



The National Center for American Indian Enterprise Development

February 16, 2021

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Ann E. Misback, Secretary
Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1723 & RIN 7100-AF94, Comments on Modernizing
the Community Reinvestment Act’s Implementation

Dear Board of Governors:

The National Center for American Indian Enterprise Development (the National Center or NCAIED) applauds the efforts of, and submits these comments to, the Federal Reserve Board on its Advanced Notice of Proposed Rulemaking to modernize the regulatory and supervisory framework for implementing the Community Reinvestment Act (CRA) at Regulation BB, 12 C.F.R. Part 228, published on October 19, 2020 (85 Fed.Reg. 66410). **The National Center urges adoption of an Indian Country Assessment Area or application of enhanced CRA credits and enforcement mechanisms to ensure that banks substantially increase investment in Indian Country business and economic development, regardless of assessment area.**

Background:

The National Center is a 501(c)(3) non-profit organization with nearly 50 years of assisting American Indian Tribes, Alaska Native corporations, their enterprises and businesses owned by their community members, with business and economic development. Now the largest national Indian specific business organization in the nation – driven by our motto, “We Mean Business For Indian Country” – the National Center is actively engaged in helping Tribal Nations and Native business people realize their business goals. We are dedicated to putting the whole of Indian Country to work to better the lives of American Indian people, both now and for generations to come. The CRA’s modernization can and should ensure greater access to capitol to achieve these goals.

For decades, the National Center has provided business and procurement technical assistance, including helping Indian Tribes, Alaska Native corporations, Native Hawaiian Organizations, community enterprises owned by these entities, and other native businesses and entrepreneurs trying to access capital. To ramp up its ability to assist on the financing front, the National Center is launching its own Native Community Development Financial Institution (CDFI).



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The National Center also has a long history of advocating for expanding access to capital in Indian Country, in Congressional testimony, regulatory comments, and other statements. Some of the more recent settings include: Senate Oversight Hearing on “Economic Development: Encouraging Investment in Indian Country” (June 25, 2014); Senate Committee “Listening Session on Economic Development” (October 9, 2014); Senate Committee Listening Session on “Buy Indian Act and Community Development Financial Institutions” (June 16, 2015); Senate Oversight Hearing on “Access to Capital in Indian Country” (June 17, 2015); House and Senate hearings on the Indian Community Economic Enhancement Act, recently enacted as Public Law 116-261 (September 7, 2016; January 17, 2018; July 20, 2018); and numerous statements urging increases in appropriations for the essential, but grossly underfunded, Indian Loan Guarantee Program of the Department of the Interior, and the Native American CDFI Assistance (NACA) Program of the Department of the Treasury.

Capital Access Needs in Indian Country:

With its key partner organizations -- the National Congress of American Indians (NCAI), Native American Finance Officers Association (NAFOA), and Native CDFI Network (NCN) – the National Center endorses CRA modernization as a long overdue step to increase access to capital in Indian Country. The Treasury’s CDFI Fund 2016 landmark report and other studies clearly exposed the urgent capital access needs in Indian Country. In addition to reinforcing the rationale for Native CDFI assistance, the CDFI Fund’s report also spotlighted the CRA’s failure to extend benefits to, or incentive private banks to serve, Indian Country. In 2018, about 45% of Native American households were in census tracts that CRA standards consider low income, distressed or underserved (compared to 32% of overall population). As many Indian Tribes’ reservation lands, Native Hawaiian Homelands, and individual Indian allotment lands are outside of any bank’s assessment area(s), the CRA system offers limited or no benefits to Native borrowers in what are termed CRA “deserts.”

In July, 2020, the National Center partnered with the Federal Reserve Bank of Minneapolis, Center for Indian Country Development (CICD), to conduct a survey of Native businesses that showed starkly how much more needs to be done to address the horrendous financial disparities Native communities and businesses suffer, especially during the COVID pandemic. Responses from 400 business owners revealed dramatic declines in revenues, with 68% suffering at least a 20% revenue reduction. A previous CICD survey in April, 2020 of tribal-owned businesses found over 80% experienced revenue loss, with nearly 25% reporting zero revenue. COVID-related closures forced many businesses to suspend operations. Most businesses strived to retain their employees, but nearly a third have had to lay off or furlough some.

The study also revealed, sadly, that the Paycheck Protection Program (PPP) has failed to help most of Indian Country. Most telling was how devastating the lack of any existing banking relationship was to Native businesses that sought relief through the PPP but were shut out. Only 1 in 3 of the NCAIED-CICD survey respondents reported having a strong or very strong relationship with their lender prior to the pandemic. Only 36% of all respondents applied for a PPP loan, and only 22% actually received a loan.



Specific Questions Posed to Native Communities:

Indian Country, especially many reservation and native homeland communities, struggle in their unique credit deserts that are unlike any others in the United States. Reservation lands are restricted against alienation so cannot serve as traditional collateral for loans – the most common financing method. Many bankers, and even some federal loan guarantee program officers, lack even the basic understanding of lending needs and barriers to capital access in Indian Country. The National Center applauds the initiatives of the Federal Reserve Board (the Board), Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) to visit some sites in Indian Country, engage in multiple listening sessions, and incorporate in their CRA modernization proposals various options to address Indian Country’s capital needs in more effective ways. The OCC’s recent Final Rule on CRA modernization addressed many banking needs of Indian Country in helpful ways, such as providing meaningful incentives that allow Indian Country to be part of any bank’s assessment area regardless of location, and allow a multiplier to a financial institution’s exam score for activities conducted within Indian Country. Those incentives should carry over to, and be augmented in, the Board’s revised regulations to ensure that, at long last, Indian Country benefits from the CRA as an affirmative obligation to afford access to capital. Indian Country should be part of the scoring system, with hefty incentives or scoring to reward, indeed compel, bank participation.

At the Federal Reserve Bank of San Francisco’s February 3, 2021 Listening Session “Collecting Insights from Native Communities,” some specific questions were posed to the participants, including the National Center. We reiterate the following views:

Key Questions for Native Communities:

- **What are the capital, credit, and community development needs in Native Communities?** HUGE AND VARIED, including: macro and micro commercial loans, lines of credit, etc. for business start up, recovery, and growth; consumer loans; home mortgages; investments in economic, community, energy, broadband and infrastructure development; more support for New Market Tax Credit (NMTC) and Low Income Housing Tax Credit (LITC) financing, and taxable and tax exempt bond financing.
- **What are the biggest barriers to accessing lending and financial services in your community?** Lack of access to or relationships with local or other banks. Different sets of regulations and landownership, non-traditional collateral requirements, challenging equity and rigid repayment requirements, credit worthiness, financial illiteracy, and far too limited amounts and access to federal loan guarantee programs to back private sector lending, among other barriers. Lack of reliable telephone or internet connections, broadband or basic infrastructure also impede progress.
- **If your community had better access to lending and financial services, which services would be the most impactful?** Small business loans, mortgages, disaster loans, investments in Native CDFIs to help make more micro loans, etc., and financings for larger,



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more complex development projects (e.g., community, infrastructure, broadband, energy, etc.).

Retail Lending Activities:

- **Question 40 (in ANPR) – Should CRA consideration be given for retail lending activities conducted within Native Communities regardless of whether those activities are located where the bank maintains branches? YES, ABSOLUTELY.** All banks should be encouraged to develop relationships and engage in retail lending and community development activities conducted in Indian Country, including the nearest local banks, regional and national banks, and internet banks willing to engage with tribal and other Native borrowers – without regard to assessment area. Not enough banks have been willing to learn, understand and accommodate Indian Country lending needs and parameters. As more time may be needed to close loans to Native borrowers, banks should receive extra CRA credit for activities in Indian Country, with a multiplier or impact score. Furthermore, if a bank wants an “outstanding” or any high rating, it should be required to perform qualifying activities within Indian Country.

- **What is your experience with attracting banking services in your area, especially if you are located in a remote or rural area?** Only some national, regional or local banks are willing to embark on lending relationships with tribal or other native borrowers, especially involving tribal reservations and Native Hawaiian Homelands. Even if federal loan guarantees are available, most lenders are unfamiliar and reluctant or unwilling to work out arrangements for non-traditional collateral, lengthened repayment periods, sovereign immunity waivers, tribal court jurisdiction, etc.
- **What kinds of financial services are needed on Native land?** Traditional banking, investments in Native banks and Native CDFIs, mortgage lending on and off reservation lands, NMTC and LIHTC financings, community development financing, financial literacy education, credit counseling, etc.

- **Question 41 – Should all retail lending activities in Native Communities be eligible for consideration in the Retail Lending Subtest or should there be limitations or exclusions for certain retail activities? Should banks get credit for loans to middle and higher-income borrowers?** The National Center’s mission is to assist all Indian Tribes and Native-owned businesses in achieving their business and economic development goals, without limitation or exclusion. Banks should receive credit for lending to any Native borrower, with extra credit as a reward for loans extended to Native borrowers on tribal lands and in remote areas.

Volunteer Activities in Rural Areas:

- **Question 50 – Should volunteer activities unrelated to the provision of financial services, or those without a primary purpose of community development,**



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receive CRA consideration for banks in rural assessment areas? If so, should consideration be expanded to include all banks? A bank's Indian Country-related volunteer activities subject to CRA credit should primarily focus on financial services, regardless of the bank's assessment area. Some non-financial services could be considered but should not be the sole basis for CRA credit as a substitute for financial services.

Overarching Questions:

- **Question 1 – Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?** As noted, the National Center urges the Board to consider creating an Indian Country Assessment Area or equivalent approach to ensure substantial capital infusion in Indian Country.
- **Question 2 -- In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?** Prompt implementation of increased CRA credit for bank lending in Indian Country – based on comments in listening sessions, on the ANPR and future NPRM – and active enforcement of modernization provisions will help. Creating and annually updating an illustrative non-exhaustive list of CRA eligible activities in Indian Country, vetted through consultations, would make clear and help avoid confusion or delay in determining what incentives will apply. Also needed are extensive education efforts to promote and effectuate productive new banking relationships.

Support for Indian Country Assessment Area or Ways to Target Incentives:

The National Center endorses the position taken in previous statements by NCAI, NAFOA and NCN that the surest way for CRA to effect positive change in Indian Country would be to establish a Assessment Area or enhanced credits for banks willing to extend capital in Indian Country. The CRA's current approach – with multiple assessment areas that may criss-cross but also miss large swaths of Indian country – has not well-served tribal government, tribal and other native communities and citizens. Instead, the Federal Reserve should adopt an Indian Assessment Arthat encompasses areas on or near Indian reservations and those tribal areas designated as such by U.S. Census Bureau tracts. The National Center endorses the specific proposals contained in NAFOA's comments as to the geographic basis of Indian Country.

The National Center is encouraged by the OCC and FDIC Final Rule that includes Indian Country in CRA-eligible activities, with specific measures designed to:

- Spur investments in economic and community development projects on tribal lands, as well as tribal public safety, housing, education healthcare and communications infrastructure.
- Provide banks with CRA credit for serving tribal communities even when Indian Country falls outside of their CRA assessment areas; and



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- Create CRA scoring incentives for banks that choose to do business in Indian Country.

These steps will help the National Center's native business constituencies better access financing and, we hope, infrastructure for internet access so essential to business, education, and essential aspects of daily life.

The National Center supports additional steps that our Native partner organizations have recommended, including to:

- Include in qualifying CRA credit activities support for entities whose activities directly serve Indian Country for similar financial services, including organizations providing similar financial, business or economic activities, and Native CDFIs;
- Create an additional multiplier for Native CDFIs to incentivize bank investment more effectively;
- Ensure the definition of "Indian Country" broadly represents and encompasses community reinvestment interests of American Indian, Alaska Native and Native Hawaiian communities and members;
- Prioritize incentives for banks to invest in Indian Country asset-building (just issuing consumer credit cards is insufficient);
- Highlight "emerging" and other Native CDFIs in the definition of, and credit for investing in, CDFIs; and
- Use Impact Scores as a qualitative measure for the Community Development Financing Subtest that grant higher scores for responsiveness, complexity, and innovation (which may be less complex than using multipliers). For example, we agree with NAFOA's proposal to award a score of 5 for activities in Indian Country due to their increased difficulty.

Support More Bank Investments with Native CDFIs:

Native CDFIs work in Indian Country providing a wide array of financial services and making micro loans unavailable from most lenders. Banks should be encouraged to partner with and invest in Native CDFIs to increase access to capital in rural and other native communities. The National Center endorses the NCN's recommendations presented in November, 2020:

- Ensure that investments, grants, and loans to Native CDFIs are included as CRA credit in all bank assessments; rather than allow credit for investments in a Native CDFI



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only if it is in the bank's Metropolitan Service Area (MSA), all banks should be incentivized to invest in Native CDFIs, whether they take deposits now or will in the future.

- Ensure banks receive CRA credit for equity and equity-like investments in Native CDFIs, most of which are non-profit entities. Unlike for-profit corporations that can raise equity by issuing stock, nonprofits build their capital base with grant and other contributions, or accumulation of retained earnings. Banks should be encouraged, through CRA credit, to make Program Related Investments and other Equity Equivalent Investments in Native CDFIs.

The National Center also urges CRA modernization provisions that support education campaigns to promote bank investment in Indian Country, especially the benefits of bank and Native CDFI partnerships to further CRA goals. As the National Center hosts many training events across the United States that include sessions on access to capital, we welcome any opportunity to include CRA trainings. In particular, we would be delighted to work with the Board and any of the Federal Reserve Banks to host and plan a major training/relationship-building session at our annual, four-day Reservation Economic Summit (RES 2021) in July to highlight new investment opportunities made possible by CRA modernization and to foster more relationship building among banks, Tribes and other Native borrowers attending the RES event.

Establishing or strengthening relationships with Native communities, their businesses and their entrepreneurs will be key to identifying opportunities for banks to pursue CRA-eligible loans and community development activities. Such relationships can help banks earn Outstanding CRA ratings, which should be the Federal Reserve Board's goal – rather than letting most banks pass with only a Satisfactory rating.

NCAIED stands ready to work closely with the Federal Reserve Board to achieve CRA modernization and host events that educate banks and Indian Country businesses on the extraordinary, and mutual, value of developing relationships to advance business, economic and community development, recovery and success.

Respectfully,

Chris James

NCAIED President and CEO