition

- Bond projects do not compete for a tax credit allocation (automatic allocation).

- States usually have open allocation rounds for bond projects.
How LIHTC financing works: basic terminology

- Total tribal contribution =
  total development cost (TDC) – investor equity

- Investor equity is calculated based on the credits awarded to the project times 10, multiplied by the per credit dollar purchase price (i.e. $0.63 - $0.67)

- Tribal contributions will typically consist of “soft” debt from NAHASDA and/or the value of assets on an acquisition / rehab project

- A developer’s fee is earned by the developer (typically the tribe or housing authority) for putting together the project
  - Typically the investor pays the developer fee’s after the project is complete and has been occupied for at least 3 months

- Other leveraging tools to help fill the gap include:
  - AHP, ARRA, ICDBG, HOME, RD, other state housing funds, etc.
How LIHTC financing works: basic terminology

• If your project is in a QCT or a DDA, then you receive a 30% BOOST in credits.

• Qualified Census Tract (QCT)
  – 50% of population has income at or below 60% of the AMI or 25%+ of the population is at or below the national poverty line.

• Difficult Development Area (DDA)
  – Cost of developing housing in your area exceeds the statewide average by a certain percentage.

• The Housing and Economic Recovery Act (HR 3221) signed by the President in 2008 allows for states to determine DDAs based on their own criteria.

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## 35-unit new construction in a QCT

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Development Cost (assumes $140,000/unit &amp; $200,000 in soft costs)</td>
<td>$5,100,000</td>
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<tr>
<td>Developer's Fee (12%)</td>
<td>+ $612,000</td>
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<tr>
<td><strong>Total Development Cost (TDC)</strong></td>
<td><strong>$5,712,000</strong></td>
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<tr>
<td>Eligible Basis (assumes $75,000 not includable in basis)</td>
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<tr>
<td>QCT Boost</td>
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<td><strong>Total Qualified Basis</strong></td>
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<tr>
<td>Applicable Tax Credit Percentage (9% Credit)</td>
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<tr>
<td><strong>Credits to be Awarded</strong></td>
<td><strong>$659,529</strong></td>
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<tr>
<td>10 Year Total of Credits</td>
<td>$6,595,290</td>
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<tr>
<td>Investor Purchase Price</td>
<td>x 0.65</td>
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<td><strong>Total Investor Equity</strong></td>
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<td><strong>Total Development Cost (TDC)</strong></td>
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<td>Less Investor Equity</td>
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<tr>
<td>Initial Tribal Contribution</td>
<td>$1,425,062</td>
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<td>Less Developers Fee</td>
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<td><strong>$813,062</strong></td>
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<td>Per unit cost</td>
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Leveraging = building more or better for the same amount of money

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<td>$813,000</td>
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## 35-units acquisition/rehab in a QCT

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<td>Development Cost (assume $85,000/unit &amp; $200,000 in soft costs)</td>
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<td><strong>Developer’s Fee (12% of acquisition &amp; 12% of rehab)</strong></td>
<td>+ $591,000</td>
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<tr>
<td><strong>Total Development Cost (TDC)</strong></td>
<td><strong>$5,516,000</strong></td>
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<tr>
<td>Eligible Basis 9% Credit (assume $75,000 not includable in basis)</td>
<td>$3,481,000</td>
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<tr>
<td>QCT Boost</td>
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<tr>
<td><strong>Total 9% Qualified Basis</strong></td>
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<td>Applicable Tax Credit Percentage (9% Credit)</td>
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<td><strong>9% Credits</strong></td>
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<td><strong>Total Investor Equity</strong></td>
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<td><strong>Total Development Cost (TDC)</strong></td>
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<td>Less Investor Equity</td>
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<td>Initial Tribal Contribution</td>
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<td>Less Acquisition</td>
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<td>Less Developers Fee</td>
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<tr>
<td><strong>Final Cost to the Tribe</strong></td>
<td><strong>$91,992</strong></td>
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<tr>
<td>Per unit cost</td>
<td>$2,628</td>
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</table>
Acquisition / rehabilitation projects

• Units must be greater than 10 years old
• No substantial capital improvements within the last 10 years (rule of thumb = 25% of cost of unit)
• Value of units in current condition (appraisal may be appropriate)
• Determine logistics of rehab (relocate tenants, work around tenants, etc.)
• Allowed to increase square footage, bedrooms, amenities, etc.
• Permitted to rehab a community facility or construct a new community facility
• Determine who lives in the units (good tenants?, # in HH, income)
• Other – interview tenants to determine if they are suitable for the program (do they mind frequent inspections, etc.)
LIHTC program requirements

• Mandatory income and rent restrictions
  – Federal maximum income – 60% AMI
  – States offer preferences to lower levels – 30-50% AMI
  – Rents are based on Area Median Income plus utility costs

• Incomes must be certified at move-in but income increases do not affect eligibility
  – In other words, if incomes increase after the initial certification, the tenant does not have to move out of the unit.
  – Must include 100% of the per cap income derived from gaming.
  – The first $2,000 in per cap income derived from interest held in trust or restricted land is excluded.
LIHTC program requirements

• Compliance periods
  – 15-year mandatory compliance period
  – 15-year extended use period
  – Some states give preferences to longer compliance periods
    (MA gives points for up to 50 years)

• Sec. 42 has provisions for Lease-Purchase
  – Allows tenants to purchase homes after the initial 15-year compliance period
  – The tribe or TDHE determines the sales price and terms of the sale
How are credits allocated?

- The IRS allocates credits to individual states (based on population), who are then responsible for allocating credits to qualified projects.

- States must develop a QAP (Qualified Allocation Plan) for allocating credits.

- Eligibility is based on meeting the requirements in both Section 42 and your state’s QAP.
Credit allocation: the QAP

• The QAP defines how a state administers their allocations of tax credits.

• Each state’s QAP has several common features:
  – Must serve the lowest income people
  – Gives preference to serving needs of low income people for the longest period of time
  – Allocations must be geographically distributed
  – Greatest consideration given to “readiness to proceed”

• Contains threshold requirements as well as scoring criteria.
Structuring LIHTC deals: partnership structure

• Typical Project Structure
  – Limited Partnerships
    • General Partner 0.01% (developer)
    • Limited Partner 99.99% (investor)

• Tribes or TDHEs serve as the managing general partner.

• Investors have 99.99% ownership; however, they play no role in managing the project.
LIHTC structure

Tax Credits

Limited Partnership

General Partner
Tribe/TDHE
0.01%

Limited Partner
Investor
99.99%

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Investor and tribal concerns

- Investor’s concerns about tribes
  - Compatible partner
  - Risk of foreclosure mitigated / removed
  - Operating results guaranteed
  - Compliance guaranteed

- Tribe’s concerns about investors
  - Compatible partner
  - Dispute resolution mechanism
  - Investor with a proven track record
  - Underwriting requirements
Investor and tribal concerns

- Risks of the LIHTC program
  - You are at risk of losing credits if you do one of the following things:
    - Negligence or fraud in determining eligibility
    - Maintenance and management neglect
    - Loss of units due to fire or tenant abuse
    - Failure to meet carryover requirements

  - Risks mitigated by paying attention to project requirements, compliance monitoring and by establishing quality management procedures.

  - The program is not “easy,” but the rewards outweigh the risks.
Make your families smile ...

Tulalip II homes family – Tulalip, Wash.

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Key players

- Tribal council
- Housing board
- Housing staff — “compliance team”
- Tenants
- State agency compliance officer
- Investor partner
Compliance

• A presentation should be made to the housing board and tribal council regarding the tax credit program requirements and expectations

• Presentations should be made regularly due to board and council turnover
Accounting considerations for LIHTC projects

- Separate legal entity
- Separate tax identification number
- Separate tax return
- Partnership agreement
- Non-governmental entity
Qualifying LIHTC households

What happens when construction is complete?

- Final construction completion inspection
- Certificates of Occupancy
- When can you begin renting units?
Qualifying LIHTC households

What happens when construction is complete?

• Final construction completion inspection
• Certificates of Occupancy
• When can you begin renting units?
Qualifying LIHTC households

• Waiting list
• Required documentation
• Household composition
• Income and rent limits
• Rent and utility allowances
Waiting lists

• Use of TDHE waiting lists
• TDHE determines preference order
• Preference can be based upon tribal enrollment, application date, ability to pay rent, rental history, or current living conditions to name a few
Required documentation

Items to get started

• Copy of the tax credit application
• Copy of all other Financing Sources
  – HOME
  – Bond
  – RD 515
  – etc.
• Copy of current Policy & Procedure Manual
Required documentation

Items to get started (cont’d)
• Copy of Land Use Restriction Agreement
• All rental forms:
  – Current year income & rent limits
  – Household application
  – Verification forms
  – Tenant Income Certification (TIC)
  – Lease
Qualifying LIHTC households

- Income limits
- Income minimums
- Handicapped units & other set-asides
- Contact information for state agency
- Current utility allowances & supporting documentation

NOTE: Utility allowances must be updated on an annual basis.
Determining annual household income

- Income
  - Inclusions
  - Exclusions
  - Examples

- Assets
  - Types
  - Exclusions
  - Income from assets
  - Imputed asset income
Examples of included income

- Employment income
- Social Security
- TANF
- Alimony & child support
- Recurring gifts
- Public assistance
- Payment in lieu of earnings (unemployment benefits, workers compensation, severance pay)
- Financial assistance in excess of tuition for adults under age 24. (See the exception under excluded income.)
Examples of excluded income

- Food stamps
- Section 8 assistance
- Payment for foster care
- Hostile fire pay to military members
- First $2,000 of per cap income from Tribal Trust Land activities
- Earnings in excess of $480 of adult dependant full-time students
- Student Financial Assistance for adults age 24 and older with dependent children
Assets

• Savings accounts, checking accounts, money market, etc.
• IRA, 401K, etc.
• Real estate ownership
• Whole life insurance
• Pension & retirement plans
Examples of excluded assets

• Personal property (vehicle that is used on a regular basis, jewelry, furniture, etc.)
• Assets that are not owned or accessible to the client
• Interest in Indian trust land
• Assets lost in divorce, foreclosure or bankruptcy
• Term life insurance
• Assets disposed of for fair market value
Managing your LIHTC tenants

- Effective tenant selection
- Tenant orientation
- Tenant eligibility
- Strict enforcement of lease provisions
Tenant orientations

• The TDHE should require that applicants for the tax credit homes complete an orientation prior to move-in

• Orientation should explain:
  – TDHE/tribal and LIHTC program policies and procedures
  – Review of lease requirements
  – How to perform proper home maintenance

• Other optional training could be applied at this time (i.e. budgeting family expenses so that rent is paid/preparing tenant for eventual homeownership)
Tenant selections

• What are the criteria?

• Pre-screening procedures
  – Criminal background check
  – Credit check
  – Drug screening
  – Rental history and performance
Tenant eligibility

- Interview applicant
- Complete initial application
- Verify all information (income/assets)
- Determine total household income
- Complete the TIC and lease

Staff must know the specific state LIHTC requirements and must use state required LIHTC forms
Inspections – key players

Stakeholders with money in the housing development …
Inspections – key players

• Housing staff — “compliance team”
  – Includes maintenance, occupancy and/or resident services departments

• Tenants

• State agency compliance officer

• Investor partner

• Travois

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Planning for inspections

• Housing staff must have plan for:
  – Preparing for inspections
  – Conducting inspections

• Tenant must receive adequate notice of inspections

• State and investor inspections must be scheduled with adequate notice to owner/manager
Pre-inspection preparation

- Notify tenants in writing of dates and estimated times for inspection.
- Tenant notice should include instructions to notify the housing manager of any problems, repair items, etc. immediately upon receipt of notice.
- Tenant notice must also state that the unit will be inspected even if the tenant is not at home.
Routine project inspections

• Housing staff must inspect units on a regular basis, provide written reports for the tenant files, issue work orders and follow up on all findings.

• Problem tenants must be inspected more frequently until issues are resolved.

• Regular inspections allow housing staff to be prepared for outside inspectors when they visit.
What do inspectors look for?

• Uniform Physical Conditions Standards (UPCS) protocol
• Interior and exterior of the unit as well as any common areas
• Maintenance staff should be present
• Smoke detectors, stove fans and burners, pilot lights
What do inspectors look for?

Going on a site visit…
Inspections – be prepared

- Maintenance staff should have all necessary items to complete quick repairs at time of inspection. These items include:
  - Batteries for smoke detectors
  - Replacement smoke detectors
  - Replacement fire extinguishers
  - Sink/tub stoppers
  - Ladders, washers, screws, light bulbs
Inspections

• Health & Safety violations must be corrected immediately.
• Examples of these types of violations include:
  – Inoperable/malfunctioning smoke detectors
  – Gas leaks
  – Exposed wires/open electrical panels
  – Expired fire extinguishers
  – Broken glass
Most frequently cited findings

• Smoke detectors – not operating/chirping
• Blocked egress (bedroom windows/improper locks on interior doors)
• Broken door hardware
• Broken glass
• Unlit basement stairs
• Exposed electrical wires/fixtures
Most frequently cited findings

- Blocked access to the electrical panel
- Doors damaged seals
- Kitchen stove – burners not functioning
- Leaking plumbing (sinks, tubs, toilets, etc.)
- Broken outlet/switch plate covers
- Walls damaged (holes, paint, etc.)
- Insect infestation
Good inspection photos!
Satisfying state, federal, and investor program requirements

What are they looking for?

• Well defined management structure
• Current audited financial statements and tax returns
• Detailed financial policy and procedures (including but not limited to)
  – Rent collection
  – Tenant accounts receivable
  – Accounts payable
  – Work order/maintenance expense tracking
• Detailed housing policy and procedures (including but not limited to)
  – Waiting list policies
  – Eviction policies
  – Drug and alcohol policies
  – Pet policies
• Structure of the housing organization
State requirements

• Minimum 15-year compliance period
• States may have different reporting requirements but all expect submission at least annually
• Noncompliance reported by state agency to IRS on Form 8823
Other requirements

- Investor Reports
  - Quarterly financials
  - Occupancy reports
  - Certificates or statements confirming that the partnership remains in compliance
  - Other reports the investor deems necessary to evaluate the partnership (e.g. business report)

- Annual reports
  - Tax return & audit
  - Operating budget
  - Utility expense changes
  - Insurance renewal
Miscellaneous Compliance Concerns

• Out-of-service units
• Leasing delays
• Cross-training
Part 2: NMTC program

• Benefits
• How does NMTC work?
• NMTC in Indian Country
• NMTC structure
• Legal ramifications
• How can tribes prepare?
Provide infrastructure

Navajo Tribal Utility Authority – substation
Provide tribal jobs

Platinum Salmon Processing Plant – 450 jobs for Native Alaskans
© 2010 Travois
Build tribal government

Bois Forte Community Facility — Construction progress August 2010

© 2010 Travois
Encourage tribal tourism

Santa Claran Hotel —
Santa Clara Pueblo, N.M.

Hotel Andaluz —
20% of jobs reserved for tribal members

© 2010 Travois
Build your community

Yonaguska Village — for-sale housing to serve the Eastern Band of Cherokee, N.C.

© 2010 Travois
How does NMTC work?

• U.S. Department of Treasury program

• Encourages private investment for economic development in low income communities

• Can provide up to 25% of equity for a business venture
How does NMTC work?

- Location in Low Income Community (LIC)
- Exclusions
- 7-year compliance period
- Principal of loan extinguished after seven years
Happy customers!

Bois Forte Community Facility groundbreaking

© 2010 Travois
Why NMTC in Indian Country?

- Flexible financing options
- Travois is only CDE with exclusive Indian Country focus; board with American Indian representatives
- Best use of limited funds
- Investor opportunities
NMTC structure

Leverage lender: government or private grants or bank loans

NMTC investor capital: U.S. Bank, Wells Fargo, etc.

Investment Fund

$8 million

$2.5 million

$10.5 million Qualified Equity Investment

CDE

$8 million senior loan

$2 million subordinated loan

QALICB: community facility

© 2010 Travois
NMTC example budget

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Project

Sources

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Uses

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<td>$250,000.00</td>
</tr>
<tr>
<td>CDE origination fee</td>
<td>$315,000.00</td>
</tr>
<tr>
<td>Site work</td>
<td>$525,000.00</td>
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<tr>
<td>Materials and finishes</td>
<td>$4,800,000.00</td>
</tr>
<tr>
<td>Mechanical systems</td>
<td>$1,700,000.00</td>
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<tr>
<td>Electrical systems</td>
<td>$750,000.00</td>
</tr>
<tr>
<td>General conditions, FF&amp;E</td>
<td>$1,000,000.00</td>
</tr>
<tr>
<td>Contingency</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>Reimbursement of design fees</td>
<td>$750,000.00</td>
</tr>
<tr>
<td></td>
<td>$10,290,000.00</td>
</tr>
</tbody>
</table>
Legal ramifications of NMTC

• Limited waiver of sovereign immunity

• Tribal or personal guaranty from business entity

• A borrower must be a Qualified Active Low Income Community Business (QALICB)
**NMTC compliance considerations**

- NMTC compliance based on project, not the individual it serves.

- Up-front compliance review: community impact rating

- Ongoing compliance review: annual site-visit and investor reporting

- Does the project have tangible benefits for the LIC?
How can tribes prepare for NMTC?

- Review your community’s needs

- Educate tribal council, board members, potential businesses

- Consider applying for BIA loan guarantee for projects in your pipeline

- Work with a CDE early in the process
How can tribes help?

• Lobby for better representation in U.S. Census

• Work with congressional representatives to ensure CDEs serving tribes receive consideration for NMTC funds

• Tell your lender or grant provider early in the process you intend to leverage NMTCs
Travois clients

Ak-Chin Indian Community
Bad River Housing Authority
Blackfeet Tribal Housing Authority
Bois Forte Reservation Housing Authority
Coastal Villages Region Fund
Cheyenne River Housing Authority
Colville Indian Housing Authority
Dakota Nation Housing Development Corporation
Fort Belknap Housing Authority
Fort Berthold Housing Authority
Fort Peck Housing Authority
Hopi Housing Authority
Jicarilla Apache Utilities Authority
Lac Courte Oreilles Housing Authority
Laguna Pueblo Housing Enterprise
Lakota Fund
Leech Lake Reservation Housing Authority
Lower Brule Housing Authority
Lower Elwha Housing Authority
Lummi Nation Housing Authority
Menominee Tribal Housing Authority
Mississippi Choctaw Housing Authority
Navajo Tribal Utility Authority
N. Arapaho Housing Authority
N. Cheyenne Tribal Housing Authority
Nez Perce Tribal Housing Authority
Nooksack Housing Authority
Oti Kaga
Pleasant Point Passamaquoddy
Pojoaque Housing Corporation
Prairie Band Potawatomie
Quinault Housing Authority
Red Lake Reservation Housing Authority
Salish & Kootenai Housing Authority
Salt River Pima-Maricopa Housing Division
San Carlos Housing Authority
Seminole Housing Authority
Sitting Bull College
Sokaogon Chippewa Housing Dept
Spokane Indian Housing Authority
Standing Rock Housing Authority
Tulalip Tribes Housing Department
Turtle Mountain Housing Authority
United Tribes Technical College
White Earth Reservation Housing Authority
White Mountain Apache Housing Authority
Wichita Housing Authority
Yakama Nation Housing Authority
Yankton Sioux Housing Authority
Yavapai-Apache Nation Tribal Housing
Ysleta Del Sur Pueblo

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For more information:

Visit our website to learn about:

- The LIHTC program
- The NMTC program
- News and events

Other services including:

- Asset Management
- Design & Construction Services

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