

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552

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**RE: Community Reinvestment Act Advance Notice for Proposed Rulemaking
Docket No. 2001-49**

Dear Chief Counsel's Office:

First Nations Development Institute appreciates the opportunity to submit the following statement regarding the *Community Reinvestment Act (CRA) Advance Notice for Proposed Rulemaking (ANPR)*. First Nations Development Institute is a 20-year-old Native American nonprofit organization that assists tribes and tribal organizations in building sound reservation economies. Our approach is asset-based – to provide culturally appropriate and sustainable financial and technical support for tribal enterprises.

First Nations Development Institute believes that the Community Reinvestment Act (CRA) has been instrumental in increasing lending and investing in Indian Country and other communities around the country. The regulatory changes to the CRA during 1995 strengthened the law by emphasizing a bank's performance in providing services and in making loans and investments in these communities. The federal banking agencies must update the CRA regulations in order to further reinvest in low and moderate-income (LMI) communities, as well as underserved minority communities. These regulations must also be changed to consider minorities on the lending test just like the LMI borrowers and communities.

One area of concern for First Nations Development Institute involves the CRA Assessment Areas and the revisions to these regulations. According to the National Community Reinvestment Coalition (NCRC), the definition of an assessment area is a "geographical area where a depository institution and/or its affiliates have branches, offices, and/or in areas where they have more than one half percent of the market in loans". For Indian country, this definition would ignore rural areas and Native American financial institutions because this definition ensures that lending institutions are examined in all areas in which they are chartered and which they engage in a significant amount of their business. As stated in the draft NCRC comment letter, "assessment areas will be those areas containing a great majority of an institution's loans" (9/17/01).

First Nations Development Institute recommends that the CRA regulations current treatment of assessment areas be revised to provide more protection for rural areas and communities. As NCRC states, "Often the largest financial institutions have assessment areas that skip from one metropolitan area to the next without acknowledging the rural areas. With the current efforts by many large financial institutions to expand their subprime lending capacity, this issue has taken on critical importance." Another issue

this raises is the ignorance by large banks that have resulted in subprime lending in rural and minority communities. NCRC stated, "Subprime lenders have dominated the refinance and home equity lending in minority communities during recent years." The loans that are made available to Native Americans and minorities tend to be based more on the interest of the loan and not on what they can afford to pay back, forcing them to either refinance at higher interest rates or default the loan. We believe that financial institutions should be encouraged to make as many prime loans to minority communities as possible. First Nations Development Institute supports this idea because prime loans are more affordable for minority and LMI borrowers. Thus, the CRA exams must provide incentives to increase prime lending and be mandatory for both small and large banks.

Another issue that needs to be addressed is the lack of lending options for Native Americans and minority communities. In Indian country there are only a few resources made available for establishing and running a business, building a home, or going back to school. First Nations Development Institute believes that the CRA regulations should require lending to minority individuals and communities and be considered in a manner similar to the LMI individuals and communities. This is an issue that needs to be addressed and eliminated in these regulations.

If the new CRA regulations required lending to rural communities and minorities, we believe that prime lending will rise in these communities and eventually take precedence over subprime lending. The CRA exams must also consider lending to minority-owned businesses because predatory lenders have made abusive refinance and home equity loans to minorities. The CRA statute states that banks must serve "the credit needs of the local communities in which they are chartered." This does not limit CRA exams from examining lending to LMI borrowers and communities, but it needs to be enforced. This specific mandate obligates federal banking agencies to ensure that traditionally underserved minority communities do not fall victim to redlining and predatory lending.

The existing CRA regulations allow banks to choose whether the lending, investing, or service activities of their affiliates will be considered on CRA exams. First Nations Development Institute encourages the regulatory agencies to mandate that all lending and banking activities of non-depository affiliates be included on the CRA exams. This change would most accurately assess the CRA performance of banks that are spreading their lending activity to all parts of their company, including mortgage brokers, insurance agents, and other non-traditional loan officers. Putting an end to the optional treatment of affiliates also stops the manipulation of CRA exams and makes exams more consistent in their overall scope, including equal treatment to rural and minority communities.

In addition, the CRA regulations must be changed so that minorities are explicitly considered on the lending test just like LMI borrowers. If minorities were an explicit part of the lending test, CRA exams would stimulate more prime lending in minority communities, which is encouraged. Segments of the banking industry are trying to weaken the CRA regulations and examinations for a variety of reasons. They will ask for the elimination of the investment test on large bank exams, and urge that more banks be

allowed to qualify for the streamlined small bank exam. First Nations Development Institute strongly opposes the elimination of the investment test since LMI communities continue to experience a shortage of equity investments for small businesses.

First Nations Development Institute believes that our suggestions for updating the CRA regulations will produce CRA exams that are rigorous, performance-based, more consistent, and better able to capture the lending, investment and service activity of rapidly changing banks in Indian Country and other minority communities. It is vital that the federal banking agencies hear the diverse voices of America's communities as they consider regulations that ensure that community credit needs are being met in Indian country. Over the years, Native Americans have become more involved with financial matters in Indian country and implementing programs to improve their current financial situations, and have proven to be effective and well-run programs. As a result of the CRA, the Shoshone-Paiute Tribes of the Duck Valley Indian reservation sought financing from the Nevada Bank and Trust for a ranch and water project, which met the bank's lending requirements. The Nevada Bank attended one of their meetings and was convinced that a branch of the bank was "imperative to the economic development of the areas as well as a definite need for the residents of the reservation and the surrounding area." They have been successful in hiring and maintaining credibility, along with hosting workshops on the importance of good credit, budgeting and planning (FNDI Business Alert, 2000).

If you have any further questions or concerns, please feel free to contact First Nations Development Institute at (540) 371-5615.

Respectfully,

Jordan Lewis
Policy Officer
First Nations Development Institute