

## NAFSA Lending Best Practices

The following Lending Best Practices outline the requirements NAFSA members must follow when creating consumer products. Because of these Best Practices, consumers can trust NAFSA members to honor their rights, treat them fairly, and constantly strive to offer them innovative alternative financial products at a better price.

- Tribal lending companies must operate as a legitimate “arm of the tribe,” owned by, operated by, and benefitting federally recognized sovereign nations.
- Ensure all consumers are afforded the same protections by following the principles detailed in federal financial services laws to the extent that they are applicable and honor tribal sovereignty. Laws to be used as guidance are:
  - **Truth in Lending Act:** United States federal law aimed at promoting the informed use of consumer credit, requiring standardized terms and cost disclosure and other regulations that emphasize consumer rights.
  - **Military Lending Act:** United States federal law that limits the way short term loans, vehicle title loans and refund anticipation loans can be offered to military personnel and their families.
  - **Equal Credit Opportunity Act:** United States federal law that makes it unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant’s income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.
  - **Fair and Accurate Credit Transactions Act of 2003:** United States federal law requiring the secure disposal of consumer information. Additionally, it allows consumers to request and obtain a free credit report once every 12 month and includes other provisions to protect against identity theft.
  - **Fair Debt Collection Practices Act:** United States federal law with the goal of eliminating abusive debt collection. The Act created guidelines for debt collectors and specifies the rights of consumers.
  - **Electronic Fund Transfer Act:** United States federal law that established the rights and liabilities of consumers and the responsibilities of the all parties in electronic funds transfer activities.
  - **Gramm-Leach-Bliley Act:** United States federal law that includes the Financial Privacy Rule governing the collection and disclosure of consumers’ personal financial information and the Safeguards Rule requiring all financial institutions maintain safeguards to protect consumer information.

- **Federal Trade Commission Act:** United States federal law whose principal mission is the promotion of consumer protection and the elimination and prevention of what regulators perceive to be anti-competitive business practices.
- Meet or exceed the minimum standards for tribal and federal employment rights.
- Demonstrate the positive economic development impact tribal lenders can have on sovereign nations through social giving, education, employment and increased opportunity.
- Promote financial literacy tools and resources for consumers when possible.
- Constantly work with consumer advocates to provide the highest quality product to all Americans.
- Always treat consumers with respect. Never garnish wages or engage in abusive collection practices.

### **Operational Best Practices**

The following Best Practices outline the requirements NAFSA members to follow when forming tribal lending companies, including the operative documents to be completed. When carrying out the steps listed below, the tribal legislative body should adopt tribal ordinances, statutes, or resolutions pursuant to their respective Tribal Constitution or other governing tribal laws to ensure the lending business is operating as an “arm of the tribe.”

#### **Forming a Tribal Lending Company:**

- Draft a Business Entity Code (e.g., LLC code or Corporation code) through which tribal business entities can be formed.
- Issue a tribal ordinance, statute, or regulation enacting the Business Entity Code pursuant to tribal law.

#### **If a tribal Corporation is to be formed:**

- Choose an available business name that complies with the Business Entity Code.
- Submit the Articles of Incorporation to the tribal legislative body pursuant to the Business Entity Code along with any application fees.
- Issue a tribal ordinance, statute, or regulation approving the Articles of Incorporation.
- Draft Corporate Bylaws and submit them to the tribal legislative body pursuant to the Business Entity Code.
- Issue a tribal ordinance, statute, or regulation approving the Corporate Bylaws.

**If a tribal LLC is to be formed:**

- Choose an available business name that complies with the Business Entity Code.
- Submit the Articles of Organization to the tribal legislative body pursuant to the Business Entity Code along with any application fees.
- Issue a tribal ordinance, statute, or regulation approving Articles of Organization.
- Draft an LLC Operating Agreement and submit it to the tribal legislative body pursuant to the Business Entity Code.
- Issue a tribal ordinance, statute, or regulation approving the LLC Operating Agreement.
- Draft an ordinance or statute setting up a Regulatory Agency for the purpose of regulating all financial service operations.
- Issue a tribal ordinance, statute, or regulation enacting the Regulatory Agency pursuant to tribal law.
- Obtain a lending license pursuant to the Regulatory Agency's licensing requirements.