



USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted Electronically
To [regulations.gov](https://www.regulations.gov)*

August 5, 2022

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

RE: USET SPF Comments on the Community Reinvestment Act, Docket ID OCC-2022-0002

Dear Chair Powell,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Joint Notice of Proposed Rulemaking (JNPRM) to amend regulations for the Community Reinvestment Act of 1977 (CRA). This JNPRM was issued by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the agencies). The agencies are proposing to amend CRA regulations to modernize how CRA activities qualify for consideration, what CRA activities should be considered, and how CRA activities are evaluated. Among the amendments include proposals to define Native Land Areas, qualifying community development activities on Native Land Areas, and reviewing the impact of community development activities. USET SPF has participated in several iterations of CRA's modernization and we are pleased that the agencies are considering several important issues for Indian Country. Moving forward, USET SPF recommends that the agencies adopt regulations that are inclusive of Tribal Nations and our citizens, adopt broad considerations for what constitutes qualifying community development activities on Tribal Lands, and support impact-review metrics that capture investments benefiting Tribal communities and citizens.

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

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), , Mi'kmaq Nation (ME), 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

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

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 are prevented from implementing a conventional and comprehensive tax system to capture resources that foster economic growth. Despite our sovereign governmental status, 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 sovereign governmental status has hindered our efforts to rebuild and grow our economies. It is vitally important that the agencies keep these issues in mind as they move forward with adopting and implementing finalized regulations in this CRA JNPRM proceeding.

Empower Tribal Nations to Designate Our Own Native Land Areas

USET SPF is pleased that the agencies are considering defining Native Land Areas to attract banking community development activities under the CRA. According to the JNPRM, the proposed definition of Native Land Areas includes Indian country ([18 U.S.C. 1151](#)), lands held in trust by the United States for Native Americans ([38 U.S.C. 3765\(1\)\(A\)](#)), Tribal Designated Statistical Areas, and American Indian Joint-Use Areas, among others. The designation of these Native Land Areas is meant to attract banks to invest in community development activities related to revitalization, essential community facilities, essential community infrastructure, and disaster preparedness and climate resiliency. Banks investing in Native Land Areas would be considered for receiving CRA credit for these activities. While we support the agencies' decision to define Native Land Areas, USET SPF recommends that the agencies recognize Tribal Nation authority to designate what lands comprise these areas.

Often, many of our Tribal citizens reside in areas outside of our Tribal Nation jurisdictional boundaries. Though they may reside outside these boundaries, we still provide essential services and assistance to these citizens, and many are often employed by the Tribal government, businesses, or corporations. For these reasons, they should also receive the benefits from banking institutions investing in Native Land Areas. Therefore, we recommend to the agencies that Tribal Nations be empowered to designate our own Native Land Areas to ensure that our communities and citizens benefit from these CRA banking investments. Furthermore, CRA investment in Native Land Areas must not be limited to low- and moderate-income (LMI) Tribal communities. Due to the federal government's trust and treaty obligations to Tribal Nations and its historic underinvestment in critical infrastructure and services in Indian Country, all Native Land Areas should be recognized as eligible for CRA banking investment.

Adopt Broad Considerations for What Constitutes Qualifying Community Development Activities

In addition to proposing a definition of Native Land Areas, the agencies are proposing to develop a definition for qualified community development activities in these areas. The proposed definition includes revitalization activities, essential community facilities, and essential community infrastructure in Native Land Areas. The agencies are proposing that these activities must benefit or serve LMI residents in Native Land Areas. Again, we reiterate that all Native Land Areas should be recognized as eligible for CRA banking investment, regardless of the LMI indicators in these areas. Compared to other jurisdictions, Tribal Nations experience increased difficulties and challenges in attracting capital and private investment. Therefore, all Native Land Areas should be eligible to benefit from CRA focused investments in revitalization activities and essential community facilities and infrastructure.

Furthermore, we recommend that the agencies defer to Tribal Nations to determine what constitutes a 'qualifying community development activity' for the purposes of CRA investment. This will ensure broad authority for Tribal Nations to determine what type of community development activity would best serve our people, which aligns with the sovereign government operations and decision-making that Tribal Nations engage in daily. In addition, due to our status as sovereign governments, the agencies should presume that any Tribal Nation activity is a qualifying community development activity. An example of a Tribal Nation exercising this governmental authority are Section 105(l) leases under the Indian Self-Determination and Education Assistance Act (P.L. 93-638). Section 105(l) provides that a Tribal Nation or Tribal organization carrying out federal functions under a self-determination contract or self-governance compact may require the Bureau of Indian Affairs and Indian Health Service to enter into lease agreements in which the Tribal Nation or Tribal organization is paid for the use of Tribally owned or leased facilities to carry out those federal functions. USET SPF recommends that Section 105(l) leases be added to the list of 'qualifying community development activity' by the agencies so that banking institutions looking to invest in Native Land Areas for CRA credit are incentivized to invest in these opportunities. Banking institutions have typically had issues with investing in large scale projects on Tribal Lands and Section 105(l) provides an opportunity to address these issues.

We also recommend that the agencies adopt these qualifying community development activities for individual Tribal citizen lending. While the agencies are focused on incentivizing banks to invest in Tribal Nations for CRA credit, the same must be done for our citizens residing in Native Land Areas. Supporting the financial success of our citizens translates into community development, revitalization, and sustainability. Like Tribal Nations, individual Tribal citizens residing on Tribal Lands have difficulties in obtaining lines of credit, loans, and other financial services. These are essential to purchase homes, conduct home improvements, start personal and small businesses, and other activities. Tribal citizens are essential and important contributors to community development and should therefore be included in these proposals to incentivize bank investment for CRA credit.

Adopt Impact-Review Metrics that Identify Banking Investment that Benefits Our Communities

We support the agencies' proposal to adopt an impact-review factor for Native Land Areas. However, the agencies have posed a question in the JNPRM about how this impact-review factor should be defined to include activities benefiting Tribal citizens and communities that are not located in Native Land Areas. Again, USET SPF recommends that the agencies adopt a definition of Native Land Areas consistent with Tribal Nation designations. As stated throughout these comments, USET SPF recommends that Tribal Nations be empowered to designate areas outside our jurisdictional boundaries as Native Land Areas due to the high percentage of our citizens that reside outside these boundaries. It is also important to note that many Tribal Nations in the USET SPF region have been relegated to just fractions of our ancestral homelands, so many of our citizens are unable to reside within the Nation's jurisdictional boundaries. Adopting this impact-review metric with the recommended Native Land Areas definition will ensure that banking institutions will be able to invest in Native Land Areas that truly capture where our populations are located.

The Agencies Must Establish Ongoing Communication with Indian Country

USET SPF appreciates the effort the agencies have put forward in developing these proposals for CRA modernization. We encourage the agencies to continue this dialogue once the JNPRM is finalized to ensure that issues with implementation can be quickly resolved. We also encourage each of the agencies to dedicate a position specifically to interacting and working with Tribal Nations. This is essential to upholding trust and treaty obligations, as well as ensuring that Tribal Nations have a designated point of contact at the agencies to navigate the myriad complexities that exist with CRA and other banking issues.

During the numerous Tribal listening sessions on the JNPRM it was clear that there was confusion about what the CRA is and its intent. Creating Tribal positions within the agencies will ensure that questions and concerns Tribal Nations have regarding CRA implementation, especially the amended regulations, can be directed and forwarded to the appropriate individuals.

USET SPF also recommends that regulators at the agencies receive training on the complex issues of financial access for Indian Country. This will ensure that examinations of banking institutions and their CRA compliance do not overlook service to Tribal Nations and our citizens. Regulators must be made aware of the Tribal Nations located within or near the assessment areas of the banking institutions they are reviewing.

Conclusion

The failings of the federal government to support our economic sovereignty has prevented Tribal Nations from accessing vital finance and credit opportunities offered by banking institutions for the purposes of Nation rebuilding and community development. This has also affected our Tribal citizens and has made it difficult for generational wealth to accumulate within our communities. Updating the CRA to incentivize banking institutions to invest directly into our communities is a step towards increasing community revitalization and building essential community facilities and infrastructure. However, in recognition of trust and treaty obligations, the agencies must also adopt regulations that hold banking institutions accountable for the use of lending and financing practices that deter Tribal Nations and individual Tribal citizens from seeking financial services or lock them into unfair, high-percentage payment contracts. Additionally, CRA investment in Native Land Areas must not be limited to low- and moderate-income (LMI) communities and all Native Land Areas should be recognized as eligible for CRA investment. We look forward to continuing these important discussions with you. 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