



The National Center
for American Indian Enterprise Development

August 5, 2022

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550 17th Street, NW
Washington, DC 20429

Chief Counsel's Office
Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Re: OCC Docket ID OCC-2022-0002; FRB Docket No. R-1769 and RIN 7100-AG29; FDIC RIN 3064-AF81, NCAIED Comments on Modernizing the Community Reinvestment Act's Implementation

The National Center for American Indian Enterprise Development (the National Center or NCAIED) applauds the joint efforts of the Federal Reserve Board of Governors (Board), the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) (referenced herein as the "Agencies") to respond favorably to the previous comments of NCAIED and other stakeholders in Indian Country in their Advanced Notice of Proposed Rulemaking to modernize the regulatory and supervisory framework for implementing the Community Reinvestment Act (CRA) at Regulation BB, 12 C.F.R. Part 228, issued on May 5, 2022 (87 Fed. Reg. 33884, June 3, 2022).

The NCAIED generally endorses the Agencies' proposal to include specific provisions to address the needs of Indian Country, such as creating a definition of Native Land Areas and for qualifying community development to benefit Native Land Areas, with the intent to increase access to urgently needed lending, investments and services in Indian Country. We urge prompt adoption of these provisions, as well as some additional emphasis on CRA credits to ensure that banks not only substantially increase investments in Indian Country community development but also increase lending to tribal and other native-owned businesses seeking to start up or expand their operations and workforce.



953 East Juanita Avenue
Mesa, Arizona, 85204



t: (480) 545-1298
f: (480) 545-4208



e: chris.james@ncaied.org
w: www.ncaied.org



The National Center for American Indian Enterprise Development

Background:

The NCAIED is a 501(c)(3) non-profit organization with nearly 50 years of assisting American Indian Tribes, Alaska Native corporations, their enterprises and businesses owned by their community members, with business and economic development. Now the largest national Indian specific business organization in the nation – driven by our motto, “We Mean Business For Indian Country” – the NCAIED actively engages in helping Tribal Nations and Native business people realize their business goals. We are dedicated to putting the whole of Indian Country to work to better the lives of American Indian people, both now and for generations to come. The CRA’s modernization can and should ensure greater access to capital to achieve these goals.

For decades, the NCAIED has provided business and procurement technical assistance, including helping Indian Tribes, Alaska Native corporations, Native Hawaiian Organizations, community enterprises owned by these entities, and other native businesses and entrepreneurs trying to access capital. To ramp up its ability to assist on the financing front, the National Center plans to launch its own Native Community Development Financial Institution (CDFI).

The NCAIED also has long advocated and facilitated greater access to capital in Indian Country through its business centers, Native Edge Institute training sessions, and annual Reservation Economic Summit (RES). In Congressional testimony, regulatory comments, and funding requests, NCAIED has sought to increase private capital access for Native borrowers by infusing more funds into the Indian Loan Guarantee and Tribal Energy Loan Guarantee Programs, and the Community Development Financial Institutions (CDFI) Fund’s Native Initiatives. We work with, and strongly support building the capacities of, financial institutions willing to do business in Indian country, especially the Native American Bank, Tribal and other Native-owned banks and credit unions, and Native CDFIs.

Capital Access Needs in Indian Country:

On February 16, 2021, the NCAIED submitted comments on the earlier NPRM published October 19, 2020 (85 Fed. Reg. 6640), lauding the CRA regulations’ modernization as a long overdue step to increase access to capital in Indian Country. The CDFI Fund’s 2016 landmark report and more recent studies clearly exposed the urgent capital access needs in Indian Country, justified robust support for Native CDFIs, and spotlighted the CRA’s failure to extend benefits to, or incentive private banks to serve, Native communities and borrowers. In 2018, about 45% of Native American households were in census tracts that CRA standards consider low income, distressed or underserved (compared to 32% of overall population). As many Indian Tribes’ reservation lands, Native Hawaiian Homelands, and individual Indian allotment lands are outside of any bank’s assessment area(s), the current CRA system offers limited or no benefits to Native borrowers in what are termed CRA “deserts.” As Board Vice Chair Lael Brainard noted in her July 19, 2022 remarks at the National Native Coalition Virtual Series on the CRA NPRM, “As of the most recent 2019 data, over 16% of Native Americans are unbanked – three times higher than the rate for all U.S. households.” Noting low access to bank branches (only 2.5 for majority-Native American counties – 0.10 of the 26-branch average for all counties nationwide), she cited a 2015





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Board analysis finding CRA small business and small farm lending per capita in majority Native American census tracts is only about .25 of that in majority-White-non-Hispanic tracts.

That gloomy picture grew much darker with the COVID pandemic. As our comments reported last year, the NCAIED partnered with the Federal Reserve Bank of Minneapolis, Center for Indian Country Development (CICD), to conduct a survey of Native businesses that revealed the horrendous financial disparities that Native communities and businesses suffer. Responses from 400 business owners reported dramatic declines in revenues, with 68% suffering at least a 20% revenue reduction. A previous CICD survey in April 2020 of tribal-owned businesses found over 80% experienced revenue loss, with nearly 25% reporting zero revenue. COVID-related closures forced many businesses to suspend operations. Most businesses strived to retain their workforce, but nearly a third have had to lay off or furlough employees. Outrageous was the failure of the federal Paycheck Protection Program (PPP) to help most of Indian Country, aggravated by the lack of existing banking relationships with Native businesses that sought relief. Only 1 in 3 of the NCAIED-CICD survey respondents reported having a strong or very strong relationship with their lender prior to the pandemic. Only 36% of all respondents applied for a PPP loan, and only 22% actually received a loan.

Listening to Native Community Representatives and Borrowers:

Indian Country, especially many reservation and native homeland communities, struggle in their unique credit deserts that are unlike any others in the United States. Reservation lands are restricted against alienation so cannot serve as traditional collateral for loans – the most common financing method. Many bankers, and even some federal loan guarantee program officers, lack even the basic understanding of lending needs and barriers to capital access in Indian Country.

The NCAIED applauds the initiatives of the Agencies that have included visiting sites in Indian Country, engaging in multiple listening sessions, and producing reform proposals in 2020 that incorporated provisions better addressing Indian Country's capital needs. In 2021 comments, the NCAIED and its national native organization partners urged that final CRA modernization rules create an Indian Country Assessment Area and provide other meaningful incentives for more banks to invest more heavily in Indian Country. We recommended incentives to allow such investments without regard to a bank's assessment area, and to allow a multiplier to a financial institution's exam score for activities conducted within Indian Country. It is essential to ensure that, at long last, Indian Country benefits from the CRA as an affirmative obligation to afford access to capital, and becomes part of the CRA scoring system, with hefty incentives to reward, indeed compel, bank participation.

Responsiveness to NCAIED's Recommendations:

NCAIED urged creation of an Indian Country Assessment Area or equivalent approach to ensure substantial capital infusion to meet huge and varied unmet capital needs. Among such needs are: macro and micro commercial loans and lines of credit for business start up, recovery, and growth; consumer loans; home mortgages; investments in economic, community, energy, broadband and infrastructure development; more support for New Market Tax Credit (NMTC) and Low Income



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Housing Tax Credit (LITC) financing, and taxable and tax exempt bond financing. Enormous barriers to accessing lending and financial services include: lack of physical access to banks or even relationships with local or other banks; different sets of regulations and landownership; non-traditional collateral requirements; challenging equity and rigid repayment requirements; credit worthiness; financial illiteracy; and far too limited federal funding for credit subsidies of the Department of the Interior's Indian Loan Guarantee Program, and limited access to other federal loan guarantee programs to back private sector lending. No or limited access to telephone or internet connections, broadband or basic infrastructure also impedes progress.

The NCAIED applauds the Agencies' responses in the NPRM that propose more ways to assess banking activity for CRA considerations by creating: 1) Facility-Based Assessment Areas established around a bank's main office, branches, and remote services facilities (e.g., ATMs); 2) Retail Lending Assessment Areas applicable to large banks for assessments based on concentrations of home mortgage or small business lending outside of facility-based assessment areas; 3) Outside Retail Lending Areas for evaluating retail lending by a bank outside retail lending area using a tailored benchmark for large banks and certain intermediate banks; and 4) Areas for Eligible Community Development Activity to provide CRA credit for all eligible community development loans, investments, and services conducted anywhere nationwide. The NPRM proposes helpful definitions of Community Development that include: affordable housing; economic development; activities with minority and women depository institutions, low-income credit unions, and Department of Treasury-certified CDFIs; community support services; revitalization activities undertaken with a government plan, program or initiative; essential community facilities; essential community infrastructure, recovery activities in designated disaster areas; disaster preparedness and climate resiliency; financial literacy; and activities in Native Land Areas – new and key to Indian Country. The new definition for Native Land Areas, as well as for community investments in Native Land Areas should provide more clarity on qualification for CRA credit for various types of activities. The proposal clarifies that activities with Treasury-certified Native CDFIs will qualify for CRA consideration, as may some activities with non-federally certified Native CDFIs. From NCAIED's perspective, the reforms will be impactful if they actually improve access to capital for Native business loans, mortgages, disaster loans, investments in Native CDFIs to help make more micro loans, etc., and financings for larger, more complex development projects (e.g., community, infrastructure, broadband, energy, etc.).

We have concerns, however, about the proposed requirement that a community development activity must be “conducted in conjunction with a Federal, state, local or tribal governmental plan, program, or initiative that benefits or serves residents of Native Land Areas.” This requirement is unnecessarily restrictive and could lead to a contraction, rather than an expansion, of community development in these areas and dampen the already limited bank lending for Tribal-owned and other Native-owned business development. The Agencies must engage in more stakeholder consultations regarding their efforts to influence the flow of capital and financial services to Indian Country so as to ensure that the Final Rule will include provisions that better address the needs of individual Native borrowers who seek access to personal and business financial services.

Support for Indian Country Assessment Area Concept and Other Targeted Incentives:



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The NCAIED is delighted that the NPRM includes Indian Country in CRA-eligible activities as they will help more of our native business constituencies better access financing and infrastructure for internet access so essential to business, education, and essential aspects of daily life. We are pleased the NPRM contains specific measures NCAIED had recommended to:

- Spur investments in economic and community development projects in Native Land Areas, as well as tribal public safety, housing, education, healthcare and communications infrastructure.
- Provide banks with CRA credit for serving Native Land Areas even they fall outside of the bank's CRA assessment areas.
- Create some CRA scoring incentive for banks that choose to do business in Indian Country by proposing impact review factors, including whether the bank's activity: **benefits Native communities**; serves persistent poverty counties; serves geographic areas with low levels of community development financing; supports minority- or women depository institutions or Treasury certified CDFIs; serves low-income individuals and families; supports small businesses or small farms with gross annual revenues of \$250,000; and several other specified activities. The proposal asks whether impact review should consider activities benefiting Native communities though not located in Native Land Areas, and we say yes. Many Tribal members reside outside of the proposed Native Land Areas, so it is important that activities with such Native borrowers be taken into account for CRA purposes, especially in the digital age with fewer bank branches and more opportunity for remote activities.
- Include in qualifying CRA credit activities support for entities whose activities directly serve Indian Country for similar financial services, including organizations providing similar financial, business or economic activities, and Native CDFIs;
- Ensure the definition of "Native Land Areas" broadly represents and encompasses community reinvestment interests of American Indian, Alaska Native and Native Hawaiian communities and members;
- Prioritize incentives for banks to invest in Indian Country asset-building (just issuing consumer credit cards or taking deposits is insufficient).
- Highlight "emerging" and other Native CDFIs by allowing CRA credit for activities with Treasury-certified CDFIs, and activities with non-Treasury-certified CDFIs if the activity meet other defined eligibility criteria.





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- Use positive qualitative consideration if banks operate branches located in Native Land Areas – although this proposal do not provide the fulsome incentives we advocated, such as providing extra credit, or granting an “Outstanding” rating only if a bank engages in activities in Native Land Areas (given the increased challenges of lending in such areas).

Retail Lending Activities:

Credit for lending in Native Land Areas regardless of bank branch locations. As we urged in earlier comments urged, all banks should be encouraged to develop relationships and engage in retail lending and community development activities conducted in Indian Country, including the nearest local banks, regional and national banks, and internet banks willing to engage with tribal and other Native borrowers – without regard to assessment area. Financial services needed on Native lands include traditional banking, investments in Native banks and Native CDFIs, mortgage lending on and off reservation lands, NMTC and LIHTC financings, community development financing, financial literacy education, credit counseling, etc. Also needed is technical assistance with loan applications.

To date, only some national, regional or local banks are willing to embark on lending relationships with tribal or other native borrowers, especially involving tribal reservations and Native Hawaiian Homelands. Even if federal loan guarantees are available, most lenders are unfamiliar and reluctant or unwilling to work out arrangements for non-traditional collateral, lengthened repayment periods, sovereign immunity waivers, tribal court jurisdiction, etc. The Native Land Areas definition will help, but we reiterate our earlier recommendation that the scoring system must be involved as well.

Extra CRA Credit and Higher Loan Limits Needed for Business Loans. As NCAIED commented earlier, our mission is to assist all Indian Tribes and Native-owned businesses in achieving their business and economic development goals, without limitation or exclusion. The NCAIED strongly believes that banks willing to lend to Native borrowers -- especially small and medium sized businesses owned by Indian tribes, Alaska Native corporations, Native Hawaiian Organizations or members of these indigenous groups -- deserve extra credit as a reward for loans extended to Native borrowers on tribal lands and in remote areas.

Far too few banks have been willing to learn, understand and accommodate Indian Country lending needs and parameters. As more time may be needed to close loans to Native borrowers, banks should receive extra CRA credit for activities in Indian Country, with a multiplier or impact score. Furthermore, if a bank wants an “outstanding” or any high rating, it should be required to perform qualifying activities on in Native Land Areas and lending to Native borrowers seeking to utilize their Native lands to access credit to meet their business development needs.

Support More Bank Investments with Native CDFIs:



953 East Juanita Avenue
Mesa, Arizona, 85204



o: (480) 545-1298
f: (480) 545-4208



e: chris.james@ncaied.org
w: www.ncaied.org



Native CDFIs work in Indian Country providing a wide array of financial services and making micro loans unavailable from most lenders. As earlier NCAIED comments urged, banks should be encouraged to partner with and invest in Native CDFIs to increase access to capital in rural and other native communities. NCAIED and other stakeholders earlier proposed that Program Related Investments, Equity Equivalent Investments, long-term debt financing, technical assistance, loans and grants (including contributions to non-profit affiliates) to Native CDFIs be included as CRA credit in all bank assessments, rather than allow credit for investments in a Native CDFI only if it is in the bank's Metropolitan Service Area (MSA).

The NCAIED supports the Agencies' proposal for all activities with Treasury-certified CDFIs would be eligible CRA activities, specifically lending, investment, and service activities by any bank undertaken in connection with a Treasury-certified CDFI at the time of the activity. We are also pleased the Agencies have proposed that activities undertaken by any bank in connect with a non-Treasury-certified CDFI also could qualify for CRA consideration if the activity separately met the defined eligibility criteria of a different prong of the community development definition.

Some NCAIED feedback on the Agencies' specific questions.

Question 26: CRA credit should be available for activities undertaken by a Native CDFI to promote its own sustainability and profitability.

Question 27: CRA credit consideration of financial literacy activities in and around Native Land Areas should be expanded to include activities that benefit individuals and families of all income levels, including low- and moderate-income, so as to help them make more informed financial decisions regarding managing income, savings, credit, and expenses with respect to business and home ownership. However, a bank should offer these financial literacy activities **in addition to and in conjunction with credit extension activities with, not just deposits by, Native borrowers and potential borrowers.**

Question 28: The definition of Native Land Areas is properly extensive, and also should include Tribal fee land within the exterior boundaries of a Tribe's reservation.

Question 29: The Agencies must consider additional eligibility requirements for lending activities to ensure that community development benefits accrue to low- and moderate-income residents who reside in Native Land Areas or who hold trust lands that, if they could be collateralized, could constitute sufficient equity to support a business loan.

Question 30: The Agencies should consider activities in Native Land Areas undertaken in conjunction with the plans, programs, or initiatives of a tribal association or tribal designee **or tribal-owned enterprise**, in addition to the proposed criteria to consider activities in conjunction with Federal, state, local, or Tribal government plans, programs or initiatives.





Question 31: First, we commend the Agencies for proposing to maintain and update a publicly available, illustrative, non-exhaustive list of activities eligible for CRA consideration – with some examples to help clarify the regulatory meaning of key community development terms. And, we agree that the illustrative list of activities should be modified periodically to incorporate new activities. However, we urge that the listings should always be vetted through consultations to educate Native borrowers and banks alike and help avoid confusion or delay in determining what incentives will apply. We also support the proposal for a process, open to banks (although we believe Native borrowers should have access to such information as well) for confirming eligibility of qualifying community development activities. Improving upfront certainty related to what will qualify for CRA consideration could help reduce delays and frustrations that Native borrowers and their potential banking partners often face. If the Agencies consider maintaining a non-exhaustive list of activities that do not qualify for CRA consideration, they should do so only after consultation with Indian Country.

Improvements in CRA regulatory implementation. Beyond NCAIED comments above on the illustrative non-exhaustive list of CRA eligible activities, we are pleased that the new NPRM makes provision for more transparency, especially by providing additional information to the public in CRA performance evaluations for large banks related to the distribution by borrower race and ethnicity of the bank's home mortgage loan originations and applications in each of the bank's assessment areas. We also believe that such information should be provided on the banks' community investments and business loan originations and applications in their assessment areas and in Native Land Areas. Any additional transparency as to mid-sized bank lending also would be extremely helpful.

Promptly reviewing, revising and finalizing the new rules will help incentivize more bank lending in Indian Country. Active enforcement of modernization provisions also will be essential. Also needed are extensive education efforts to promote and effectuate productive new banking relationships.

Further Consultation and Education Needed:

The NCAIED reiterates its earlier recommendations that the Agencies' CRA modernization efforts include support for education campaigns to promote bank investment in Indian Country and partnerships among banks, Native CDFI and Native organizations that can help further CRA goals. As the NCAIED hosts many training events across the United States that include sessions on access to capital, we welcome any opportunity to include CRA trainings. In particular, we would be delighted to work with the Agencies to host and plan a major training/relationship-building session at our annual, four-day Reservation Economic Summit (RES 2023) to highlight new investment opportunities made possible by CRA modernization and to foster more relationship building among banks, Tribes and other Native borrowers attending the RES event.

Establishing or strengthening relationships with Native communities, their businesses and their entrepreneurs will be key to identifying opportunities for banks to pursue CRA-eligible loans and





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community development activities. Such relationships can help banks earn Outstanding CRA ratings, which should be the Federal Reserve Board's goal – rather than letting most banks pass with only a Satisfactory rating.

Conclusion:

The NCAIED strongly supports final adoption of the definitions of Native Land Areas and of qualifying community development activities to benefit Native Land Areas. We pledge to work closely with the Agencies to achieve CRA modernization and host events that educate banks and Indian Country businesses on the extraordinary, and mutual, value of developing relationships to advance business, economic and community development, recovery and success.

Respectfully,



Chris James

NCAIED President and CEO



953 East Juanita Avenue
Mesa, Arizona, 85204



o: (480) 545-1298
f: (480) 545-4208



e: chris.james@ncaied.org
w: www.ncaied.org