National American Indian Housing Council
30th
Anniversary
"A Tradition of Native American Housing"

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April 5, 2004

Docket No. 04-06
Communications Division
Public Information Room, Mailstop 1-5
Office of the Comptroller of the Currency
250 E St. SW,
Washington, DC 20219

Docket No. R-1181
Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th St NW
Washington, DC 20429

Regulation Comments, Attention: No. 2004-04
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street NW
Washington, DC 20552

Re: Comment on Changes to Community Reinvestment Act

Dear Officials of Federal Bank and Thrift Agencies:

The National American Indian Housing Council (NAIHC) would like to comment on proposed changes to the Community Reinvestment Act (CRA) regulations. As the sole national housing group representing more than 470 tribes and their housing entities, NAIHC has the responsibility to protect the housing interests of Native Americans. We feel that these changes would be contrary to the housing interests of Native Americans, and with our current challenges and struggle, we cannot afford any further hindrance in addressing the numerous housing and economic development issues. Therefore, NAIHC does not support proposed changes to CRA regulations.

Many people familiar with Indian Country are aware that in tribal areas there are numerous social, economic and other issues requiring the attention and limited resources of tribal leaders. For this reason, it is necessary for non-tribal organizations, government agencies and policy makers to maintain

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strong laws to provide protections to groups such as Native Americans who do not have equal access to credit and who, frequently, according to the government's own data, are victims of discrimination in lending at a very high level. We believe changes to the CRA will have a negative influence on community reinvestment.

One reason the CRA was implemented was to increase homeownership and economic opportunities for typically underserved groups, including minority and low- or moderate-income populations. One group that is not only underserved, but overlooked, is Native Americans. Standing more than 2 million strong, First Americans have continually been last in line when it comes to equal access to credit and attention from government leaders. For example, whenever the Bush Administration's goal to create 5.5 million new minority homeowners by the end of the decade is mentioned, Native Americans and Alaska Natives are not included--something unacceptable when you consider that there are 562 federally recognized tribes across the nation.

Furthermore, Native Americans tend to live on reservation lands, where horrible living conditions fuel the feelings of hopelessness and reflect decades of being "forgotten." Thousands of Native families across the nation hope to have access to a decent home and are encouraged by the progress that is just now arriving in Indian Country. In fact, due in part to studies sharing data and new initiatives drawing attention to Native people, at long last lenders, community organizations and others are paying attention to the housing and economic needs of Native people. Over the years, the CRA has undoubtedly contributed to this progress, which is why we cannot watch it all disappear by supporting these proposed changes.

Statement of Position on Proposed Changes

More Streamlined and Cursory Exams

Current CRA regulations allow large banks with assets of at least $250 million to be rated by performance evaluations, which scrutinize their level of lending, investing and services to low- and moderate-income communities. The proposed changes would eliminate the investment and service parts of the CRA exam for banks and thrifts with assets between $250 and $500 million, resulting in reduced access to banking services and capital for underserved communities. This will have a disproportionate effect on rural populations such as tribes, where such services are already scarce.

Last year, NAIHC called for the Federal Deposit Insurance Corporation (FDIC) and the banking community to better monitor regulators in order to reduce the number of predatory lending victims and consumers who have no choice but to use unscrupulous payday lenders. When entire communities have none or few choices to conduct their financial transactions, they have to make use of the nearest or most convenient services—albeit, these typically expensive services may wind up creating a new cycle of victims. This is particularly true for people who are trapped by high-interest loans or fees for something as simple as cashing a check or borrowing money for an emergency. In tribal areas, where 26% of residents are impoverished, it is difficult to find opportunities to buy a home or establish something as simple as a savings or checking account, because so few financial institutions are located in Indian Country, particularly on trust land.

If these changes are accepted, these very banks would no longer be held accountable for the provision of bank branches, checking accounts, Individual Development Accounts (IDAs) or debit card services. When it comes to banking services, the Native community—with many reservations in remote areas—deserves more locations, better hours and adequate federal regulation in order to provide a satisfactory level of services.

Finally, banks would no longer be held accountable under CRA exams for investing in Low Income Housing Tax Credits (LIHTC). These tax credits have been a great, and yet, underused housing program for tribes, many of whom seek additional funding sources to add to the minimal funding currently appropriated for Indian housing programs. Some tribes, such as the White Mountain Apache in Arizona, have used the program for the rehabilitation of rental units and development of both townhomes and single-family rental homes. The value of the LIHTC program is supported by federal efforts to encourage private investment in the development of affordable housing, which decreases the federal tax liability for investors providing funding towards eligible housing projects.

Predatory Lending Standard

In addition, we believe the proposed CRA changes would also increase predatory lending because abusive lending would not result in lower CRA ratings for banks. In other words, Native borrowers could still have the income necessary for monthly payments, yet they might not be able to absorb a lender's excessive fees or predatory loan terms.

The proposed standard states that loans based on the foreclosure value of the collateral, instead of the ability of the borrower to repay, can result in downgrades in CRA ratings. This standard does not cover many instances of predatory lending and this is unacceptable, as there are numerous forms of predatory lending—including the packing of fees into mortgage loans, high prepayment penalties, and loan flipping.

To fight abusive lending, severe penalties and rigorous fair lending audits are necessary, so new and first-time Native American homeowners are protected, but the proposed predatory lending standard will not provide the necessary protections. In addition, an anti-predatory standard must apply to all loans made by the bank and all of its affiliates, not just real-estate secured loans issued by the bank in its "assessment area" as proposed by the agencies. By shielding banks from the consequences of abusive lending, the proposed standard will frustrate the CRA's statutory requirement that banks serve low- and moderate-income communities consistent with safety and soundness.

In 2003, NAIHC surveyed tribes and tribal housing entities on predatory lending in tribal areas. Conducted in partnership with the National Community Reinvestment Coalition (NCRC), the resulting report brought much-needed attention to the important issue of predatory lending in tribal areas.

<u>More on Predatory Lending In Tribal Areas</u>

- 52.9% of respondents believed lenders discriminated based on race and identified predatory lending in their tribal area as a serious concern.
- In the survey, the most frequently-cited predatory lending practices included abusive loans for purchasers of manufactured homes (48.6%) and for first-time homebuyers (35%).

Should these changes be made to the CRA, it's very likely that the incidences of foreclosure or bankruptcy would increase. Furthermore, why would we want to allow more lending—with high interest and fees—to low-income people and those in areas with fewer job or economic opportunities? These proposed changes cannot be approved because they are unfair and wrong.

Right now, we have too many Native people being targeted for abusive and expensive mortgage loans. That is why NAIHC has embarked on two major initiatives, one to expand homebuyer education in Indian Country and the second, a $10 million campaign to boost Native homeownership and housing development.

Tribes Pass Own Anti-Predatory Laws to Protect Their People

In some cases, a few tribes, such as the Grand Traverse Tribe of Michigan and the Navajo Nation have passed anti-predatory lending legislation. But more must be done in order for Native voices to be heard. That is why NAIHC will continue working with policy makers to find adequate solutions to the problem of abusive and predatory lending. Already, NAIHC has spent 30 years helping tribal housing authorities meet the needs of their tribal members, offering on-site trainings, technical assistance and research on Native housing issues. We will continue to do so, as there is so much more to be done.

For all those in charge of protecting and enhancing the scope of the CRA, we hope you will recognize that any investment in Native homeownership is an investment in the self-sufficiency of Native people. Aid given to Native people should not be seen as a "handout" because the government has trust responsibilities and as regulators of a hugely valuable law, we know that you recognize that across America, homeownership results in more stable communities and increased community involvement. Meanwhile, growth in home equity allows people to earn a larger and more reliable return than most other investments, which empowers people by encouraging entrepreneurs.

The proposed changes to CRA stand to severely affect Native American homeownership, potential economic opportunities and access to banking services. Furthermore, such changes would provide abusive lenders more leeway in getting away with their predatory lending practices.

We strongly urge you to decline the proposed changes and ensure the CRA is maintained as a fair and efficient law for those who need it most.

Thank you for your consideration of our issues and concerns.

Sincerely,

Gary L. Gordon

Gary L. Gordon
Executive Director

Russell Sossamon

Russell Sossamon
Chairman

Cc:

National Community Reinvestment Coalition
President George W. Bush
Treasury Secretary John W. Snow