

## **Economic Development in Indian Country**

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## Introduction

Good morning. I am pleased to be here and have a chance to talk with you. My ability to engage in this kind of dialogue reflects the characteristically American design of the Federal Reserve System. Unlike most central banks, the Fed was designed to be a regional organization, so that residents of cities and rural areas from across the country can hear from central bank officials in person and directly add their voices to the monetary policy process. I and my senior management colleagues regularly hear from our boards of directors and advisory councils at both the Minneapolis Federal Reserve Bank and our Helena branch, and I really appreciate the opportunities I have to get out to Helena and other Ninth District cities and communities.

Often, at events like this, I provide comments on the economic outlook or monetary policy and then interact with the audience, to get their insights into the issues facing households, businesses, and local governments. I find those opportunities incredibly valuable, both to communicate what the Fed is doing and to hear how our policies, and economic forces generally, are affecting people like you.

Today, however, I want to forgo my usual monetary policy themes and talk about another way in which the Federal Reserve interacts with citizens at the local level to promote economic prosperity. I have in mind our Community Development program, which collaborates with partners across the Ninth District to enhance the foundations of an open and accessible market economy. More specifically, I want to talk about some important work our Community Development staff are engaged in, much of it here in Montana, to assist tribal leaders who are strengthening the institutions of business law that prevail on Indian reservations. First,

however, I must note that the views I present are mine and not those of the Federal Reserve System or the Federal Open Market Committee.

### **Community Development**

The Fed's Community Development function is not the most prominent of our policy tools, but it provides a useful complement to our better-known tools, such as monetary policy and banking supervision. For example, one of our staff in Helena, Sue Woodrow, helped found the Montana Financial Education Coalition as part of her Community Development work to ensure that low- and moderate-income Montanans would know how to access credit markets prudently and effectively. But that same effort provides a broader benefit to the Fed, because monetary policy is also more effective if consumers and business owners understand concepts like inflation and compound interest. For another example, Sue and her colleagues gathered intelligence last year on the factors that were impeding the flow of credit from banks to small businesses, one of the sectors targeted by our Community Development program. But the results of that exercise were also shared with management in Minneapolis and ultimately with Chairman Bernanke at a national forum in Washington.

Our Community Development program has roots in the Community Reinvestment Act of 1977, which requires federal regulators to assess that financial institutions are meeting, safely and soundly, the credit needs of their entire community or market, including credit needs in low- or moderate-income neighborhoods. Out of that basic regulatory responsibility, the Federal Reserve gave the Community Development program the mission of supporting the

Fed's economic growth objectives by working beyond our walls and independently from our bank examiners to promote fair and impartial access to credit and financial services.

In pursuing this mission, the Minneapolis Community Development team often works with external partners to shore up the foundations of a well-functioning market economy, including initiatives on financial education like the one I mentioned. This year, they also will work to strengthen organizations that provide training and credit to small businesses, to assist foreclosure and housing counselors, and to support organizations that foster rural development and post-foreclosure neighborhood recovery. In a very local but important way, these efforts supplement the Fed's other policy tools for promoting economic growth.

### **Work in Indian Country**

As you might imagine, the range of issues our Community Development staff might try to address is vast. I should note, by the way, that we do not operate as a foundation and thus do not provide cash contributions or donations to any organization. Our community development work is primarily conducted through staff work on outreach, technical assistance, and analysis. To thoroughly cover the entire community development field would take significantly more staff than we have. So we have identified some high-priority areas where we think we can make a difference by focusing our efforts. One of our highest Community Development priorities is the one I want to focus on this morning—supporting tribes as they strengthen the legal foundations of their Indian Country economies. By the way, I am using the term *Indian Country* as a consistent term to describe the many self-governing Native American communities throughout the United States.

## **A New Voyage of Discovery**

I find these efforts to strengthen legal foundations of Indian Country economies to be very interesting and full of potential, but thinking about them here also reminds me of their historical roots. A bit over 200 years ago, Lewis and Clark and their Corps of Discovery passed near here on a federally sponsored voyage that launched a powerful transformation of Montana and the American West. That transformation led to tremendous economic development, but, as we know, also relegated most of the region's tribal societies to reservations. For decades thereafter, the tribes' affairs were largely administered by federal officials who permitted them very little local autonomy. Partly as a result, economic development lagged on most reservations, leaving them as pockets of sharp rural poverty.

Federal policy began to shift in the 1930s, with passage of the Indian Reorganization Act, which led to the drafting of numerous tribal government constitutions. But federal policy wavered for another 40 years, including a significant shift away from tribal recognition and sovereign rights in the 1950s. By the 1970s, however, civil rights activism and a shift toward market-oriented economic policies created a consensus in support of greater tribal self-government. A combination of executive orders and the Indian Self-Determination and Educational Assistance Act of 1975 finally put federal support for tribal sovereignty on firmer footing. Despite some unsettled issues, a new realm of meaningful tribal sovereignty within the United States was opened up.

This realm remains fairly new and is still incompletely mapped out. I am tempted to say that tribes are now on a new voyage of discovery in search of the most suitable institutions to govern their own affairs, including in the important area of business law and regulation. From an outsider's perspective, at least, the impetus for this search is simple. In the United States, the bulk of our practical, everyday business law is state, not federal, law. But tribes are sovereign, to varying but significant degrees, with respect to state law. That is, state laws and state legal procedures and institutions often do not apply, or do not clearly apply, to business disputes on reservations. Unless appropriate tribal laws and institutions are in place, the result can be a vacuum, a real or perceived lack of business law and related institutions on reservations. Not surprisingly, this has a chilling effect on business and economic development.

Fortunately, since the 1930s and especially since the 1970s, a number of tribes have pioneered the development of laws and institutions that support growth while respecting tribal traditions. In the Southwest, for example, the Navajo have developed both an extensive body of written law and a strong system of courts to coherently administer a blend of written and Navajo traditional law. Later, I will also discuss work here in Montana. Nonetheless, the voyage has only begun, and much remains to be learned and done.

## **Our Work**

The Minneapolis Fed's Community Development program is proud to assist in this journey. For many years, we have helped Ninth District tribes explore how to make good use of their renewed sovereign powers, with a special focus on helping tribes develop the legal and institutional foundations of a strong private business sector. This fits neatly into our general

strategy of shoring up the foundations of a sound and inclusive market-oriented economy; in fact, I regard it as perhaps the best example of that strategy.

Some of our work in this area goes back many years, but the thrust of our current efforts took shape early in the previous decade here in Montana. Through the initiative of Sue Woodrow, who is our Helena Branch Community Development staff person and an attorney with experience on Indian reservations, we began to take an active role in national efforts to draft model tribal business laws.

What is a model law? It's essentially a recommended starting point that a legislative body can use in drafting and passing real laws. For example, states often base their business laws on the model laws developed by a voluntary organization called the Uniform Law Commission.

About 10 years ago, the commission took a new direction by undertaking to draft a model secured transactions law for tribal governments. Secured transactions laws are basic to modern business finance. These laws allow a business owner to pledge movable property, like a truck or machine the business owns, as collateral for a loan. State governments have provided for this bread-and-butter business activity by adopting versions of the commission's Uniform Commercial Code (UCC) for states and, in particular, its Article 9 on secured transactions.

As I've noted, however, state law does not automatically extend to transactions on reservations. So unless tribes take similar steps to adopt secured transactions laws, creditors may hold back from making collateralized loans to reservation-based businesses. There are

ways to try to work around this problem, and some tribes had adopted varying types of secured transactions laws to fill the gap. Overall, however, big gaps remained, and the existing tribal laws in this area were often incomplete, confusingly divergent, or out of date.

The Uniform Law Commission chose to address this problem head on. Under its leadership, a team of business law experts and tribal leaders gathered to devise a model secured transactions law that would both support collateralized lending on reservations and respect key aspects of tribal sovereignty. The team also understood that an effective model tribal act would need to be free-standing, unlike the UCC's Article 9, which frequently refers to other UCC articles. We were very pleased to make Sue Woodrow available to serve on this team of experts.

In 2005, after four years of work, the group put forward a new model Tribal Secured Transactions Act, or model STA, for tribal governments to consider. Just as states decide whether to adopt the Uniform Law Commission's model acts, tribes are free to make use of the model STA as they wish. However, to help tribes make an informed decision, our Community Development program prominently includes the provision of information about the model STA, which we pursue through our publications, a new Indian Country page on our website, and presentations and meetings all around Indian Country.

Since 2005, a growing number of tribes have reached the conclusion that the model STA can help them. Again, the way was paved here in Montana. Crow tribal leaders were involved in advising the Uniform Law Commission on the model act and were also quick to undertake the process of adapting the model act to meet their specific needs. The tribe passed its customized



version of the model STA in April 2006. Since then, other tribes in the Ninth District and beyond have adopted versions of the model STA, including the Oglala Sioux in South Dakota, the Mille Lacs and Leech Lake Ojibwe in Minnesota, the Ponca in Nebraska, and the Osage in Oklahoma, while others are actively considering it.

Community Development's support has not ended with adoption of the tribal STAs, and for good reason. The act is important, but achieving its full potential requires a system for filing liens, judges who are trained to understand and enforce it, and lenders who understand and trust it. To assist tribes in putting these elements in place, our Community Development staff have organized training materials and events on the STAs for tribal judges, lenders, attorneys, and other interested parties. They have also helped tribes negotiate with state governments to use existing state lien filing systems. We were thus very pleased when the compact that was negotiated here, for the Crow tribe to use the state of Montana's lien filing system, was nationally recognized with a ceremonial signing at the Capitol in Washington, D.C., on February 6, 2008.

Recently, our work in Indian Country has broadened in three new directions that complement our earlier work. First, to assist Indian business owners to articulate and overcome barriers to tribal economic development, the Minneapolis Community Development staff have helped organize Indian business alliances, or IBAs, in Montana, South Dakota, Minnesota, and Wisconsin. These statewide coalitions of tribes, financial institutions, nonprofit organizations, corporations, colleges and universities, and government agencies work to encourage and support Native small business owners and entrepreneurs. Although each alliance is unique,

they all have committed to working on four building blocks of sustainable business development in Indian Country: governance, infrastructure, finance, and business training and support resources. The Montana IBA is quite active, and we expect to work with them to host a conference in Montana on tribal economic development issues and opportunities later this year. Similar events with our other IBAs are also in the works this year.

Second, we have again made Sue Woodrow available to the Uniform Law Commission, this time to assist in drafting a model tribal probate code. This project is in its early stages but further exemplifies our support for tribes' efforts to modernize their legal institutions in support of economic development.

Finally, I have challenged my Community Development staff to evaluate the impact of their efforts to assist tribes in the development of tribal business laws and institutions. Part of their response will be to compare key aspects of the business environment on a number of reservations, in order to assess which factors seem to be associated with better economic outcomes. This is a new and challenging research effort, but I hope we will be able to report some results by next year.

## **Conclusion**

In conclusion, I have noted that Indian tribes have embarked on a voyage of discovery of their renewed sovereign powers and capacity for local governance. Our Community Development program has strongly supported this journey for many years and will continue to do so. As you can see by visiting our website, our Indian Country work fits into a broader

strategy that touches Montana and the rest of the Ninth District in many ways. Nonetheless, I regard our work with tribes who are modernizing the legal and institutional foundations of their reservation economies, much of it done right here in Montana, as the leading example of how our Community Development program rounds out the Federal Reserve's approach to economic policy and economic development.

Thank you.