Proposal: 1723 (AF94) Reg BB - Community Reinvestment Act

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From: Native CDFI Network, Jackson Brossy

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Comments:

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The Native CDFI Network (NCN) submits the following comments in response to the Advance notice of proposed rulemaking, request for comment on the Community Reinvestment Act (CRA) issued by the Board of Governors of the Federal Reserve System (Fed). The Native CDFI Network is the only member organization of emerging and US Treasury-certified Community Development Financial Institutions (CDFIs) that serve American Indian, Alaska Native, and Native Hawaiian communities across the United States. This diverse set of Native-serving CDFIs operates across 27 states and provides access to capital where it is most sorely needed in some of the country's most remote, rural, and disadvantaged communities. Collectively, the CDFIs have helped increase financial literacy, repair credit, expand homeownership, and grow financial assets for Native American families and entrepreneurs. Nearly half a trillion dollars run through the Community Reinvestment Act (CRA) in a given year which has existed for 44 years - yet it has largely failed to deliver real reinvestment in Indian Country and Native CDFIs. In May 2020, the Native CDFI Network conducted a member survey and found that only 24% of member CDFIs had an existing relationship that resulted in CRA credit for a partner bank. This statistic highlights the dire need for CRA improvement to support Native American consumers, entrepreneurs, and nonprofit loan funds across the country. How is it possible that so many banks can receive an "Outstanding" CRA rating, yet so few have meaningful investments in Indian Country and Native CDFIs more specifically? How is it possible that so many banks can receive a "Satisfactory" CRA rating with real access to capital problems pointed out by the Federal Reserve? This disparate outcome of "Outstanding" CRA ratings and $500 billion in annual reinvestment capital, yet horrible income statistics and access to capital in Indian Country is only possible through a system that has overlooked Indian Country and Native CDFIs. Now is the perfect opportunity to fix problems with the CRA and ensure that more than 24% of Native CDFIs have a bank partnership and that a meaningful percentage of the half-trillion dollars in CRA credit activity is directed towards Indian Country. This comment note provides recommendations to help achieve the Board of Governors of the Federal Reserve System's goal of more effectively meeting the needs of low- and moderate-income

(LMI) communities and address inequities in credit access. This note begins with some necessary background of Native CDFIs, the CRA, and the intersection between the two forces for systemic change and opportunity. This note proceeds with thirteen recommendations in response to sixteen questions posed in the ANPR. In addition to the thirteen recommendations, this note also includes a brief appendix. BACKGROUND NCN is deeply committed to its collective mission of creating fair access to capital and resources for Native people - primarily in low-moderate income communities. NCDFIs' missions align with the CRA's motivations, which included addressing fairness and access to housing and credit. Native communities' community development (CD) needs for lending and investment have evolved and grown. Not only have the needs grown, but in many ways, Native communities' needs were not fully contemplated when designing the first regulations after Congress passed it in 1977. While the act's intent was aligned with addressing fairness and access to housing and credit in low and moderate-income areas, CRA investment's primary measurement mechanism was local. This local CRA measurement mechanism of using a given bank's "metropolitan service area" was not inclusive of large swaths of rural Indian Country that were and continue to define credit deserts where there are no banking services available. The CRA does not cover large portions of Indian Country, which have instead turned to check-cashing establishments in small municipalities. As a result, the CRA largely has not resulted in reinvestment in Native communities. The 2010 Census found that roughly 23 percent of Native American families lived below the poverty line, with significant increases in South Dakota (43-47%) and Arizona (31-33%). NCN is encouraged that the Fed has included Indian Country in discussions and has even joined NCN webinars open to Native CDFI members on two separate occasions.

NCN is appreciative of the opportunity to meet with the Fed through these webinars. NCN recommends additional in-person visits (when such visits are safe) to even more rural credit deserts in Alaska, Montana, and South Dakota. These credit deserts are often served by NCDFIs alone. In addition to strong support for the final inclusion of Indian Country in bank assessments, NCN has additional recommendations and concerns. These are further defined throughout this comment letter. These concerns range from including a more inclusive and comprehensive definition for Indian Country, other incentives for investing in NCDFIs that might not operate near local banks, and recommending more time for a review of the regulations. RECOMMENDATIONS A. Ensure Investments in NCDFIs & Indian Country qualify for preapproval in a Bank's Service Area. (Questions 2, 8, 9, 40, 69) The essential modernization feature of any CRA update (and included in the OCC version) is to allow investments in Indian Country as well as investments and loans to Native CDFIs to count towards a bank's CRA credit through inclusion in their service area. Even if the investment is not in a former metropolitan service area, investment in Indian Country should be counted anywhere. Preapproval for Indian Country more effectively meets the needs of low- and moderate-income (LMI) communities and helps address inequities in credit access. While there are some notable exceptions of Native CDFIs that operate within urban centers and bank metropolitan statistical areas, large parts of Indian Country are credit desert epicenters and have traditionally been omitted from the CRA's benefits. NCN proposes the Fed finally address the lack of incentives for banks to invest in all of Indian Country through CRA mechanisms. Section VII of the ANPR discusses how to support investments in credit deserts - by investing in Native CDFIs, this directly helps reduce these deserts, and therefore any investment should qualify. This should apply to internet-based banks as well as brick-and-mortar banks. Again, NCN believes this to be an essential requirement of any CRA modernization initiative. B. Only give banks an "Outstanding" rating if they have met a basic threshold for CD and Retail investments/lending in Indian Country. (Questions 2, 18, 64, 66, 67, 69.) Mandating Indian Country inclusion in an "Oustanding" rating can easily be accomplished by creating a base floor for investment or loans in Indian Country. A suggested baseline could either be equal to the population of Native Americans in a given state (if a state bank) or nationally (if a national bank). For example, if the bank is national, it should do business with a minimum overall lending percentage of 1.7% to Native Americans, matching the 2010 Census figures. If it is a state bank, say in Arizona, that would be 5.3%. This baseline investment in Indian Country should apply to both Retail and Community Development activities. If regulations are not changed to require a base threshold to achieve an "Outstanding" rating, the status quo will remain unchanged, and the CRA will continue to fall short in overlooked communities such as Indian Country. C. Strongly Recommend Fed Invest in an Annual CRA & Indian Country Summit (Questions 2, 18.)

A May 2020 survey of Native CDFIs found that 76% of Native CDFIs did not have a partnership with banks that resulted in CRA credit for the bank. A Native CDFI/bank CRA summit is a tremendous opportunity to grow CRA partnerships in a short period. Perhaps most importantly, there is an opportunity for education for both banks and Native CDFIs on how they can partner. Creating a commitment to do an annual gathering of Native CDFIs, bank CRA officers, and bank regulators will not require an extended rulemaking process -- the Fed can accomplish this administratively in 2021. NCN would love to follow up and assist with such a summit. D. Include Multipliers for Investment in Indian Country and NCDFIs. (Questions 2, 18.) NCN proposes utilizing a multiplier incentive for investing in CDFIs. Several Treasury and Federal Reserve studies have found that Native communities and Native CDFIs (NCDFIs) face additional headwinds when accessing capital. In response to these studies, the Treasury created the Native American CDFI Assistance (NACA) program, which acknowledges these different challenges and provides a support system for NCDFIs. In acknowledging the increased obstacles to access to capital and the success of the NACA program, NCN recommends an additional multiplier for NCDFIs to provide an incentive for bank investment. If this is not included, capital will continue to flow to the most comfortable and most familiar location, which often leaves rural NCDFIs behind. The CRA has existed for 44 years; unfortunately, this excellent reinvestment tool has been severely underutilized in Indian Country. Now is the time to update the rule to result in real investment in Indian Country and Native CDFIs. Ensuring the updated rule matches multiplier incentives included in the OCC update is a significant step toward reinvesting in Indian Country. Specifically, NCN supports a metric to double the impact of investments in Indian Country and Native CDFIs through the Community Development evaluation criteria. There is precedent for such incentives to meet the needs of low- and moderate-income (LMI) communities more effectively and address inequities in credit access in the OCC modernization regulations. E. Eliminate Any Incentives for Pushing Credit Cards in Indian Country. (Question 41.) Predatory lenders and high-interest credit card companies have long targeted Indian Country and other LMI communities. Other CRA modernization regulations allow for banks to receive CRA credit for providing credit cards to Native Americans. Native CDFIs, however, often provide a much-needed response to high-interest credit cards and payday lending. Therefore, NCN has opposed portions of other CRA modernizations that gave banks CRA points for selling credit cards to Native Americans. Similarly, NCN opposes any framework that would allow for Retail points to banks that provide credit cards to Native Americans. The best solution to provide credit (and fix credit) in Indian Country is to invest in Native CDFIs who are often giving credit-building and credit-fixing loans. NCDFIs work hard to build assets in low and moderate-income areas. The lack of financial education in many NCDFI communities results in issues with credit card debt. If some banks currently receive CRA ratings for issuing credit cards in Indian Country, NCN opposes this use. Furthermore, reinvestment in asset building is much more impactful for community development than bank investments in consumer credit cards. NCN believes that while some banks may have received CRA consideration for these activities in the past, such practices do not align with the CRA goals and do not constitute "reinvestment." Therefore, NCN urges that any Retail incentive for banks to issue consumer credit cards in Indian Country be removed or become secondary to the incentive to loan to other asset-building enterprises, such as NCDFIs. F. Visit and meet directly with NCDFIs before finalizing a proposed rule. (Questions 2, 18.)

NCN recommends immediately joining a national bank/Native CDFI education summit in 2021 and encourages Federal Reserve regulators to visit Indian Country. Native CDFIs operate in 27 states across the country - NCN invites the Fed to visit Native CDFI operations on the ground to best learn how modernization can provide a tremendous improvement for LMI communities and credit deserts such as Indian Country. G. Ensure Indian Country and NCDFIs are included in all four CD and Retail subtests. (Questions 2, 18.) Section IV of the ANPR provides an overview of the Board's proposed framework for evaluating banks' CRA performance with a qualitative Retail Test and a metrics-based Community Development Test as well as two subtests within both CD and Retail. H. Ensure the definition of "Indian Country" is representative and comprehensive. (Questions 2, 18.) Indian Country is a broad term that encompasses many indigenous groups that all can benefit from community reinvestment. NCN prefers a comprehensive and representative definition of Indian Country including all of the following: (i) the areas under tribal jurisdiction including lands defined as "Indian country" under 18 U.S. Code, Section 1511; (ii) any trust land (as defined at section 3765 of title 38, United

States Code); (iii) any land within a township that encloses all or part of a Native village (as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)); and (iv) any land that is part or all of a Tribal designated statistical area associated with an Indian tribe as defined by the Census Bureau for the most recent decennial census. Concerning Oklahoma, NCN wants to note that this should be inclusive of land under tribal jurisdiction under 18 U.S. Code, Section 1511. I. Smaller banks must not be allowed to skirt any investment requirements for Indian Country.

(Questions 4, 11, 12, 13.) The ANPR contemplates allowing smaller banks to continue with the status quo version of the regulation (or closely adhere to the current structure). NCN is of the position that current CRA incentives have only resulted in less than a quarter of Native CDFIs engaging in CRA-eligible bank partnerships. Often, the nearest banks to Native CDFIs are smaller banks. However, if status quo regulations for these smaller banks advanced the CRA in Indian Country, there would be much more than a 24% bank-NCDFI partnership rate. Therefore, the Fed should not give smaller banks a carve-out of any new investment requirements or incentives to invest in Indian Country. NCN recommends ensuring small banks receive credit for investments in Indian Country, regardless of whether they fully-opt into the proposed regulations. NCN is aware of emerging NCDFIs that cannot receive CRA considerations in local smaller banks - by not including the incentive for investment in Indian Country, the status quo is likely to continue for rural NCDFIs. J. Retail lending and community development activities in potential nationwide assessment for an internet bank's overall CRA performance must include investment in Indian Country and Native CDFIs.

(Question 10.) Internet banks lend nationwide - Indian Country and Native populations fit squarely within the LMI framework and must be represented in all internet bank evaluations. Indian Country investments must count towards an internet bank's national assessment for the CRA to modernize. K. The Fed should include Indian Country and Native CDFIs in the definition of banking deserts.

(Question 25.) NCN also recommends the definition of CRA-eligible activities include "emerging Native CDFIs" in addition to established CDFIs. The Treasury's CDFI program recognizes Emerging CDFIs, and they are eligible to receive NACA funding. L. Minority Depository Institutions (MDIs) and women-owned financial institutions absolutely should receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions.

(Question 65.) There is a wide range of Native CDFI operations, functions, and business models. While the vast majority of Native CDFIs are nonprofit loan funds, the group also includes Native CDFI banks. Native CDFI banks have long supported Indian Country and Native CDFIs - updated regulations must continue to incentivize investment by Native banks into other nonprofit Native loan funds. M. Banks should receive Retail CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country.

(Question 67.) In response to Question 67, banks should absolutely receive CRA consideration for loans, investments, or services in conjunction with a CDFI, regardless of its location. CDFIs (both Native and non-Native) are by definition advancing the CRA goals, and banks should have clearly defined incentives to partner with CDFIs. BACKGROUND ON CHALLENGES AND OPPORTUNITIES WITH NCDFIS IN NATIVE COMMUNITIES American Indian, Alaska Native, and Native Hawaiian communities are located in some of the most rural and remote locations in the country and face a unique set of challenges that limit economic growth, such as underdeveloped infrastructure, complex governing structures, and limited access to capital. The Native CDFI Network's 2017 survey of Native CDFIs revealed a $29,000 median income of the markets they served, and the FDIC estimates 41.3% of AIAN households are underbanked and 14% completely unbanked. Despite these challenges, Native CDFIs have proven themselves as engines to help fuel growth for healthy, vibrant Native economies and communities. They have entered markets typically considered "high-risk" and have been responsible for an astounding transformation - creating businesses, jobs, homeowners and serving as the catalyst for developing local economies. The Treasury's report on Access to Capital and Credit in Native Communities highlights that CDFIs play a critical role in helping underbanked Native people access financial products and services. The Native CDFI Network is a membership organization formed in 2009 to unify Native CDFIs serving American Indians, Alaska Natives, and Native Hawaiians.

NCN's mission is to be a national voice and advocate that strengthens and promotes Native CDFIs, creating access to capital and resources for Native peoples. In support of this mission, the Native CDFI Network seeks to create opportunities to share our stories, identify our collective priorities, and strengthen our industry. In addition, the NCN works to ensure Native peoples are represented in national policy dialogues and that innovative solutions created by CDFIs are spread throughout our Native communities. LONG TERM OUTCOMES NCN is encouraged by the possibility of much-needed inclusion of Indian Country in CRA eligible activities. Furthermore, NCN is hopeful to work with the Fed to address the additional concerns outlined in this comment letter before finalizing this rule. NCN is keen to work together to build incentives to ensure that more than 24% of Native CDFIs have a CRA-bank partnership, which will result in banks investing more of the $500+ billion running through the CRA in Indian Country. If the modernized CRA does not ensure Native CDFI investments are automatically CRA-eligible, if the new regulations do not set a base threshold for investing in Indian Country at a national level, if there is not a renewed CRA investment education effort in Indian Country, then the status quo will continue. From financial literacy to access to capital to many communities' rural nature, there remain many significant challenges for American Indian, Alaska Native, and Native Hawaiian communities to achieve economic opportunity, let alone economic prosperity. The members of the Native CDFI Network are working hard across 27 states to address these challenges. NCN is hopeful that the next proposed CRA rule will help advance our shared priorities. Together, with potential increased incentives for banking investment through new CRA regulations, the Native CDFI Network looks forward to helping grow the next generation of Native American consumers, entrepreneurs, and families who will engage, participate and flourish in the American economy. Please follow up can reach out to Jackson Brossy, NCN Executive Director, at jbrossy@nativecdfi.net. APPENDIX I. A. US TREASURY-CERTIFIED NATIVE CDFIS & EMERGING NCDFIS ACROSS THE US Source: Federal Reserve Bank of Minneapolis - Center for Indian Country Development   APPENDIX II. RECOMMENDATIONS & QUESTIONS AT A GLANCE A. Ensure Investments in NCDFIs & Indian Country qualify for preapproval in a Bank's Service Area.

(Questions 2, 8, 9, 40, 69) B. Only give banks an "Outstanding" rating if they have met a basic threshold for CD and Retail investments/lending in Indian Country.

(Questions 2, 18, 64, 66, 67, 69.) C. Strongly Recommend Fed Invest in an Annual CRA & Indian Country Summit (Questions 2, 18.) D. Include Multipliers for Investment in Indian Country and NCDFIs.

(Questions 2, 18.) E. Eliminate Any Incentives for Pushing Credit Cards in Indian Country. (

(Question 41.) F. Visit and meet directly with NCDFIs before finalizing a proposed rule.

(Questions 2, 18.) G. Ensure Indian Country and NCDFIs are included in all four CD and Retail subtests.
(Questions 2, 18.) H. Ensure the definition of "Indian Country" is representative and comprehensive.
(Questions 2, 18.) I. Smaller banks must not be allowed to skirt any investment requirements for Indian Country.

(Questions 4, 11, 12, 13.) J. Retail lending and community development activities in potential nationwide assessment for an internet bank's overall CRA performance must include investment in Indian Country and Native CDFIs. (Question 10.) K. The Fed should include Indian Country and Native CDFIs in the definition of banking deserts.

(Question 25.) L. Minority Depository Institutions (MDIs) and women-owned financial institutions absolutely should receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions.

(Question 65.) M. Banks should receive Retail CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country. (Question 67.)