



# NATIONAL CONGRESS OF AMERICAN INDIANS

November 16, 2018

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

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

Via email: [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)

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

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, hereby submits the following comments in response to OCC's Advance Notice of Proposed Rulemaking (ANPR) titled "Reforming the Community Reinvestment Act Regulatory Framework."

Indian Country is deeply committed to working with Treasury and the OCC to ensure that a modernized Community Reinvestment Act (CRA) lives up to its full potential to appropriately incentivize and systematically increase (in targeted fashion) access to capital and credit in tribal communities and for Native people. To that end, in October 2017, NCAI staff participated in one of OCC's many formal listening sessions/roundtables about how best to modernize the CRA, and subsequently provided OCC staff additional materials and suggestions. The comments below build on the information that NCAI previously provided, and also weave in Indian Country's common priorities for modernizing the CRA that we have identified through our deliberations with tribal nations, tribal leaders, and key partner organizations like the Native CDFI Network (NCN) and the Native American Finance Officers Association (NAFOA).

## Framing the Issue for Indian Country

As you know, 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

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paper the CRA should have discernably enhanced the ability of Native people to access capital and credit through CRA-qualifying financial institutions.

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 NAFOA 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 financial access for tribal governments and citizens, modernized regulations governing the Act must deliberately and explicitly address their unique and complex needs. The following recommendations, if adopted, will create a transformed CRA capable of achieving that task.

**1. Establish a Stand-Alone Assessment Area Specifically for Indian Country:** We concur with NAFOA, NCN, tribal nations, and other key Indian Country stakeholders that the modernized CRA should create a new assessment area exclusive to Indian Country, as the current approach that unsystematically spreads Indian Country across multiple assessment areas simply has not served tribal governments and tribal citizens well. This new Indian Country Assessment Area should encompass areas on or near Indian reservations, and those tribal areas designated as such by U.S. Census Bureau tracts.

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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.

The modernized CRA should also then require large banking institutions to provide (directly or indirectly) critical financial services to tribal governments and citizens in the Indian Country Assessment Area, as well as their existing assessment areas that are in reasonably close proximity to tribal communities (see below).

**2. Create a Strong Set of Requirements to Incentivize Sustained CRA Investment in the Indian Country Assessment Area:** Establishing a stand-alone assessment area for Indian Country on its own will have limited impact unless the modernized CRA also strongly incentivizes through explicit requirements that large financial institutions do business in that assessment area. This will prevent these institutions from either purposefully or inadvertently avoiding doing business on tribal lands with tribal governments and tribal citizens, as has commonly been the case under the current CRA. For example, if a financial institution's assessment area encompasses or overlaps with the new Indian Country Assessment Area (ICAA), then that institution's CRA rating should receive a direct and significant boost in its community development lending rating when that institution proceeds to do business within the ICAA. The highest rating should be given to institutions who fully engage the ICAA by doing business with tribal governments, tribally owned enterprises, tribal citizens (such as existing and would-be small business owners), *and* local Native-run community development organizations (see next recommendation for details). Ultimately, the new CRA should prevent ICAA-tethered financial institutions from receiving an "Outstanding" CRA rating unless they offer substantial community development lending opportunities within the ICAA to those entities listed above.

**3. Expand CRA-Eligible Activities to Incentivize Investment in Native CDFIs:** The current CRA provides that, in assessing the performance of non-minority- and non-women-owned (majority-owned) financial institutions, CRA examiners may consider capital investments, loan participations, and other ventures undertaken by the institutions in cooperation with minority- or women-owned financial institutions and low-income credit unions (MWLIs) as a qualifying factor, provided these activities help meet the credit needs of local communities in which the MWLIs are chartered. A modernized CRA must add the more than 75 federally certified Native community development financial institutions (CDFIs) to the list of eligible MWLIs, as Native CDFIs often are the only entity providing needed financial products and development services to the tribal communities in which they are located and/or serve.

**4. Incentivize Financial Institutions to Support Existing Community Development-Focused Federal Programs and Services:** Existing federal laws and programs such as the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act, HUD Section 184 Loan Program, New Markets Tax Credits, energy and business loan guarantees offered through the Departments of Interior and Energy, and other related initiatives are geared towards increasing the flow of directly needed capital into Indian Country. Yet these initiatives have not realized their full potential to date because they haven't been appropriately resourced. The new CRA should offer financial institutions explicit and significant CRA ratings-tied incentives for providing lending through these existing federal initiatives.

**5. Carefully Account for Indian Country's Communications Infrastructure Challenges:** As mentioned above, an approach exclusively focused on extending bricks-and-mortar bank branches into tribal communities has not worked well for Indian Country, nor is it a viable solution moving

forward. However, that does not mean that mobile banking would be a failsafe alternative, considering the severe communications infrastructure challenges many tribal communities face. For example, as NCAI's 2017 "Tribal Infrastructure" report points out, 41 percent of people living on tribal lands lack access to advanced telecommunications capability, compared to the national average of 10 percent. Meanwhile, 68 percent of people living on *rural* tribal lands lack access compared to the 39 percent average for rural areas nationwide.<sup>4</sup> Consequently, the new CRA must methodically prioritize a *combination* of physical *and* online banking solutions when determining financial institutions' compliance with the CRA, and it should provide CRA rating boosts to financial institutions who work directly with tribal governments to develop multifaceted banking services customized to those particular tribal communities.

**6. Leverage the New CRA to Incentivize Investment in Indian Country's Communications and Other Types of Infrastructures:** The modernized CRA should provide ratings points to financial institutions who partner with tribal governments to provide lending capital as well as equity alternatives to tribal projects designed to build out their communications and other physical infrastructures (schools, roads, healthcare facilities, etc). This would not only improve the overall quality of life, but would greatly enhance tribal communities' ability to access banking services and make their long-range community and economic development priorities a reality.

**7. Strengthening Data in Partnership with Tribal Governments to Ensure CRA Compliance:** NCAI has received numerous reports of financial institutions systematically declining to extend loans to tribal citizens on the same Indian reservations where they freely lend to non-Native residents. The new CRA should significantly penalize financial institutions who engage in such discriminatory practices. In addition, it should strengthen OCC/Treasury's ability to generate critical data that can be used to track CRA non-discrimination and compliance by mandating that financial institutions work closely with tribal governments to verify the tribal citizenship of those who apply for financial services.

In closing, NCAI appreciates the opportunity to inform and contribute to OCC's methodical effort to reform and strengthen the CRA so that it is capable of realizing its full community development potential for tribal nations and their citizens. We look forward to engaging you further about this important topic, and please let us know if you have any questions.

Sincerely,



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<sup>4</sup> NCAI, *Tribal Infrastructure: Investing in Indian Country for a Stronger America* (report), 2017, p. 22 ([http://www.ncai.org/attachments/PolicyPaper\\_RsInCGsUDiatRYTpXKwThNYoACnjDoBOrdDIBSRcheKxwJZDCx\\_NCAI-InfrastructureReport-FINAL.pdf](http://www.ncai.org/attachments/PolicyPaper_RsInCGsUDiatRYTpXKwThNYoACnjDoBOrdDIBSRcheKxwJZDCx_NCAI-InfrastructureReport-FINAL.pdf), accessed November 15, 2018).