

IS THE COMMUNITY REINVESTMENT ACT EFFECTIVE FOR INDIAN COUNTRY?

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ABSTRACT

The Community Reinvestment Act (CRA) is a U.S. law designed to encourage commercial banks to help meet the needs of borrowers in all segments of their communities, including low- and moderate-income neighborhoods (LMIs). Presidents of various Native American owned banks were interviewed, and one overarching comment surfaced: the law does not recognize the contribution of Native American banks to underserved Native Americans because many of these prospective borrowers live in rural areas outside of what are labelled “assessment areas” under the CRA. In effect, the limitations imposed by the assessment area component of the CRA punishes these banks and discourages them from acting on the underlying intent of the CRA to provide access to credit for their population – Native Americans. Furthermore, this requirement conflicts with the core foundation of and support by the Federal Deposit Insurance Corporation (FDIC) in promoting Minority Depository Institutions (MDIs) and their vital role in the financial system and to their communities.

If indeed the contribution of Native American Banks, as MDIs, provides an important mission in credit lending to their population, where the majority remain underserved, then consideration needs to be given to their outreach efforts to Native Americans, rather than activities within their CRA assessment area. We propose to measure their contribution through quantitative data on CRA ratings, and three case studies with qualitative data are provided to endorse the notion of expanding the CRA assessment area. Having a designation for CRA evaluation that can include the contributions of MDI Native American banks beyond their assessment area, to serve their population and to promote partnerships between MDIs and larger banks for investment into

Indian Country, may further open up lending for those rural areas which remain underserved, specifically within reservations. This unique program directly connects these banks to their communities, throughout Indian Country, wherever they may live; and promotes the intent of MDIs and CRA to create economic investments in LMIs.

This paper builds on the following:

Joanie Buckley & Russell Kashian (2019) Ownership effects among Native American banks, 2001-2016, *Applied Economics*, 51:2, 181-195, DOI: [10.1080/00036846.2018.1494810](https://doi.org/10.1080/00036846.2018.1494810)

INTRODUCTION

On July 10, 2017, in an FDIC broadcast, former FDIC Chairman Martin J. Gruenberg described the vital role of Minority Depository Institutions (MDIs) as follows: “MDIs have unique expertise in serving populations that often do not have adequate access to banking services, such as low and moderate income areas and minority populations. They provide responsible banking services in these areas, helping people buy homes, supporting local businesses, and helping communities grow and prosper.”

These sentiments were echoed by the present FDIC Chairman Jelena McWilliams in her testimony to the Senate Committee on Banking, Housing and Urban Affairs on May 15, 2019, as she encouraged the FDIC to increase efforts to promote and preserve the nation’s Minority Depository Institutions (MDIs). “Many of the institutions overseen by the FDIC are small banks, including MDIs, whose communities have unique needs for accessing financial services, and our oversight must reflect their critical role in our financial system...The vitality of these banks is critical given their role in the economic well-being of the minority and traditionally underserved communities many MDIs serve.”

Minority banks evolved for various reasons, often due to the lack of financial institutions serving those communities, or due to discrimination, or racial disparities in lending (LaCour-Little 1999; Matasar and Pavelka 2004). Local minority citizens were instrumental in establishing minority owned banks to serve their own communities, many of which were plagued by poverty and high unemployment. This effort to meet the community needs of their underserved was not formally

recognized until 1969, with Executive Orders signed by President Nixon creating the Minority Bank Deposit Program (MBDP). The introduction of the MBDP opened a new chapter for minority banks, to certify with the government in order to vie for government deposits, and to be supported for their contribution to servicing low-income areas (Edmonds and Robincheaux, 2007). It classified the MDIs as Blacks, Hispanic, Asian, or Native American, and most recently multi-racial, through either minority ownership of 51% of the bank, or a minority comprising both a majority of the bank board and of the community served (FDIC, 2019). The efforts by the federal government in support of MDIs are intended to enhance minority ownership of banks to “promote the economic viability of minority and under-served communities” (FDIC 2002). A recent FDIC report concluded MDIs tend to fulfill these objectives in terms of service to high-poverty and minority communities (FDIC, 2014).

The 2014 FDIC report on Minority Depository Institutions noted that 2.6 percent of the insured institutions were designated as MDIs, and were naturally linked to geographic areas servicing their population, and primarily located in metropolitan areas, such as California (San Francisco, Los Angeles), Texas (San Antonio and border cities), Florida (Miami), Georgia (Atlanta), Illinois (Chicago), and Washington D.C. (FDIC, 2014). Additionally, the report describes the growth and percentage of total MDI assets at year end in 2013, noting that Hispanic banks held 52 percent of the total MDI assets (although most of those assets – including 1/3 of total MDI assets – are held in Puerto Rico), followed by the Asian American banks MDI assets, and African American and Native Americans with four percent or less (FDIC, 2014).

The study further notes that while MDIs perform much like community banks in their income sources, they tend to have higher expenses related to their service area and higher risks related to their loan portfolios (FDIC, 2014).

Likewise, Kashian, McGregory, & Gunfelder-Mcreank (2014), in their study of Black-owned-Banks (BOB) noted that while BOBs were located in metropolitan cities, they were predominately in the low-income sector or within a sector of high poverty. Both studies focus on the efforts of MDIs to serve underserved communities. The history and development of MDIs supports the hypothesis that these banks may be changing the landscape for the underserved, and incurring high costs by engaging in relationship banking with poor clientele. By the beginning

of 2014, there were 174 insured MDIs with combined assets of \$181 billion (FDIC, 2014). By the end of 2018, there were 149 MDIs, with Asian American leading with 73 banks or 49 percent, Hispanic with 35 banks, African American with 23, and Native American with 18 banks. The Summary of Deposits (SOD) report for the 4th quarter 2018 shows the largest MDI based on assets to be East West Bank, and Asian American Bank in Pasadena California with just over \$41 Billion; the largest Hispanic MDI being Banco Popular de Puerto Rico in Hato Rey, PR with \$37.9 Billion; the largest Black-owned bank to be OneUnited Bank in Boston, MA with \$656 Million. The largest Native American MDI with assets of \$478 Million was F&M Bank, a Native family owned bank out of Edmond, OK, and the largest tribal-owned bank (owned by the Citizen Potawatomi Nation) to be 1st National Bank & Trust, in Shawnee, OK with assets of \$247.8 Million. The inventory of MDIs by asset size shows a significant difference between the largest Asian bank with assets of \$41.0 *billion*, compared to the Native private bank of \$478 *million*, and the Native tribal-owned of \$247 *million*.

While the 2014 FDIC 3rd Quarter report provides an overall view of the MDIs, and their geographic location showing their natural link to their communities, this report focuses on Native American MDIs to provide a missing link in the report, and a deeper understanding of Native American MDIs, as many are not located in large metropolitan areas. Additionally, due to the rural nature of much of Indian Country, the Native population continues to be deprived of credit lending, especially on remote reservations.

This report provides a lens into Indian country, and the geographic landscape of tribal lands, comprised of several reservations, rancherias (California), and pueblos (New Mexico). The lands are a small representation of Indian Country's 573 Federally Recognized Tribal entities by the U.S. Bureau of Indian Affairs (84FR1200, doc. 2019-00897, p.1200-1205), such as the 177-acre Rancheria of the Little River Band of Pomo Indians in the Redwood Valley in northern California, the 2.2 million acres of the Crow Nation in Montana, the 27.4 square miles of the Navajo Nation, or the 56,000 acres of the Cherokees of North Carolina. The report provides another perspective on the cost of relationship banking and the jurisdictional issues that are encountered when working with various federally recognized tribal governments, understanding

that each is considered a domestic sovereign nation with its own tribal laws, court systems, and land rights.

“Breaching the Buckskin Curtain” (Wirtz, 2000), described the shortfall of lending in Indian country by noting that little formal research exists on the penetration of banking services on reservations. It described the disparity of servicing communities on reservations in Montana. Pine Ridge reservation, with a population of over 15,000 members and a land base of over two million acres, is 50 miles from the city of Pine Ridge, the largest city in Shannon County, with a population of 3,000. Neither the city nor the reservation had a bank. Yet there are seven cities in South Dakota each with a population of less than 1,000 individuals and each is served by at least one bank. In Montana, the Crow Tribe, with a reservation area of 3,590 square miles, an unemployment rate of 44%, and an average income per capita of \$4,200 has no direct access to banking (Wirt, 2000).

In addition to MDI designation, another legislative effort to improve lending to underserved communities lies in the Community Reinvestment Act (CRA) of 1977. The CRA was designed to counter red-lining against poor communities, a practice involving banks accepting deposits from but not engaging in lending to those communities. The CRA helps to ensure that commercial banks meet the needs of the communities they serve, especially by providing the credit and capital needs to the low-income residents in the markets in which they operate (Haag, 2002). It sets regulatory guidelines and monitors through its federal regulatory agencies (i.e. FDIC, and Federal Reserve Board for state chartered banks), the activities of the bank to ensure that it is servicing the overall community area through its loans, investments, and banking services, (Hendrickson and Nichols, 2010; Snyder, 2017).

It serves this function by periodically examining lending data for all banks, and other bank services and community development efforts for all banks, then rating banks on a four point scale from “outstanding” to “satisfactory,” “needs improvement,” or “substantial noncompliance” (Barr, 2005). In contrast to MDI designation – which is based upon minority status – CRA ratings are only linked to poverty, and specifically to lending within low and

moderate income (LMI) census tracts within a bank's designated "assessment area" (Barr, 2005). The assessment area is a geographic designation of the local market for a bank, its branches, and ATMs which accept deposits, and research finds that CRA ratings enhance lending in LMIs within assessment areas (Agarwal et al., 2012; Barr, 2005).

There are incentives associated with the CRA ratings. First is the fact that the ratings have been public since 1995, so a bank may receive a reputational benefit in terms of social responsibility for achieving an "outstanding" rating (which accounts for approximately 10% of all ratings). Second is the fact that ratings below "satisfactory" can lead to regulatory denial of either bank mergers or the opening, relocation, or closure of bank offices (OCC, 2014).

The CRA ratings pose obvious challenges for internet banks, who may have difficulties defining assessment areas, but also for Native American MDIs, since Native lands tend to be highly dispersed and often located in sparsely populated rural areas. As a result, a Native American MDI may need to lend beyond the local assessment area – and often thousands of miles from those areas – in order to provide loans to underserved Native Americans.

Despite the challenges of lending in Indian Country, Native banks continue to support their social mission to provide credit lending to their underserved population, beyond their designated Community Reinvestment Act (CRA) assessment area, with a higher risk and cost over traditional community banks. These MDIs are improving the financial fiber for the underserved, one Tribal Nation at a time, as described with the Samish Nation:

In 1969, the Samish Nation lost its land due to a clerical error on the tribe's federal recognition. It took 26 years and countless hours of legal bantering to reinstate their lands. The tribe developed their lands as a tourism attraction. During that period, and seeking a \$3.4 million loan in 2004, the Samish Nation was turned down by five local banks. With the help of Native American Bank, the Bureau of Indian Affairs Loan Guarantee Program, and USDA's community development program, the bank was able to structure a \$3.4 million loan for the Nation. Pam Nesius, a senior vice president with the bank recapped the project as a complex one involving many hours of work, and a strong team of stakeholders with the BIA, USDA, community members, and the Tribe

to make it a successful project, which represented the mission of the bank – to help their community (Beans, 2006).

Tom Ogaard, President and CEO of Native American Bank, provided a historical perspective on the bank's formation,

There was thinking among the tribal leaders that had come together that there needed to be a Native-owned bank that could work in Indian country and do things in parts of Indian country that were not being addressed because there are so few Native-owned banks in the country. And that was really the premise for starting a Native American bank itself....I just looked at our current pipeline of projects that we have ongoing which exceeds \$100 million in projects. The last number I looked at was 90% (loans) in Indian Country... And we will bank any individual, we get a number of people that like our mission who want to be a part of it, be they native or non-native. In addition, we certainly welcome that and enjoy that. And in the last year of those loans that have been made, I would say that probably 95% of the loans are in Indian Country – our mission is to serve Indian Country. Native American Bank has a nationwide presence and does business across the entire country (interview Ogaard, October 16, 2018).

Considering the comments of this Native American bank President, and the social mission of Native American banks, the following questions are posed related to the legislative and regulatory reforms for modernizing CRA, especially related to the designated assessment area, and merit of “outstanding” performance:

- *How can the FDIC support the MDIs who are lending to the underserved, especially to Native Americans outside of their CRA assessment areas?*
- *Should the CRA assessment area criteria be reassessed to support MDIs who are lending to their underserved populations?*
- *Can a program be developed to partner capital with Native MDI knowledge of sovereign jurisdictional issues to increase lending to the underserved in Indian Country?*

- *Given that only 10% of all banks receive “outstanding” CRA ratings, and 40% of Native American MDIs hold an outstanding rating as of 2018, is there a benefit of the rating for the bank’s development?*

This report reflects on the philosophical intent of the CRA and it poses the question:

Is the CRA effective for Indian Country? It offers another perspective to consider policies that will credit and support the work of Native MDIs in LMI areas on tribal lands, regardless of location. Their work in providing credit to the underserved, especially at a higher cost and higher risk, should be recognized and supported for Indian Country.

INSIGHTS INTO INDIAN COUNTRY

According to data from the American Community Survey, collected by the U.S. Census Bureau between 2007 and 2011, American Indian and Alaska Natives had the highest poverty rate (27.0 percent) of any major race/ethnicity in the U.S., far exceeding the national rate of 14.3 percent. Nine states (Arizona, Maine, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota and Utah) had Native Americans with poverty rates over 30 percent. As concerning as this high poverty rate may seem, it is a great improvement from the 2000 census, which showed the per capita income on Native American reservations to be \$ 7,942 compared to the U.S. average of \$21,937 (Swan, 2004). Native Americans continue to be the poorest of the poor in terms of poverty, substandard housing, and unemployment (Beans, 2006; Huyser et al., 2014). Many of these problems are linked to the isolation of reservations, political and social underdevelopment, and lack of economic opportunities (Cornell and Kalt, 1990; Cornell and Kalt, 1998).

As of January 29, 2018, the Bureau of Indian Affairs (BIA) of the United States recognized 573 Native American Tribes. Indian Country has a varied topography of almost 50 million square miles, from rolling hills to deserts and tumbleweeds; and often involving remote and isolated reservations which lack infrastructure. Tribal lands may be multi-jurisdictional as fee lands, or

under the trust responsibility of the Federal government, and span various jurisdictions across counties or states. For example, the Navajo Reservation is anchored in four states (AZ, UT, CO, NM) with much of its 27,400 miles being a desert. The Navajo Nation, with 350,000 members, faces various jurisdictional issues with its location in four states, has an unemployment rate of 42% and a median income of \$27,000. In Wisconsin, the St. Croix Chippewa Indians have 3,000 acres of forest. In Montana, the Confederated Salish and Kootenai Tribes have a land mass of 1,900 square miles of lush green forest mountains, valleys and lakes. The Tohono O'odham Nation reservation of 4,450 square miles (almost the size of Connecticut), is anchored in both the United States (Arizona) and in Mexico, and has a median income of \$29,000. Turtle Mountain reservation, with 227 square miles, has a presence in Montana, North Dakota, and South Dakota. The Alturas Indian Tribe controls 20 acres in California. Their reservations are known under different names – in California they are called Rancherias, in New Mexico they are Pueblos, and in Nevada they are Indian Colonies. The lands of Indian Country are as socially and economically diverse as its terrain.

While tribes are not subject to state Uniform Commercial Code of laws, and have jurisdiction over their own lands, ownership of tribal lands, especially if held in trust, precludes collateralizing the land for loans and, in the case of defaults on houses or tribal assets, may preclude repossession (Paden, 2004). In the event of a tribal member living on tribal lands, and defaulting on a loan of any type, the lender must pursue legal action through a tribal court or federal court, which may or may not be sympathetic to the bank (Koppisch, 2011).

According to 2011 FDIC data, 26% of Native Americans have a bank account but use alternative financial services, and more than 40% of Native Americans have limited or no access to mainstream financial services (Brus, 2013). A quantitative analysis by Dimitrova-Grajzl et al. (2015) for years 2002 through 2012 showed that Equifax scores are significantly lower within reservations (650), than adjacent (680), or nearby (700) locations. This finding provides a lens for the disparity on and off reservations for credit lending. The understanding of tribal governments and tribal trust lands may support calls for a stronger relationship banking approach by Native banks.

NATIVE AMERICAN BANKS

“There is a perception among other bankers that doing business in Indian Country is risky and problematic.... A lot of people have some fear of doing business with tribes; they just don’t know how to do it,” said Larry Briggs, president of First National Bank and Trust Co., of Shawnee, Oklahoma, a tribally-owned bank (Brus, 2013, p.59).

Native American banks are classified as Minority Depository Institutions (MDIs). In 2004, Bank News reported on Native American banks. Their report noted that the Native American population was about 1.2 million, with as much as one-half unemployed and about one-third living below the poverty line. The report went on to note that at that time there were a total of 19 Native-owned banks, ranging in assets from \$183 million (Canyon National in Palm Springs, CA) to as small as \$18 million (First National Bank of Calumet, OK), with a large geographic concentration of 11 Native banks in Oklahoma. The stories of the development of tribal banks vary. However, the ownership by tribes evolved from frustration with the lack of lending to rural reservations (Erb, 2001) toward a strategy to promote citizen capacity and asset building. For example, in 2001 the Chickasaw Nation established a \$70 million institution, Bank 2, as a mechanism to address poverty and provide home ownership (Paden, 2004). In February of 2009, the Meskwaki Tribe (Sac and Fox in Iowa) filed to purchase Pinnacle Bank, a then \$90 million asset-sized institution, as part of a long-term diversification strategy: (a) to provide services to its tribal members, including financial literacy; and (b) to listen to the concerns and issues of its tribal community regarding credit needs (DeWitte, 2009). As of close of 2015, the bank’s assets were listed at \$178,298,000 (FDIC, 2015).

Not all stories have a positive ending. Canyon National Bank, owned by the Agua Calientes Tribe in Palm Springs, California, failed in February 2011, and the deposits were transferred to Pacific Premier Bank in Costa Mesa California. After FDIC receivership the branches opened as Pacific Premier. Canyon National had \$210 million in assets at the time of closing (Forgarty, 2015).

Tribes may not have seen banks as economic engines for their communities, yet they realized the need for credit, especially for remote rural areas. As part of the Treasury's responsibility to encourage minority depository institutions, and to validate the ability of tribes to establish financial institutions, the Office of Comptroller of Currency (OCC) published in 2002 "A Guide to Tribal Bank Ownership", acknowledging and endorsing tribal governments entering into banking. The document recognized Indian tribes as "domestic dependent nations" with the right to self-government over their members and their territories. "A bank may be owned directly by a tribe or group of tribes or through a bank holding company (BHC) that is owned by a tribe or group of tribes." This provided a needed clarification, equalizing MDI guidelines and supporting tribal governments as they entered into the banking field.

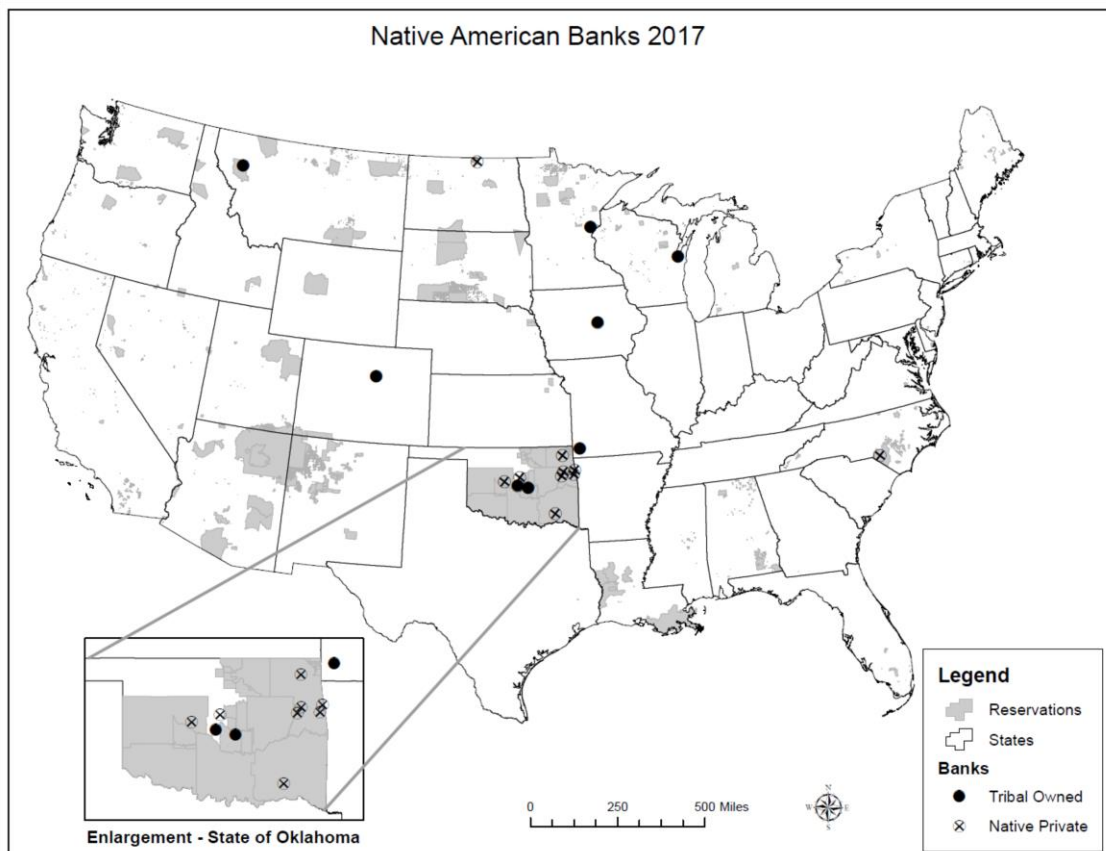
Development of Native banks has been varied, both for private and tribal ownership. The Chickasaw Nation entered banking in 2002 with an asset base of \$6.5 million by acquiring First National Bank of Davidson, Oklahoma, as a mechanism to address poverty and to provide home ownership opportunities for tribal members (Paden, 2004). The tribe transferred its operation to Oklahoma City as Bank 2, and hired a professional banker, growing the bank to become the third largest Department of Housing and Urban Development Section 184 (HUD 184) housing lender in the country (a program to support mortgage lending to Native Americans, described further below), and significantly changed the landscape for Native home ownership. By 2017, the Chickasaw Nation's (58,000 tribal members) Bank 2 had grown to \$135 million in assets, and continued to service Native Americans from its single bank location in Oklahoma City.

Mille Lacs Bank of the Ojibwe Indians entered banking through the 1996 acquisition of a bank in Onmia, Minnesota in order to help overcome economic stagnation and facilitate access to capital and especially housing among its 2,800 tribal members. The bank was located in a town with a population of 700, and the tribe changed its charter from state to national. Conversely, private Native American banks developed as with a Native American, John V. Anderson, who purchased F&M Bank in Edmond, Oklahoma in February 1973 as a private venture. By 2017, this family-owned and managed bank had grown to \$410 million in assets, with nine locations (Burkes, 2017). It is the largest private Native American bank in terms of assets, and managed as a family business with each of the three brothers as presidents of their own branches.

Regardless of private or tribal ownership, research has found that Native American banks are population matched, or operate in communities with relatively high proportions of Native Americans. Kashian and Drago (2017) found the average community served (in terms of branch office deposits linked to American Community Survey data) to be 1% of Native Americans for non-MDIs but 8.6% for Native American banks. Further, poverty rates are relatively high in these communities, with the proportion of residents 200% below the poverty line being 34.3% for non-MDIs and 39.9% for Native American banks (albeit rates were far higher, at 50.1% for Black-owned banks). More generally Native Americans exhibit relatively high rates of poverty (Macartney, Bishaw, & Fontenot, 2013) and are often unbanked (Burhouse, Osaki, & Sharma, 2012; Cyree, Harvey, & Melton, 2004).

Figure 1 offers a perspective of the geographic locations of Native American banks in smaller metropolitan or rural areas, which contrasts with the geographic locations of most MDIs referred to in the 2014 study by the FDIC in larger metropolitan areas such as Los Angeles, San Francisco, Miami, Chicago, or New York. The map includes tribal lands (primarily reservations, rancherias, and pueblos).

Figure 1 Geographic Locations of Native American Banks with tribal lands



A list of the 18 NatBs existing in 2018 is provided in Table 1. Within the table, the Tribal ownership header lists the Tribe having at least 51% ownership. If no tribal ownership is noted, the bank is a private Native American bank, which implies that the voting majority is Native American or that a majority of the board of directors and of depositors are Native Americans. Asset size is included for a glimpse into the size of Native American banks.

Table 1

Native American Owned Banks, Tribal Ownership, Assets 2018

<i>Name</i>	<i>City</i>	<i>State</i>	<i>Tribal ownership</i>	<i>Assets 2018 \$000</i>
<i>Banks Existing 2001-2018</i>				
Lumbee Guaranty Bank	Pembroke	NC		\$336,770
Bay Bank	Green Bay	WI	Oneida Nation	\$95,272
Native American Bank	Denver	CO	Consortium 20 tribes	\$113,297
Bank of Cherokee County	Hulbert	OK		\$111,914
F&M Bank	Edmond	OK		\$478,360
First National Bank & Trust	Shawnee	OK	Citizen Potawatomi Nation	\$247,889
Fort Gibson State Bank	Ft. Gibson	OK		\$61,482
Woodlands National Bank	Hinckley	MN	Mille Lacs Band of Ojibwe	\$183,379
Peoples Bank of Seneca	Seneca	MO	Eastern Shawnee	\$195,208
<i>Newer banks</i>				
All Nations Bank (from 2004)	Calumet	OK	Absentee Shawnee Tribe	\$47,321
Bank of Commerce (from 2002)	Stilwell	OK		\$78,190
Bank 2 (from 2002)	Oklahoma City	OK	Chickasaw Nation	\$192,527
Eagle Bank (from 2007)	Polson	MT	Salish and Kootenai	\$66,075
First Bank (from 2014)	Antlers	OK		\$335,689
Oklahoma State Bank (from 2003)	Vinita	OK		\$155,920
Pinnacle Bank (from 2013)	Marshalltown	IA	Sac and Fox Tribe of Mississippi	\$199,038
Peoples Bank (from 2002)	Westville	OK		\$47,763
Turtle Mountain State Bk (from 2008)	Belcourt	ND		\$33,369

The history of Native American banks has shown the developments and the failures. Although 23 Native American banks existed at some point from 2001 through 2016, only nine existed continuously. Of these, just over half were tribal Native American banks with similar split for newer banks (four of nine were tribal Native American banks), and four banks which lost Native American banks status, failed, or merged (two of five were tribal Native American banks),

Table 2.

Table 2

<i>Banks merged, failed or lost NatB status</i>			<i>Tribal Affiliation</i>
Canyon National Bank (failed and merged 2011)	Palm Springs	CA	Agua Calientes
American Bank (merged 2011)	Baxter Springs	KS	
First State Bank (became Nat. Am. 2010, failed & merged 2011)	Camargo	CA	
Borrego Springs Bank (merged 2014)	La Mesa	CA	Viejas
First State Bank of Porter (merge 2015)	Porter	OK	

Native American banks perform the socially valuable function of serving minority and under-served communities as a mechanism to build credit worthiness and individual home ownership (Cyree, Harvey and Melton, 2004). Further, many Native Americans live on tribal lands or reservations, many of which are held in Federal trust status; and by federal law those lands have legal encumbrance restrictions. This fact plays a major role in limiting lending access and home ownership among Native Americans (Dimitrova-Grajzl, Grajzl, Guse and Todd, 2015; Akee and Jorgensen, 2014; Laderman and Reid, 2010; Cyree et al., 2004). This provides another challenge to lending in Indian Country and highlights the social importance of Native American banks.

MODERNIZING THE COMMUNITY REINVESTMENT ACT (CRA) GUIDELINES FOR INDIAN COUNTRY

The CRA is designed to encourage commercial banks to help meet the needs of borrowers in all segments of their communities, and particularly LMIs. Native American Banks, as MDIs, perform an important mission in lending to their population where the majority remain underserved. Therefore, consideration needs to be given to their outreach efforts in Indian Country, rather than local community economic development and lending.

Since the enactment of the CRA in 1977, it has been subject to debate. There have been some significant impacts in terms of community development, with the establishment of grassroots advocate organizations (Reid, 2017; Bull, 2017), which can build partnerships with local lenders and therefore support local mobilization (Casey, Farhat and Cartwright, 2017); yet this focus may not be relevant to Indian Country, since many reservations are not included in the local CRA assessment area of Native American banks. With the need to modernize after 40 years, the OCC, Federal Reserve Board, and FDIC as agencies have reached out across the country with listening sessions and testimony to evaluate the performance of the CRA for today's banking system. The OCC received nearly 1,500 comments for modernizing the CRA, once they issued an Advance Notice of Proposed Rulemaking (ANPR) in August 2018. The findings were presented on April 9, 2019, to the House Financial Services Committee. The findings include comments involving communities of color, and particularly the need to pay attention to urban areas and to augment its attention to rural Native American communities. It includes a recommendation to consider identifying underserved counties in order to encourage financing to promote community development.

This study presents another perspective on modernizing the CRA, particularly by considering the assessment area for credit lending to the underserved in Indian Country. The intent is to acknowledge the activities of lending institutions in these underserved counties or census tracts in Indian Country, which are predominately outside traditional CRA assessment areas and which have a high proportion of LMI neighborhoods. In support, this study includes analysis of the CRA ratings of MDIs. Thomas (2016) suggests that, given his analyses of CRA ratings, banks engage in a strategy to receive a "satisfactory" rating. Since approximately 90% of institutions are

satisfied with this rating, they may have little incentive to go above and beyond in terms of donations, engagement in the community, and servicing of LMIs. He goes on to suggest that the Federal Reserve should consider incentivizing “outstanding” CRA performance.

Fewer than 10% of banks receive “outstanding” ratings – the gold medal (Thomas, 2016). During an interview (Oct. 2016) with Andrew West, President of Eagle Bank in Polson, Montana, a tribal-owned Native American bank, which received an “outstanding” CRA rating, he recognized the bank’s work towards the achievement of the gold medal, “I’m proud of that actually. When I looked up the statistics, I think less than 10% of banks nationally get outstanding ratings...I think it’s a testament to our devotion to not only make the bank profitable, but also making sure that we do service our core constituency.”

Eagle Bank is owned by the Salish and Kootenai Nation, with assets as of December 2018, of \$66 million, and strong competition in the locale from 15 other financial institutions and 51 offices. The Flathead Indian Reservation comprises 1.3 million acres of mountain, forests, valleys and lakes. Eagle Bank has delineated its assessment area as the political subdivision of the reservation. It consists of 12 census tracks, with an estimated population of 46,926, comprised of 75% middle-income households, 16% moderate-income, and 8% low-income. During the interview with Andrew West (October 14, 2018), he provided insight into relationship banking:

We are granting a large portion (...to small loans), and a lot of those are to people with a sub-600 credit score. So, I think we’re still meeting that mission of helping the underbanked and unbanked. We still cash checks for non-account holders. We’ll make a \$500 loan, where a lot of banks are not going to make a \$500 loan. That’s a risky lending endeavor when you do that...and what we have done is to strategically work with my staff to come up with ways to build a relationship with our customer.

Tom Ogaard, President of Native American Bank in Denver, in an interview on October 9, 2018, commented:

What I would like the regulatory agencies – and now, the OCC is to take the lead on this and I don’t know if the FDIC or the Federal Reserve has weighed in yet – but our feedback to them has been, to listen. In order for a bank to get CRA credit,

they have to do business in LMIs, low and moderate income areas. That is all we do, for the most part, in some of the poorest areas of the country. What we would like to see, instead of defining your assessment area of a bank as the geography around where you are located, why don't you make Indian Country in and of itself its own assessment area? So if you're a bank in Virginia, and you want to help a Native American bank by taking a participation in a loan in California, you're going to get CRA credit even though it's nowhere near your physical geography...make Indian Country its own assessment area, because predominantly in and of itself, they're virtually all LMIs, except for a very few. And you know, that's one area, and it's maybe how to provide non-native owned banks with an incentive to do business with either Native-owned banks or they themselves get involved in Indian Country...we just did one (loan) where we co-lead a fairly large credit with PNC Bank, and they're a huge bank. However, if they want to learn how to do business in Indian Country, then they need help understanding how to navigate. And if we can get more banks who want to do business in Indian Country, that's going to help Indian Country....making the assessment area different and defining the work that gets done perhaps a little bit different.

Banks are typically evaluated every three years for the CRA performance. The Federal Financial Institutions Examination Council (FFIEC) provides data on all CRA ratings. Using the data for 2001 to 2017, with 132,932 ratings as data points, 12,126 (9.1%) were outstanding, 119,230 (89.7%) were satisfactory, 1,402 (1.1%) were classified as needs to improve, and 174 (0.1%) were classified as in substantial noncompliance. Considering the three categories of banks by size for CRA examinations and grading, most Native American banks would fall within the small bank size category with assets below \$321 million as of December 31, 2018. With 40% of the Native American banks holding a CRA rating of outstanding (see Table 3), the recognition of Native American banks support for LMI neighborhoods is evident.

A summary of the most recent CRA ratings for 2001, 2010 and 2017, for Native American banks, is provided in Table 3. Note that none of the banks were classified as either needs to improve or

in substantial non-compliance, but this is not surprising given a total of only 1.2% of all banks fall into those categories. More surprising is that a minimum of 15.8% of Native American banks (in 2001) achieve an outstanding rating, compared to only 9.1% of all banks, and that figure rises to 40% by 2017.

Table 3 Recent CRA Ratings and Native American banks, 2001, 2010, 2017, Absolute number (%)

CRA Rating	2001	2010	2017
Outstanding	3 (15.8%)	5 (27.8%)	6 (40.0%)
Satisfactory	16 (84.2%)	13 (62.2%)	9 (60.0%)
Total Native American banks Rated	19	18	15

Source: FFIEC.

Note: Banks not rated within 3 years of date are not counted. If multiple ratings within 3 year window, most recent rating used.

CRA ratings for individual banks are provided in Table 4, including the banks that were previously tribal or native owned, and have merged or failed, losing MDI status.

Table 4 Recent CRA Ratings for Native American Banks

FDIC Certificate Number	Bank Name	State	2001 Rating	2010 Rating	2017 Rating
422	BANK OF COMMERCE	Oklahoma	Outstanding	Satisfactory	Outstanding
1417	WOODLANDS NATIONAL BANK	Minnesota	Satisfactory	Outstanding	Outstanding
27026	NATIVE AMERICAN BANK NA	Colorado			Outstanding
34052	BAY BANK	Wisconsin	Satisfactory	Outstanding	Outstanding
58282	EAGLE BANK	Montana		Satisfactory	Outstanding
4180	FIRST STATE BANK OF PORTER	Oklahoma	Satisfactory	Satisfactory	Outstanding
252	PINNACLE BANK	Iowa			Satisfactory
2320	PEOPLES BANK	Oklahoma	Outstanding	Satisfactory	Satisfactory
11521	BANK 2	Oklahoma	Satisfactory	Satisfactory	Satisfactory
14331	FIRSTBANK	Oklahoma	Satisfactory	Satisfactory	Satisfactory
15611	OKLAHOMA STATE BANK	Oklahoma	Satisfactory	Satisfactory	Satisfactory

20568	LUMBEE GUARANTY BANK	North Carolina	Satisfactory	Outstanding	Satisfactory
21090	FORT GIBSON STATE BANK	Oklahoma	Satisfactory	Satisfactory	Satisfactory
34146	PEOPLES BANK OF SENECA	Missouri	Satisfactory	Satisfactory	Satisfactory
58586	TURTLE MOUNTAIN STATE BANK	North Dakota		Satisfactory	Satisfactory
2327	BANK OF CHEROKEE COUNTY	Oklahoma	Satisfactory		
4051	ALLNATIONS BANK	Oklahoma	Satisfactory	Satisfactory	
12761*	F&M BANK	Oklahoma	Satisfactory		
25738	FIRST NATIONAL BANK&TRUST CO	Oklahoma	Satisfactory	Outstanding	Outstanding
2303	THE FIRST STATE BANK (<i>merged 2011</i>)	Oklahoma	Satisfactory	Satisfactory	
4624	AMERICAN BANK OF BAXTER SPRINGS (<i>merged 2011</i>)	Kansas	Satisfactory		
24080	BORREGO SPRINGS BANK (<i>merged 2014</i>)	California	Satisfactory	Satisfactory	
34692	CANYON NATIONAL BANK (<i>failed & merged 2011</i>)	California	Outstanding	Outstanding	

Source: FFIEC.

Note: Banks not rated within 3 years of date are not counted. If multiple ratings within 3 year window, most recent rating used.

*F&M also has FDIC Certificate Number 27421, but no recent CRA rating for either number.

The CRA evaluation is scheduled for 2019.

Using all CRA ratings from 2001-2018, with the ratings ranked from ‘0’ for substantial noncompliance to ‘3’ for outstanding, while only using observations for CRA examination years, table 5 notes the mean differences as:

Table 5 Mean CRA ratings by bank type

<i>Bank Type</i>	<i>Average CRA rating</i>	<i>N</i>
Mainstream	2.073	26,168
Asian American owned	2.018	337
Black owned	2.339	112
Hispanic owned	2.082	194
Native American owned	2.197	61

The linear regression version of Table 5 is as found in Table 6, and suggests that Asian American banks are below average on CRA ratings, with Black and Native American owned banks above average.

Table 6 Ordinary Least Squares regression for CRA ratings, with robust standard errors

Variables	Coefficient (Standard error)
Asian American owned	-.055*** (.0169)
Black owned	.266*** (.0498)
Hispanic owned	.009 (.0286)
Native American owned	.124** (.0509)
Constant	2.073*** (.0021)
Adjusted R ²	.003
N	26,876

** significant at 5% level; *** significant at 1% level.

Considering detailed tabulations, none of the Native American banks ever receive ratings of substantial noncompliance or needs to improve, while each of the other Minority owned banks receive some ‘needs to improve’ ratings (3.9% of Asian owned banks, 2.7% of Black owned banks, and 4.1% of Hispanic owned banks).

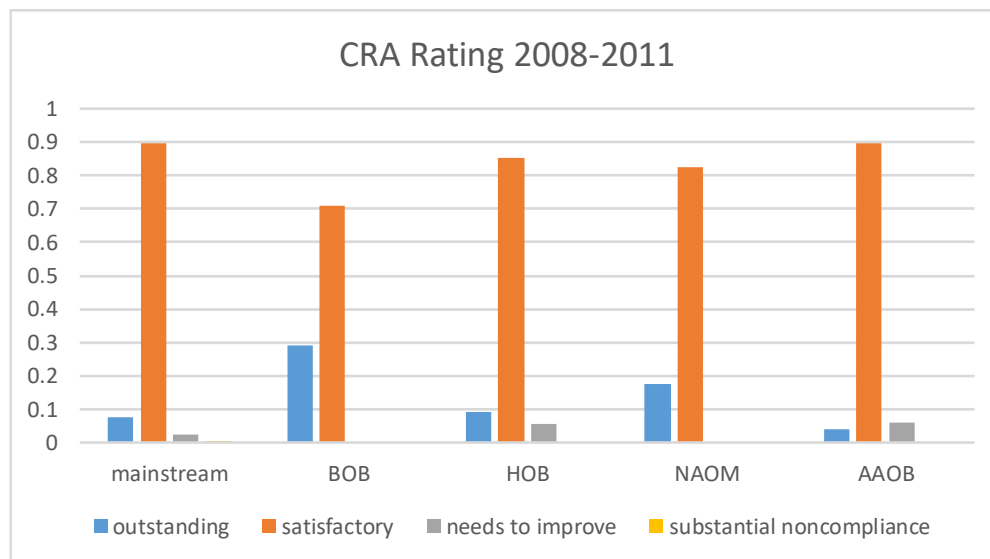
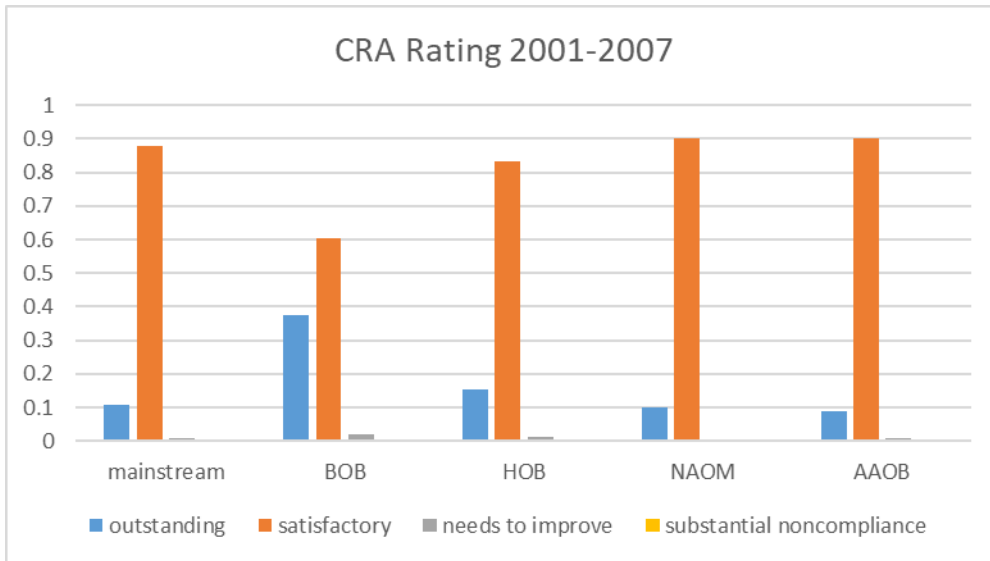
Comparing the Native American banks receiving satisfactory (49) as opposed to outstanding (12) CRA ratings, the following characteristics were checked:

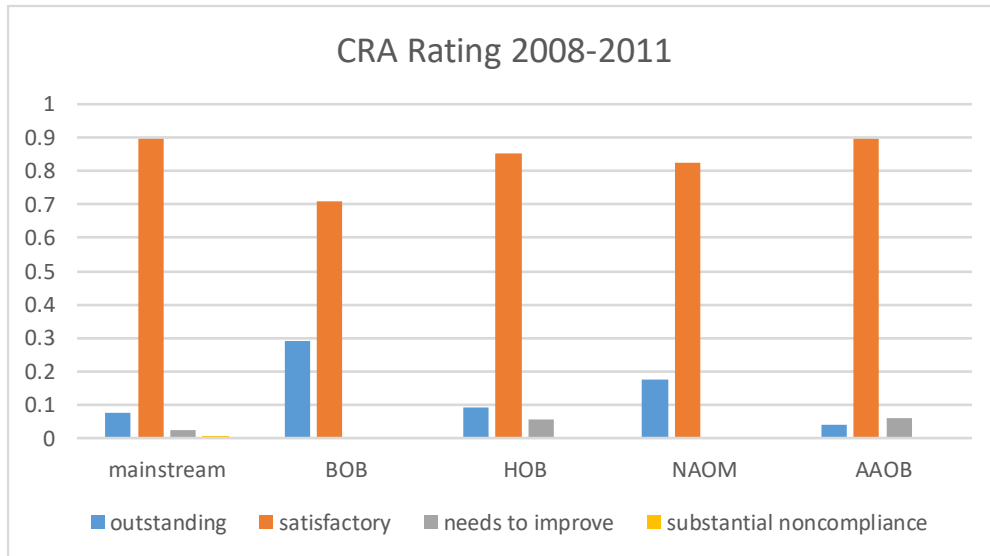
Table 7 Characteristics of Native American owned banks by CRA rating

Characteristics	Satisfactory	Outstanding
Assets (2018 \$s)	\$119m	\$174m
Non-performing loans	1.35%	2.99%
Return on assets	.976%	.946%
Poverty rate depositors	17.3%	17.4%
Native American depositors	10.8%	11.3%
N	49	12

A check of the time distribution of the CRA ratings for Native American owned banks did not yield any clear patterns. All 15 ratings from 2002-2005 were ‘satisfactory,’ with a split of 11

'satisfactory' and 5 'outstanding' from 2006-2009, all 8 'satisfactory' from 2010-2012, an even split of 5 each for 2013 and 2014, with 10 'satisfactory' and 2 'outstanding' for 2015 to 2018.





Describing the work of Native American banks in their CRA assessment areas provides one perspective on the impact into LMI neighborhoods. Another perspective can be gained through the Native American banks' work with housing loans, and population matching can be identified through the Section 184 loans.

HOUSING AND URBAN DEVELOPMENT AGENCY (HUD) Section 184 HOME PROGRAM

Previous research suggests that Native Americans are underrepresented for housing credit. Likewise, mortgage credit has been somewhat difficult to obtain on tribal trust lands due to the nature of sovereignty. Additionally, Native Americans living on reservations, especially isolated reservations, have very limited credit history, and limited knowledge of financial transactions (Cyree et al., 2004).

To help increase loan Native access to credit for housing, the Housing and Urban Development Agency (HUD) established in 1992 through a Congressional Act, the Section 184 loan guarantee program to address the lack of credit to Native Americans (see HUD.gov). The program helps

tribal members secure credit for housing, whether for new construction, an existing home, refinancing, or rehabilitation on a tribal reservations on trust lands, or on fee lands.

Since the Bureau of Indian Affairs (BIA) holds tribal lands in trust, the lending institution must work with the BIA and HUD prior to placing a lien on the property. Understanding that tribal trust lands cannot be mortgaged or used as collateral, the lending agency or HUD can only pursue liquidation for non-compliance, segmenting the tribal trust lands or transferring the loan to another tribal member, or to the tribe. Therefore, financial institutions, whether tribal or mainstream, must complete Section 184 training and have met program requirements before entering into this loan program. For Native Americans, many of whom are first time home owners, the program offers affordability to tribal members, with a minimum down payment of 2.25 percent, 1 percent of the loan as a HUD mortgage insurance guarantee, and with a 30 year fixed market rate. The program was expanded in 2005 on a state by state basis, allowing tribal members to utilize the Section 184 loan on fee lands (Hawkee, 2002; Cyree et al, 2004; DeMuth, 2006; National Bank, 2004). This expansion opened the doors for many financial institutions who were located on the outskirts of reservations to provide HUD 184 lending.

The tribal banks saw growth and investment in their communities as they promoted mortgage lending. In 2014, Bank 2 in Oklahoma City made \$38 million in home loans, making more than half of its 426 mortgages to Native Americans. Bay Bank of Green Bay made over 70% of its mortgages to Native Americans, which equated to \$8.4 million in lending. In addition, Lumbee Guaranty Bank out of Pembroke, North Carolina drove 45% of its mortgage portfolio to Indian Country for a \$6.2 million investment (Fogarty, 2016).

HUD Section 184 loans serve as a basis to identify the outreach of Native American banks within and beyond its CRA assessment area. For this study, HUD 184 loans are captured in data points to show the geographic span within and outside of their CRA assessment area. The HUD 184 loans validate the relationship of the Native banks to population matching, or their outreach to their own minority group. It helps to correlate the need to modernize the CRA in order to credit lending to the underserved beyond the local CRA assessment area.

In order to better understand the information reported in the CRA evaluation, the author synthesized the following CRA performance evaluation on Woodlands National Bank, charter number 23926, dated February 18, 2014. The bank is located in Hinckley, Minnesota, and owned by the Mille Lacs Band of Ojibwe. Hinckley is a city of approximately 1,800 people, located between the Minneapolis and St. Paul metro area and Duluth. The bank has six other locations in Minnesota, in Onamia, Grand Market, Cloquet, Minneapolis, Sturgeon Lake and Zimmerman. It has three assessment areas: Mille Lac and Pine County, portions of Hennepin and all of Sherburne County as well as Carlton County. As of December 31, 2013, and at close of the CRA assessment period, the bank's loan portfolio was \$85.8 million, or 62.4% of total assets. Woodlands National Bank received an outstanding rating on the 2014 CRA evaluation.

The outstanding rating on the CRA evaluation for Woodlands National Bank in Minnesota, prompted the author on June 8, 2019, to interview the bank President, Ken Villebro for his perspective of the CRA guidelines:

Question. Do you feel the present CRA guidelines are effective for Native MDIs to service their population?

Answer. No. In general, I feel the CRA guidelines are outdated. This is especially true when it comes to lending in Indian Country. For us, we work with people from various communities and most are not located within our CA area. HUD 184 loans are a big part of who we are, yet they were not part of the analysis in our last CRA exam.

Question. What are your challenges providing credit lending in Indian Country?

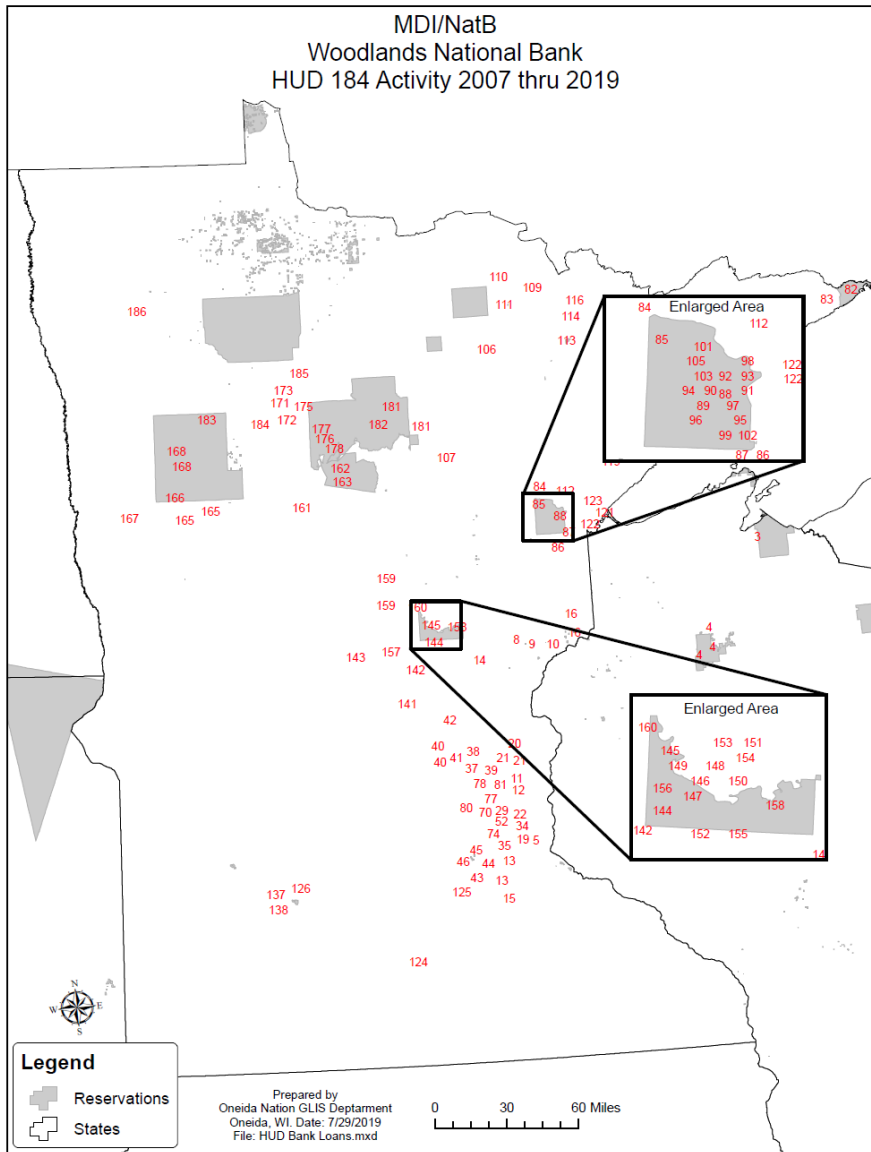
Answer. For HUD 184 loans, the biggest challenge is dealing with HUD. This is a typical government bureaucracy and it is difficult for a small community bank to navigate through this when we have an issue. For other retail lending, the challenge is dealing with tribal law. Each tribe has different laws, and it is difficult for us to know our rights and responsibilities on an enforcement action. If we are not able to seek remedies through tribal court, it makes borrowing money more expensive for everyone.

Question. Is an “outstanding” CRA rating worth the investment? Or would a “satisfactory” suffice?

Answer. We do not have a strategy of investing for the specific purpose of CRA credit. We have an outstanding CRA rating because we have a good record of providing credit to all people within the communities we serve. But this is not because of CRA; it is who we are.

The HUD 184 loans for Woodlands National Bank are mapped in Figure 2 to illustrate the span within Minnesota. The figure represents 188 HUD 184 loans originated between 2007 and 2019, with an average loan of \$143,000. Loans are within and outside CRA area.

Figure 2



As the CRA performance analysis continues to be debated, the following interview with Tom Ogaard, President of Native American Bank, founded through a consortium of Native American tribes, and presently headquartered in Denver, with a branch in Montana, is instructive. The bank received an overall outstanding rating on the CRA evaluation of February 27, 2012. In an interview (October 9, 2018) with Tom Ogaard, he shares the history and formation of Native American Bank:

Native American Bank is a wholly owned subsidiary of the bank's holding company. So, that makes two entities. The holding company was originally formed, got its charter through the act of Congress. They raised capital from 11 different tribes and tribal entities, and it is with those funds that they purchased Blackfeet National Bank in Montana. The ownership today has 33 shareholders, 30 of whom are tribe and tribal corporations or Alaska Native Corporation.

One aspect mentioned by Ogaard on the CRA evaluation was that the assessment area considers mainly Denver and the Montana area near Browning. As mentioned in the interview: "Ours is Indian Country overall, the entire country plus Alaska. So we don't want to get to a defined geographic area, it is all of Indian Country and Alaska, so it comprises quite a bit of geography". This broad geography is noted in Figures 3 and 4 with the mapping of the bank's commercial loans from 2014 through 2018, from as small as \$10,000 to as large as \$10 million.

Figure 3 Alaska loan activity

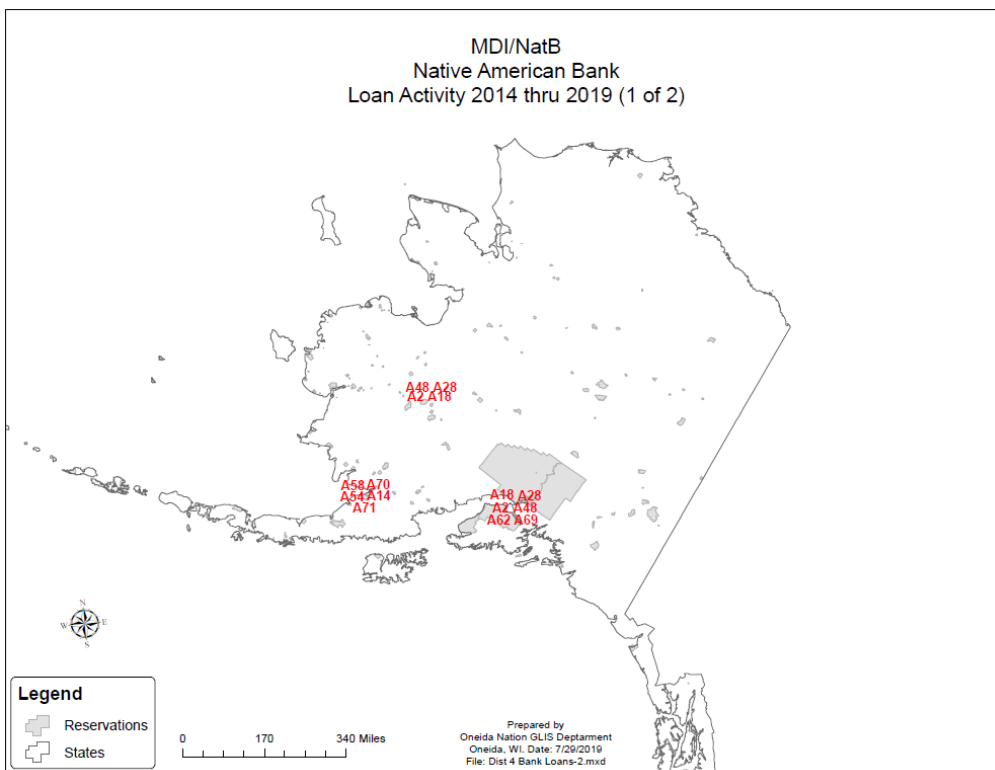
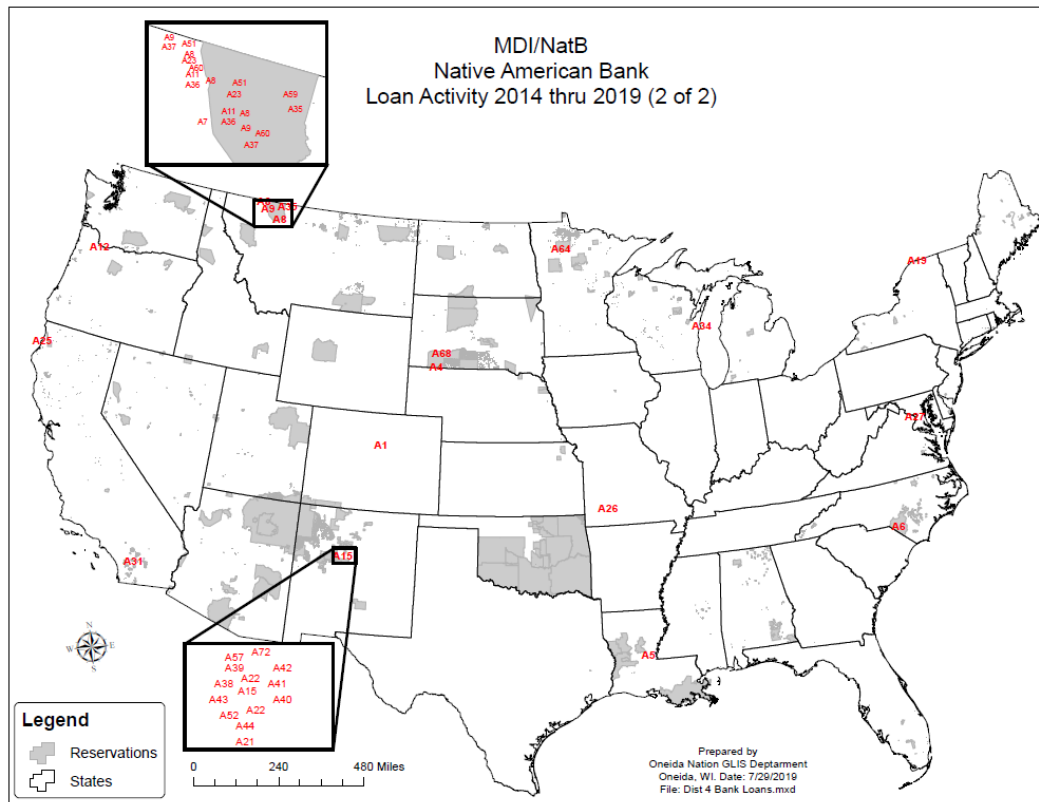
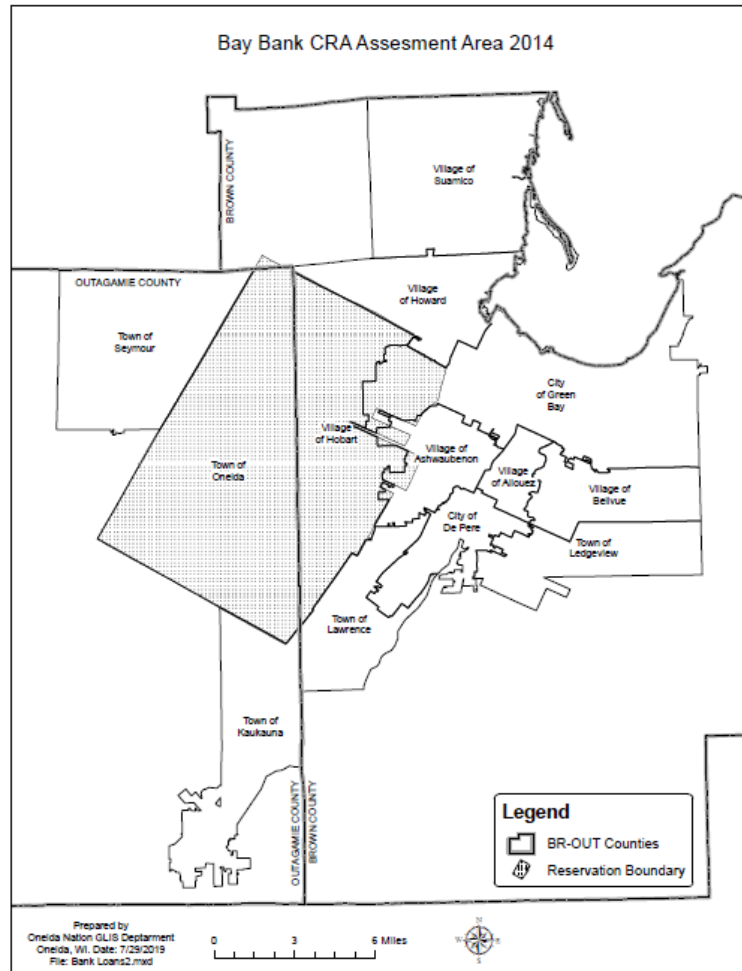


Figure 4 Lower 48 loan activity



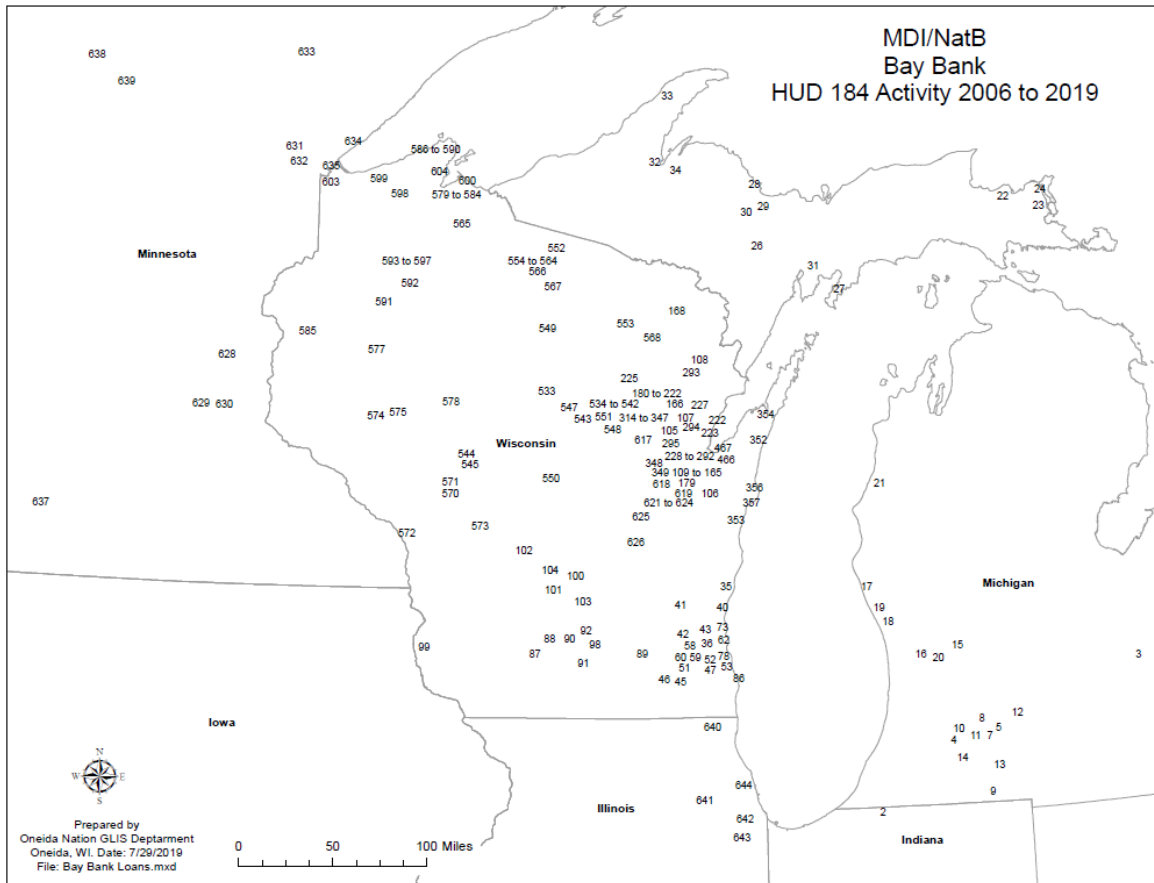
Consider a final example of a Native American bank’s outreach to its population beyond its CRA assessment area. Bay Bank of Green Bay, Wisconsin, FDIC Certificate number 34052, received an outstanding rating on their CRA evaluation of June 23, 2014, and has two locations. The CRA evaluation period was from June 1, 2013 through May 31, 2014, and showed the assessment area to be 54 census tracts in Brown County and three census tracts in Outagamie County, with a total population of 265,050. The assessment area is a combination of rural and urban areas. The Oneida Nation tribal lands are also located within the bank’s assessment area, as shown in Figure 5. The housing data noted the median housing value was \$167,000, and 81% of the housing loans were for housing units of one to four family members. There are 21 institutions with a lending and deposit presence, and five have a nationwide or regional presence with multiple offices. Based on 2010 U.S. Census data, 13 are upper-income, 29 are middle-income, 12 are moderate income, two of the census tracts are low-income, and one is NA, as it consists of a correctional facility.

Figure 5. Bay Bank assessment area 2014



Bay Bank is the largest HUD Section 184 lender in northeastern Wisconsin. The number of originations in 2013 of HUD Section 184 loans was 52, or \$6.4 million. These figures represent direct population matching, especially for a small bank with assets of around \$80 million during the time of the CRA evaluation, and \$95 million by close of 2018. The map (Figure 6) shows 645 loan plots representing Bay Bank's HUD 184 loans from 2006 to 2019.

Figure 6 – Bay Bank 184 loans



Jeff Bowman joined Bay Bank as President in June, 2013. The bank is wholly owned by the Oneida Nation and had assets of \$95 million as of December 2018. During an interview with Bowman (October 17, 2018), he discussed the loan portfolio and servicing Native Americans:

About 70% of our loan portfolio is commercial, and then residential is probably another 20% and then consumer related which would be a car loan or an unsecured loan, that's probably about another 10%. The bank currently has \$95 million in assets and \$61 million of those assets are loans. On the 10% consumer lending, I would say easily 95% plus would be tribal members. And then when you get to the 20% mortgage lending, maybe half of that are native people. And then when it

comes to commercial, I would say out of the 70% of the portfolio, maybe 10% to 20% would be native.

The bank is Native-owned. It has Native employees. We have a mission to help people in Native communities, Oneida in particular, and the___14 surrounding communities. But I don't think that the bank can live on one demographic. We've always enjoyed a mix of business with people from all over Green Bay. And so we help everyone, and we have Latino customers, we have Jewish customers, we have people from the outskirts of town, so it's a blend. It's a melting pot, and I think that's a great thing. You can't have all your revenue coming from one particular group of people, whether it's a neighborhood or a village or a city.

And then here's the other thing. We service all the HUD 184 loans we originate; and 100% of those loans are to native borrowers.

As the interview continued, Jeff Bowman went on to describe his thoughts on the CRA assessment area:

Currently regulators are talking about reforming the Community Reinvestment Act. By the way, we have an *outstanding* CRA rating. How you're scored in your lending activities is based on the amount of loan business that you do in your service area, and so that's a map of continuous census tracts (Figure5).

And we make loans outside those census tracts that we think we should get credit for. So if there's a tribe in northern Wisconsin, and we help them with their construction loan to build some houses or rehab some houses or start a tribal business enterprise, I think we should get credit for that.

And maybe it gets mentioned as a footnote in a feel good story in a CRA exam, but knowing that the bank is mission focused, tribally owned, it helps tribal people. And if there were one or two or 10 or 20 projects outside the CRA assessment area, I think we should get credit for that. We're going to do it regardless. It's the right thing to do. And I think having a bank charter tribally owned is a powerful tool. And I think it comes with the obligation to run it profitably and soundly but to make impact.

CONCLUSION

Literature has shown significant impacts in terms of community development since the Community Reinvestment Act was enacted in 1977 to counter red-lining against poor communities, with many efforts from grassroots organizations (Bull, 2017; Reid, 2017). Likewise, studies describe the locale for the MDI as primarily in metropolitan areas (FDIC 2014) and serving their population (Kashian et al 2014). And the debate continues on evaluating performance, where *satisfactory* is the norm.

This study presents another perspective on the CRA, and the assessment area as it relates to credit lending to Indian Country, the predominately underserved. It provides another insight into Native American banks, as MDIs, and their work to serve their population. Through the various interviews and informal conversations with the Native American bank presidents, it is evident that Native American banks are not relying on CRA credit, rather focusing their efforts on their communities, and their population, Native Americans at-large. As small banks servicing Indian Country, they incur a higher cost with relationship banking as many of their clients are in rural areas. They understand the nuances of working in Indian Country and the individuality of each of the 573 domestic sovereign nations, especially credit lending on tribal trust lands, with each tribe's own statutes, codes, laws, and tribal courts. And yet, they continue to invest in Indian Country, knowing that their efforts can change the economic landscape.

How do we acknowledge and promote the work of the 18 Native American banks providing credit lending to the underserved outside of their CRA assessment area?

- Modernize the CRA guidelines to encourage collaborations and partnerships with the Native MDIs to help them increase the investment in Indian Country.
- Recognize those 10% who have reached the gold medal status of *outstanding*, when the norm is *satisfactory*, by providing a credit toward insurance premiums, or other benefit to support infrastructure.
- Provide technical assistance, such as technology, to support their outreach as they continue their work with LMIs.

- Credit banks with their lending outside their CRA in targeted LMI areas such as tribal reservations and trust lands.

The work of Native American banks continues to make an impact. They are the *change agents*.

ACKNOWLEDGEMENTS

The authors thank the Board of Governors for inviting us to share perspectives from Native American banks on credit lending in Indian Country, and for allowing this information to be presented Interagency MDI and CDFI Bank Conference (June 2019). We thank the Native American bank Presidents for their candor as we compiled this information.

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