NATIONAL CONGRESS OF AMERICAN INDIANS

Written Testimony for the

Community Reinvestment Act Regulation Hearings

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Office of Thrift Supervision

August 31, 2010

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The National Congress of American Indians (NCAI) is the oldest, largest and most representative organization serving American Indian and Alaska Native people. We are the membership organization that that serves the broad interests of tribal governments. Since our inception in 1944, tribal governments have come together as a representative congress through NCAI to deliberate policy issues of critical importance to Native communities.

We come to this conversation convinced that – as one of the three types of government recognized in the U.S. Constitution – federal, tribal and state governments – tribes offer a unique perspective that can make significant contributions to national policy debates. The revision of Community Reinvestment Act (CRA) regulations provides a significant opportunity to promote access to financial institution for a population that is significantly underserved by the American financial system.

Native communities and the American financial system

The limited access to basic financial services in Native communities highlights the work left to be done to connect Native people to the benefits of the American financial system. A recent FDIC study revealed that 44.5% of American Indian and Alaska Native households are underbanked, and 15.6% of American Indian and Alaska Native households are completely unbanked.[1] These figures are explained – in part – by the findings of the 2001 Native American Lending Study. The Study found that the primary financial services challenge facing Native people is that services are often completely absent. Eighty six percent of Native communities lack access to a single financial institution (with a broad definition that included a simple ATM), and 15 percent of our community members need to travel over 100 miles to access a financial institution.[2] The ten year old study is also indicative of the need to better include tribes in conversations about the CRA because, as the most comprehensive study of lending needs in Native communities, conducted by the Department of the Treasury, it does not even mention the Community Reinvestment Act.[3] The Study also identified the economic impact of underserved Native communities. It estimated an unmet capital need in Native communities of $44 billion.[4]

Addressing financial institution access in Native communities

In 2002, the Native Initiatives program of the CDFI Fund was launched to address the egregious lack of financial institutions and the lack of access to capital for homeownership, business development, and other economic needs. These investments at the CDFI Fund have grown the Native CDFI field from nine certified CDFIs in 2001 to 55 certified Native CDFIs in 2010, and another 60 Native CDFIs preparing for certification.[5] These institutions are critical partners for the agencies[6] to engage in assessing bank services as part of CRA exams.

The issues discussed in these hearings are a high priority for tribal leaders. At the 2007 Native American Economic Policy Summit the hundreds of tribal leaders in attendance offered three recommendations to support the development of financial institutions on Indian lands. [7] The first two related to funding for the CDFI Native Initiatives program and data collection to support the most effective strategies to meet financial services needs in tribal communities. The third recommendation underscored the fact that tribal leaders see the CRA as a tool to encourage financial institution access on Indian lands. The recommendation was that the CRA be strengthened to "provide further incentives to encourage bank branch development on Indian lands and regulate practices that reduce tribal access to financial institutions."[8]

Passage of the Dodd-Frank Financial Reform Bill also provided an important legislative acknowledgement that tribal governments have a critical role to play in financial regulation, alongside their state government counterparts. Tribal governments are empowered to enforce the Consumer Financial Protection Bureau's rules in areas under their jurisdiction, in the same way that states are in areas under their jurisdiction. In addition, tribal consumer financial protection codes are protected, so that tribal governments are able to set standards that are tougher than the federal standards (and maintain protections already in place) to afford greater protections for consumers borrowing on Native lands.

Improvements to address financial institution access

The following recommendations address the needs of Native communities with regard to CRA regulations with the goal of improving access to the American financial system and the economic opportunities it offers:

Recommendation 1: Develop meaningful and specific strategies for consultation and coordination with tribes to ensure CRA effectively promotes financial services to serve Native communities.

Further consultation and coordination between tribes and the federal government is necessary to bridge the substantial gap in financial service access between Native people and other Americans. On November 5, 2009, President Obama held an historic meeting with tribal government leaders from across the United States. It was a proud day for our country as President Obama promised to improve the partnership between the federal government and tribal nations. As an initial step toward fulfilling his promise, the President issued an Executive Memorandum that directed all federal agencies to develop a plan within 90 days for consultation and coordination with tribal governments under President Clinton's Executive Order 13175.

As recommended in NCAI's letter to each cabinet secretary and agency head (sent on November 20, 2009, after the President's meeting), tribal leaders specifically asked federal agencies to: (1) refocus on substantive goals while respecting tribal sovereignty and the federal trust responsibility; (2) develop accountability and tracking provisions; (3) focus on solutions and bring decision-makers to tribal consultation and engage in real dialogue; (4) develop methods for interagency cooperation; and (5) create opportunities for both formal consultation on developed proposals and early informal scoping on tribal issues.

Given the unique challenges Native communities face, we urge the agencies to carefully review written testimony from Native communities. NCAI would be pleased to facilitate consultation with tribal leaders (as it has for other federal agencies) and would welcome the opportunity to partner with other leading national Native organizations, like the Native CDFI Network, to facilitate additional engagement on CRA and its impacts in Native communities.

Recommendation 2: Collaborate with other federal agencies to ensure the financial system serves Native communities.

Recent passage of the Dodd-Frank Financial Reform Bill creates a robust Bureau to oversee the financial experience of Native people. It is critical that this people-focused lens be integrated with the place-focused lens of CRA. Particularly given the challenges faced by residents of reservation communities, a cohesive approach to assessing financial services for Native people and Native communities, is essential.

Recommendation 3: Hire and appoint qualified Native people.

While not a regulatory action per se, we strongly recommend that the Administration in general, and the agencies specifically, seek to hire and appoint qualified Native people to governing boards, advisory councils, and staff positions. Native people belong at the policymaking table when it comes to ensuring all Americans have equal access to quality financial services.

Recommendation 4: Enhance small business data to include the race and gender of the borrower.

A significant challenge facing policymakers serving Native communities – at the federal, tribal, and state level – is the lack of access to adequate data. The challenge is not restricted to data on access to financial services, but we urge the agencies to set the gold standard for quality data collection, particularly in a context so critical to economic recovery. One key lens for measuring the impact of the crisis – the monthly unemployment report issued by the Bureau of Labor Statistics – essentially excludes on-reservation unemployment rates (often at levels well beyond 50 percent). This means the unemployment rate for states with high Native populations is likely considerably understated.

On the specific subject of revising small business and consumer lending data, Indian Country sees quality data as a critical need to evaluate the extent of the challenges facing Native business owners and consumers. Home Mortgage Disclosure Act (HMDA) data has been used effectively to increase responsible lending by holding banks publicly accountable (though there are some challenges with sample size for Native borrowers). We need comparable small business, community development, and consumer lending data to bolster affordable bank lending and basic services.

Recommendation 5: Collect census tract data on community development lending and investing, small business lending, and bank deposit and consumer lending on a census tract level.

As a critical component of collecting quality data, it is important for policymakers that serve tribal communities to have access to data at the census tract level so it can be aligned most closely with reservation boundaries. Without data that can be applied to the specific needs of reservation communities, policy interventions will be constrained by inadequate data.

Recommendation 6: Collect pricing information on lending products (small business and consumer loans).

Loan data should be detailed enough to provide the agencies, Native leaders, and community organizations to determine whether Native people and businesses are really receiving affordable loans. In remote and rural communities the lack of competition can provide incentives to offer unaffordable financial products to consumers who are constrained by the lack of choices.

Recommendation 7: Develop tools that can make data accessible to the public.

Existing and new data should be meaningful and accessible so researchers and community members can understand the services provided to their community. We encourage the agencies to explore tools that can be used to map the location of services offered by, and CRA exam results of, banks. Examples such as tools found on the Recovery.gov website – and other agency American Recovery and Reinvestment Act (ARRA) websites – provide good examples of these tools.

Recommendation 8: Use existing and new data to hold banks accountable.

Data collected by the agencies must be used to meaningfully evaluate bank performance. A large body of research concludes that minorities received more high-cost and risky lending than was justified based on their creditworthiness. If CRA considers lending and service to minorities, racial disparities in lending will be reduced. After revisions to the CRA exam procedures in the mid-1990s, the reduced focus on evaluating bank practices for the presence of discrimination in lending was a huge step backwards. CRA exams resulted in the referral of some banks to the Justice Department for discrimination against Native borrowers as recently as the mid-1990s. Discrimination did not stop in the mid-1990s, the agencies simply stopped looking for it. Native citizens need the support of the agencies to ensure we receive equitable access to financial services.

Recommendation 9: Clarify that investments in alternative energy facilities and energy efficiency enhancements are eligible for CRA credits.

Like other low and moderate income Americans, tribal members lack access to infrastructure that many other Americans take for granted. Tribes – and therefore Native citizens – have been almost completely excluded from efforts to improve the energy efficiency of homes and government buildings.[9] Not only do these facilities – in some of America's most extreme climates – require further investment, tribes are also being left out when it comes to the development of alternative energy and "green jobs."

Tribal lands comprise over 10 percent of the nation's traditional energy resources and five percent of the land base, and are also a potentially rich source of renewable energy. According to the Department of Energy, wind energy potential on tribal lands can provide more than 20 percent of the nation's electric power generated in 2004. Solar energy potential on tribal lands can provide 4.5 times the current annual U.S. electric generation.

Despite these opportunities, tribes have been left out of federal efforts – and many private investments – to support domestic energy development. ARRA provided $3.1 billion to support state renewable energy and energy efficiency programs but nothing for tribes. In fact, only $16.5 million has been allocated to tribes since 2002.

To ensure maximum benefit for the national, regional, and tribal economies, tribes can and must be provided with the same opportunities as states to become meaningful participants in the nation's clean energy future. We support the recommendation, made by colleagues at the Center for American Progress, that the agencies clarify that both investments in alternative energy facilities and energy efficiency enhancements can be considered for CRA credit.[10] This regulatory clarification offers much promise for economic development and innovation in tribal communities.

Recommendation 10: Engage tribes and community-based organizations.
From our perspective in Indian Country, it is essential that the agencies find more effective methods for facilitating engagement between banks and community-based organizations. Tribal governments, Native CDFIs, and other community institutions regularly report banks refusing to work with them to offer accounts to Native people, sometimes because they are unclear that these are CRA eligible activities. The real world effect of this confusion is that Native clients often have to travel even further to access banking services. Banks in Native communities are also not held accountable to offer products that meet the needs of our consumers. A complete absence of competition means interest rates of above 20 percent are not uncommon for some loan products.

Tribal communities are also unique in that tribal government departments often serve roles parallel to non-Native non-profit institutions. When assessing banks whose service area includes Indian lands, examiners should meet with tribal representatives to more fully (and accurately) assess bank activities. CRA examiners should also be required to meet with key community-based organizations, particularly those – like Native CDFIs – that work alongside banks.

Recommendation 11: Recognize responsiveness to local needs.
Banks that work hard to meet the needs of underserved Native communities must be recognized. The agencies should develop incentives for banks that make loans that are particularly responsive to local needs – either in the volume of loans or the innovation displayed by them. An important outcome of bank collaboration with Native institutions (tribal governments, Native CDFIs, and others) is the encouragement of product innovation to serve the needs of the community. These partnerships can (and have) encourage/d product innovation and the development of lending and services that promote wealth building for Native citizens. Whether it is alternatives to pay day loan products or alternatives to refund anticipation loans, these innovations must be recognized and highlighted for replication in other communities.

Recommendation 12: Impose meaningful consequences for non-compliance with CRA requirements.
We join many other advocates in recommending that the agencies impose meaningful penalties on banks who fail to receive satisfactory grades on their CRA exams. One bank in South Dakota, located in the midst of the Lake Traverse Reservation of the Sisseton-Wahpeton Oyate, has received “needs to improve” as its grade on all five CRA exams since 1996 with no clear consequences for this ongoing non-compliance.

Recommendation 13: Add a specific community development test for large banks, and remove exemptions for small and intermediate small banks.
The few Native communities that do have bank branches on their reservations, are afflicted by one of two challenges: (1) served by small or intermediate small banks whose CRA exams are not sufficiently robust; or (2) served by branches of large banks that can offset underinvestment in Native communities with lending activities elsewhere. It is critical for the agencies to both remove exemptions from data reporting and other tests for small banks (as was done, for example, in the Dodd-Frank Financial Reform Bill), and add a community development component to the CRA exam for large banks. We need an exam methodology that incentivizes the investment in community infrastructure to serve remote, rural, and especially, reservation communities. The current structure of large bank exams allows a lack of community focused lending to be offset by home or business lending in other communities (often urban communities).

Recommendation 14: Ensure bank Performance Evaluations include analysis of services provided to Native communities.
In preparing for this testimony, NCAI staff reviewed dozens of Performance Evaluations (PEs) that assessed banks located on, or near, an Indian reservation. We were shocked to see very few references to Native clients in the PEs. Given the significant absence of financial services in Native communities, we urge the agencies to require their examiners to pay particular attention

in their examination to the provision of financial services to Native communities when assessing banks located on, or near, Indian lands.

Recommendation 15: Include long-term unemployment as a criterion for assessing "distressed communities."

The Policy Research Center at NCAI has identified the critical need for the agencies to consider the impact of long-term unemployment on the metrics used to define distressed communities. In June 2010, the Bureau of Labor Statistics (BLS) reported the unemployment rate for South Dakota at 4.5 percent, less than half the national rate. This figure completely obscures the impact of long-term unemployment and unattached workers, particularly those who live within the state's reservations. The weakness of the data in defining economic distress is seen when comparing BLS data with that reported by the Bureau of Indian Affairs (BIA). The BIA reports that two-thirds or more of the eligible working population on South Dakota's reservations are unemployed, underemployed, or have given up looking for work. This is a reality that we in Indian Country have faced for decades, but it will be increasingly common in other communities and must be reflected in the agencies' definition of distressed communities.

Conclusion

NCAI would like to thank the agencies for the opportunity to share the needs of Native communities with you. We look forward to further discussions and trust that this will be the first of many conversations about the needs of Native communities with respect to the Community Reinvestment Act.

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[1] FDIC National Survey of Unbanked and Underbanked Households (Dec. 2009) http://www.fdic.gov/householdsurvey/ p10.

[2] Department of the Treasury, (2001) *Native American Lending Study*, http://www.cdfifund.gov/docs/2001_nacta_lending_study.pdf

[3] Treasury 2001

[4] Treasury 2001

[5] Fiddler, Tanya, (March 9, 2010), "Testimony Before The House Committee On Financial Services Hearing On Community Development Financial Institutions (CDFIs)— Their Unique Role And Challenges Serving Lower-Income, Underserved And Minority Communities"

[6] This phrase is used throughout the testimony to refer to the four agencies hosting the joint hearings – the Office of the Comptroller of the Currency, the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

[7] National Congress of American Indians, (2007), *Native American Economic Policy Report*, p15

[8] National Congress of American Indians, (2007), *Native American Economic Policy Report*, p15

[9] See NCAI Policy Research Center, (2010), "Investing in Tribal Governments: An Analysis of Impact and Remaining Need Under the American Recovery and Reinvestment Act," http://www.indiancountryworks.org/file/Investing%20in%20Tribal%20Governments%20-%20An%20Analysis%20of%20ARRA.pdf

[10] Wartell, Sarah Rosen, (June 19, 2010) "Testimony at the Joint Public Hearing on The Community Reinvestment Act Regulation," pp10-11