



USET

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*Transmitted Electronically to
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February 16, 2021

Mr. Jerome H. Powell
Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW,
Washington, DC 20551

Re: Comments on the Community Reinvestment Act, Docket No. R-1723, RIN: 7100-AF94

Dear Chairman Powell,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to efforts by the Board of Governors of the Federal Reserve to modernize the regulatory and supervisory framework of the Community Reinvestment Act (CRA). Economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. The current COVID-19 pandemic has resulted in harmful impacts to Indian Country's financial and operational capabilities, exacerbating existing inequities resulting from the federal government's failure to deliver upon its obligations to support Tribal economic development, as well as centuries of termination policy. Modernizing the CRA to benefit economic opportunity for Indian Country will provide the foundation for economic recovery and growth during and following the COVID-19 crisis. USET SPF is pleased to have the Federal Reserve take a proactive and determined approach in addressing the financial shortfalls of capital access and investment in Indian Country.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

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), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), 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), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), 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), Rappahannock Tribe (VA), 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), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

On October 19, 2020 the Federal Register published an Advanced Notice of Proposed Rulemaking (ANPR) issued by the Federal Reserve. The ANPR requested comments on how to improve the CRA to encourage financial institutions to increase credit opportunities for low- and moderate-income (LMI) communities. The ANPR was discussed with Tribal Nations during a National Tribal Listening Session hosted on January 21, 2021 by the Federal Reserve Bank of Minneapolis's Center for Indian Country Development. This listening session was held to receive recommendations from Tribal Nations on the capital, credit, and community financial resources that have remained inaccessible and underfunded in Indian Country.

It is also important to note that other federal entities have initiated rulemakings to update CRA regulations. On June 5, 2020 the Department of the Treasury, Office of the Comptroller of Currency (OCC) adopted a Final Rule to make comprehensive changes to CRA regulations. These changes provided clarifications to banking institutions on where and what type of activities count for CRA credit, establishment of consistent and objective methods to measure CRA performance, and to provide timely and transparent CRA-related data collection, recordkeeping, and reporting. On December 4, 2020 OCC issued a Notice of Proposed Rulemaking (NRPM) to request comments on proposed approaches to determine CRA evaluation measure benchmarks, retail lending distribution test thresholds, and community development minimums under the general performance standards. The comment deadline on the NRPM was February 2, 2021 and was extended to February 16, 2021. USET SPF strongly recommends that any CRA modifications must be coordinated amongst the federal entities responsible with implementing CRA directives, and that such modifications reflect particular coordination on improving the financial capabilities of Indian Country.

Financial Resources Have Long Been Absent and Inaccessible for Tribal Nations

Access to capital and other financial resources has long remained a challenging and complex issue for Indian Country. Unlike other units of government, Tribal Nations do not have a conventional and comprehensive tax system to capture resources that foster economic growth. Despite our governmental status recognized by the U.S. Constitution, treaties, and federal laws and court decisions, Tribal Nations continue to lack many of the same benefits and flexibility offered to other units of government under current tax law. Revenues generated in Indian Country continue to be taken outside our borders, especially through blatant efforts by state jurisdictions imposing dual taxation policies on products and services produced and sold in Indian Country. This largely prevents Tribal Nations from achieving an economic multiplier effect, allowing for each dollar to turn over multiple times within a given Tribal economy. The failure of the federal government to recognize Tribal Nations in a manner consistent with our governmental status has hindered our efforts to rebuild and grow our economies.

Additionally, Tribal homelands held in trust by the federal government are often the predominant asset of many Tribal Nations. These lands cannot be collateralized to secure loans or letters of credit from financial institutions, and they should never be offered up as collateralizable assets due to the millions of acres of land loss already experienced by Tribal Nations. The failings of the federal government's trust and treaty obligations to support our economic sovereignty has prevented the ability of Tribal Nations to access credit opportunities offered by banking institutions. There is also a severe lack of any physical presence of banking institutions in Indian Country. Therefore, Tribal Nations and citizens are compelled to rely on those banking institutions located outside of Tribal homelands, which could be located long distances from Tribal Nation jurisdictional boundaries. Essential financial services such as ATMs and deposit boxes are also usually located at brick and mortar facilities outside our jurisdictional boundaries. While some banking institutions have implemented mobile banking options to supplement brick and mortar functions, such as mobile check depositing, the lack of available and reliable broadband internet service creates another barrier to accessing these mobile applications. These financial challenges in Indian Country have been further emphasized and exacerbated during the current COVID-19 crisis.

CRA Regulations Must be Updated to Facilitate Tribal Nation Self-Determination and Sufficiency

The CRA was enacted by Congress in response to unjust lending practices by banking institutions, such as redlining, which historically avoided investment to entire communities. However, redlining is still a common occurrence in Indian Country, both for Tribal Nations and individual Tribal citizens. Furthermore, where Tribal Nations and citizens do have access to financial resources—such as loans and lines of credit—exceedingly high interest rates are often built into contracts offered by banking institutions. There have also been instances where LMI Tribal citizens with reasonable credit scores are still required to enter high interest rate contracts in order to access resources from banking institutions. This issue can be further exacerbated when Tribal citizens, because of an historic lack of access to credit, do not have any credit history that can inform a credit score. USET SPF strongly recommends that in revising CRA regulations, the Federal Reserve should conduct an analysis of banking institutions to determine what interest rates are being charged for Tribal Nations, businesses, and citizens in comparison to those offered to their non-Native counterparts.

Another major issue of concern is that banking institutions delineate their own assessment areas for compliance with CRA directives to serve LMI communities. Often, these assessment area delineations do not include nearby Tribal Nations or those Tribal citizens that rely on their brick and mortar facilities for financial services. Assessment areas delineated by banking institutions should be subject to regulatory oversight to ensure Indian Country is not carved out of service areas, especially if those banking institutions are one of a few or the only institution providing financial services near Tribal homelands. Training regulators on the complex issues of financial access for Indian Country will also ensure that examinations of banking institutions and their CRA compliance do not overlook service to Tribal Nations and citizens. Regulators must be made aware of the Tribal Nations located within or near the assessment areas of the banking institutions they are reviewing.

There has been a recommendation that banking institutions establish working groups or advisory committees to collaborate with and provide financial assistance to Tribal Nations within their service areas. USET SPF supports this recommendation so long as these working groups or advisory committees are representative of the Tribal Nations within these respective service areas. It is also important that the representation on these working groups or advisory committees include the perspectives and priorities of our Tribal citizens residing in jurisdictions outside our Tribal homelands. For instance, there are no federally recognized Tribal Nations with jurisdictional boundaries within or adjacent to those of Tennessee, yet the Indian Health Service offices for the Nashville Area provide services to Tribal Nations in the South and Eastern region.

USET SPF recommends the establishment of a national as well as regional working groups or advisory committees to the Federal Reserve to inform the guidance promulgated to banking institutions on improving access to capital and credit within Indian Country. These groups or committees can provide recommendations on how to improve financial services to Tribal Nations and our Tribal citizens residing within and outside our jurisdictional boundaries. USET SPF recommends that the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis operate as the primary federal entity to coordinate and facilitate the establishment of these national and regional Tribal Nation working groups or advisory committees.

Conclusion – Update CRA Regulations to Include Tribal Nation Metrics

The CRA established several criteria to rate financial institutions based on four main areas: assessment area delineations, lending tests, community development tests, and ratings. However, there is not much discernible data regarding the local economic impact of non-Native banking institutions on Tribal communities. What is undeniably apparent, though, is that Tribal Nations continue to experience

inequitable access to financial resources provided by non-Native banking institutions. The COVID-19 pandemic has further emphasized the shortfalls of these institutions and their inclination to overlook the financial circumstances of Indian Country. CRA regulations must be revised to ensure that regulators are educated on the challenges Tribal Nations experience in accessing financial resources from banking institutions. Similarly, in conducting examinations of these institutions, regulators should be trained to identify and document instances where these institutions fail to meet CRA directives to support Tribal communities. This data can be utilized to improve financial services for Tribal Nations and our citizens, especially as Indian Country continues to address the economic and operational ramifications of the COVID-19 crisis. Adopting and implementing these recommendations with further the Federal Reserve's trust and treaty obligations to support economic opportunity and development for Tribal Nations. USET SPF looks forward to continuing to work with the Federal Reserve to ensure that beneficial and pragmatic updates included in the modernization of current CRA regulations. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director