



Ewiiapaayp Tribal Office
Ewiiapaayp Band of Kumeyaay Indians

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July 19, 2022

Comments to Department of the Treasury, Office of the Comptroller of the Currency, Regarding 12 CFR Part 25 [Docket ID OCC-2022-0002], RIN 1557-AF15; Federal Reserve Systems, 12 CFR Part 228, [Regulation BB; Docket No. R-1769], RIN 7100-AG29; Federal Deposit Insurance Corporation, 12 CFR Part 345, RIN 3064-AF81
Community Reinvestment Act

Submission Via Email: comments@fdic.gov; Subject: RIN 3064-AF81

Please accept the Ewiiapaayp Band of Kumeyaay Indians comments and recommendations to the proposed revisions to the Community Reinvestment Act (CRA).

If you have any questions or concerns at any time, please feel free to contact the Tribe's Chief Executive Officer, Mr. Will Micklin, by telephone at (619) 368-4382, or by email at ceo@ebki-nsn.gov. Thank you.

Sincerely,



Robert Pinto, Sr.
Tribal Chairman
Ewiiapaayp Band of Kumeyaay Indians

ATTEST:



Harlan Pinto Jr., Secretary
Date: 07/19/2022

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Summary

The Community Reinvestment Act, or CRA, became law in 1977 and intends to address systemic inequities in access to credit. Our objective is a revised CRA that effectively encourages investment, financing, and lending to help meet the banking and credit needs of our Tribal communities as a subset of and separate and apart from low- and moderate- income (LMI) communities benchmarks.

In the NPR, the agencies propose to retain the conditions that bank assessment areas are prohibited from reflecting illegal discrimination or arbitrarily excluding low- or moderate income census tracts. However, the proposed use of census tracts and Native Lands Areas for CRA performance assessments is problematic for Indian Country in the lower 48 states, and impossibly unrepresentative for Alaska tribes if the CRA is to recognize Indian Country within LMI communities. The NPR six place-based definitions and their four common elements are ill-suited to qualifying community development activities that would support lending, financing, and investment in Indian Country and uphold regulatory responsibilities for both fair lending and CRA examinations.

Recommendations

Recognize Indian Country within LMI Communities. The NPR proposed key elements to expand access to credit, investment, and banking services to LMI communities should additionally identify Indian Country communities separate and apart from the LMI communities, and should establish the separate metrics necessary to track and evaluate bank performance across Indian Country tribal communities. If the CRA does not separate Indian Country tribal communities from LMI communities and modify the proposed metrics based approach to CRA evaluations to include Indian Country specific benchmarks, then CRA assessments will continue to assess performance goals as satisfied without significant benefit conveyed to tribes and their tribal citizens.

The current CRA does not include a specific definition for community development activities in Native Land Areas. In the NPR, the agencies propose to define Native Land Areas to include a definition of Native Land Areas [Indian Country, land held in trust by the United States for Native Americans and Alaska Natives, state American Indian reservations, Alaska Native Villages, Hawaiian Homelands, Alaska Native Village Statistical Areas, Oklahoma Tribal Statistical Areas, Tribal Designated Statistical Areas, American Indian Joint-Use Areas, and state-designated Tribal Statistical Areas] that is too narrow in its exclusion of significant geographic

areas of development for Tribes. Far less than half of Tribal Citizens reside within reservation or trust land boundaries due in large part to the lack of tribal housing, the lack of reservation or tribal lands for the majority of tribes (including all tribes in the state of Alaska except for one) and the regional, national, or international scope of tribal enterprises. Substantial Tribal communities development activities also occur outside of these Native Land Areas.

For example, Tribal subsistence rights often extend beyond the boundaries of tribal lands and sometimes don't take place on "land" at all. How do the CRA proposed regulations address community revitalizing activities that take place on bodies of water? How do Alaska Tribes subsistence rights and treaty-based hunting, fishing, and gathering rights that extend to state or federal lands, will those activities qualify?

For example, Community revitalization for Tribal Nations can often include a cultural and historical preservation element that is educational and critical to healing generational trauma and promoting health and socio-economic wellbeing. While these activities may take place in Native Land Areas, they can also take place on state and federal lands. How do the proposed regulations address cultural and historical preservation activities that may take place off of tribal lands but are fundamentally the types of activities that revitalize the community?

In November 2021, the Secretaries of the Interior and Agriculture signed Joint Secretarial Order No. 3403 to facilitate agreements with Tribes to collaborate in the co-stewardship of federal lands and waters. Will the proposed the CRA regulations capture these eligible co-management activities that may take place off of tribal lands?

Reclaiming Native Land Areas is a community revitalization activity that promotes the jurisdictional building blocks for community facilities, infrastructure, and economic development. Does the proposed definition of "Native Land Areas" include land held in fee status by a Tribe? What about the restoration of tribal homelands? Do the proposed regulations include lending for the purpose of a Tribal Nation restoring its homelands in fee status or to take land into trust?

CRA Benefits Available for Retail Lending and Community Development Financing. Indian Country communities within the LMI communities are notable for their lack of infrastructure, including affordable and reliable energy, lack of community clean water and waste water systems, lack of broadband deployment, lack of housing, lack of safe transportation, and lack of food security. The CRA regulatory framework as revised by the proposed new framework, speaks to a business model out of reach of Indian Country tribal communities without essential infrastructure sufficient to attract retail and business development lending. The CRA should provide benefits that support investment in essential infrastructure. However, much of these activities occur outside of the Native Land Areas.

Through the U.S. Department of the Interior's Tribal Transportation Program, Tribal Nations exercise jurisdiction for the planning, design, construction, operations, and maintenance of transportation facilities that are both on or provide access to tribal land.

These facilities mean a public highway, road, bridge, trail, transit system, or other approved facility. There is an official registry of these facilities, known as the National Tribal Transportation Facility Inventory (NTTFI). Do the regulations capture these transportation facilities as qualifying? If not, what should commenters do to make sure that transportation facilities are included as qualifying areas and activities?

Many Tribes rely on ferries or barges for the transportation of people and goods. Do the regulations consider these water transport systems that connect Native Land Areas to surrounding areas as qualifying?

There are a large number of Tribal Nations that have no roads, and can only be reached by dog sled or by air transportation. How do the proposed regulations take into account where airports and runways are essential community infrastructure? If an airport is co-managed by a Tribe and a Local Authority, will it qualify? What if there is no agreement in place for the co-management of an airport and the land is not traditionally considered a Native Lands Area? Can these areas be designated as qualifying if a Tribal Nation chooses?

Similar concepts to community infrastructure that rely on connection to a greater grid system like transportation are electrification and telecommunication. As one example, broadband networks require connection in the community and to homes and businesses, known as the “last mile,” but they also require that the local network be connected to the greater infrastructure of the internet through what is known as “middle mile” or “backhaul” networks. Broadband access in Native communities necessarily includes connecting to the larger network by traversing Native and non-Native lands. Further, some middle mile networking is located off the coast, out in the ocean, or in other navigable waters. Will these projects that are necessary to broadband deployment on the “last mile” be recognized as qualifying for CRA credit when they take place on the “middle mile?” Can a Tribal Nation designate a project taking place off of Native Land Areas as necessary to the proper function of a project or activity that takes place on Native Land Areas?

Qualifying Community Development Activities. The agencies intend for this new category of place-based definitions to provide more clarity on the types of activities that qualify, and to better tailor the types of activities that qualify in different targeted geographies. Each of the categories focuses on place-based activities that benefit residents of targeted geographic areas: (i) Revitalization; (ii) essential community facilities; (iii) essential community infrastructure; (iv) recovery activities in designated disaster areas; (v) disaster preparedness and climate resiliency activities; and (vi) qualifying activities in Native Land Areas.

The six proposed place-based definitions share four common elements. First, each definition has a geographic focus (e.g., low- or moderate income census tracts) where the activities must occur. Second, each definition has standardized eligibility criteria that require the activity to benefit local residents, including low- or moderate-income residents, of the targeted geographies. Third, each definition has the eligibility requirement that the activity must not displace or exclude low- or moderate income residents in the targeted geography. Finally, each definition provides that the

activity must be conducted in conjunction with a government plan, program, or initiative that includes an explicit focus on benefitting the targeted geography. Together, these four common elements are intended to provide necessary clarity regarding the activities that may qualify for CRA credit, while maintaining sufficient flexibility. In addition, these four common elements are intended to ensure a strong connection between the activities and community needs.

The Indian Self-Determination and Education Assistance Act authorizes Tribal Nations to contract and compact the operation federal programs, services, functions, or activities within the Bureau of Indian Affairs, Bureau of Indian Education, and the Indian Health Service. Section 105(l) of the Indian Self-Determination and Education Assistance Act provides that Tribes and Tribal organizations carrying out Federal functions under a self-determination contract or self-governance compact may enter into a lease agreement with the Department of the Interior (DOI) and Department of Health and Human Services for the Tribally owned or rented facility used to carry out those functions. Will construction of eligible facilities and other capital improvements under the Indian Self-Determination and Education Assistance Act be recognized as qualifying activities?

Within the Indian Health Service (IHS) accounts is an annually funded account for Urban Indian Health Organizations. By their very nature, these activities take place off of Native Lands Areas, but are a critical part of the Indian Health Care system, seeing patients in urban settings who may not have the ability to go home to receive health care. Will the proposed regulations include Urban Indian Health Organizations that are funded by annual IHS appropriations?

With respect to higher education, certain Tribal Colleges and Universities and other Alaska Native and Native Hawaiian-serving institutions may be located outside of Native Lands Areas with activities that take place, in part, outside of Native Land Areas. Nonetheless, educational attainment is a critical component of community revitalization that often ultimately impacts Native Land Areas. Will the proposed regulations recognize investment in these institutions as qualifying activities under the Community Reinvestment Act?

Tribal Governments and the CRA. Unanswered in the proposed regulations are the mechanisms that, first, convey benefits to tribes as government entities and their political subdivisions not taxed, which, uniquely among governments, are either without a tax base or with a limited tax authority aggressively usurped by state and local governments. Nor is the NPR clear in how the proposed revisions would provide support to interest bearing debt instruments deployed as investments for development in tribal communities with limited essential infrastructure and without a viable economy available to support business models for financing and investment.

The focus on low-income and moderate-income individuals is limiting for tribes. Tribal governments should be deemed to satisfy the income-based eligibility standards when, in the absence of essential infrastructure, all tribal citizens of any income level are injured by a lack of economic opportunity.

One of the fundamental pieces of being a government is protecting your own people, or being able to tax or raise revenue to provide government services and do government activities. Like

all sovereigns, Tribal Nations need revenues to fund governmental services and public goods. Unfortunately, federal funding to fulfill the United States' trust and treaty obligations to tribal governments and their citizens remains woefully inadequate. Due to infringements on tribal sovereign tax jurisdiction, tribal governments essentially have no tax base and are currently unable to utilize traditional economic development tools – e.g. tax abatements – to stimulate private sector investment. Instead, Tribal Nations largely rely on economic development to generate the revenue that other governments take for granted, which ultimately provides for tribal government operations that revitalize the community, including critical assistance to low- and moderate-income households. Will the proposed regulations recognize tribal governments' unique reliance on economic activities to generate revenue as qualifying community revitalization activity?

[end]