



USET

SOVEREIGNTY PROTECTION FUND

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November 19, 2018

Joseph Otting
Office of the Comptroller of Currency
400 7th Street SW
Washington, DC 20219

Re: Community Reinvestment Act Modernization
Docket ID: OCC-2018-0008

Dear Comptroller Otting,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit the following comment to the Office of the Comptroller of Currency (OCC) on the Advanced Notice of Proposed Rulemaking requesting feedback on the modernization of the Community Reinvestment Act (CRA). Indian Country must be included as full partners in any efforts to transform or modernize the regulations that implement the CRA. Unlike state and local governments, Tribal governments rely on economic development in lieu of property taxes to provide basic government services such as public safety, education, housing, and cultural programs. Therefore, modifications to the CRA can only be effective in Indian Country if they are inclusive of individual Native Americans as well as Tribal governments which have critical capital responsibilities that are essential to growing their economies, creating economic opportunities, and providing services.

USET SPF is an intertribal organization comprised of twenty-seven federally recognized Tribal Nations, ranging from Maine to Florida to Texas¹. USET SPF is dedicated to enhancing the development of federally recognized Tribal Nations, to improving the capabilities of Tribal governments, and assisting USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people.

The economic growth and development of USET SPF member Tribal Nations economies is largely dependent on effective federal economic policy, specifically with respect to the flow of capital and financial services into Tribal communities. However, the CRA has not adequately served Indian Country over the past four decades, providing only access to financial services through passive encouragement. Tribal Nations continue to identify lack of access to adequate and reasonable capital and investment as a hurdle for economic development growth. 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

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

and banking services. An improved CRA that addresses the unique financial conditions within Indian Country, including limited access to credit and banking services and the limited reach of the existing CRA to Tribal communities, has the potential to move many Tribal communities away from an underserved and underbanked status within the nation. For your consideration, USET SPF provides specific recommendations to OCC below that would help to provide much needed incentives and other modifications to address these unique and long-standing issues within Indian Country.

USET SPF Recommendations

Assessment Area

USET SPF strongly believes that Indian Country should have its own assessment area. The issues and structures in Indian Country are unique, therefore banks should have an incentive or requirement to do business, to understand, and to engage with Indian Country. As a point of clarification, Indian Country should not be included in combined or stand-alone metropolitan centers or other assessment areas that include Tribally-designated areas. Experience in tax credit allocations and other well-intended policies have failed to have an inclusive or effective reach for Indian Country. Further, it should not be used to avoid serving Tribal communities located near existing assessment areas that currently do not receive banking services in lieu of an easier to reach community. An example of a successful federal policy that rightfully considers the unique needs of Indian Country can be found in the Treasury Department's Native Community Development Financial Institutions Fund (CDFI) program. A separate focus on Indian Country has yielded one of the few economic development programs that is having a positive impact for Native individuals, businesses, and governments gaining access to basic financial services.

The assessment area for Indian Country can be defined as those areas on or near reservations or a Tribally-designated area by census tracts. As reported by the Center for Indian Country Development, even when financial institutions are established on or near Tribal communities that should serve those communities they are sometimes up to fifty or more miles away which puts a substantial burden on these often smaller institutions. However, the burden of serving Tribal communities should not fall to community banks and those already making inroads into Indian Country. More institutions are needed to meet the demand and share the risk of developing underserved Tribal communities. This may include creative access to in-person services and those offered through remote or mobile services.

The CRA requirements should be amended to include a requirement for large institutions that do not have a presence to provide or support needed financial services in the Indian Country assessment area and their current assessment areas that are near Tribal communities.

Follow the Federal Policies

Amending the CRA to provide clear incentives for banks to support existing federal programs and services would do a tremendous amount of good for Tribal governments and individual Native Americans and help leverage the reach of these well-established programs. The federal government, through tax incentives, guarantees, or other federal policies, has identified a need to influence development or the flow of capital into Indian Country. The policies include energy and business loan guarantees through the Departments of Energy and Interior, New Markets Tax Credits and Native CDFI's through the Department of Treasury, schools and health care centers through the Department of Interior and Health & Human Services, continued support of home lending through the Section 184 Loan Program at the Department of Housing and Urban Development among other programs.

The CRA should simply provide an incentive for banks to support existing federal programs designed to help Indian Country.

Collaboration and Support

Indian Country markets and structures can be difficult for every bank to learn. Community, national, Native-owned banks as well as Native CDFIs that have obligated themselves to serving the Tribal market should be given lending and deposit support necessary to continuing to serve Indian Country, and other institutions should be incentivized to help. The risks of serving underserved communities should be shared by these various institutions to allow for additional capital and outreach in Indian Country while receiving CRA credit for doing so.

CRA credit should be given to institutions that provide collaboration and support for those institutions that are familiar with and serving Indian Country. This support should include partnering on lending, maintaining deposits in smaller banks, and the purchase of development loans all to increase lending capacity.

Reliance on Technology

Conversations related to the use of technology in solving access to financial services and improving financial literacy were met with caution. In addition to being one of the most underserved populations for banking purposes, Indian Country is also the most underserved population for broadband access. Furthermore, technology solutions and the misuse of data may widen the gap of populations between those communities that enjoy broad competition and those needing greater services. Indian Country, because of its unique structures and small relative population, will not fit into a scalable and profitable app or be served by general literacy programs that do not give way to understanding cultural and situational awareness. Any changes in the CRA regarding on-line and mobile banking must include the realities of Indian Country having a lack of physical banking infrastructure along with a lack of access to broadband and cellphone service.

Simply allowing for easier CRA compliance using on-line banking alone will not meet the banking needs of Indian Country. Solutions that address the technological realities of today, must address the entirety of the banking issues for individual Tribal citizens and Tribal governments.

Equity Alternatives

Economic development for Tribal governments and business development for individual Native Americans are both in need of patient capital. Large scale energy and manufacturing projects that require investments in buildings, equipment, and infrastructure would benefit from banks investing in larger Tribal development projects. The same is true for smaller business projects for individuals that want to not only want to provide a product or service but invest in their communities.

CRA credit or incentives should be given to banks investing in business and economic development projects, from Native CDFI support of business ownership to building out sustainable energy projects. This may have far-reaching benefits for growing economies in the most distressed areas.

Compliance Data

Tribal governments and Tribal citizens have experienced higher declination rates and outright denial of service from banks near reservations that portend to serve their communities. Data is needed to ensure banks are complying with CRA amendments. For Tribal governments, this is a political concern. Ascertaining the citizenship of applicants is already part of the application process for financial services. It is strongly suggested that banks work with Tribal governments to ensure Tribal citizen identification be used when applying for financial services to ensure accurate data and compliance.

Conclusion

While the CRA will not solve all of these issues, modifications to the regulations that implement the CRA can make a significant difference in the way financial institutions interact with Indian Country. By implementing the specific recommendations to the CRA as outlined above, the OCC and other banking regulatory agencies can greatly improve how banks serve Indian Country while providing banks with the surety that their actions will comply with the CRA. Working together in this manner is necessary to address the long-standing issues of access to credit and banking services in Indian Country and the limited reach of the existing CRA to Tribal communities. Should you have any questions or require further information, please contact Mr. Kitcki Carroll, USET SPF Executive Director, at KCarroll@usetinc.org or 615-495-2814.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director