

Proposal: 1769(AG29) Regulation BB: Community Reinvestment Act

Description:

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From: National American Indian Housing Council, Tony Walters

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Comments:

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First name: Tony

Middle initial:

Last name: Walters

Affiliation (if any): National American Indian Housing Council

Affiliation Type: Other (Oth)

Address line 1: 122 C Street NW Suite 505

Address line 2:

City: Washington

State: District of Columbia

Zip: 20001

Country: UNITED STATES

Postal (if outside the U.S.):

Your comment: National American Indian Housing Council Response to Notice of Proposed Rulemaking to Strengthen and Modernize the Regulations implementing the Community Reinvestment Act Background of NAIHC: The National American Indian Housing Council (NAIHC) was created by tribal housing programs in 1974 and for nearly five decades has provided Training and Technical Assistance (T&TA) to all tribes and tribal housing entities; provided information to Congress regarding the issues and challenges that tribes face in their housing, infrastructure, and community development efforts; and worked with key federal agencies to ensure their programs' effectiveness in native communities. Overall, NAIHC's primary mission is to promote and support American Indians, Alaska Natives and native Hawaiians in their self-determined goal to provide culturally relevant and quality affordable housing for Native people. The membership of NAIHC is comprised of 292 tribal housing organizations representing 493 tribes and tribal communities. NAIHC's membership includes tribes and tribally-designated housing entities throughout the United States, including Alaska and Hawaii.

Background of CRA and Notice of Proposed Rulemaking: On May 5, 2022, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency released a Notice of Proposed Rulemaking (NPR) to strengthen and modernize the regulations implementing the Community Reinvestment Act (CRA). A May 19, 2022 article published by the Federal Reserve Bank of Minneapolis describes the CRA as "a federal law that encourages banks and other depository institutions to help meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking operations." The NPR would update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. It seeks to address the significant changes in the banking industry since the last substantive CRA updates in 1995 and 2005. That article also describes the NPR as included "provisions that are tailored to the unique needs of Native communities. These provisions reflect feedback that stakeholders provided in engagement meetings and roundtables convened by staff from across the Federal Reserve System, including staff from the Center for Indian

Country Development, and in comment letters submitted in response to prior agency proposals. To ensure that the CRA-modernization process continues to reflect stakeholder needs, the three banking agencies now seek additional feedback on a number of points, including the following issues affecting Indian Country." Response to the Notice of Proposes Rulemaking First and foremost, NAIHC appreciates our federal partners' attempts to include tribes and tribal communities in their revisions of the CRA, and also appreciates our federal partners' interest in soliciting and incorporating additional feedback from tribes and tribal stakeholders. Specifically, the agencies requested feedback regarding "Activities in Native Land Areas". The agencies are proposing both a new definition of "qualifying activities in Native Land Areas" and a new definition of "Native Land Areas" itself. The inclusion of tribal specific language in the CRA regulations at all is a productive first step at highlighting the need for and incentivizing investment in tribal communities. While the agencies posed specific questions for feedback from tribal stakeholders, NAIHC's primary concern related to the CRA regulations is broader than those narrow questions. While specific inclusion of activities in tribal communities is welcome in the proposed CRA regulations, unless banks are specifically assessed regarding their investment in tribal communities, NAIHC fears that tribal investments will continue to lag behind that of other communities across the United States. The goal of the CRA is designed broadly to encourage banks to meet the needs of the entire communities for which they serve, and largely intended to ensure banks are serving low- and moderate-income (LMI) neighborhoods and that areas consisting predominantly of minority or underserved community members are not excluded from banks' services or investment. NAIHC would note that many banks have not counted Native communities with their area of service in the past, so the proposed regulations allowing banks to receive CRA credits for serving Native communities is helpful. Currently, the majority of banks are largely able to attain satisfactory assessments under the CRA requirements based on their investments in non-tribal areas or non-tribal activities. Until assessments under the CRA specifically assess a bank's performance on investments or activities in tribal areas, NAIHC fears investments in tribal communities will not see much improvement. Simply put, tribal communities are too often the last underserved community to be served. While specific inclusion in the proposed CRA regulations will allow banks to receive credit for investments in tribal communities, banks will likely continue to steer their investment to other non-tribal underserved communities and activities until they are specifically required or assessed on tribal investments. The proposed rules should be revised to include specific and detailed assessment of banks' investments in native land areas and tribal-serving qualified activities. Additionally, the rules should be revised to reflect the fact that investment in tribal entities and investment in activities carried out by tribes, tribal government entities or tribally owned businesses will benefit LMI neighborhoods and families, even if the specific activity does not fully or exclusively serve that LMI demographic. Tribal projects carried out by tribes, tribal government entities and tribally owned businesses may very well cater to or target non-LMI constituents, but the revenue and benefits from those tribal projects allow a tribe to provide greater government services to its LMI members. While avoidance of LMI neighborhoods has been a key factor in past CRA assessments, tribal communities have often been entirely avoided by banks. Requiring investments in tribal communities and tribal activities to also satisfy some LMI threshold would actually continue to cause investment in tribal communities to be avoided when, as a matter of historical correction, any and all community and economic development in tribal communities should be promoted. A final general comment is that tribal housing programs, most often the Tribally-Designated Housing Entity (TDHE) that receives federal funding, should be specifically included as an organization in which investments can be made to receive CRA consideration. Tribes rely on their TDHE to drive housing development in their communities, and there are federal loan programs that TDHEs can access to encourage private investments. These federal loan programs include a variety of federal loan guarantees, however, the guarantee by itself (even those that are 100% loan guarantees) has not always led to increased private investment in tribal housing development. The proposed rules should provide clarity that investment in these existing federal loan and housing programs can also allow banks to satisfy CRA considerations. The NAIHC looks forward to participating in future steps of the rulemaking process and is available to conduct further conversations related to these proposed rules. NAIHC would also be able to assist in convening tribal specific forums to allow greater feedback from tribal stakeholders should our federal partners wish to engage further on these specific issues. These comments were also submitted by e-mail to comments@federalreserve.gov