



# NATIONAL CONGRESS OF AMERICAN INDIANS

April 7, 2020

Attn: Joseph Otting  
Office of the Comptroller of Currency (OCC)  
U.S. Department of the Treasury  
400 7th Street SW  
Washington, DC 20219

Re: Modernization of Community Reinvestment Act Regulations, Docket ID: OCC-2018-0008  
(12 CFR Parts 25 and 195, RIN 1557-AE34)

Via email: [cra.reg@occ.treas.gov](mailto:cra.reg@occ.treas.gov)

**Re: NCAI comments in response to NPRM on modernizing the Community Reinvestment Act**

Dear Comptroller Otting:

On behalf of the National Congress of American Indians (NCAI), the oldest and largest national organization advocating on behalf of American Indian and Alaska Native tribal nations and their citizens, I write to express NCAI's formal support of the Notice of Proposed Rulemaking (NPRM), Docket ID OCC-2018-008, which modernizes the regulations governing the Community Reinvestment Act (CRA).

NCAI and its organizational partners worked closely with OCC and FDIC leadership during the rulemaking process to share Indian Country's unified priorities for how the modernized CRA regulations could and should explicitly and comprehensively incentivize increased access to capital and credit for tribal governments and communities. The NPRM affirms that when it comes to those priorities, the OCC and FDIC have heard Indian Country's voice (the proposed regulations mention Indian Country a total of 66 times).

## The CRA's Four-Decade Track Record in Indian Country

The CRA was signed into law in 1977 to encourage depository institutions to help serve the credit needs of the communities in which they operate, in particular low- and moderate-income areas and populations. The Act also sought to deter discriminatory credit and lending practices against those populations, a practice commonly known as "redlining." With many Indian reservations located in the poorest regions of the country, and with a significant portion of the Native population considered to have low or moderate incomes, on paper the CRA should have discernably enhanced the ability of Native people to access capital and credit through CRA-qualifying financial institutions.

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However, as the CDFI Fund’s landmark “Access to Capital and Credit in Native Communities” report noted in 2016, while the CRA “was not intended to exclude Native Communities living on tribal lands...in practice it often does,” and banks under the Act’s current regulations can rather effortlessly satisfy CRA requirements “without working with a Native Community located on Native lands (communities which otherwise meet CRA criteria)” if they so choose.<sup>1</sup> In that vein, one recent study affirmed the severe challenges that Native people – particularly those living in impoverished, rural communities – still face in reasonably accessing capital and credit services, finding that 16.9 percent of American Indian/Alaska Native households were unbanked (did not have an account at an insured institution) and 25.5 percent were underbanked (households have an account, but have also obtained financial services and products from non-bank, alternative financial services providers in the prior 12 months), as compared to only 7.7 percent and 20 percent for the general U.S. population.<sup>2</sup>

While the current state of financial access for Indian Country cannot be laid at the CRA’s feet entirely, “it is an understatement to claim that Indian Country has been underserved” by the Act since its inception four decades ago. Furthermore, as the Native American Finance Officers Association explains, “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.”<sup>3</sup>

For the CRA to make a discernable dent in improving access to capital and credit for tribal governments, communities, and citizens, the modernized regulations governing the Act must deliberately and *explicitly* address their unique and complex needs.

### **The NPRM – Meeting that Threshold**

The CRA’s [new regulatory framework](#) generally addresses several major priorities outlined in NCAI’s November 2018 [comments](#) (see attached) on the OCC’s Advance Notice of Proposed Rulemaking, notably:

- specific measures aimed at spurring investments in tribal public safety, housing, education, healthcare, and communications infrastructure, as well as other community and economic development projects on tribal lands;

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<sup>1</sup> Native Nations Institute. *Access to Capital and Credit in Native Communities*. Tucson, AZ: Native Nations Institute, 2016, p. 94 (<http://nni.arizona.edu/publications-resources/publications/papers/2016/access-capital-and-credit-native-communities>, accessed November 5, 2018); citing Native CDFI Network, “Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment,” May 17, 2013.

<sup>2</sup> Federal Deposit Insurance Corporation (FDIC). *2013 Federal Deposit Insurance Corporation National Survey of Unbanked and Underbanked Households*. Washington, DC: FDIC, October 2014.

<sup>3</sup> Native American Finance Officers Association (NAFOA). “Comments Re: Community Reinvestment Act Modernization, Docket ID: OCC-2018-0008.” Washington, DC: NAFOA, November 6, 2018, p. 2.

- providing banks with CRA credit for serving tribal communities even when Indian Country falls outside their CRA assessment areas; and
- creating CRA scoring incentives for banks that choose to do business in Indian Country.

As NCAI CEO Kevin Allis said upon the NPRM's release in December 2019, "The proposed rule to modernize the Community Reinvestment Act reflects the OCC and FDIC's genuine commitment to heed Indian Country's call for a modernized CRA that helps tribal nations build thriving economies and communities through increased access to capital and credit. It is a testament to the good that can come when the federal government fulfills its trust and treaty obligations to consult with tribal nations on a true government-to-government basis."

### **Refining the Proposed Regulations to Further Strengthen the CRA for Indian Country**

NCAI also supports the targeted recommendations put forth by our partners to refine and strengthen the proposed regulations, notably: (1) creating an additional multiplier for Native Community Development Financial Institutions (NCDFIs) to more effectively incentivize bank investment; (2) ensuring that the final definition of "Indian Country" is broadly representative and comprehensive to encompass the community reinvestment interests of American Indian and Alaska Native tribal nations and their citizens; (3) minimizing incentives for banks to issue consumer credit cards in Indian Country in lieu of incentives to invest in Indian Country asset-building enterprises, such as NCDFIs; and (4) finalizing a definition of CDFIs that includes *emerging* CDFIs.

In closing, we look forward to working with the OCC and FDIC to ensure the modernized CRA fulfills its intended promise for tribal governments, communities, and citizens. Please let us know if you have any questions.

Sincerely,



Fawn Sharp  
President, NCAI

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