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Modernizing and Strengthening CRA Regulations:
A Conversation with the National Congress of American Indians

Remarks by

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Good afternoon and thank you to President Fawn Sharp and Kevin Allis of the National Congress of American Indians (NCAI) for inviting me to join your discussion.¹ As the oldest and largest American Indian and Alaska Native organization serving the broad interests of tribal governments and communities, your voice is vitally important on economic issues affecting Indian Country.² We appreciate your engagement on our work to reform the Community Reinvestment Act (CRA) regulations to better address credit and investment needs in Indian Country.

Two years ago, I had the pleasure of visiting with the Thunder Valley Community Development Corporation on the Pine Ridge Reservation of South Dakota. We toured the major housing, small business, and community development mixed-use project, which was under construction. Despite the importance of the Thunder Valley project to the community, banks were not among the funders listed for this important project. Their absence underscores the broader challenge underserved communities such as the Pine Ridge Reservation face when they are included in only one bank's CRA assessment area. I thought about this challenge frequently as we worked on the Board's proposal to reform CRA.

We recognize the importance of engaging with Indian Country to inform research and policymaking at the Federal Reserve. The Center for Indian Country Development (CICD) at the Federal Reserve Bank of Minneapolis is a key resource across the Federal Reserve System in fulfilling our responsibility to Indian Country.³ The CICD is led by

¹ I am grateful to Amanda Roberts and Matthew Lambert of the Federal Reserve Board and Casey Lozar of the Federal Reserve Bank of Minneapolis for their assistance in preparing this text. These remarks represent my own views, which do not necessarily represent those of the Federal Reserve Board or the Federal Open Market Committee.

² See <http://www.ncai.org/about-ncai>.

³ See <https://www.minneapolisfed.org/indiancountry>.

Casey Lozar, who is an enrolled member of the Confederated Salish and Kootenai Tribes, and the CICD's Native staff have deep expertise in community and economic development in Indian Country. I greatly value the research and thought leadership of the CICD, as well as their input on policy decisions regarding Indian Country and work to deepen our engagement with tribal communities.

The COVID-19 Pandemic

The COVID-19 pandemic is bringing hardship to all our communities, and the health of tribal communities is suffering disproportionately. Hospitalization rates for Native Americans are 4.3 times the rate for Whites, adjusting for age, according to the Centers for Disease Control and Prevention.⁴ We are thinking about those in Indian Country who have lost loved ones and those who are struggling with the virus.

The COVID-19 pandemic is also causing significant economic hardship in Indian Country, affecting the many small businesses that are the backbone of tribal economies.⁵ Indian Country faces significant challenges associated with “various data collection and reporting issues, such as small sample size or large margins of error,” which are sometimes referred to by the term *Asterisk Nation*.⁶ This lack of data makes it challenging to evaluate how economic developments are impacting Indian Country. To assess the real-time economic impacts of COVID-19 on Indian Country's economic

⁴ Centers for Disease Control and Prevention (CDC), *COVIDView* (Atlanta: CDC, November 5, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html>.

⁵ <https://www.minneapolisfed.org/article/2020/indian-country-small-businesses-face-strong-headwinds-in-covid-19-recovery>. September 8, 2020. Federal Reserve Bank of Minneapolis.

⁶ “American Indians and Alaska Natives may be described as the ‘Asterisk Nation’ because an asterisk, instead of data point, is often used in data displays when reporting racial and ethnic data,” according to the NCAI Policy Research Center (2020), “The Asterisk Nation,” 2020, <https://www.ncai.org/policy-research-center/research-data/data>.

experience in the COVID-19 conversation, the Federal Reserve Bank of Minneapolis conducted a series of pulse surveys with tribal governments, tribally owned enterprises, and tribal member businesses, as well as hosted meetings with tribal leaders and national organizations.⁷ The surveys found that two-thirds of businesses in Indian Country saw a revenue reduction of at least 20 percent, and one in six businesses reported losing all of their revenue due to the pandemic.⁸ Tribal governments have experienced similar revenue declines, with over half of tribal government respondents anticipating continued declines of more than 20 percent over the next six months. Despite this, over 60 percent of tribal small businesses reported they had not laid off or furloughed workers.⁹ Maintaining these employee/employer relationships will be critical for Indian Country economic recovery, but cash-strapped small businesses are finding it increasingly challenging to maintain payrolls as the pandemic continues. Only 20 percent of tribal small businesses reported they had enough cash on hand to maintain operations beyond a three-month period.¹⁰

Emergency lending programs aimed at providing pandemic relief, such as the Paycheck Protection Program (PPP) and our Main Street Lending Program, provide critical support to small businesses, so it was extremely important to make sure they were

⁷ See Donna Feir, Chris James, Casey Lozar, and Ryan Nunn, “Indian Country Small Businesses Face Strong Headwinds in COVID-19 Recovery,” September 8, 2020, <https://www.minneapolisfed.org/article/2020/indian-country-small-businesses-face-strong-headwinds-in-covid-19-recovery>; Casey Lozar, Donna Feir, and James Robert Columbe, “COVID-19: A Deep Economic Crisis in Indian Country,” May 13, 2020, <https://www.minneapolisfed.org/article/2020/covid-19-a-deep-economic-crisis-in-indian-country>; and Casey Lozar, Donna Feir, and James Robert Columbe, “COVID-19 and Indian Country: Early Snapshot Reveals Disproportionate Economic Exposure and Uncertainty,” April 10, 2020, <https://www.minneapolisfed.org/article/2020/covid-19-and-indian-country-early-snapshot-reveals-disproportionate-economic-exposure-and-uncertainty>.

⁸ Feir, “Indian Country Small Businesses Face Strong Headwinds.”

⁹ Feir, “Indian Country Small Businesses Face Strong Headwinds.”

¹⁰ Feir, “Indian Country Small Businesses Face Strong Headwinds.”

accessible to tribal enterprises. Valuable feedback from tribal leaders and lending institutions led us to change requirements in the Main Street program to allow tribally owned enterprises to participate in Main Street lending while still continuing to provide distributions back to their tribal governments. Similarly, we expanded the PPP Liquidity Facility to include non-depository community development financial institutions (CDFIs) because of their ability to reach minority small business owners, including those in Indian Country.

Financial Access

The COVID-19 pandemic has exacerbated an already challenging landscape for financial access in Indian Country, where Native minority depository institutions (MDIs), credit unions, and CDFIs are making exceptional efforts to serve Native Americans on and off tribal lands.¹¹ In 2018, the Board worked with the CICD to convene Native American financial institutions on the Flathead Indian Reservation in Montana and discuss how best to collaborate to maximize the impact for their communities. We remain committed to helping these vital financial institutions provide critical financial services in their communities.

Despite the significant efforts of Native banks, CDFIs, and credit unions, for many Native Americans, banking and credit access remain challenging. Over 16 percent of American Indians and Alaska Natives were unbanked in 2019, and survey research finds that only one in three Native American respondents have a strong or very strong

¹¹ The Minneapolis Federal Reserve's Center for Indian Country Development website has an interactive map of banks and credit unions owned by, and CDFIs primarily serving, American Indian, Alaska Native, and Native Hawaiian individuals and communities at <https://www.minneapolisfed.org/indiancountry/resources/mapping-native-banks>.

relationship with lenders.¹² One reason for these low levels of banking relationships is a lack of proximate bank branches. Majority-Native American counties, on average, have only 3 bank branches, which is below the 9-branch average in nonmetro counties, and well below the 26-branch overall average for all counties.¹³ This is exacerbated by low rates of broadband and cellular access in Indian Country, where it is reported that 28 percent of tribal lands and 48 percent of rural tribal lands are not covered by broadband.¹⁴

Native small businesses struggle to access bank capital even during normal economic times. Native-owned small businesses also struggle to access CRA-motivated loans. From 2014 to 2018, the total dollar amount of CRA small business and small farm lending per capita in majority-Native American or Alaska Native census tracts was less than half of what it was in majority-non-Hispanic White areas.¹⁵ These data make it clear that we still have a long way to go in improving access to banking services and capital in Indian Country.

CRA Reform

Let me spend a few minutes talking about how CRA reform might help address these systemic economic inequities in Indian Country. Over 45 percent of the American Indian and Alaskan Native population live in low- and moderate-income (LMI) or

¹² Federal Deposit Insurance Corporation (FDIC), “How America Banks: Household Use of Banking and Financial Services,” 2019 FDIC Survey (Washington: FDIC, October 2020), <https://www.fdic.gov/analysis/household-survey/2019report.pdf>; and Feir, “Indian Country Small Businesses Face Strong Headwinds.”

¹³ Information calculated using Summary of Deposits (SoD) 2020. Note that not all counties, especially some with high Native American populations, do not exist in the SoD dataset.

¹⁴ Federal Communications Commission (FCC), *2020 Broadband Deployment Report* (Washington: FCC, April 24, 2020), <https://docs.fcc.gov/public/attachments/FCC-20-50A1.pdf>.

¹⁵ Federal Reserve Board staff analyzed annually reported CRA Small Business and Small Farm loan data submitted by banks at the tract level and combined it with demographic data from the American Community Survey 2018 5-Year Survey.

distressed or underserved census tracts.¹⁶ Yet, feedback from stakeholders like yourselves indicates that many of these locations fall outside of where banks currently serve.

In September, the Federal Reserve Board unanimously voted to approve an Advance Notice of Proposed Rulemaking (ANPR) on the CRA. The ANPR proposes reforming CRA regulations based on ideas advanced by a broad set of stakeholders, including the NCAI. I hope you will continue to engage throughout the rest of this process. It has been 25 years since the banking agencies last substantially reformed CRA, so it is important that we get it done right.

The Board's ANPR seeks to advance the law's core purpose of addressing unequal access to credit for LMI and minority communities and disinvestment in underserved communities. A modernized CRA should improve credit access and the availability of community development financing. This includes strengthening the regulations to ensure that a wide range of banking needs are being met.

Another key objective the Federal Reserve has focused on in the ANPR is providing greater certainty, tailoring regulations based on bank size and business model and local conditions, and minimizing burden. For example, the ANPR proposes using a

¹⁶ Federal Financial Institutions Examination Council Online Census Data System 2018 and U.S. Census Bureau American Community Survey 2014-2018. A tract is designated as distressed if it is a nonmetropolitan middle-income tract that meets one or more of the following triggers: (1) an unemployment rate of at least 1.5 times the national average; (2) a poverty rate of 20 percent or more; or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of 5 percent or more over the five-year period preceding the most recent census. A tract is designated as underserved if it is a nonmetropolitan middle-income tract that meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. A nonmetropolitan middle-income tract is defined as a tract with median family income of more than 80 percent or less than or equal to 120 percent compared to a statewide nonmetropolitan area median family income.

complementary set of metrics to separately evaluate retail-lending activity (like mortgage lending) and community development financing activity (like investing in affordable rental housing). Looking at these activities separately helps to ensure that we are comprehensively evaluating bank activity and that we are taking both retail and community development activity into consideration.

Third, we also hope the ANPR will provide a foundation for a consistent approach that has broad support among stakeholders. Stakeholders have expressed strong support for the agencies to work together to modernize CRA. By reflecting stakeholders' views and providing a long public comment period, we believe the ANPR provides the basis for the agencies to establish a consistent approach that has broad support.

As we embark on CRA reform to strengthen the law's core purpose, we have a unique opportunity to design a regulation that better addresses the needs of individuals and communities in Indian Country. There are several proposals in the ANPR that I would like to highlight that advance that goal.

First, we have specific proposals in the ANPR that would allow banks to receive credit for eligible CRA activities in Indian Country, even when those activities are outside of a bank's assessment area(s). For instance, the ANPR proposes providing CRA credit for retail lending activity like mortgage lending or small business lending in Indian Country, even when it takes place outside of CRA assessment areas.¹⁷ For example, under the ANPR's proposals, a mortgage, small business, small farm, or consumer loan made by a bank on the Flathead Indian Reservation in Montana could be qualified as part

¹⁷ Under the approach proposed in the ANPR, the qualitative aspects of a bank's performance would include a review of any retail activity conducted in Indian Country, even when outside of a bank's assessment area(s), as long as a bank also satisfies the needs of its own assessment area(s).

of that bank's overall rating, even without the loan being within the assessment area of any bank.

In addition, the ANPR proposes expanding consideration of CRA *community development* activities to specific *areas of need* outside of a bank's assessment area(s), with Indian Country being one of the proposed designations. As a result, the Board's proposal makes clear that a bank in any part of the country could receive credit for community development activities in Indian Country. Banks could receive credit for investments in affordable rental housing, broadband expansion, or building community and elder centers in rural areas and other areas of persistent economic distress. We hope that this proposal responds to stakeholders' feedback emphasizing the critical importance of community development in banking deserts, and we look forward to feedback on this during the comment period.

The Board understands that broadening eligibility of CRA activities in Indian Country beyond assessment areas is only part of what is required to address structural economic inequities. We are particularly mindful of the importance of community voice on community development projects, especially in Indian Country. Given this, the ANPR seeks feedback on how best to incorporate government or tribal planning in qualifying community development consideration for revitalization and stabilization projects. This is critically important to increase banks' certainty that they will receive CRA credit when they make impactful investments that have the support of tribal governments and leaders, and to increase certainty about how these activities qualify for CRA credit.

Second, the ANPR proposes to encourage and reward banks for activities that are responsive to community needs, particularly in harder to serve areas. The ANPR proposes the use of *impact scores* for community development activities as a way to ensure that performance evaluations adequately reflect the relative importance of loans and investments within communities. Under the proposed approach, examinations would assess the impact of a bank's community development activities, including those in Indian Country. We hope that this approach will encourage banks to extend additional CRA activities to areas with unmet needs, such as in Indian Country. The ANPR also proposes clear steps to ensure that eligible activities taking place outside of assessment areas are adequately reflected in a bank's CRA ratings.

Third, the ANPR contains several proposals that better support mission-focused partners, including those working in Indian Country, to address challenges in credit access and wealth building. Although a significant portion of household wealth is held through homeownership for the U.S. overall, buying a home on trust land can be a complicated transaction.¹⁸ Section 184 Indian Home Loan Guarantee Program loans from the U.S. Department of Housing and Urban Development (HUD) are designed to help Native Americans purchase homes, but the required application process can require special expertise.¹⁹ Many Native MDIs have developed the requisite Section 184 expertise and are experienced in working with Native Americans across the country to purchase homes on and off tribal lands. For example, the Chickasaw Community Bank

¹⁸ Joshua H. Gallin, Raven Molloy, Eric Nielsen, Paul Smith, and Kamila Sommer (2018). "Measuring Aggregate Housing Wealth: New Insights from Machine Learning," Finance and Economics Discussion Series 2018-064 (Washington: Board of Governors of the Federal Reserve System, July 26, 2019), <https://www.federalreserve.gov/econres/feds/files/2018064r1pap.pdf>.

¹⁹ For more on the Section 184 Indian Home Loan Guarantee Program, see https://www.hud.gov/program_offices/public_indian_housing/ih/homeownership/184.

in Oklahoma, which is both an MDI and a CDFI, has a mission of helping Native Americans around the country achieve homeownership and is one of the nation's largest HUD Section 184 lenders.²⁰

The ANPR includes several provisions to support MDIs like Chickasaw Community Bank. Activities with MDIs can receive credit nationwide even when they take place outside of assessment areas, and the ANPR asks for feedback on whether these activities with MDIs should be a potential pathway to an outstanding rating. In an effort to support mutually beneficial partnerships between MDIs, the ANPR also would provide credit for MDIs and women-owned financial institutions investing in other MDIs, women-owned financial institutions, and low-income credit unions, as well as in their own institutions. We believe these and other ideas to support MDIs can help provide incentives for majority-owned institutions to capitalize and to partner with these institutions, which will ultimately support more equitable financial access to low-income and minority consumers and communities.

In addition, the Federal Reserve has consistently heard that bank partnerships with experienced CDFIs can play an important role in helping banks more effectively make Indian Country loans and investments. During the pandemic, Native CDFIs have played an outsized role in supporting tribal businesses and homeowners, providing financial counseling, or extending loan terms for borrowers. For example, Lakota Funds in South Dakota, led by Tawney Brunsch, helped 37 businesses access more than \$100,000 in COVID-19 emergency relief funds and provided more than \$120,000 in small grants to

²⁰ See <https://www.ccb.bank/indian-country/home-loans>.

Native ranchers, businesses, and homeowners.²¹ Despite their valuable work, Native CDFIs face substantial funding gaps.²²

To encourage bank partnerships that advance financial inclusion and address unmet credit needs, the ANPR seeks feedback on extending to CDFIs the status that is extended to MDIs, women-owned financial institutions, and low-income credit unions. This approach would effectively give banks CRA consideration for loans, investments, or services in conjunction with a CDFI anywhere in the country. We look forward to feedback on this potential approach, including the role this could play in Indian Country.

In short, we recognize the challenges you face are great and we want to ensure CRA reform helps you to improve credit access and financial inclusion in tribal communities. I am hopeful that the changes the Federal Reserve is considering will help spur new partnerships and encourage greater bank investment for tribal communities that have had inequitable access to financial services for too long. We need your input on these proposals and we are ready to listen. Over the next three months, the Federal Reserve System will host CRA ANPR outreach meetings and listening sessions around the country, including in Indian Country. We encourage your feedback as part of these events, in addition to submitting written comments by the deadline of February 16, 2021. We thank you for your engagement thus far and look forward to hearing more from you and your members through the rulemaking process.

²¹ Lakota Funds data and conversations with Lakota Funds leadership.

²² Michou Kokodoko, "Findings from the 2017 Native CDFI Survey: Industry Opportunities and Limitations," Center for Indian Country Development Working Paper 2017-04, November 28, 2017, <https://www.minneapolisfed.org/research/cicd-working-paper-series/findings-from-the-2017-native-cdfi-survey-industry-opportunities-and-limitations>.