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Extending Credit in Indian Country

How Banks Use Federal Programs to Promote Economic Development


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Community Developments Investments is produced by the OCC's Community Affairs Department. Articles by non-OCC authors represent their own views and not necessarily the OCC's.

A Look Inside…

Barry Wides, Deputy Comptroller, Community Affairs, OCC

This issue of Community Developments Investments examines the availability of capital in Indian Country and the opportunities for banks interested in doing business there.[1] While doing business on sovereign Indian lands may present some challenges, there are incentives that make investing and lending in Indian Country a profitable proposition.

By helping banks better understand the economic and banking landscapes in Indian Country, and by presenting examples of how other banks and financial institutions have experienced success working with Native American communities, we hope to open the door to more investments and loans in places that need them most.

Before trying to understand the challenges and opportunities facing Native American communities, it is useful to review the economic condition of these communities.

National Congress of American Indians

With more than 5 million people and 566 sovereign tribal nations, Indian Country presents many opportunities for banks to do business. These opportunities are enhanced by several federal programs designed to encourage banks to lend and invest in Indian Country.

Economic Landscape

The Community Development Financial Institutions (CDFI) Fund's 2001 "Native American Lending Study" reflected the prevalent perception among Native Americans surveyed then that mortgages, home equity loans, business loans, and private equity investments were "difficult" or "impossible" to obtain.

More than a decade later, these perceptions have been confirmed by the National Congress of American Indians in its economic survey of Indian Country, which is highlighted in this newsletter. The article reports that while Native American economies have fared better in the last two decades than in the previous two, the Great Recession hit Native American communities hard and exposed holes in the economic and financial infrastructure of Indian Country.

Faced with depreciating real property values, tightening credit standards, and severe job losses, Native American communities are experiencing exceptionally high unemployment and poverty.

Who is Doing Business in Indian Country?

Despite the financial contraction caused by the recession, some banks have been able to weather the storm and continue to extend loans and make investments in their markets, including Native communities. These banks have been able to do so because they understand the unique business dynamics and cultures of these communities and have been able to adapt and remain active partners during the downturn.

U.S. Bank, First National Bank Alaska, First National Bank & Trust of Shawnee, Okla., and Bank of Oklahoma provide examples of loans and investments they made in Indian Country in the last few years. Some of these banks took advantage of federal loan guarantee programs when underwriting mortgages and small business loans. Others used long-standing relationships and innovative approaches to doing business—all while making sure their investments and loans were underwritten on a safe and sound basis.

Financial services are not, however, the sole domain of banks. For years, nonprofit organizations and other financial institutions have entered the arena to help local community development efforts in Native communities by making small loans and providing technical assistance to Native individuals and small businesses. Native CDFIs are a type of these financial service providers. The Four Bands CDFI of South Dakota gives us an insight into the working of a Native CDFI by discussing the institution's myriad efforts in helping South Dakota Native Americans obtain loans, learn about entrepreneurship, and receive financial education.

It is difficult for capital access to take hold in areas with no business rules or with rules that are not clear or enforceable. When it comes to lending and investment, it is important to have secured transactions codes in place so that lenders have a clear understanding of business rules in Indian Country. Not all tribes and Native communities have adopted uniform commercial codes or their necessary enforcement mechanisms. The Federal Reserve Bank of Minneapolis has done much work in this area and shares knowledge of the topic in this newsletter.

What Can Banks Do?

Banks with little or no experience doing business in Indian Country need not shy away from viable business opportunities just because of a lack of familiarity with Native American tribes or communities. There are several viable options banks can take to venture into this important community.

For example, banks can collaborate with Native CDFIs to provide loans, technical assistance, and financial education. Banks already well versed in U.S. Small Business Administration programs, such as the 7(a) loan guarantee program, can use the programs to extend loans to Native small businesses. Also, banks can take advantage of other federal loan guarantee programs to mitigate the risks of lending in Indian Country. This newsletter touches on three such programs: the U.S. Department of Housing and Urban Development's Section 184 Indian Home Loan Guarantee Program; the U.S. Department of Agriculture's Business and Industry Guaranteed Loan Program; and the U.S. Department of the Interior's Loan Guarantee, Insurance, and Interest Subsidy Program.

And, because many of the census tracts on Indian reservations are considered low-income communities or are targeted for redevelopment by federal, state, local, or tribal governments, bank loans and investments in these areas may qualify for Community Reinvestment Act (CRA) consideration. In this newsletter, we provide a primer on the CRA and how it can serve as an added incentive for banks to lend and invest in Indian Country.

How the OCC Helps

In addition to capital access promotion, federal agencies play other constructive roles in these community development efforts. For example, in 2011 and 2012, the OCC—along with the Federal Reserve Bank and other federal and state agencies—organized a series of workshops around the United States called "Growing Economies in Indian Country [www.federalreserve.gov/newsevents/conferences/GEIC-white-paper-20120501.pdf]." The workshops provided opportunities for tribal leaders and community members to voice their concerns and venues for federal agencies to highlight programs available to tribes, Native businesses, and private, non-Native enterprises—including banks. Findings from the workshops were presented at a national summit hosted by the Federal Reserve Board in May 2012. Summit speakers reiterated the anecdotal evidence shared by workshop participants that capital for many in Indian Country continues to be difficult to access. For more information on the summit, visit [www.federalreserve.gov/newsevents/conferences/GEIC-white-paper-20120501.pdf].

The OCC has 14 district community affairs officers, located in four regions around the country, who offer assistance and consultation to national banks and federal savings associations on all issues related to community development, including those related to rural and tribal communities. For more information, see the Community Affairs home page [www.occ.gov/topics/community-affairs/index-community-affairs.html].

In addition, our resource directory on Native American banking provides listings for a host of OCC and other federal agency resources on all facets of banking and finance. For example, tribes interested in founding or acquiring their own bank can consult our "Guide to Tribal Ownership of a National Bank." Banks interested in learning more about lending opportunities in Indian Country may consult our report "Commercial Lending in Indian Country." The Native American Banking Resource Directory can be accessed at [www.occ.gov/topics/community-affairs/resource-directories/native-american/index-native-american.html].

Conclusion

Banks that consider Indian Country for business stand to reap more than profits. Loans and investments help create jobs, revitalize communities experiencing record unemployment, and open the door to local Native entrepreneurs seeking to build and grow businesses, pushing forward the wheel of growth.

We hope you find this publication useful, and for those banks located in or near a Native American community, we hope that after reading this publication you will have a renewed sense of confidence about doing business in Indian Country.

Barry Wides, Deputy Comptroller for Community Affairs, can be reached at barry.wides@occ.treas.gov.

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[1] Indian Country includes all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities, such as the New Mexico pueblos; and all Indian allotments still in trust, whether they are located within reservations or not.

USDA B&I Program

Banks interested in doing business in Indian Country may want to consider the U.S. Department of Agriculture's (USDA) Business and Industry Guaranteed Loan (B&I) Program. Designed to improve the economic and environmental climate in rural communities, this program bolsters the existing private credit structure through the guarantee of quality loans that provide lasting community benefits. Here is a summary of some of the program's provisions.

- A borrower must meet citizenship and residency requirements. The borrower may be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a for-profit or nonprofit basis; an Indian tribe on a federal or state reservation, or another federally recognized tribal group; a public body; or an individual.
- A borrower must provide employment; improve the economic or environmental climate; promote the conservation, development, and use of water for aquaculture; or reduce reliance on nonrenewable energy resources by encouraging the development

and construction of solar energy systems or other renewable energy systems.

- Loan purposes include business and industrial acquisitions when the loan keeps the business from closing, prevents the loss of employment opportunities, or provides expanded job opportunities; business conversion, enlargement, repair, modernization, or development; purchase and development of land, easements, rights-of-way, buildings, or facilities; and purchase of equipment, leasehold improvements, machinery, supplies, or inventory.
- The maximum guarantee percentage is 80 percent for loans of $5 million or less, 70 percent for loans between $5 million and $10 million, and 60 percent for loans exceeding $10 million.
- The total amount one borrower may borrow from the program must not exceed $10 million. Please refer to the program guidelines for possible exceptions.
- The maximum repayment term for loans on real estate cannot exceed 30 years; a machinery and equipment repayment term cannot exceed the useful life of the machinery and equipment purchased with loan funds or 15 years, whichever is less; and a working capital repayment term cannot exceed seven years.
- The interest rate for the guaranteed loan is negotiated between the lender and the applicant and may be fixed or variable, so long as the rate is a legal rate. Interest rates are subject to USDA review and approval.
- Collateral must have documented value sufficient to protect the interests of the lender and the USDA. The discounted collateral value is normally at least equal to the loan amount. Lenders must discount collateral consistent with sound loan-to-value policy.

For more information on the program, please refer to the USDA Rural Development Web site [www.rurdev.usda.gov/BCP_gar.html].

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Tribal Nations: Ready and Able to Fully Contribute to America's Prosperity

Jacqueline Johnson Pata, Executive Director, National Congress of American Indians

NCAI

Jacqueline Johnson Pata, Executive Director of the National Congress of American Indians, speaks at the 2013 State of the Indian Nations annual gathering in February in Washington, D.C.

The story of access to capital in Indian Country is one of unrealized potential.

The unique wisdom of tribal nations has been evident since before the United States was even formed. On every dollar bill, as part of the Great Seal of the United States, there is an image that speaks to the wisdom of Native people: an eagle clutching a bundle of arrows in its talons. Those arrows are a symbol of the great Iroquois confederacy. The Iroquois had a profound influence on the outcome of the Revolutionary War and the origins of American democracy. On June 11, 1776, the Iroquois chiefs were invited to the Continental Congress. They spoke about their confederacy and shared the hope that the new Americans would "act as one people and have but one heart."

As we consider the economic potential of tribal nations, that bundle of arrows is a powerful image— for tribes and for all Americans. It shows us that our united strength is much greater than our individual strength alone. It is our conviction at the National Congress of American Indians (NCAI) that, just as tribes need the access to capital that our nation's banks can provide, so, too, can banks benefit from partnerships with tribes.

There are 566 tribal nations that are part of the American family of governments recognized in the Constitution, Supreme Court decisions, and acts of Congress. These governments range in size from small rancherias in California and Alaska Native villages to the Navajo Nation in Arizona, New Mexico, and Utah. The Navajo Nation, which has more than 300,000 tribal citizens, covers 17 million acres—larger than nine states: Maryland, Vermont, New Hampshire, Massachusetts, New Jersey, Hawaii, Connecticut, Delaware, and Rhode Island.

In total, tribal lands cover more than 100 million acres, or more than 5 percent of the U.S. land base. Taken together, this area would make Indian Country America's fourth-largest state, behind only Alaska, Texas, and California. The 2010 census reported a Native population of more than 5.2 million people, 1.7 percent of the population.[1]

Economic Challenges and Opportunities

Tribal nations have faced depression-level unemployment for generations. According to 2006–2010 American Community Survey estimates from the U.S. Census Bureau, the on-reservation unemployment rate for American Indians was 19 percent, compared with 8 percent for all Americans. Unemployment in Alaska Native villages was estimated even higher, at 24 percent.[2] During the most recent recession, the Economic Policy Institute estimated that the Native unemployment rate rose at a rate 1.6 times that of the rate for the white population.[3]

The difficulties in accessing capital paint an even more troubling picture. More than 40 percent of Native people have limited or no access to mainstream financial services (one of the highest rates in the nation), 26.8 percent of American Indian and Alaska Native households are underbanked (have a bank account but use alternative financial services), and an additional 14.5 percent are completely unbanked.[4] In 2001, the U.S. Department of the Treasury's "Native American Lending Study" reported that 86 percent of Native communities lacked access to a single financial institution (with a broad definition that included a simple ATM) and 15 percent of Native community members had to travel more than 100 miles to access a financial institution.[5] Given those stark figures, it is not surprising that the unmet capital need in Indian Country was estimated in 2001 at more than $44 billion.[6]

In spite of these challenges, tribal economies—those with gaming and those without—grew at a rate three times that of the rest of the U.S. economy, according the Harvard Project on American Indian Economic Development, which conducted a detailed analysis of economic data between the 1990 and 2000 censuses.[7] National business data paint a still more promising picture, with 2007 data from the Census Bureau identifying 236,967 businesses owned by individual American Indian and Alaska Native people, an increase of 17.7 percent from 2002. This increase is more remarkable because the data excluded tribally owned businesses. Individually owned American Indian and Alaska Native businesses generated $34.4 billion in receipts in 2007, a 28 percent increase from 2002.

Recent studies have revealed the significant economic impact of particular tribes. The Chickasaw Nation of Oklahoma has an annual economic impact on the state of more than $2.4 billion and supports 16,000 jobs, according to a study by the Economic Research and Policy Institute, Oklahoma City University.[8] A 2006 study showed that the combined economic impact of tribes in Washington state amounted to $3.2 billion and 30,000 jobs.[9] Even in remote places with limited economic activity, tribes can play an outsize role in promoting economic development. In rural southeast Alaska, the Central Council Tlingit and Haida Indian Tribes of Alaska is the seventh-largest private employer and generates an annual economic impact of $22.5 million.[10] An interesting feature of many of these studies is that they reveal the economic benefits tribes bring to entire regions; the Washington study showed that tribes created jobs for more non-Native people than for tribal citizens by a ratio of almost 2–to–1.

The financial services sector is another significant indicator of strength in Native communities. The number of Native community development financial institutions (CDFI) has grown significantly in recent years, and there are now more than 70 certified Native CDFIs, with dozens more in various stages of development. The South Dakota Indian Business Alliance commissioned research that showed that on South Dakota's reservations—some of America's poorest communities—there was accelerated income growth and job creation compared with non-Native communities. These effects were particularly pronounced when Native CDFIs were present.[11] Tribes are increasingly using CDFIs strategically: for example, to enhance already successful business development (in places like Salt River Pima–Maricopa Indian Community in Arizona and the Citizen Potawatomi Nation of Oklahoma) and to build strong economies in some of America's poorest and most remote communities.

A timely enhancement to Indian Country's economic potential is the fact that the federal government has recently settled dozens of outstanding trust cases, including the Cobell and Keepseagle class actions and a series of individual tribal trust settlements. It is estimated these settlements will amount to $3 billion by mid-2013, offering significant new resources that will require diverse financial services to promote ongoing banking relationships. The NCAI has launched a national campaign, "Protect Native Money," to support tribal leaders and Native citizens in best utilizing these valuable resources and to engage important partners, including financial institutions.

Partnering in the 'New Era'

Amid all of this economic promise—some of it in the darkest days of the economic crisis—it may be natural to wonder why access to capital is such a chronic challenge for tribal nations. The simple answer is that there is an education gap. When the NCAI was formed in 1944, the founding tribal leaders placed a priority on educating the public about Native peoples. Seventy years later, that challenge remains. Native people and the economic potential of tribal nations often go unnoticed.

Now, in what we have called a "new era" in tribal–federal relations, we have identified a few promising areas where tribes, financial institutions, and the federal government can partner to advance economic growth in tribal nations that strengthens tribal and regional economies.

- **Education:** The NCAI and our member tribes stand ready to engage and educate financial institution partners to understand the most promising partnerships. Just as there are big differences between California and Delaware or Alaska and Maine, there is significant diversity among America's 566 federally recognized tribes, and understanding those differences is critical for successful partnerships.
- **Housing:** The housing need in Indian Country is dire. Almost 75 percent of housing units are not owned using traditional mortgage products, and infrastructure other Americans take for granted (indoor plumbing, kitchen facilities, and telephone service) are absent at alarming rates. In 2001, the U.S. Department of Housing and Urban Development (HUD) reported that fewer than 1.5 percent of eligible Native people had mortgages. The HUD Section 184 program is a government-guaranteed mortgage with a very low default rate that has been underutilized, in part because of limited interest among financial institutions. Tribes are ready to partner with financial institutions to utilize Section 184 and other federal programs to expand housing in Indian Country.
- **Business development:** As noted above, Native CDFIs have created supportive environments to incubate successful Indian-owned businesses. In some communities, tribes have also purchased banks to build diverse financial services systems, but in many cases tribes are still looking for banks to partner with in fulfilling the economic potential of tribally and individually owned businesses.
- **Youth financial education:** About 42 percent of Native people are younger than 25, and almost 1 in 10 is 15–19.12 There is a unique opportunity to equip Native young people with the skills they need to lead their tribal governments and manage their personal finances successfully. Tribes all over the nation are looking for banking partners to advance financial capabilities among their young people.

Conclusion

When the Iroquois leaders met with the Continental Congress and urged them to "have but one heart," they offered enduring wisdom that will reestablish America's economic success. Like that bundle of arrows in the eagle's talons, we are stronger together. We can move forward with one heart, acting as one people. Just as tribes inspired the greatness of American democracy, so tribes and Native people can inspire American businesses to reach new heights. We stand ready to partner with financial institutions, other governments, and the private sector to fully realize the immense economic potential of America's tribal nations.

Jacqueline Johnson Pata can be reached at jpata@ncai.org.

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[1]U.S. Census Bureau, "Overview of Race and Hispanic Origin: 2010 [www.census.gov/prod/cen2010/briefs/c2010br-02.pdf]," 2010 Census Briefs (March 2011).

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[5]Community Development Financial Institutions Fund, Department of the Treasury, "Report of the Native American Lending Study [www.cdfifund.gov/docs/2001_nacta_lending_study.pdf]" (November 2001).

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[8]Steven C. Agee, "Estimating the Oklahoma Economic Impact of the Chickasaw Nation," Economic Research and Policy Institute, Oklahoma City University (May 15, 2012).

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[10]Contributions of Central Council Tlingit and Haida Indian Tribes of Alaska [www.ccthita.org/services/overview/documents/documents/cssg.ccthita.mcdowell.4.19.2010.pdf]," McDowell Group (March 2010).

[11]Tanya Fiddler, "Remarks to the South Dakota Indian Business Conference" (2011).

[12]NCAI Policy Research Center, "Native Youth Count [www.aianheritagemonth.org/blog/2011/11/30/native-youth-count.html]" (November 2011).

Open for Business: U.S. Bank's Experience in Indian Country

Melissa Borino, Senior Vice President, Community Affairs, U.S. Bank Juanita Yost, Reporting and Communication Coordinator, Office of Corporate Citizenship & Financial Education, U.S. Bank

At U.S. Bank, community development means investing in people and their hopes and dreams for the future. We do that by providing products and services that meet the needs of diverse populations and serve as a social and economic foundation for achieving safe and secure housing, productive small businesses, and culturally vibrant communities.

NCAI

Experienced in doing business with tribal nations, U.S. Bank uses SBA 7(a) loans and New Market Tax Credits to lend and invest in Indian Country.

Diversity and inclusion are entrenched in our interactions and results. To be the bank of choice, we offer the innovative products and services that our diverse individual and business customers need to achieve their goals. To be the partner of choice, we engage the talents and services of diverse suppliers and make a meaningful impact in the communities where we live and work.

One way we serve our diverse customer base is by fostering long-term partnerships through which we create customized solutions for each community we serve.

That has been our approach with our Native American individual, tribal government, and tribal-owned entity customers. While the majority of the products we offer are mainstream financial tools, they are delivered in a way that meets the unique needs of this community.

Understanding the needs and cultural values of all the customers we serve is crucial to our service. The needs we have identified for Native American individuals and tribal entities center on job creation, health care, social services, and economic development. We have accomplished this by recognizing their desire to remain independent and self-sufficient while sustaining their way of life and values.

Two-way communication and understanding with our partners is required—our customers should feel as comfortable working with us as we feel working with them. We work hard to earn this trust.

Challenges to overcome or work through include recognizing that tribal entities are sovereign nations. Bankers need to understand the sovereign immunity doctrine, which may require special and sometimes challenging documentation. Bankers also need to understand the political nature of the tribes they are working with and develop strong relationships with members of the Tribal Council and Business Council, remaining aware of any changes in the councils. A person meeting with these councils is meeting with a nation's top government officials. The Tribal Council and Business Council members are elected by the majority vote of their nation's citizens.

Below are several examples of how U.S. Bank has successfully provided loans, investments, and services in Indian Country.

Lending: Gila River Indian Reservation, Ariz.

In 2012, U.S. Bank provided a $1 million Small Business Administration 7(a) loan to a business owner who wanted to expand his facility to a vacant building on the Gila River Indian Reservation in Arizona. The mission of this innovative business is to create, design, and implement unique nutritional concepts and products to improve the health and well-being of animals and people worldwide.

The proposed business expansion was expected to directly benefit the Gila River Indian Reservation by providing income to the community as well as offering the possibility of future jobs for workers from the tribe. Financing the project involved some unique circumstances, given the facility's location on an Indian reservation. The business owner had to have the lease approved by a tribal committee and the U.S. Bureau of Indian Affairs, which resulted in a longer loan process than was originally planned. But patience and attention to detail and Gila River Tribe requirements resulted in a successful loan and business expansion.

Investing: Pueblo of Laguna, N.M.

U.S. Bancorp Community Development Corporation (USBCDC), the community investment subsidiary of U.S. Bank, is the nation's leading new markets tax credit (NMTC) investor, specializing in making and managing federal and state tax credit equity investments that support business growth and job creation and spur economic development in underserved communities across the country.

In Pueblo of Laguna, a reservation in central New Mexico west of Albuquerque, USBCDC invested nearly $2.7 million in NMTC equity to help finance the construction of a new grocery store. The reservation covers 875 square miles in Cibola, Sandoval, Valencia, and Bernalillo counties and includes six villages, but currently there is no modern, full-service grocery store within 30 miles in either direction on Interstate Highway 40. The new store will replace the community's only grocery, an outdated, 30-year-old store that is structurally unsound. The new store will offer healthy foods and have additional freezer and storage capacity, a deli, bakery, and other amenities, plus a small Ace Hardware store, thus bringing much benefit to pueblo members and the surrounding low-income communities. This redevelopment will retain 30 full-time jobs, of which 63 percent are to be filled by pueblo members and 76 percent by Native Americans.

Two additional and complementary NMTC investments, in which USBCDC committed a total of $8.3 million of NMTC equity, are helping to finance the multimillion-dollar exploration, drilling, and construction of a new water and waste system located on the east side of the pueblo near pueblo-owned commercial properties. The new water supply, part of an aggressive economic development plan to create new jobs on the pueblo, will expand water availability and quality, address serious health concerns, provide improved fire protection, and allow the pueblo to attract additional commercial development.

By utilizing the NMTC Program and leveraging its available resources, Pueblo of Laguna has gained access to critically needed capital so that it can focus more of its efforts on its vision of preserving the pueblo's beliefs and ensuring a vibrant future woven with the threads of love, respect, and self-discipline.

Programming and Services: Nebraska and New Mexico

At U.S. Bank, we believe in investing in education. Providing opportunities for children and adults to learn and apply the skills necessary to create brighter futures fosters communities that are progressive and self-sufficient, and we are committed to supporting our communities by empowering individuals and small businesses through financial education.

In 2012, we hosted small business boot camps in the Nebraska towns of Lawrence, Omaha, and Lincoln. The workshops featured Native American national speaker and author Dr. Beverly Browning.

We also worked with the Ponca Tribe of Nebraska to offer the Northern Ponca Housing Authority (NPHA) mortgage program in a focused area that represents the original Ponca homeland, which consists of the eastern half of Nebraska and part of Iowa. NPHA low-income housing programs range from down-payment assistance to help with HUD Section 184 mortgage applications. Mortgages have been successfully closed for Ponca tribe members residing off tribal lands in Lincoln, Omaha, and Norfolk, Neb.

In New Mexico, our partnership with the New Mexico Tribal Homeownership Coalition supports homeownership initiatives. The coalition consists of professionals dedicated to increasing housing opportunities for tribal members through advocacy, technical and financial assistance, and implementation of housing programs. All coalition members are volunteers, and their mission is one our staff has been committed to for more than 15 years. Collectively, the coalition is a resource for tribes interested in developing homeownership programs on their reservations.

Conclusion

The moral of the story: Offer good products and services to your diverse individual and business customers and help them achieve their goals. Work through any challenges or perceived obstacles and build strong relationships. There are many lending and investment opportunities with Native American individuals, small businesses, and tribal entities. Indian Country is open for business.

Melissa Borino, Senior Vice President, Community Affairs, can be reached at melissa.borino@usbank.com. Visit U.S. Bancorp on the Web at www.usbank.com.

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SBA 7(a) Loan Program

Lenders interested in doing business in Indian Country may want to consider the 7(a) Loan Program from the U.S. Small Business Administration (SBA). Designed to encourage longer-term small business financing, this program can be used for real estate, equipment, or working capital loans. The loan proceeds may also be used to establish a new business or to assist in the acquisition, operation, or expansion of an existing business. The specific terms of SBA loans are negotiated between a borrower and an SBA-approved lender. In general, the following provisions apply to all SBA 7(a) loans:

- As a business, the borrower must be engaged in an activity that the SBA determines to be acceptable for financial assistance from a federal provider. There is a long list of prohibited activities, including deriving more than one-third of gross annual revenue from legal gambling activities.
- The 7(a) program sets a maximum loan amount of $5 million. The SBA does not set a minimum loan amount. The average 7(a) loan amount in fiscal year 2012 was $337,730.
- Loans guaranteed by the SBA are assessed a guarantee fee. This fee is based on the loan's maturity and the dollar amount guaranteed, not the total loan amount.
- The SBA can guarantee as much as 85 percent on loans of up to $150,000 and 75 percent on loans of more than $150,000. The SBA's maximum exposure is $1.5 million. SBA Express loans have a maximum guarantee of 50 percent.

- The SBA offers several special purpose 7(a) loans to aid specific types of businesses, including the following:
    - CAPLines program: This program is designed to help small businesses meet short-term and cyclical working capital needs.
    - SBA export loan programs: These programs are specifically designed to help develop or expand export activities.
    - Rural business loans: The Small/Rural Lender Advantage initiative is designed to accommodate the unique loan-processing needs of small community and rural-based lenders.
    - Patriot Express: This loan initiative allows lenders with Patriot Express authority to make loans to eligible veterans and members of the military community who want to establish or expand a small business.

For more information on the 7(a) Loan Program, please refer to the program's Web site [http://www.sba.gov/category/navigation-structure/loans- grants/small-business-loans/sba-loans/sba-loan-programs/7a-loan-program](http://www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/sba-loans/sba-loan-programs/7a-loan-program)

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Prospering Together on Top of the World
How First National Bank Alaska Became a Leading Financial Partner of Alaska Native Corporations

Jay Page, Vice President, First National Bank Alaska

First National Bank Alaska boasts a rich history of helping provide opportunity to all Alaskans. Alaskan-owned and operated since 1922, First National today proudly meets the financial needs of its customers with 30 branches and ATMs in 18 communities throughout the state. The bank lends money to grow businesses, build homes, and send students to college. It also supports its local communities through donations, grants, and volunteerism.

First National Bank Alaska

Crews work on the underwater fiber-optic cable that connects Alaska's Kodiak Island to telecommunications infrastructure on the mainland. FNBA financed the project with the help of a loan guarantee from the U.S. Office of Indian Energy and Economic Development.

The Alaska Native community is an important segment of the bank's customer base. One way the bank lends to and invests in Alaska Native-owned businesses and enterprises is through its work with the U.S. Office of Indian Energy and Economic Development (IEED) loan guarantee program. First National is the state's top IEED lender.

To better appreciate the nature of banking in our region, let's take a look at Alaska's economy, the unique aspects of doing business with Alaska Native corporations, and the bank's relationship with the IEED program and how this relationship benefits the local economy.

Alaska's Economy: A Three-Legged Stool

Oil production and federal spending make up about two-thirds of Alaska's economy. The remaining third is made up of all other economic activity. Liken the economy to a three-legged stool: It takes all three to support businesses and households.

People from all walks of life have long called for the diversification of the Alaskan economy, but that has proved to be easier said than done, largely because of the state's remoteness. The high cost of transportation caused by the long distances is so prohibitive that it is difficult to add value to raw material and remain competitive in national or global markets. It makes more economic sense to export the raw material for processing elsewhere. The result is that the state serves as the center of the import-export cycle—the arrival point for imported goods and the departure point for exported raw materials.

Despite the lack of economic diversity, Alaska is still prosperous, and its growing economy has enabled successful operation of private businesses for decades. It has remained essential that everyone in the state understands and actively supports the "three-legged stool" in order to keep the economy strong.

Whatever job an Alaskan has—in a grocery store or bank or state agency—it depends in some way on the three legs of the Alaskan economy.

Alaska Native Corporations: Major Economic Players

The Alaska Native Claims Settlement Act (ANCSA) was signed into law by President Richard Nixon in December 1971. Disputed aboriginal land claims were extinguished and, in turn, titles were transferred to 12 newly formed Alaska Native regional corporations and more than 200

village corporations in the regions.
Native corporations were deeded 44 million acres of land and were paid $963 million. ANCSA also allowed for creation of the Trans-Alaska Pipeline, which has shipped to market 16 billion barrels of oil as of 2010. For Alaska Natives as well as the oil industry, the state's economic engine was primed.

In the early 1970s, the world of business was mostly foreign to Natives from far-flung, undeveloped villages like Barrow. ANCSA was passed before there was oil development on the nearby North Slope. Natives of Alaska's interior were experts in subsistence hunting and fishing but most had no business experience. So, early on, many Native corporations and individuals from rural Alaska had difficulty starting and sustaining businesses. A few corporate bankruptcies were filed and problems arose while trying to develop profitable business enterprises from scratch. The good capital needed to leverage deals wasn't easy to find.

But as Alaska Native corporations gained experience and matured, business-savvy shareholders appeared to take the leadership positions and, as they gained more experience, the corporations transformed themselves into solid businesses and assumed an integral role in the overall Alaskan economy. Just recently, Alaska Business Monthly recognized the 49 largest Alaskan-owned companies by gross revenue as of year-end 2011. The 20 Alaska Native-owned companies on the list accounted for 73.7 percent of the combined gross revenue for all 49 companies and 62.4 percent of all Alaska-based jobs. The success since the early 1970s is due to many factors, not the least of which is the IEED loan guarantee program.

Lending to Alaska Native Enterprises

Lending to Alaska Native for-profit companies is similar to lending to any other business.

Pledged collateral, whether it is buildings, equipment, or tenant improvements, is typically privately owned property. The majority of First National's IEED lending is secured by property and equipment residing on private property. Making loans becomes more challenging when the collateral is on tribal land.

Native villages are recognized by the federal government as sovereign nations, so foreclosure or repossession on tribal land requires the consent of the Native village. For practical purposes, lenders often require the village to execute a waiver of sovereignty specific to the asset or assets being pledged.

It has been our experience that villages understand why the waivers are required, and in most situations borrower and lender can work together to keep a loan in place.

Not Unlike Any Other Commercial Loan

The IEED loan guarantee program helps First National meet the needs of many Alaskans. To qualify for an IEED guarantee, the borrowing entity must be at least 51 percent Native owned, but as mentioned earlier, jobs are created for both Native and non-Native employees to the benefit of the local economy.

A Native corporation is 100 percent Native owned, but a limited liability company can be classified as Native owned if it is at least 51 percent Native owned. An IEED guarantee lapses if the borrowing entity becomes less than 51 percent Native owned during the course of the loan. First

National has not had that happen.

Currently, we have 46 IEED-guaranteed loans with an aggregate balance of more than $118 million, making us the top IEED lender in the state. Processing a loan with an IEED guarantee is similar to processing other commercial loans, with minor additional steps.

Typically, the bank provides the borrower with a checklist of items needed to consider the loan request. When First National reviews a complete application, we consider the effect an IEED guarantee would have. If we think the application is a sound proposition that is enhanced by IEED involvement, the loan is approved. IEED has a checklist of items it wants to see when the bank applies for the guarantee. That checklist is the same as our initial checklist to the borrower, so there is no redundancy or delay in the process. IEED communicates with the loan officer on points of clarification, and IEED makes its decision.

The Alaska state IEED currently has authority to approve loan guarantees up to $3 million. Turnaround time for loan guarantee approval is very good. Loans greater than $3 million are submitted locally and sent to Washington, D.C., for approval. Depending on government funding cycles and IEED processes, loan guarantee approval can take two weeks to two months.

First National does not submit applications to IEED unless it thinks the applicant has a sound credit. There may be a lack of business history or we may be dealing with specialized collateral, but if we have a strong belief in the applicant's credit we will submit it for IEED consideration.

An IEED Assist

How does a bank collateralize itself while providing construction and term financing for a submerged fiber-optic cable hundreds of miles long? In our case, Kodiak-Kenai Cable Company's unconventional project came to life when First National helped secure a 90 percent IEED loan guarantee.

Kodiak Island, once served by bouncing signals off satellites, now has subsea cable service that is also relayed to surrounding villages such as Ouzinkie and Old Harbor. Now diagnoses of medical conditions in remote Kodiak can be done by doctors in Anchorage through telemedicine. Communications are more reliable and better quality, at a more reasonable cost.

Native nonprofit groups benefit from the IEED guarantee program as well. The Native Village of Tyonek is recognized by the U.S. Department of Interior as the Indian tribal government for the village of Tyonek. The village administers contracts and grants for the benefit of Native inhabitants of Tyonek pursuant to the Indian Tribal Governmental Tax Status Act of 1982, as amended.

Village Chief Frank Standifer recognized a need to renovate and remove asbestos from the 47-year-old village headquarters. At the time, the building housed village offices, Tyonek Native Corporation, Tyonek Contractors LLC, a university program, and government and nonprofit organizations that benefit the community. The bank secured an IEED guarantee on a term loan to fund construction work to keep the building in service for decades.

The IEED loan guarantee program can also be used for smaller deals. One example is the Aurora Lodge loan. Many rural Alaskans have never traveled out of their village or region, and a first trip to Anchorage can be a culture shock. An IEED-guaranteed loan from First National Bank Alaska let

15th Terrace LLC finance Aurora Lodge, a small boardinghouse in a quiet part of town enjoyed by visitors from rural Alaska.

IEED does not have maximum or minimum loan amount restrictions. If a deal makes sense it will be considered, but very small deals don't go to IEED. First National has individual loans guaranteed in excess of $10 million, but when a villager needs a new kicker (outboard boat motor) to pull in his fishnets from the Kuskokwim River, or needs $2,000 for fuel oil to heat the house in winter, we make those loans at the branch and get paid when seasonally made money comes to the borrower.

Working hand in hand with IEED allows Alaska-owned First National to help Alaska Native enterprises grow and prosper. In turn, this work makes it possible for the bank and Alaskans to succeed.

First National Bank Alaska Vice President Jay Page can be reached at jpage@fnbalaska.com.

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Indian Loan Guarantee Program

Shannon Loeve, Southwest Zone Credit Office Manager, Division of Capital Investment, Office of Indian Energy and Economic Development

In an effort to help Indian tribes and individuals establish or expand Indian-owned businesses and move toward self-sufficiency, Congress passed the Indian Financing Act of 1974. The act provides reservation businesses with access to investment capital equal to that available to businesses in nonreservation areas. The Loan Guarantee, Insurance, and Interest Subsidy Program (also called the Indian Loan Guarantee Program, or ILGP) was established under 25 CFR 103 to execute this authority. Today, the Division of Capital Investment (DCI), under the Office of Indian Energy and Economic Development (IEED), manages the program, helping to break through conventional barriers to financing for tribes and individual Indians. The direct function of the ILGP is to help lenders reduce excessive risks on the loans they make to eligible Indian-owned businesses, primarily by guaranteeing up to 90 percent of the unpaid principal due on the loans.

The program is open to federally recognized American Indian tribes or Alaska Native groups, individually enrolled members of such tribes or groups, or business organizations with no less than 51 percent ownership by American Indians or Alaska Natives. The borrowers must be located on or near a federally recognized Indian reservation or recognized service area, and must contribute to the economy of the reservation or service area. Nearly any type or size of business can benefit from the ILGP, and its authority allows great flexibility in providing loan guarantees of varied amounts and to any business structure.

American Indian tribes, businesses, and individuals throughout the United States and in various industries have been beneficiaries of the ILGP. Loan guarantees have been made for commercial fishers, farmers, restaurateurs, small business owners, and tribal enterprises. Projects have included social services centers, health care providers, a wholesale data center, roads, commercial real estate, and a high-technology manufacturing company.

From 2000 through the end of fiscal year 2012, the ILGP facilitated access to more than $1 billion in capital to Indian- and Alaska Native-owned businesses. To further demonstrate the benefits of the ILGP, IEED worked with the U.S. Department of the Interior's Indian Affairs economist to estimate the impact of the ILGP's loan guarantees. Based on this information, IEED estimates that the capital guaranteed by the ILGP and invested in federally recognized Indian reservations and service areas has resulted or will result in the following:

- The creation of more than 10,500 initial (temporary) jobs in the areas served during the 12 year period.

- Annual value added of $666 million through economic growth in the communities receiving this capital.

- More than 7,500 new full-time jobs associated with the economic expansion in the areas served.

For more information about the ILGP, or for contact information for your nearest ILGP Credit Office Service Center, please visit the DCI's Web site www.indianaffairs.gov/WhoWeAre/AS-IA/IEED/DCI/index.htm.

Shannon Loeve, Southwest Zone Credit Office Manager for the DCI, can be reached at shannon.loeve@bia.gov.

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Lending in Indian Country: Opportunities in Partnerships

Larry Briggs, President and CEO, First National Bank & Trust

There is a misperception among U.S. bankers that doing business in Indian Country is difficult, risky, and unprofitable. We at First National Bank & Trust (FNB) have been doing business in Indian Country for years—profitably and in a safe and sound manner. In this article we would like to share our experiences with fellow bankers in the hope it will encourage them to consider Indian Country as a sound business opportunity.

First National Bank & Trust

The Cultural Heritage Center of the Citizen Potawatomi Nation, the owner of Shawnee, Okla.-based First National Bank & Trust.

Founded as the First Oklahoma Bank NA in 1984 and later purchased by the Citizen Potawatomi Nation (CPN), which changed the bank's name, FNB is a 100 percent tribally owned financial institution based in Shawnee, Okla. FNB has approximately $230 million in assets and seven branches: in Shawnee, Holdenville, Lawton, Mangum, and Granite in central and southwestern Oklahoma (see figure 1).

The communities FNB serves are diverse. Mangum, Granite, and Holdenville are primarily rural agricultural communities. Lawton is a U.S. Census Bureau metropolitan statistical area (MSA) that is home to the Army's Fort Sill, known as the artillery capital of the world. It is a diversified city, but the military is the largest employer by far.

Figure 1: FNB Branch Locations in Oklahoma

Source: First National Bank & Trust

Although Shawnee is not part of the Oklahoma City MSA, the two cities are connected by a heavily traveled interstate highway and the commute is about 30 minutes. Shawnee has a large manufacturing base and is the medical and retail hub for thousands of people in the surrounding small communities and rural areas. It also boasts the only Catholic and Southern Baptist universities in the state of Oklahoma.

FNB's customer base varies as widely as the communities it serves. The primary customers of FNB are consumer/retail, small business, agricultural, and professionals and executives.

Oklahoma's Economic Landscape

Oklahoma has been fortunate not to have experienced many of the recent economic and financial challenges faced by a large part of the country. Some of the reasons are as follows:

- The energy business has been stable.
- The state's manufacturing industry has not experienced a major decline.
- Oklahoma did not experience the housing bubble and bust to the degree other parts of the country did.

- A large number of the bankers and regulators in Oklahoma experienced the recession of the 1980s and early 1990s and learned valuable lessons. We made a conscious effort not to repeat the problems experienced during those years.

As stated in the 2012 Greater Oklahoma City Economic Forecast, "although Oklahoma was late going into recession, it emerged from the recession at the same time as the nation." Over the 2007–2010 period, Oklahoma had the eighth-fastest growth in employment as reported by the U.S. Bureau of Economic Analysis. After the recession started, Oklahoma's unemployment rate reached a high of 7.2 percent in January of 2010 but has declined steadily since, reporting 5 percent in May 2013.[1]

Recent employment growth in Oklahoma has greatly exceeded that of the nation, and the Oklahoma City MSA is one of 22 metropolitan areas to gain back more than half the jobs lost between the areas' employment peaks and post-recession low points.

Banking in Oklahoma

For the most part, banks in Oklahoma, including FNB, recorded profits through the recession and recovery. Losses in the loan portfolio were higher than normal but manageable, and banks continued to do reasonably well. There were very few bank failures during and after the recession in Oklahoma, and that trend continues.

The uncertainty surrounding new banking regulations, the state of the economy, the tax system, health care reform, etc., has affected the banking system in general, and Oklahoma banks are no exceptions. In most cases, our loan-to-deposit ratios have decreased, our interest margins continue to fall, and uncertainty is still prevalent among our borrowers and business people.

Our assessment is that until the uncertainty is diminished, our customers and potential customers will be reluctant to expand, borrow, or change business models. Many of our business people are flush with cash and their borrowing needs have diminished because of their liquidity. This is especially the case in the oil and gas industry.

Most of the banks in the state, including FNB, are actively soliciting quality loans. For every quality opportunity, there appear to be 10 to 15 banks chasing that business. Even though the Oklahoma economy is doing well, Oklahoma banks, in line with industry trends, have raised their lending and investment standards, hence eschewing lower-quality loans and investments.

Citizen Potawatomi Nation

Federally recognized since 1938, the CPN is the largest of eight tribes of the Potawatomi language-speaking people. As of September 2011, the nation had 29,788 tribal members, of whom 10,312 resided in Oklahoma.

The CPN has been the largest employer in the city of Shawnee and Pottawatomie County for the last eight years. The 2011 CPN Annual Report indicates that tribal employment totaled 1,922 as of September 2011. During fiscal year 2011, the CPN provided an annual payroll of more than $59.6 million. Additionally, the CPN spent approximately $175.1 million on goods and services. The tribe's impact on the local community and the state continues to increase.

The activities of the CPN vary from medical assistance for senior tribal members, scholarships for financially challenged students, and genealogical and enrollment assistance to tribal families and their members, to sponsorship of recreational, sports, and economic development activities. Major CPN initiatives include housing, health care, child care, employment and training, wellness, and community and family services.

Given that FNB is owned by the CPN, the bank moved cautiously into a lending relationship with the nation. FNB's first foray into business with the

CPN was on a grocery store. The majority of the funds to build the grocery store were provided from the CPN's operating income.

FNB was going to take a mortgage on the grocery store real estate as collateral on the loan. Because the property was located on trust land, however, the obstacles the bank faced in securing this collateral were nearly insurmountable. FNB elected instead to make a loan on the equipment in the store.

The bank applied for a guarantee from the U.S. Bureau of Indian Affairs (BIA), because the loan amount would be above the bank's lending limit. FNB worked closely with the BIA to obtain that guarantee.

The BIA guarantee reassured FNB's regulators, who were able to observe how the bank and the CPN handled that transaction. We believe that the regulators' comfort level increased dramatically after this experience. They witnessed the bank's knowledge and expertise in this area, and saw that the CPN's financial condition and history of taking care of its finances were excellent.

The loan was a resounding success for FNB and the CPN. In 2011, FireLake Discount Foods produced sales of $53.8 million. The grocery store employs more than 250 people, providing economic benefits to Shawnee and its surrounding communities.

The CPN has been willing to waive sovereign immunity when borrowing money in order to assure the bank that its loan's collateral is adequately secured. Since the first note was made on the supermarket, the bank and the CPN have partnered on several more successful loan opportunities.

Over the years, FNB has developed relationships with other tribes, and today the bank actively seeks business from them as well as their tribal members. There are 39 federally recognized tribes domiciled in Oklahoma, and a large portion of the state population belongs to one of these tribes. Therefore, a large number of our customers are tribal members.

Successful Business Partnerships

FNB business in Indian Country is enhanced by forging partnerships with other financial institutions and community development organizations. One example of such a partnership is FNB's relationship with the Citizen Potawatomi Community Development Corporation (CPCDC).

The CPCDC was created by tribal ordinance in 2003 to provide nontraditional financing and commercial lending resources to Native-owned small businesses and other small commercial entities, as well as to small businesses in rural areas. The mission of the CPCDC is to promote, educate, and inspire the entrepreneurial growth and financial well-being of the CPN tribal community through financial education, access to capital, business development services, and innovative capacity-building practices. The CPCDC is a certified community development financial institution. It is not an affiliate of the bank; however, we work hand in hand with the organization.

When making a loan, the CPCDC usually requires less upfront capital from business owners, allows longer amortization periods and more flexible repayment terms, and employs a more lenient credit analysis. The CPCDC provides technical assistance for the borrower to develop the skills needed to keep a business stable and profitable. The CPCDC also provides loans for startup businesses, which FNB rarely does, and actively partners with the Consumer Credit Counseling Service of Central Oklahoma to provide credit consultation and debt management planning.

The CPCDC and FNB have developed a working relationship that has proved beneficial to both. The CPCDC offices are located on the second floor of the bank building. Some of the board members of FNB also serve on the CPCDC board. This has allowed the organizations to familiarize themselves with the products and services offered by each institution to its respective clientele.

This close working relationship has produced successful business ventures. For example, FNB has had the opportunity to sell loan participations to the CPCDC when the bank was faced with lending-limit restrictions or loan concentration issues. FNB was able to refer Native American clients with loan requests that were not considered bankable to the CPCDC. The CPCDC was established to accommodate a different set of criteria for borrowers than the bank's.

By the same token, when the CPCDC is approached with a loan request that appears to be bankable, the agency refers that borrower to the bank. The CPCDC also recommends that clients develop financial services relationships with FNB.

FNB recently sold a loan participation on a medical facility to the CPCDC. This loan was from our Lawton location. The medical facility provides services to Native Americans, members of the military, and the general population. This participation loan transaction allowed the bank to extend its portion of the loan without exceeding its lending limits.

One example of a loan referral from the CPCDC to FNB was a loan request to build a storage facility in Oklahoma City. The bank provided the construction loan as well as the permanent financing. The facility has been a success and is looking to expand in the near future.

From time to time, the bank has sold participations on tribal loans to other banks. It has been necessary for FNB to educate and explain the process and differences of loans made to Native Americans. We believe that the reputation of our ownership, our bank, and our management team has made this an easier process.

Conclusion

Despite the perception that lending to Native American tribes, businesses, or individuals is difficult, we have found that, for the most part, loan requests from Native Americans are not much different from those coming from the population at large. In addition to the five Cs of credit, some of the items that we review when making a decision on whether to make a loan to a tribal entity or individual are as follows:

- Willingness to waive tribal immunity.
- Tribal government stability.
- Thorough review of documents that could affect the loan, such as the tribe's constitution, resolutions, laws, etc.
- Determination of which court system would handle any disagreement.

Good legal counsel can be of help in this endeavor.

We have been extremely pleased with the opportunity to offer banking services to Native American tribes, businesses, and individuals. This type of business is an integral part of our current and future business plan.

It is true that lending in Indian Country can present a few more challenges, but these challenges are manageable. We have found this line of business to be rewarding on several levels. We believe that community banks are missing out on great business prospects if they are not willing to act on these opportunities.

Larry Briggs, President and CEO of First National Bank & Trust, can be contacted at lbriggs@fnbshawnee.com.

[1] Oklahoma Employment Security Commission [www.ok.gov/oesc_web/Services/Find_Labor_Market_Statistics/lmihp/lmihp82109.html], seasonally adjusted unemployment rate accessed on June 11, 2013.

Public–Private Partnership Helps Dream of Home Ownership Come True

Gilbert Gerst, Senior Vice President, Community Development Banking, BOK Financial Corporation

Bank of Oklahoma

This home in Isleta Pueblo in Albuquerque, N.M., was financed by the Bank of Albuquerque with a loan guarantee through the U.S. Department of Housing and Urban Development's Section 184 program.

Most Indian land is owned by tribes but held in trust by the federal government. Land held in trust for a tribe typically cannot be mortgaged, and federal approval is required before a lien can be placed on land held in trust for an individual. This land ownership structure is the main reason most banks have not actively pursued mortgage lending on Indian land: The banks have been unable to obtain valid liens on property or pursue foreclosure in the event of a loan default. In the event of default, neither the U.S. Department of Housing and Urban Development (HUD) nor a lender may sell a defaulted property to a non-Native American. As a result of this ownership structure, tribes and individual Native American families have historically had limited access to private mortgage capital.

In 1992, Congress created the Indian Home Loan Guarantee Program, referred to as Section 184. This federal program is specifically designed to address the lack of mortgage capital on tribal land. Under Section 184, actively enrolled members of a federally recognized tribe are eligible to apply for, and banks can make government-guaranteed mortgage loans for, the purchase, refinancing, rehabilitation, or new construction of homes on either tribe-owned land or fee simple land that is outside of Native lands. The guarantee is provided by the Office of Loan Guarantee within HUD's Office of Native American Programs. The intent of this program is to increase the availability of mortgage lending on Indian reservations or designated Indian operating areas.

Through BOK Financial Corporation's New Mexico banking division, Bank of Albuquerque, we have used Section 184 loans as an important tool to enable individuals and families to realize the dream of home ownership. Bank of Albuquerque works with approximately 19 pueblos in New Mexico. The word "pueblo" means "town" or "village" in Spanish and is also used to refer to various tribes themselves. In 2010–2012, Bank of Albuquerque originated more than 600 loans totaling more than $90 million under this program.

According to 2010 census data, the population of American Indian or Alaska Native individuals in New Mexico totaled 219,512. To prove eligibility for Section 184, an individual must be considered an actively enrolled member in a federally recognized tribe. This membership is validated through a tribal enrollment card. Each tribe has specific tribal enrollment requirements, established to preserve the tribe's unique character and traditions. The tribes establish membership criteria based on shared customs, traditions, language, and tribal blood. Tribal enrollment criteria are set forth in each tribe's constitution, articles of incorporation, or ordinances, and vary from tribe to tribe. Common requirements for membership include lineal descendancy from someone named on the tribe's base roll or relationship to a tribal member who descended from someone named on the base roll. The base roll is the original list of members as designated in a tribal constitution or other document.

The Section 184 program is fairly easy to use, and can be used for purchase, refinance, and single close construction transactions. We use an in- house underwriter who has the authority to approve fee simple land loans, so turnaround is very quick. The maximum loan is 150 percent of the U.S. Federal Housing Administration (FHA) mortgage limit, with only 1.25 percent to 2.25 percent for down payment with no mortgage insurance. Interest rates are fixed and comparable to FHA loan rates. Terms may not exceed 30 years and there is no income limit associated with the program. The Section 184 program also has the lowest cost of any government guarantee or conventional insurance program, with no monthly premium. There is only one qualifying rate, which is a 41 percent total debt-to-income ratio, and that can be exceeded if there are compensating factors.

Tribal trust or leasehold land transactions can take a bit longer for approval, because we must have a residential lease agreement in place that has been approved by the individual tribal government. Then a title status report is issued by the U.S. Bureau of Indian Affairs. Once all of this is in place, the entire file is submitted to one of the three designated underwriters at HUD (in Denver, Colo.; Atlanta, Ga.; or Washington, D.C.). These underwriters underwrite loans for all states, and turnaround times can be two to three weeks. Performance of loans under the program has been good, with overall performance better than the FHA product. We include these loans in Ginnie Mae pools along with other government loans, which are then sold on the secondary market. While we have had defaults under the program, we work closely with tribal leadership in each case to develop the optimal solution to resolve the default.

Through this program, we are able to help individuals—many of whom never thought they would own their own home—achieve the dream of homeownership.

Gilbert Gerst, Senior Vice President, Community Development Banking, can be reached at ggerst@bokf.com.

HUD's Section 184 Home Loan Guarantee Program

The OCC has published a fact sheet describing the U.S. Department of Housing and Urban Development's Section 184 Indian Home Loan Guarantee Program, which was authorized by the Housing and Community Development Act of 1992. Section 184 is one of the most important federal programs to help Native Americans obtain home mortgages. By guaranteeing home loans, the program encourages lenders to underwrite mortgages in Indian Country.

Section 184 loans offer many advantages:

- Low down payments: Program requires a 2.25 percent down payment on loans of more than $50,000 and only 1.25 percent on loans of less than $50,000.
- Fixed interest rates: Lenders charge market rate. Adjustable rate mortgages are not permitted. Fees are monitored to prevent predatory lending.
- No monthly mortgage insurance: A one-time 1 percent fee is paid by the borrower at closing and can be financed into the loan.
- Manual underwriting: The program uses a hands-on approach to underwriting and approval, as opposed to automated decision- making tools.
- Liquidity: A Section 184 guaranteed loan, including the security given for the loan, may be sold or assigned by the lender to any financial institution. Section 184 loans are eligible for inclusion in Ginnie Mae's mortgage-backed securities, and some state housing financing agencies and federal home loan banks purchase Section 184 loans.
- Growing national network of approved lenders: The program's network of approved lenders includes national companies and local banks and can fulfill a variety of borrowers' needs.

The program has other conditions as well. For more information, read the Section 184 fact sheet. For information on how to become a Section 184 lender, read HUD's Lender Section 184 Resources http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/homeownership/184/lenders
or contact HUD's Office of Loan Guarantee at (202) 402-2402.

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Working Together: Effective Partnerships Between Native CDFIs and Banks Bridge the Financing Gap in Indian Country

Tanya Fiddler, Executive Director, Four Bands Community Fund

High poverty and unemployment rates and limited physical, legal, and financial infrastructure mark the Indian reservations scattered throughout the country. A significant portion of Native American populations living in these reservation communities struggle daily to meet basic needs for food, water, and shelter. A movement that began gaining momentum in the early 2000s is beginning to turn the tide, however, by providing access to lending products and fundamental financial education. This movement, led by Native community development financial institutions (CDFI), is building a financial infrastructure where there once was none.

Four Bands Community Fund

This hunting lodge and cabins complex is one of the small business projects financed by the Four Bands Community Fund.

Take, for example, the Cheyenne River Indian Reservation, an area about the size of Connecticut. Located in Dewey and Ziebach counties in north–central South Dakota, the Cheyenne River Indian Reservation is home to an estimated 8,407 people as of 2012, including 6,146 Native Americans—73.1 percent of the population.[1] For the 2007–2011 period, in Ziebach County—among the country's poorest—43.5 percent of the population lived below the poverty level, while Dewey County reported a 30.3 percent poverty level. For the same period, South Dakota and the United States reported 13.8 and 14.3 percent poverty levels, respectively.[2]

According to the U.S. Census Bureau's 2007–2011 American Community Survey 5-Year Estimates (table 1), the median household income for Dewey and Ziebach counties is $30,645 and $27,917, respectively. For the same period, South Dakota and the United States reported median household income of $48,010 and $52,762, respectively.[3] In the same survey and for the same period, Dewey and Ziebach counties posted unemployment rates of 20.3 percent and 27.1 percent, respectively—multiple times the unemployment rates for South Dakota (4.8 percent) and the United States (8.7 percent).[4] A starker picture, however, is portrayed in the last labor survey conducted in 2005 by the U.S. Bureau of Indian Affairs, which estimated 88 percent of the labor force on the Cheyenne River Reservation to be unemployed.[5]

Table 1: 2007-2011 Economic Characteristics of Cheyenne River Reservation Counties, South Dakota, and the United States

Population characteristic	Dewey County	Ziebach County	South Dakota	United States
Persons below poverty level	30.3%	43.5%	13.8%	14.3%
Median household income	$30,645	$27,917	$48,010	$52,762
Unemployment rate	20.3%	27.1%	4.8%	8.7%

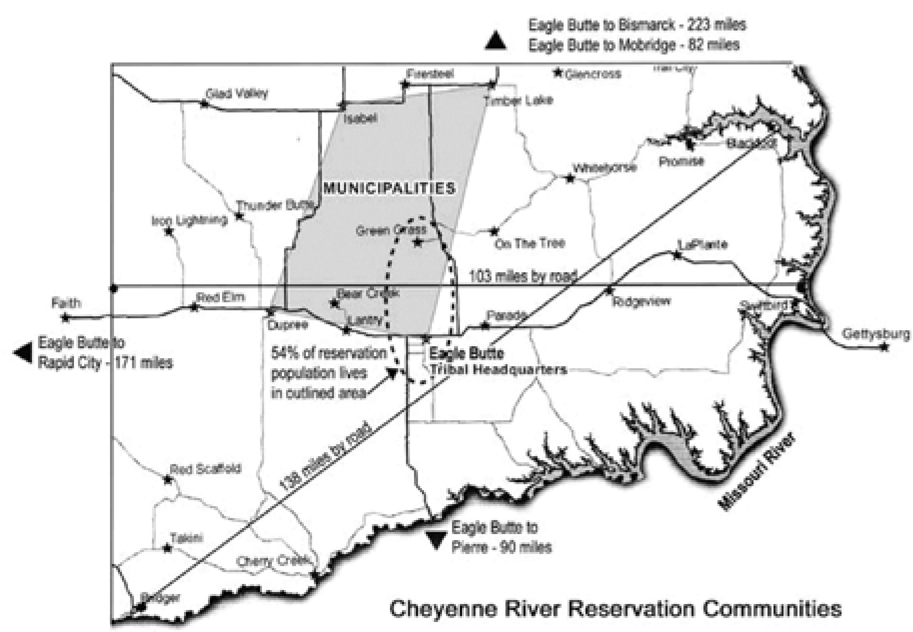
Source: U.S. Census Bureau

Most of the reservation's residents operate on a cash-only basis and have little experience with banks, savings accounts, or effective use of credit. According to data from the Bank On program, an estimated 21.8 percent of households in Dewey County are unbanked and 25.7 percent are estimated to be underbanked. For Ziebach County, it is estimated that 20.1 percent of households are unbanked and 25.3 percent are underbanked.[6] With little financial experience, residents become easy targets for predatory lenders—payday lenders, check cashers, high-interest credit card companies, and pawnshops. It is not uncommon for residents to receive offers in the mail for credit cards with 80 percent interest rates or such high fees that, in some cases, the borrower is left with $50 out of a $250 line of credit.

Payroll deduction programs available from the tribe—a major employer on the reservation—and other employers further exacerbate the problem by enabling individuals to commit significant portions of their paychecks in advance for many types of purchases—often non-necessities. Although the payroll deduction program was intended to provide financial assistance in the face of an emergency, people use the program to purchase furniture or electronics on credit and are left with fewer dollars for day-to-day living expenses.

Four Bands Community Fund, a Native CDFI in Eagle Butte, S.D., has developed products and services to help overcome the challenges of poverty and unemployment that the residents of the Cheyenne River Indian Reservation (figure 1) face. Four Bands was born out of the Cheyenne River Sioux Tribe's Planning Department and was incorporated in 2000 as a 501(c)(3) nonprofit organization. As a separate entity and an independent organization chartered by the tribe and the state of South Dakota, Four Bands is free of political influence from the tribal system. The organization has formed a strategic relationship with the tribe, however, to ensure that the CDFI's programs and services are aligned with the tribe's overall economic development planning efforts.

Figure 1: Cheyenne River Indian Reservation Communities



Source: Four Bands Community Fund

With intimate knowledge of the unique circumstances on the reservation and with more than a decade of experience working in a rural, economically distressed area, Four Bands has become the leading organization on the Cheyenne River Indian Reservation in the areas of small business development, business lending, financial literacy, and entrepreneurship education. A small nonprofit organization with a staff of nine, this organization has dramatically transformed the economic landscape of the Cheyenne River Indian Reservation.

Through the end of 2012, Four Bands had served nearly 4,000 clients and disbursed approximately 580 microloans, small business loans, and credit-builder loans totaling $4.1 million. Since its inception in 2000, Four Bands, through its lending products, has contributed to the establishment or expansion of more than 100 Native-owned businesses and the creation or retention of more than 400 jobs on the Cheyenne River Indian Reservation. Since 2005, its individual development account (IDA), or matched-savings, program has committed more than $400,000 to help more than 100 people achieve asset-based savings goals. Thousands of adults and youths have completed financial education training, and more than 300 individuals have completed a comprehensive business development course. Through a partnership with the five reservation schools, more than 2,000 students have been exposed to financial literacy and entrepreneurship concepts.

Through all of this, Four Bands, like other Native CDFIs, has been changing the unbanked and underbanked population into banked individuals and families. As a result, individuals who may never have had a bank account have enrolled in the IDA program and opened savings accounts, and individuals who may have had only a personal savings account have started a business and opened personal and business checking accounts. In addition, Native CDFIs have been helping their local business communities grow. It is not uncommon for a CDFI business client to transition into mainstream banking for larger or more complex loan products.

While Native CDFIs have helped ease the lack of access to capital and financial resources that plague reservation communities throughout the country, the impact of these small nonprofit organizations remains limited. The fact is, mainstream banking institutions rarely, if ever, engage reservation communities, but these banks' investments are needed to push economic development on the reservations to the next level. The problem is that, for mainstream banks, Indian Country is unfamiliar and risky territory, with layers of complex issues such as tribal sovereignty and multi-jurisdictional areas. A majority of the potential lending opportunities are for start-ups, and those loans carry significant amounts of risk— especially if the lender does not know how to recapture losses through tribal court. Native CDFIs, however, can help: They are local experts and have the relationships and experience in place to navigate these systems. Because their programs are designed to mitigate risk, Native CDFIs can serve as protective layers as well as beneficial partners for banks wishing to invest in Indian Country.

Until recently, Four Bands' limited relationship with banks was typical for a Native CDFI: We partnered with local banks to administer our matched savings program. (Because most Native CDFIs are revolving loan funds and do not offer depository services, the organizations work with nearby banks, where matched-savings program participants open savings accounts and make regular monthly deposits.)

In 2012, Four Bands pioneered a new investment strategy with 1st Financial Bank USA in Dupree, S.D. Because Native CDFIs are mission-driven, they offer development services, such as financial education and business training, that banks do not. In April and May of 2012, 1st Financial Bank took an active role in a series of financial education courses that Four Bands delivered to nearly 300 tribal employees. Not only did the bank financially support the training to cover curriculum purchases and a portion of the staff time, bankers from 1st Financial were on site at the training sessions. As the trainer discussed budgeting or checking and savings accounts, bankers had the opportunity to answer specific questions about their banks' products and services. This partnership combined the best of both worlds—nonprofit mission and for-profit banking services—to invest in the human capital on the Cheyenne River Indian Reservation.

The Citi Foundation has also been a leader in Native investment strategies. Through a grant, it is the primary funder of the South Dakota Native Entrepreneur Investment Fund, the first statewide lending program designed for Native communities. With a substantial investment from Citi, the South Dakota Indian Business Alliance is piloting the investment fund this year based on the successful Native CDFI model. As a result, 10 participants will obtain credit-builder loans and improve their credit scores, 25 participants will complete business plans, and 15 participants will obtain microenterprise loans.

There are other ways banks can invest in Native communities too. For example, banks can provide low-cost long-term capital that Native CDFIs can relend. In this strategy, banks can meet their CRA requirements and Native CDFIs can increase business activity and create jobs in their communities. Bank of America has done well in this arena, although its footprint doesn't cover all reservation communities.

Participation loans are another way Native CDFIs and banks can come together. As businesses keep growing in Indian Country, participation loans may become common. For example, a Native entrepreneur may grow his or her business to the point where capital needs exceed what the local Native CDFI can provide. Say the entrepreneur needs to make a large equipment purchase of $350,000 to expand the business. While he or she may have built a positive history with the local Native CDFI, the CDFI cannot make a loan for this amount. (Native CDFIs typically focus on microlending and small business loans. Currently, Four Bands' maximum loan amount is $250,000.) In this situation, a bank could take first position on a participation loan and the Native CDFI could take a soft second position; both share the risks and profits, while the reservation economy grows a little bit more.

Conclusion

There is a lot of potential for banks and Native CDFIs to form symbiotic relationships, in which each partner benefits. It comes down to this: Native CDFIs have what banks need to break into Indian Country—knowledge and ground-level experience. Banks have what Native CDFIs need to keep effecting change in their communities—capital and expertise.

Working together, these two types of financial institutions can have a far greater impact than one working alone.

Tanya Fiddler, Executive Director of the Four Bands Community Fund, can be reached at tfiddler@fourbands.org.

1U.S. Census Bureau, State and County Quick Facts, South Dakota [http://quickfacts.census.gov/qfd/states/46000.html]
2Ibid.
3Ibid.
4U.S. Census Bureau, Selected Economic Characteristics [http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t], 2007-2011 American Community Survey 5-Year Estimate, DP03.

5U.S. Bureau of Indian Affairs, Office of Indian Services, 2005 American Indian Population and Labor Force Report [www.bia.gov/cs/groups/public/documents/text/idc-001719.pdf]
6Bank On interactive map [http://webtools.joinbankon.org/community/map].

CDFI Fund

Native community development financial institutions (Native CDFIs) provide access to capital, credit, and other financial services to Native American, Alaska Native, and Native Hawaiian communities (collectively, Native communities). Native CDFIs include banks, credit unions, and nondepository institutions, such as loan funds and venture capital funds, that direct at least 50 percent of their activities to Native communities.

The CDFI Fund, part of the U.S. Department of the Treasury, was established by the Riegle Community Development and Regulatory Improvement Act of 1994. It has played an ever-increasing role in the economic development of Native communities by providing grants and technical assistance to Native CDFIs. In the November 2001 "Native American Lending Study," the CDFI Fund identified barriers preventing access to capital, credit, and financial services for Native peoples and provided recommendations to address these issues.

Since the release of the lending study, the CDFI Fund, through its Native American Initiatives, has embarked on initiatives designed to overcome these barriers by supporting Native CDFIs. To date, the program has funded 335 awards (primarily grants) totaling more than $80 million to 168 Native CDFIs with the intent to increase access to affordable capital and credit in Native communities. In 2012, the CDFI Fund awarded more than $11 million in grants to 33 Native CDFIs throughout the United States.

The CDFI Fund provides funding to Native CDFIs in two ways: through financial assistance awards and technical assistance awards. Financial assistance is used by Native CDFIs to increase capital for lending to small businesses, to entrepreneurs, and for housing development. Technical assistance is used to increase operational capacity to serve Native communities. Further, the CDFI Fund supports Native CDFIs though capacity-building contracts that seek to foster the development of new Native CDFIs and strengthen the operational capacity of existing Native CDFIs.

The Lakota Funds show the positive effect a Native CDFI can have on its community. Aided by $2.3 million in financial and technical support from the CDFI Fund, the Lakota Funds have lent more than $6 million, helping create nearly 450 businesses and more than 1,200 jobs and making a substantial social and economic impact on the Pine Ridge Indian Reservation in South Dakota.

For more information about the CDFI Fund, including certification requirements and a list of certified CDFIs, please visit www.cdfifund.gov.

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Q&A

Secured Transactions Codes: A Stepping–Stone to Economic Development in Indian Country

With Susan Woodrow, Community Development Adviser, Federal Reserve Bank of Minneapolis, Helena, Mont., Branch

There is some evidence that economic growth in Indian Country has improved over the past two decades. Yet the economies of Indian reservations still post unemployment and poverty rates that are among the highest in the nation. While there are many obstacles to economic growth on Indian reservations, lack of access to capital remains one of the most significant.

Federal Reserve of Minneapolis

The Federal Reserve Bank of Minneapolis uses this private business development model in its approach to economic development in Indian Country.

Because Indian reservations are sovereign nations where not all U.S. laws apply, many non-Native lenders and businesses are ambivalent about investing and doing business in Indian Country. One frequently cited reason for this uneasiness is the insufficiency or absence of commercial laws on Indian reservations—specifically, laws addressing secured transactions. These laws are essential in protecting the interests and rights of businesses that extend credit, such as banks. Some tribes have adopted secured transactions codes to varying degrees of success, but many tribes lag behind.

The Federal Reserve Bank (FRB) of Minneapolis has been a leader in educating the public and tribes about the importance of up-to-date, clear, and comprehensive secured transactions laws, as well as modern and reliable Uniform Commercial Code (UCC) filing systems to bolster business investment and lending. As a community development adviser with the FRB Minneapolis, Susan Woodrow has devoted more than a decade to writing and presenting on this issue.

Below is an interview we in OCC Community Affairs conducted with Woodrow. We hope it illuminates the importance of secured transactions codes in tribal jurisdictions, and in turn helps banks understand the importance of knowing the laws of the tribes in whose jurisdictions they are seeking to do business.

OCC: Let’s begin by defining our terms. What are secured transactions?

Woodrow: In the United States, loans and other types of credit may be made on a secured or unsecured basis. “Secured” means the creditor requires collateral, typically property of the debtor or another obligor, such as a surety, to be pledged as a secondary source of repayment in the event of default. “Unsecured” means no collateral is required to secure the credit. A credit card purchase, for example, is typically an unsecured credit transaction.

Secured lending can be described within two broad categories. One is the type of lending that involves the use of real property as the underlying collateral to secure a creditor’s interest. Real property is land or things attached or affixed to land—think of “immovable” property. Extensions of credit in which real property serves as the underlying collateral tend to be long-term transactions.

Repossession of such property can sometimes involve extensive legal procedures, as well as comparatively lengthy periods to liquidate such collateral.

The other category of secured lending relies on the use of personal property as collateral to secure a creditor's interest. Personal property basically includes everything other than real property, with the exception of a hybrid group called "fixtures." Examples of personal property are "movable" things, such as equipment, inventory, cut crops, and timber; a variety of payment obligations and financial instruments, such as accounts receivable, letters of credit, and documents of title; and intangibles of value, such as copyrights, licenses, and patents. Extensions of credit that rely on personal property as the collateral are called "secured transactions." These types of transactions tend to be shorter term and more frequently used for day-to-day business and consumer transactions, because personal property tends to be easier to repossess and liquidate than real property in the event of debtor default. A few common examples of secured transactions are loans for vehicles, equipment, and inventory that are typically necessary for business start-ups and expansions, as well as a wide variety of consumer purchases.

Secured transactions lending is of particular relevance to Indian Country because credit of any significant size generally cannot be obtained there on an unsecured basis. Also, real property collateral lending in Indian Country can be difficult because large areas of land within tribal jurisdictions are held in trust or otherwise restricted and often cannot easily be used as collateral.

OCC: Why the emphasis on secured transactions codes?

Woodrow: Because, among other things, they are designed to protect creditors' rights, such as those governing when and how collateral can be collected as repayment upon default. Where laws governing secured transactions lending are insufficient, uncertain, or absent, there is likely to be limited or no access to the affordable credit that is essential for business growth and investment in general.

OCC: How does secured transactions lending work, and can the debtor still use the collateral, even though the creditor owns an interest in it?

Woodrow: In a secured transaction, a debtor or other obligor, such as a surety, grants a security interest to the creditor in the personal property being offered as collateral. A security interest is a type of lien. But unlike liens that arise as a matter of law, such as statutory or common-law construction or mechanic's liens, or liens that arise by order of a court, called judicial liens, security interests are consensual, meaning they are created by agreement between a creditor and debtor. Security interests under this scheme can be possessory, meaning the creditor takes physical possession or control of the collateral and holds it until the debt is paid, or nonpossessory, where the creditor has a security interest in the collateral but does not have actual possession or control of it.

It is crucial to point out that in the latter case the debtor can continue to operate equipment, circulate inventory, collect accounts receivable, and use a business or consumer vehicle, even though such property may be subject to one or more security interests. This ability enables credit to easily and efficiently flow for business and consumer purposes.

OCC: What's the current state of secured transactions laws in Indian Country?

Woodrow: In the United States, laws governing secured transactions generally fall within the jurisdiction of the states and not the federal government and are encompassed in Article 9 of the UCC as adopted by all 50 states and several U.S. territories. It is difficult to assess the adoption of these laws by tribes accurately, because there is no comprehensive, up-to-date repository of all tribal laws.

We know that some tribes have enacted secured transactions laws, but many have not. Of the tribes that have, a number of them have modeled their codes on the official text of Article 9 of the model UCC, while other tribes have used Article 9 as adopted by the state in which the tribe's reservation or community is located as their template. Some tribes have adopted verbatim the law of the states in which they are located, while others have incorporated the state law by reference into tribal law, in some cases carving out a few provisions or making the state law subject to a few specified tribal laws.

Also, a number of tribes have modeled their codes after the model law drafted by the University of Montana's Indian Law Clinic in the 1990s. Others have incorporated into contracts either the official text of Article 9 or the state Article 9 for individual transactions only. A few tribes have adopted more narrowly purposed collection codes that govern repossession procedures only. Still others have enacted some unique provisions or versions of a secured transactions law. For example, they have incorporated real property mortgage-lending provisions into the secured transactions law.

Many of the tribes that have enacted some version of a secured transactions law did so in the 1980s and 1990s. Of these, many have not updated their laws to reflect significant revisions that were made to the official text of Article 9 in the early 2000s and since adopted by all the states.

OCC: Can you tell us about some options for tribes to address their need for good commercial law? What about the so-called MTA?

Woodrow: In 2001, at the request of several tribes, a committee of the National Conference of Commissioners on Uniform State Laws together with advisers from 10 tribes began working on a draft Model Tribal Secured Transactions Act (MTA). The MTA, which was completed in August 2005, provides a comprehensive model law for tribes to use as a template to build sound legal infrastructure for secured transactions. The committee also drafted a comprehensive implementation guide to accompany the model code. The guide provides a plain-language commentary on each code provision, lists optional provisions where the committee is aware that tribes may have differing needs or issues, offers guidance to tribal legislative bodies for adapting the code into tribal law, and serves as a general educational tool for tribal judges and attorneys as well as tribal credit, economic development, and business managers.

OCC: Let's say a tribe adopts the MTA. Is that all the tribe needs to do to facilitate secured transactions lending?

Woodrow: Unfortunately, no. Although many tribes have enacted secured transactions laws, such laws are often underutilized or not used at all because of the lack of a publicly accessible, modern, and reliable UCC lien-filing system designation. You see, at the heart of a secured transactions system is a public UCC filing or registry system in which a creditor will publish notice of its nonpossessory security interests. This accomplishes two things. First, it puts other potential creditors of a given debtor on notice that the debtor's property in question is already being used as collateral for another debt or debts. Second, it establishes a "first-in-time" method by which to determine which creditor, if there is more than one, will have a first, or "prior," interest in that collateral.

There are other problems that are specific to the nature of tribal governments and cultures. For example, administration of the secured transactions law requires extensive training and familiarity by the tribal governing body and tribal courts. The stability, competence, and impartiality of a tribal court are important qualities for the success of these laws. Also, some tribes conduct official business in their

ancestral language. This often requires the translation of the law to native languages, many of which have no equivalents for English business terms. Addressing these issues requires additional resources that make the whole process more expensive and cumbersome.
OCC: How are the tribes that have adopted the MTA addressing these challenges?

Woodrow: As far as filing systems are concerned, some tribes have forged agreements with the states in which they are located, effectively making the state the tribe's UCC filing agent at no cost to the tribes. This arrangement enables creditors to file liens seamlessly and conduct searches in a system they are already familiar with. The arrangements these states and tribes have entered into conform to the tribes' laws, respect tribal jurisdiction, and maintain the confidence of lenders and nontribal businesses, with the expectation that businesses and lenders will be encouraged to do business on the reservations. For example, the Crow Nation and Chippewa-Cree Tribe in Montana, the Oglala Sioux and Cheyenne River Sioux tribes in South Dakota, and the Leech Lake Band of Ojibwe in Minnesota have entered into such agreements with their respective secretaries of state offices.

OCC: You have pointed out that secured transactions codes and lien-filing arrangements aren't the only legal elements necessary for supporting business and economic development in Indian Country. Can you expand on that?

Woodrow: Yes. Adopting secured transactions laws and modern lien-filing system arrangements is important, but it's equally important to have tribal courts that are perceived to be fair and impartial and that are known to be competent to adjudicate commercial cases. Lenders and other potential business partners want assurance that tribal judges understand the complexities of the commercial laws they may need to adjudicate. Because many tribal judges and attorneys have traditionally adjudicated and advocated primarily in areas of criminal, family, and sometimes environmental law, judicial education and training are absolutely critical if a tribe adopts a secured transactions law.

Providing easy access to tribal laws and court decisions, either by publishing them on a Web site or in a readily accessible written format, is also very important. If an outside party cannot access a tribe's law or does not know it exists, business is likely to be hindered. Similarly, tribal court decisions should be published and accessible so parties can determine how a tribal court is interpreting the law. And, there are many other important commercial and business laws and regulations tribes should consider as part of a solid legal infrastructure that will support a robust business environment. These may include business organization laws, zoning regulations, and codes addressing other types of commercial transactions encompassed in the various articles of the UCC, such as sales and commercial leasing. While adoption of a comprehensive and culturally tailored secured transactions law is an important foundational component of a strong and sustainable business environment, it is just one piece of the foundation.

OCC: Finally, what about lenders? How do the disparities in the law or its absence influence decisions about doing business in Indian Country?

Woodrow: The lender should first seek to determine whether the tribe has such a law, and second, ensure it does a thorough review of the law so it understands the rules. The lender should also determine where to file a financing statement or conduct lien searches, according to the tribe's law. If the tribe doesn't have a secured transactions law or the filing location is unclear, the lender will need to determine whether it is confident that a contract provision specifying that state law be the governing law would be upheld in the tribal court if an issue were to arise. Basically, the lender will need to conduct appropriate due diligence and, as with all other transactions, simply assess the risk, which would include a review of the legal environment.

Susan Woodrow, Community Development Adviser, can be reached at susan.woodrow@mpls.frb.org.

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'Commercial Lending in Indian Country'
(Community Developments Insights, March 2006)

In March 2006, the Community Affairs Department of the OCC published an Insights report titled "Commercial Lending in Indian Country: Potential Opportunities in an Emerging Market." The report explored the commercial lending environment in Indian Country, including the relationships between governmental, legal, institutional, organizational, and financial infrastructures. The report also examined the major community development challenges and constraints facing Native American communities and described banking and tribal community responses to these barriers. In addition, the report discussed several federal programs that have helped banks mitigate the risks related to lending and investing in Indian Country. Here are some of the report's important takeaways:

- One major obstacle is lenders' unfamiliarity with the unique characteristics and dynamics of the Native American economy and community.
- Tribal sovereignty has substantial implications for jurisdiction, collateral, and arbitration practices that can discourage a bank from undertaking economic development activities in Indian Country.
- Indian tribes and communities exist and operate in a unique legal and governmental framework that can complicate business and financial contracts and their enforcement mechanisms.
- The lack of standard commercial practices and codes is another obstacle facing lenders interested in doing business in Indian Country.
- Tribal sovereignty requires that banks and tribes work together to ensure that lenders can use litigation, arbitration, or other methods of adjudication to enforce contracts and resolve contract disputes that arise from commercial transactions.
- Some tribes have used different business and legal codes to address some of the long-standing barriers to lending in Indian County.
- Government programs are available to help banks mitigate the risk of doing business in Indian Country.

Download the report at www.occ.gov/topics/community-affairs/publications/insights/insights-commercial-lending-indian-country.pdf.

Community Reinvestment in Indian Country

Ammar Askari and Vonda Eanes, Community Affairs, Office of the Comptroller of the Currency

The Community Reinvestment Act of 1977 (CRA) provided a framework for financial institutions, state and local governments, and community organizations to jointly promote the provision of financial services to all members of a community, including residents of low- and moderate-income (LMI) neighborhoods.[1]

Financial institution regulatory agencies (agencies) issue regulations that explain a financial institution's obligations under the CRA and how the agencies evaluate the financial institution's performance. The regulations describe the types of activities that qualify for CRA consideration, including those that meet the definition of community development (CD), such as lending, investment, and services in LMI areas or distressed or underserved nonmetropolitan middle-income geographies. A financial institution may undertake various types of CD activities, depending on factors such as its size, location, capacity, and opportunities to lend, invest, and provide services.

There are several broad categories within which CD activities fall, and most of them apply to large parts of Indian Country. The following questions can help determine whether an activity qualifies for consideration under the CRA:

- Does the banking activity serve LMI individuals or benefit LMI areas?
- Does the activity serve an economic development purpose?
- Does the activity serve distressed or underserved nonmetropolitan middle-income areas?
- Is the bank's CD activity innovative, flexible, complex, responsive, extensive, or not provided by other sources?
- Are the beneficiaries of the activity located in the financial institution's assessment area, or within the same state or region as the assessment area?

To answer these questions, financial institutions and their Native American customers need to understand what, exactly, is involved.

What Is an LMI Area?

A geographic area is considered LMI based on definitions provided in the CRA. A low-income census tract has a median family income (MFI) of less than 50 percent of the MFI for the metropolitan statistical area (MSA) or the statewide nonmetropolitan area where the tract is located; a moderate-income tract has an MFI of 50 percent to less than 80 percent. (A middle-income tract has an MFI of 80 percent to less than 120 percent, and an upper-income tract has an MFI of 120 percent and above.)

What Is an Assessment Area?

A financial institution's assessment area(s) is generally based on the location of its deposit-taking facilities. The assessment area is the geographic area within which bank examiners evaluate a financial institution's record of helping to meet community credit needs. The areas typically follow the boundaries of a metropolitan area or political subdivision and must not reflect illegal discrimination or arbitrarily exclude LMI areas.[2]

What Are Small, Intermediate Small, and Large Banks?

The vast majority of national banks and federal savings associations (collectively, banks) are divided into three categories by asset size: small, intermediate small (ISB), and large. The agencies publish annual adjustments to these asset size thresholds.[3] As of January 1, 2013, a small bank is one that has assets of less than $1.186 billion on December 31 of either of the prior two calendar years. ISBs are a subset of small banks. An ISB is a small bank with assets of at least $296 million as of December 31 of both of the prior two calendar years. Large banks are those with assets of at least $1.186 billion as of December 31 of both of the prior two calendar years.

What Is a Community Development Activity?

A bank loan, investment, or service has a purpose of community development if it supports one or more of the following:

- Affordable housing for LMI individuals.
- Community services targeted to LMI individuals.
- Economic development by financing businesses or farms that meet certain size requirements.
- Revitalization or stabilization of LMI areas, designated disaster areas, or distressed or underserved nonmetropolitan middle-income areas.
- Activities that meet certain "eligible uses" criteria in designated target areas in conjunction with the Neighborhood Stabilization Program (NSP).[4]

A bank can fund a variety of community services through CD loans or investments or may provide a more limited range of services directly. CD services that a bank provides directly must generally be related to the provision of financial services. This includes, for example, providing technical assistance on financial matters to nonprofit, tribal, or government organizations serving low- and moderate-income housing or economic revitalization and development needs.[5]

Activities are considered to promote economic development if they support permanent job creation, retention, or improvement for LMI people, or if they support permanent job creation, retention, or improvement either in LMI geographies or in areas targeted for redevelopment by federal, state, local, or tribal governments.[6]

Activities that help to attract new or retain existing businesses or residents are considered to revitalize or stabilize an LMI, disaster, or distressed or underserved nonmetropolitan middle-income area. Bank examiners presume activities help revitalize or stabilize an LMI geography if the activities are consistent with a federal, state, local, or tribal government plan for the revitalization or stabilization of the LMI geography.[7]

What Are 'Distressed or Underserved' Areas?

A distressed area is a nonmetropolitan middle-income area that meets one or more of the following conditions:

- Unemployment rate at least 1.5 times the national average.
- Poverty rate of 20 percent or more.
- Population loss of 10 percent or more between the previous and most recent decennial censuses or a net migration loss of 5 percent or more over the five-year period preceding the most recent census.[8]

An underserved area is a nonmetropolitan middle-income area that meets criteria for population size, density, and dispersion that indicate that the 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.[9]

The agencies publish updated lists of distressed and underserved nonmetropolitan middle-income geographies annually.[10]

How Does the CRA Apply to Government Guarantee Programs?

A bank can receive consideration under the CRA for participating in loan guarantee programs designed to help meet the credit needs of LMI individuals, small businesses, or small farms in Indian Country. The following are a few examples of some of the loan guarantee programs:

The U.S. Department of Housing and Urban Development's Section 184 Indian Home Loan Guarantee Program [http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/homeownership/184] is available to enrolled members of federally recognized tribes or for tribally designated housing entities. The program encourages lenders to underwrite mortgages in Indian Country. Most banks receive CRA consideration under the lending test for home mortgage loans originated under this program. An ISB may choose to have home mortgage loans that have community development purposes evaluated as community development loans if these loans were not reported by the bank under the Home Mortgage Disclosure Act (HMDA).[11]

The U.S. Department of the Interior's Office of Indian Energy and Economic Development administers the Indian Loan Guarantee, Insurance, and Interest Subsidy Program [www.bia.gov/cs/groups/public/documents/text/idc-001933.pdf] (ILGP). This program provides up to a 90 percent guarantee on a qualifying loan's unpaid principal balance and is open to federally recognized American Indian tribes or Alaska Native groups, individually enrolled members of such tribes or groups, or a business organization with no less than 51 percent ownership by American Indians or Alaska Natives. In general, banks may receive CRA consideration for small business loans originated under the ILGP for loans in amounts of $1 million or less, or for loans greater than $1 million that also have a community development purpose. As with home mortgage loans, an ISB has the flexibility to choose to have a loan of any amount that has a community development purpose considered as a community development loan.

The U.S. Department of Agriculture's Rural Development's Business and Industry (B&I) Guaranteed Loan Program [www.bia.gov/cs/groups/public/documents/text/idc-001933.pdf] can help lenders finance tribal and tribal member businesses, both on tribal trust land and off the reservation, in rural areas that have populations of 50,000 people or less.

Large banks evaluated under the lending, investment, and service tests may receive consideration for innovative or flexible lending practices by participating in these programs. For all banks, home mortgage and small business loans generally must be located in a bank's assessment area(s) to receive consideration. The regulations do provide some flexibility to consider loans based on borrower characteristics beyond the assessment area. Community development loans must be located in a bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

Conclusion

Tribal nations have experienced high levels of unemployment and poverty along with low levels of access to capital and economic growth for decades. Nevertheless, where there is a challenge, there is an opportunity. Banks can lend, invest, and perform community development services successfully in Indian Country. In addition, several federal programs are designed to reduce the banks' risk of doing business in Indian Country.

Banks that invest and lend in Indian Country have a real opportunity to garner CRA consideration. In doing so, not only do banks help their bottom lines, they also help one of the most disadvantaged populations in the United States to grow and prosper.

Banks that have further CRA-related questions should contact the OCC supervisory office in their region.

Contact Ammar Askari at ammar.askari@occ.treas.gov; contact Vonda Eanes at vonda.eanes@occ.treas.gov.

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[1]For more information, see the OCC's CRA Web page.
[2]See 12 CFR 25.41 (national banks) and 12 CFR 195.41 (federal savings associations).
[3]See OCC Bulletin 2013–3, "Small and Intermediate Small Bank and Savings Association Asset Thresholds Regulatory Revision" (January 25, 2013).
[4]For the definition of community development, see 12 CFR 25.12(g) (national banks) and 12 CFR 195.12(g) (federal savings associations).
[5]See 75 Federal Register 47 (March 11, 2010), "Questions and Answers on Community Reinvestment (Q&A) [www.fdic.gov/regulations/laws/federal/2010/10noticeMarch11.pdf]," page 11650, 12(i)-3.
[6]Ibid, page 11646, .12(g)(3)-1.
[7]Ibid, page 11647, .12(g)(4)(i)-1.
[8]Ibid, page 11647, .12(g)(4)(iii)−1.
[9]Ibid.
[10]See the FFIEC Web site [www.ffiec.gov/cra/distressed.htm] for current and historical lists.
[11]See "Q&A," [www.fdic.gov/regulations/laws/federal/2010/10noticeMarch11.pdf] page 11648, .12(h)-2.

Resources

The OCC has organized useful resources for banks interested in exploring business opportunities in Indian Country. All of the resources are in the "Native American Banking Resource Directory" listed below, but we chose to highlight a couple of documents that are particularly interesting and two federal offices that work closely with small and rural businesses.

Native American Banking Resource Directory
[www.occ.gov/topics/community-affairs/resource-directories/native-american/index-native-american.html]

This OCC guide provides descriptions of and links to a sampling of organizations and programs that provide resources to banks interested in lending, investing, or providing retail financial services in Indian Country.

Guide to Tribal Ownership of a National Bank
[www.occ.gov/topics/community-affairs/resource-directories/native-american/tribalp.pdf]

A companion to the OCC's licensing manuals, this guide is designed to help federally recognized Native American tribes explore entry into the national banking system by establishing or acquiring control of a national bank.

HUD Section 184 Program Fact Sheet
[www.occ.gov/topics/community-affairs/publications/fact-sheets/hud-section-184.pdf]

This publication from OCC Community Affairs describes the U.S. Department of Housing and Urban Development's Section 184 Indian Home Loan Guarantee Program, a home mortgage federal loan guarantee for enrolled members of federally recognized tribes and tribally designated housing entities.

U.S. Small Business Administration Office of Native American Affairs
[www.sba.gov/naa]

This office supports Native American entrepreneurs by making them aware of SBA resources, engaging them via numerous outreach activities, participating in tribal consultations, providing online and in-person training, and developing and distributing educational and promotional materials.

U.S. Department of Agriculture Rural Development Program
[www.rurdev.usda.gov/Home.html]

This program supports economic development in Indian Country through a variety of support channels, such as financial support for public facilities, loans to businesses, and technical assistance for farmers and rural communities.

Office of Native American Affairs
Chris James, Assistant Administrator, U.S. Small Business Administration

The mission of the U.S. Small Business Administration's (SBA) Office of Native American Affairs (ONAA) is to ensure that American Indians, Alaska Natives, and Native Hawaiians seeking to create, develop, and expand small businesses have full access to the business development and expansion tools available through the agency's entrepreneurial development, lending, and procurement programs.

ONAA supports several national small business initiatives and offers general and specialized resources for Native American entrepreneurs and business owners. For example, the office participated in the SBA's Emerging Leaders (formerly e200) Initiative, produced an online course, and organized a series of entrepreneurship workshops.

The Emerging Leaders Initiative is the only nationwide federal training initiative that specifically focuses on executives of established businesses poised for growth and provides these executives the organizational framework, resource network, and motivation required to build sustainable businesses of size and scale. Since 2010, the SBA has trained 234 Native American business executives from 12 locations across Indian Country. The seven-month training includes about 100 hours of classroom time per participant and provides small business owners with opportunities to work with mentors, attend workshops, and develop connections with peers, city leaders, and financial institutions. The initiative has been a catalyst for expanding opportunities for both urban small business owners and Native American communities. Sixty-seven percent of surveyed participants reported an increase in revenue, while 75 percent of those surveyed reported maintaining or creating new jobs in their communities. Surveyed participants also reported having secured more than $26 million in new financing for their businesses, as well as increased confidence when applying for government contracts. As a result, nearly half of the initiative graduates reported securing federal, state, or local contracts, together worth more than $330 million.

In 2012, ONAA launched the "Native American Small Business Primer," a self-paced online course that highlights basic business principles and enhances awareness of SBA programs and services. More than 4,000 individuals have registered for this online training. In late 2013, the SBA will introduce a second series of online training geared toward American Indian, Alaska Native, and Native Hawaiian entrepreneurs and their communities.

ONAA is also engaged in offering economic and business development resources through tribal colleges, building reservation-based entrepreneurial development, and providing a variety of online resources. Last year, for example, the office began the second phase of its "Native American Entrepreneurial Empowerment" workshop initiative. More than 160 participants received small business development training at eight events held in five states: Oklahoma, California, Texas, South Dakota, and Washington. Native American communities received nearly

150 hours of training and post-technical assistance, and these events created bridges that produced new partnerships and renewed older relationships. In 2013, ONAA is conducting an additional 23 workshops throughout the country, including in Alaska and Hawaii.

By using the SBA's resources and network of entrepreneurial development partners, ONAA can help match Native business owners with expert advisers, counselors, and mentoring services. These resource partners can provide business owners with practical advice on matters related to management, financing, and marketing. ONAA can also identify local SBA lenders and refer customers to the nearest SBA District Office for assistance. For an immediate connection to SBA resources, potential and established business owners can visit www.sba.gov/direct.

Native American small business ownership is on the rise. There are more than 240,000 Native American-owned businesses, generating annual revenues of more than $34.3 billion, a 28 percent increase in 10 years. Native Americans make significant contributions in many areas, such as construction, energy, and tourism, and to our economic health through business ownership and job creation. ONAA stands ready to help.

To learn more about ONAA, please visit www.sba.gov/naa.

Community Developments Investments is produced by the OCC's Community Affairs Department. Articles by non-OCC authors represent their own views and not necessarily the OCC's.

USDA Rural Development

Tedd Buelow, Native American Coordinator, U.S. Department of Agriculture, Rural Development

U.S. Department of Agriculture Rural Development is deeply involved in building capacity, developing infrastructure, and improving the quality of life for American Indians and Alaska Natives in the United States. Through our guaranteed loan, direct loan, and grant programs, we help build the credit readiness and creditworthiness of tribes and tribal businesses across the country.

Since 2009, Rural Development has made and facilitated more than $1.7 billion in investments directly benefiting American Indians and Alaska Natives. Rural Development's Business and Industry (B&I) Guaranteed Loan Program can help lenders finance tribal and tribal member businesses, both on tribal trust land and off the reservation, in rural areas that have populations of 50,000 people or less. Since fiscal year 2001, Rural Development has guaranteed loans for American Indian and Alaska Native businesses through the B&I program totaling $196.5 million, with $51.9 million of those loan guarantees issued since fiscal year 2009.

We are proud that tribes and tribal members use programs such as the Rural Business Enterprise Grant Program and the Intermediary Relending Program to capitalize locally driven loan funds. Rural Development loans and grants provide needed capital for business development and entrepreneurial efforts that spur rural job creation.

We are also pleased to see tribes use Rural Development programs to help develop water, telecommunications, and electrical infrastructure that enables tribal communities to thrive in a sustainable and competitive manner. Additionally, since 2001 Rural Development's housing programs have helped more than 14,000 American Indians and Alaska Natives buy or repair homes or obtain rental housing.

If you are interested in working with Rural Development for the first time, or if you are ready to return for additional business, we encourage you to contact us to learn how Rural Development's programs can help your financial institution, your community, and local businesses.

For more information, please contact a local Rural Development office or visit www.rurdev.usda.gov.

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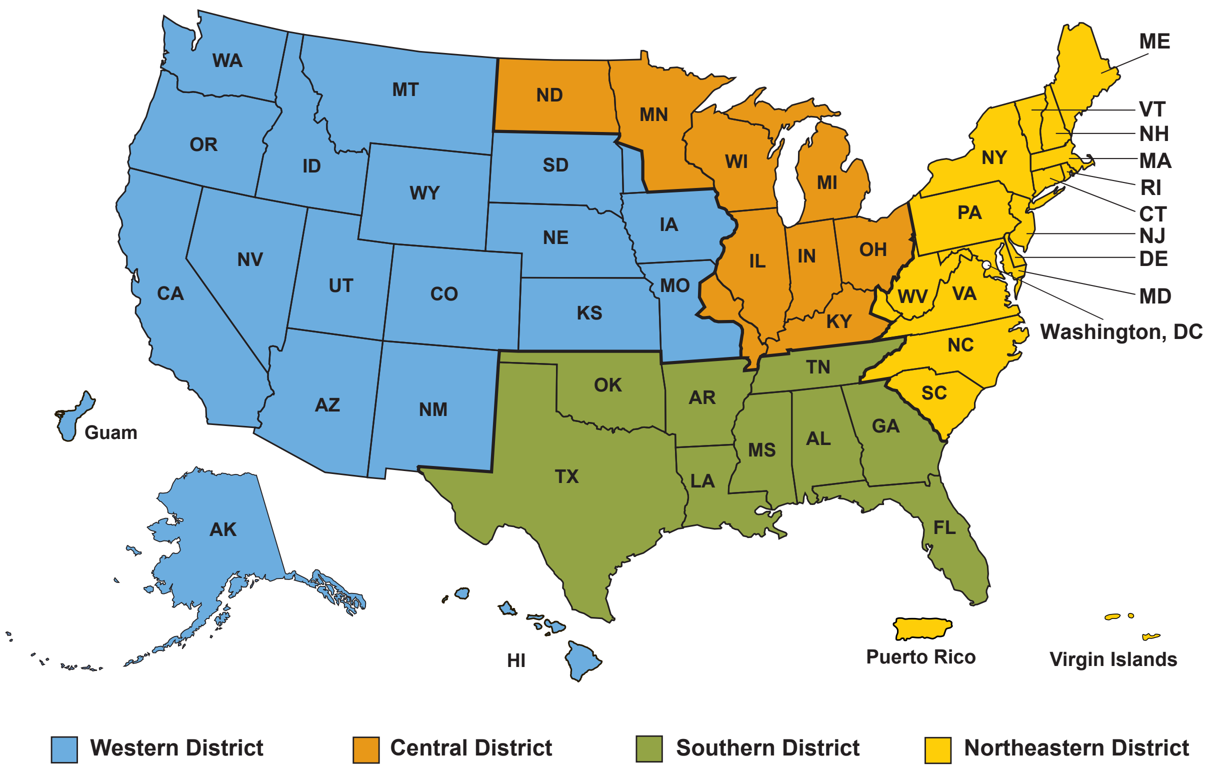
Community Affairs supports the OCC's mission to ensure a vibrant banking system by helping national banks and federal savings associations to be leaders in providing safe and sound community development financing and making financial services accessible to underserved communities and consumers, while treating their customers fairly.



E-mail and telephone information for the OCC's District Community Affairs Officers is available at www.occ.gov/cacontacts.

Community Affairs

Office of the Comptroller of the Currency
Washington, DC 20219
(202) 649-6420
www.occ.gov/communityaffairs
www.occ.gov/cacontacts