



Native American Finance Officers Association
Growing tribal economies. Strengthening tribal finance.

1101 30th Street, NW, Suite 500 • Washington, DC

November 6, 2018

Joseph Otting
Office of the Comptroller of Currency
400 7th Street SW
Washington, DC 20219

Re: Community Reinvestment Act Modernization
Docket ID: OCC-2018-0008

Dear Comptroller Otting,

In representing the economic interests of over one hundred tribal governments, NAFOA has a clear mission to build and grow tribal government economies through advocating for effective economic policy solutions. In furtherance of our mission, we welcome the opportunity to comment on the Advanced Notice of Proposed Rulemaking issued by the Office of the Comptroller of Currency requesting feedback on the modernization of the Community Reinvestment Act (CRA).

NAFOA, in its first few decades, was focused on building the foundation for economic development for tribal governments. This work focused on two necessary elements. The first was working to convince banks, capital markets, and any institution, public or private, to lend to tribal governments. The second was building acceptable financial management practices that provided the necessary framework to attract private capital. Both areas, access to capital and financial management, remain a core part of NAFOA's work.

Over the past few months, NAFOA has conducted broad outreach to tribal governments and the institutions that serve Indian Country, including hosting a facilitated CRA discussion with stakeholders from large banks, individual Native American and tribal government-owned banks, Native CDFIs, and tribal government leadership. In addition to the group discussion, we have also reached out directly to bank presidents and executive officers of tribally owned banks, as well as Native CDFI's. Through our outreach effort, NAFOA developed clear recommendations on how the CRA could be modified to achieve its original mission of compelling banks to serve the needs of low- and middle-income communities, including the needs of Indian Country.

The discussions made it clear that Indian Country needs to be considered in any conversation or attempt to influence the flow of capital and financial services into tribal communities. It also highlighted the concern that CRA modifications can only be effective in Indian Country if they are inclusive of individual Native Americans who need access to personal and business financial services and inclusive of tribal governments which have critical capital needs that are essential to growing their economies, creating economic opportunities, and providing services. The latter is especially important since tribal governments rely on economic development in lieu of property taxes to provide government services such as public safety, education, housing, and cultural programs.

NAFOA fully supports a metric-based system that allows for transparency and a clear understanding of where banks stand regarding community reinvestment activities. Indian Country should be a required part of the scoring systems with incentives or scoring that compels bank participation. We are also fully supportive of expanding qualifying activities that can creatively meet unique and changing community needs – especially those in Indian Country.

Background – Financial Concerns in Indian Country

It is an understatement to claim that Indian Country has been underserved by the CRA over the past four decades. The idea of providing adequate and fair access to financial services by expanding branch networks and through other means of passive encouragement has not worked and will not work for Indian Country. An alignment of a banking and credit deserts map with a map of tribal communities reveals a crisis for tribal citizens and governments attempting to access cost effective capital and banking services. Research from the Center for Indian Country Development within the Minneapolis Federal Reserve Bank reveals Indian communities are largely unable to reasonably access basic capital services.ⁱ A report conducted in 2016 by the Native CDFI Fund in the Department of Treasury shows Native communities improving but still generations away from achieving parity.ⁱⁱ This means that an improved CRA that specifically addresses unique tribal needs has the potential to move Indian Country away from occupying the unenviable status of being the most underserved and underbanked population in the nation.

“There’s a whole history of Native people not being served, and there’s another whole trend about Native Americans being preyed upon by payday lenders and check-cashing facilities that just charge exorbitant fees,” said [Patrice] Kunesh. “They’re paying a lot of money out of their own pocket to have a service that they should be able to have access to at nominal cost to them in their own community.”



Indian Country has been shaped by federal policies that make it more difficult for the capital markets to serve both individual tribal citizens and tribal government needs. For individuals, mortgages are more difficult to underwrite because housing valuations on trust lands have a narrow market and regulations require a longer titling and approval process. For those that have secured mortgages or own a home on trust lands, equity loans are difficult to secure as well. Banks have been reluctant to collateralize reservation properties for similar reasons. The inability to leverage what is the largest asset for most Americans has the very real impact of removing the most common form of business and wealth creators for Native Americans. Too often the solution and implied incentive for Native Americans is to secure property off the reservation which restricts community and economic development on reservations.

Tribal governments often have difficulty securing suitable financial services. Tribal governments need long-term government financing and greater access to tax credits for housing and development. However, legal and process issues make adequate access to these integral services challenging. Banks and tribes cannot rely on tax-exempt debt for economic development. Permanent solutions for government financing require a legislative fix while the temporary solution proposed over ten years ago of a tribal financing allocation set aside for the purpose of economic development will be depleted in less than a year. This leaves tribal governments relying too often on short-term commercial debt for long-term development needs.

In addition to inadequate financing options, tribal governments are considerably under-represented in New Markets Tax Credits.ⁱⁱⁱ In certain cases, this is due to a lack of familiarity of Indian Country by community development entities that apply for and implement the allocations. In other cases, the intense competition for credits makes it more acceptable to fund traditional projects with state and local impacts.

All of these capital issues can be solved with the right incentives and requirements. While the CRA will not solve all of these issues, it can make a significant difference in the way banks interact with Indian Country. By making some specific changes to CRA compliance that are outlined below, the OCC and other banking regulatory agencies can greatly improve how banks serve Indian Country while providing banks with the surety that their actions will comply with the CRA. Working together in this manner is necessary to address the long-standing issues of access to credit and banking services in Indian Country and the limited reach of the existing CRA to tribal communities.

Recommendations

Assessment Area

In our broad outreach and discussions, it was widely agreed that Indian Country should have its own assessment area. The issues and structures in Indian Country are unique and banks should have an incentive or requirement to do business, to understand, and to engage with Indian Country. As a point of clarification, Indian Country should not be included in combined or stand-alone metropolitan centers or other assessment areas that include tribally designated areas.

Experience in tax credit allocations and other well-intended policies have failed to have an inclusive or effective reach for Indian Country. Further, it should not be used to avoid serving tribal communities located near existing assessment areas that currently do not receive banking services in lieu of an easier to reach community. An example of a successful federal policy that rightfully considers the unique needs of Indian Country can be found in the Treasury Department's Native CDFI program. A separate focus on Indian Country has yielded one of the few economic development programs that is having a positive impact for Native individuals, businesses, and governments gaining access to basic financial services.

The assessment area for Indian Country can be defined as those areas on or near reservations or a tribally designated area by census tracts. As reported by the Center for Indian Country Development, even when financial institutions are established on or near tribal communities, that should serve tribal communities they are sometimes up to fifty or more miles away which puts a substantial burden on these often smaller institutions. However, the burden of serving tribal communities should not fall to community banks and those already making inroads into Indian Country. More institutions are needed to meet the demand and share the risk of developing underserved tribal communities. This may include creative access to in-person services and those offered through remote or mobile services.

The CRA requirements should be amended to include a requirement for large institutions that do not have a presence to provide or support needed financial services in the Indian Country assessment area and their current assessment areas that are near tribal communities.

Follow the Federal Policies

Amending the CRA to provide clear incentives for banks to support existing federal programs and services would do a tremendous amount of good for tribal governments and individual Natives and help leverage the reach of these well-established programs. The federal government, through tax incentives, guarantees, or other federal policies, has identified a need to influence development or the flow of capital into Indian Country. The policies include energy and business loan guarantees through the Departments of Energy and Interior, New Markets Tax Credits and Native CDFI's through the Department of Treasury, schools and health care centers through the Department of Interior and Health & Human Services, continued support of home lending through the Section 184 Loan Program at the Department of Housing and Urban Development among other programs.

The CRA should simply provide an incentive for banks to support existing federal programs designed to help Indian Country.

Collaboration and Support

Indian Country markets and structures can be difficult for every bank to learn. Community, national, Native-owned banks as well as Native CDFIs that have obligated themselves to serving the tribal market should be given lending and deposit support necessary to continuing to serve

Indian Country, and other institutions should be incentivized to help. The risks of serving underserved communities should be shared by these various institutions to allow for additional capital and outreach in Indian Country while receiving CRA credit for doing so.

CRA credit should be given to institutions that provide collaboration and support for those institutions that are familiar with and serving Indian Country. This support should include partnering on lending, maintaining deposits in smaller banks, and the purchase of development loans all to increase lending capacity.

Reliance on Technology

Conversations related to the use of technology in solving access to financial services and improving financial literacy were met with caution. In addition to being one of the most underserved populations for banking purposes, Indian Country is also the most underserved population for broadband access. Furthermore, technology solutions and the misuse of data may widen the gap of populations between those communities that enjoy broad competition and those needing greater services. Indian Country, because of its unique structures and small relative population, will not fit into a scalable and profitable app or be served by general literacy programs that do not give way to understanding cultural and situational awareness. Any changes in the CRA regarding on-line and mobile banking must include the realities of Indian Country having a lack of physical banking infrastructure along with a lack of access to broadband and cellphone service.

Simply allowing for easier CRA compliance using on-line banking alone will not meet the banking needs of Indian Country. Solutions that address the technological realities of today, must address the entirety of the banking issues for individual tribal citizens and tribal governments.

Equity Alternatives

Economic development for tribal governments and business development for individual Native Americans are both in need of patient capital. Large scale energy and manufacturing projects that require investments in buildings, equipment, and infrastructure would benefit from banks investing in larger tribal development projects. The same is true for smaller business projects for individuals that want to not only want to provide a product or service but invest in their communities.

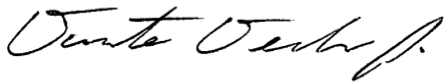
CRA credit or incentives should be given to banks investing in business and economic development projects, from Native CDFI support of business ownership to building out sustainable energy projects. This may have far-reaching benefits for growing economies in the most distressed areas.

Compliance Data

Tribal governments and tribal citizens have experienced higher declination rates and outright denial of service from banks near reservations that portend to serve their communities. Data is needed to ensure banks are complying with CRA amendments. For tribal governments, this is a political concern. Ascertaining the citizenship of applicants is already part of the application process for financial services. It is strongly suggested that banks work with tribal governments to ensure tribal citizen identification be used when applying for financial services to ensure accurate data and compliance.

Thank you for the opportunity to comment on this important and necessary effort to revise the CRA. Thank you in advance for your consideration and please feel free to reach out to us if you need further clarification or have questions.

Sincerely,



Dante Desiderio
Executive Director

ⁱ Mapping Native American Financial Institutions, Minneapolis Federal Reserve Bank, Center for Indian Country Development, <https://www.minneapolisfed.org/indiancountry/resources/mapping-native-banks>

ⁱⁱ Access to Capital and Credit in Native Communities, Miriam Jorgensen, University of Arizona, Native Nations Institute, 2016 - <http://nni.arizona.edu/publications-resources/publications/papers/2016/access-capital-and-credit-native-communities> with accompanying data set.

ⁱⁱⁱ NAFOA Testimony – Senate Committee on Indian Affairs Oversight Hearing on Access to Capital, June 2015