

Community Affairs Officer's note - Summer 1998

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July 1, 1998

AUTHOR



JoAnne Lewellen

Community Affairs Officer

This issue of *Community Dividends* is the second of two addressing community development in Indian Country. Here we focus on economic development and the opportunities for and challenges to lender participation in these communities.

First, Patrick Borunda advances the thesis that banks have an unprecedented opportunity to participate in and profit from the recent growth in [Indian-owned businesses](#) throughout the nation. Borunda is executive director of ONABEN—A Native American Business Network, a Portland-based Native American business network serving the Pacific Northwest. He also is a member of the board of directors of the Portland branch of the Federal Reserve Bank of San Francisco.

Next, two authors discuss the tribal legal infrastructure needed to support the type of boom in economic activity Borunda describes. One discusses [tribal sovereign immunity](#) and what it means for bankers entering into commercial relationships with tribes. This article is written by Susan Woodrow, senior counsel at the Federal Reserve Bank of Minneapolis. The other, written by Maylinn Smith, director of the Indian Law Clinic of the University of Montana's School of Law, discusses a recent initiative that resulted in drafting a [model secured transaction law](#) for Montana and Wyoming reservations.

Finally, we report on Federal Reserve Board Governor [Laurence H. Meyer's recent visit](#) to Minnesota's Mille Lacs and Fond du Lac Indian reservations. Guided by the Reserve Bank's Karen Grandstrand, Banking Supervision vice president; Margaret Tyndall, Community Affairs manager; and me, Governor Meyer saw and heard about the economic development initiatives of two tribes that have benefited from profitable casino operations.

To provide Governor Meyer a broader perspective of the Ninth District reservations not visited, we also discussed with him those Indian communities in remote locations, those who have not shared in the advantages of sizable casino revenues and those who still struggle to provide the basics of life for their tribal members.

It is part of our mission to help people understand the value and complexity of economic development in Indian Country. We hope you find this issue informative and useful in your work.

U.S. banks offered historic opportunity in Indian Country

To serve the emerging Indian-owned private enterprise market, bankers should understand the structure of the economies of tribal communities and the size of the potential market.

July 1, 1998

AUTHOR



Patrick Borunda

Indian tribes and individual Indians across the country are now poised to share in the benefits of the American economic system. In many cases, this is due to direct or indirect benefits from casino revenues, which are infusing money into reservation economies and thereby enabling many tribes and some tribal members to invest in business opportunities.

Participation in the American economic system requires access to capital, usually in the form of credit, as well as a likely source of repayment for that credit. Many tribes and tribal members—especially those located in rural areas—will look to local banks for this capital. And while banks are providing the debt capital, bankers can also serve as an important resource for tribal communities by providing technical expertise and other services that will ensure that borrowers are poised to take full advantage of the opportunities now open.

To serve this emerging market, bankers should understand the structure of the economies of tribal communities and the size of the potential market. Toward that end, this article discusses the structure of the economies in Indian Country before 1988, the effects of gaming on economic development in Indian Country and the emergence of the private sector in Indian Country.

Structure of the economy in Indian Country before 1988

The post-World War II economic structure of Indian Country has had three elements: tribal governments, tribal enterprises and private enterprises.

Tribal governments have tended to be distorted in their economic development functions relative to state governments, to which they are somewhat parallel. This distortion stems from the lack of economic alternatives in reservation communities. For example, control of a tribal government often represented control of the largest source of jobs on a reservation and tribal governments too often became battlegrounds to control this source of jobs. In a state government situation, the majority of jobs are not controlled by the head of government and a state's nongovernment jobs strongly outnumber its government jobs.

To improve their economies, tribal governments often sponsored various enterprises such as manufacturing facilities or businesses that used a tribal resource; for example, timber or mineral deposits. Unfortunately, these enterprises were all too often noncompetitive since their primary purpose was to create employment in a setting where jobs were rare. The lack of competitiveness often disqualified these enterprises as sources of cash to collateralize borrowing. Furthermore, plants and equipment were often not maintained adequately, leading to further loss of competitiveness and credit access. Those few young Native Americans able to acquire higher education were drawn by off-reservation opportunities, resulting in a "brain drain" on reservations. Tribal enterprises may be a legitimate use of tribal assets, but most of these enterprises were unable to stop the downward spiral of reservation communities and their economies.

Just as tribal enterprises were suffering, Indian Country's private sector was anemic. The U.S. Census Bureau counted only 13,600 Indian-owned private businesses in the United States in the 1982 Economic Census. Their total revenues were a mere \$495 million. While the number of businesses grew 57 percent to 21,380 as of the 1987 Economic Census, the ownership rates were still very small. In 1987, the per capita ownership rate for Native Americans was approximately 10 percent of the rate of their white fellow

citizens, less than 20 percent the rate of Asian-Pacific Islander citizens and far below the rates for black and Latino citizens. The many benefits of business ownership—including job generation, employment training and keeping money on the reservation—were not being enjoyed in Indian Country.

Contributing to the lack of business success was the lack of infrastructure. It is generally recognized that many reservations, particularly those in remote rural areas, do not have the necessary transportation, power and communication infrastructure to support businesses in the 1990s.

Effects of gaming on economic development

In the late 1970s, tribes began generating revenues from various types of gaming activities. In 1987, the Supreme Court confirmed tribes' authority to operate gaming establishments on trust lands independent of state regulation. To resolve outstanding issues among tribes and states, the U.S. Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988. Gaming expanded with breathtaking speed.

Only a few casinos account for most of the gaming revenues, however. The General Accounting Office reported that 184 tribes were operating 281 gaming facilities as of December 31, 1996. The report examined financial statements from 178 facilities owned by 126 tribes. Just eight of the 178 facilities accounted for 40 percent of the total revenues. Furthermore, of the \$1.6 billion in net income transferred from these facilities to their tribes in 1995, more than 50 percent went to just 10 tribes. Twenty tribes, 16 percent of the sample, indicated there were no income transfers.

While the profits of Indian-owned gaming facilities are not making Indian people wealthy, Indian-controlled cash flowing into tribal governments has restored options in gridlocked communities and wages from the increased employment have created modest buying power. This new cash flow and buying power can be leveraged into material changes not only for Indian individuals and communities, but for the surrounding non-Indian communities as tribal members become more active in the regional economy.

Tribal governments are challenged to create the tangible and intangible infrastructures that underlie sustainable economic development. Tangible infrastructure comprises roads, water and power systems and schools. Intangible infrastructure consists of uniform commercial codes, court systems and commitments to consistent policy between successive administrations. This infrastructure is necessary to preserve economic gains over time. (For additional discussions on these issues, see our articles by Susan Woodrow and Maylinn Smith in this issue of *Community Dividend*.)

Emergence of a private sector

Perhaps the single most exciting development in Indian Country is the creation of wealth among tribal members through owning and operating private enterprises. The number of Native American-owned businesses (NAB) increased nearly fourfold between 1987 and 1992, according to the U.S. Census Bureau. In some areas of the country, Native American private enterprise is approaching critical mass; that is, able to sustain a chain reaction of growth.

Revenues from these businesses totaled \$8 billion in 1992, which means that Indian-owned small businesses collectively contributed the same amount to the national economy as did individual large companies such as General Mills, Colgate Palmolive, or Time-Warner. Clearly, NABs are making a substantial and growing contribution to the well-being of Indian communities across America.

A business contributes to the economy by purchasing labor and materials and converting them into goods and services. In 1992, Indian-owned private enterprise purchased at least \$6 billion worth of materials and paid out \$820 million in employee income. Additionally, owners of these businesses drew \$732 million for their own income. Contrary to common perception, this income is taxable at the state and federal levels. In many states, these businesses also collect a state sales tax, which benefits the state government.

There is enormous untapped, but measurable, potential for entrepreneurship in Native American communities. My organization, ONABEN-A Native American Business Network [headquartered in Portland], has analyzed business ownership rates per thousand population in Oregon. The Native American rate of business ownership, at less than 15 per thousand in the 1992 Economic Census, is the lowest rate of any cultural community in the state and well short of the white rate of 82-plus per thousand. If Indian people had ownership rates equal to those of whites, there would be an additional 2,800 Indian-owned businesses in Oregon with attendant benefits to the general community through increases in gross state product, taxable wages and taxable business income. This situation is mirrored throughout the Northwest. There is no reason to believe that the situation is much different in other states.

Opportunities for banks

The opportunities for the banking community in the growth of Native American private enterprise are similar to the opportunities associated with all small business lending. These are profitable loans and a source of future customers. To play a role, bankers must tailor their products to the economic realities of these emerging businesses or invest in organizations that can tailor products. For their

part, Indian entrepreneurs must be prepared to acquire a full range of business skills. What's more, they must learn what motivates and what frightens bankers. They must strive to minimize the apparent risks bankers try to avoid.

The United States is at a historic moment in the relationship between its First Nations and the rest of the country. The economies of Indian Country were already evolving when IGRA passed. However, passage increased the pace. Tribes and their members are ready to be full economic partners. The banking community can play a significant role as a provider of credit capital and source of financial expertise.

Many non-Indian citizens will benefit from healthy reservation economies. Those living on and near the reservations will benefit from the fact that the reservations are poised to be a regional economic engine. All Americans—regardless of their proximity—will benefit from these durable Indian communities being restored to economic health. These communities are becoming full partners in the economy of the United States, and their potential contributions are enormous.

Patrick Borunda, who wrote and researched this article, is executive director of ONABEN—A Native American Business Network and a member of the board of directors of the Portland, Ore., branch of the Federal Reserve Bank of San Francisco.

We, the First Americans shows statistics regarding indigenous U.S. citizens

Census statistics offer a picture of how economic life for American Indians on reservations compares with that of the rest of the U.S. population.

July 1, 1998

To offer you context for our articles about economic development on Indian reservations, we are reprinting selected discussions and charts from *We, the First Americans*, a publication of the U.S. Bureau of the Census. While these statistics are from the 1990 census, they still offer a picture of how economic life for American Indians on reservations compares with that of the rest of the U.S. population.

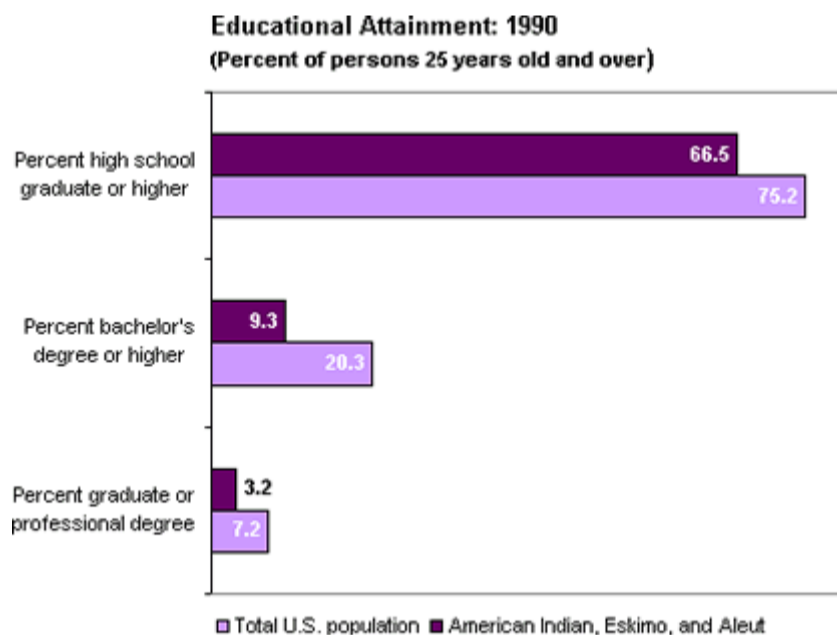
Charts from this report appear below. To obtain the complete report, visit www.census.gov/aprd/wepeople/we-5.pdf.

Our educational attainment improved during the 1980s

The educational attainment levels of American Indians (including Eskimos and Aleuts) improved significantly during the 1980s but remained considerably below the levels of the total U.S. population.

In 1990, 66 percent of the 1,080,000 American Indians 25 years old and over were high school graduates or higher compared with only 56 percent in 1980. Despite the advances, the 1990 proportion was still below the total population (75 percent).

American Indians were not as likely as the entire U.S. population to have completed a bachelor's degree or higher. About 9 percent of American Indians completed a bachelor's degree or higher in 1990 compared with 8 percent in 1980—still lower than the 20 percent for the total population in 1990.



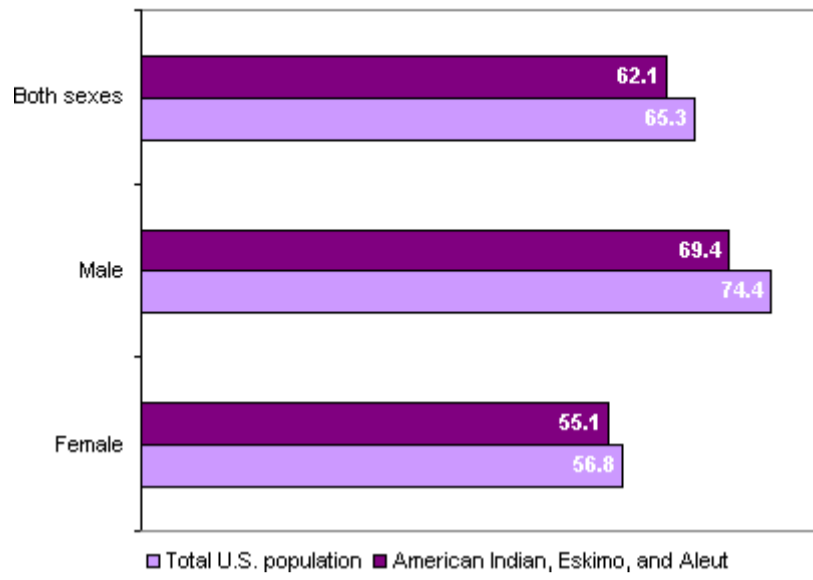
We have lower labor force participation rates than the total population

Overall, 62 percent of the 1,395,009 American Indians (including Eskimos and Aleuts) 16 years old and over were in the labor force in 1990, 3 percentage points below the 65 percent for the total population.

Sixty-nine percent of American Indian males 16 years old and over were in the labor force compared with more than 74 percent for all males.

American Indian women have shared in the national trend of increased labor force participation by women. The proportion of American Indian women in the labor force increased from 48 percent in 1980 to 55 percent in 1990. The rate for all women in 1990 was only slightly higher at 57 percent.

Labor Force Participation Rates by Sex: 1990
(Percent of persons 16 years old and over)



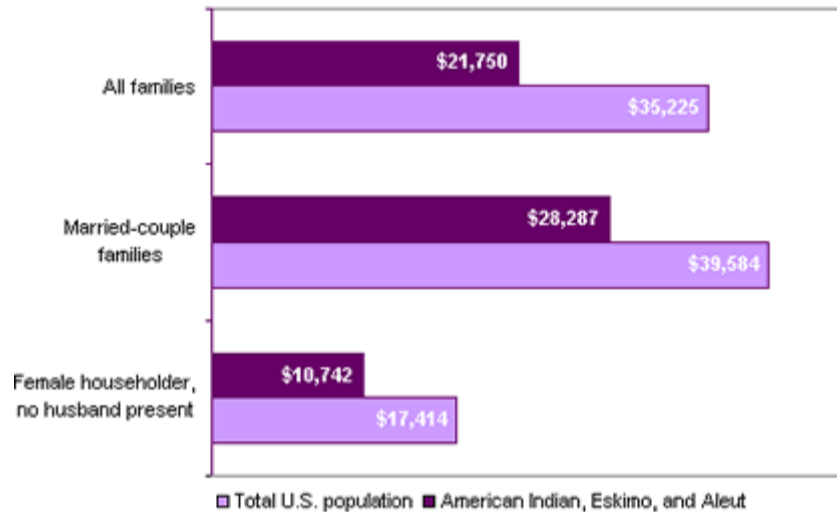
Our incomes are well below those of all Americans

In 1990, the median family income of American Indians (including Eskimos and Aleuts) was \$21,750 compared with \$35,225 for the total population. Stated another way, for every \$100 U.S. families received, American Indian families received \$62.

The median income of American Indian married-couple families was \$28,287, or 71 percent of the \$39,584 median for all married-couple families.

Twenty-seven percent of all American Indian families were maintained by a female householder with no husband present in 1990. The median income for these families was \$10,742, about 62 percent of the \$17,414 median for all families maintained by women without husbands.

Median Family Income by Type of Family: 1990
(In 1989 dollars)



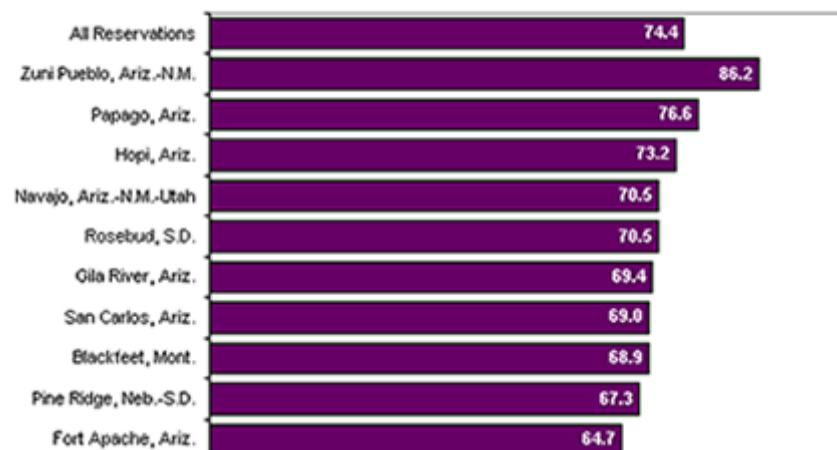
Our labor force participation rates differ substantially among reservations

There were substantial differences in civilian labor force participation rates for American Indians 16 years old and over on the 10 largest reservations and trust lands.

Zuni Pueblo had the highest proportion of American Indians employed in the civilian labor force in 1990.

About 69 percent or less of the American Indian population was employed in the civilian labor force at Blackfeet, Gila River, San Carlos, Pine Ridge, and Fort Apache.

Employment Rates: 1990
(Percent of employed persons 16 years old and over in the civilian labor force)

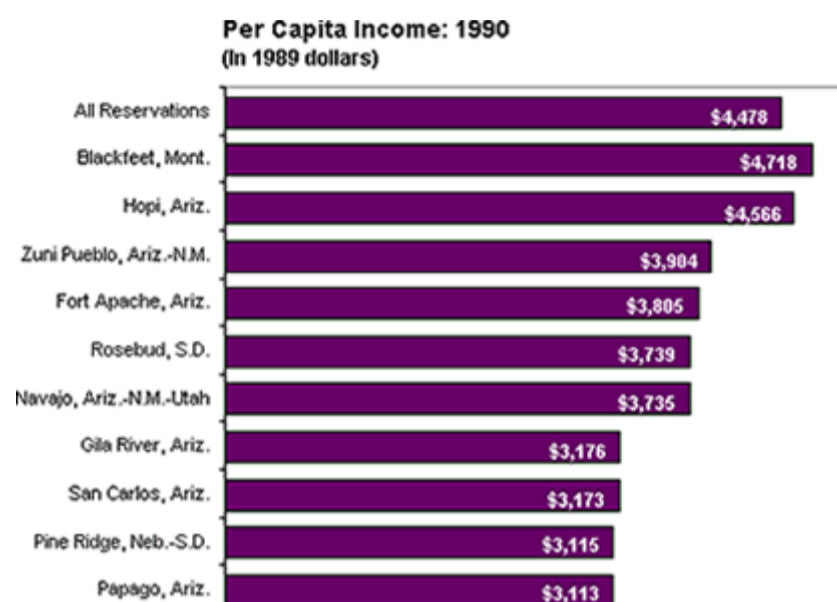


Our per capita income ranged from just over \$3,000 per person to nearly \$5,000 per person in 1989

The per capita income in 1989 was about \$4,478 for American Indians residing on all reservations and trust lands.

The per capita income of American Indians on the 10 largest reservations ranged from \$3,113 to \$4,718. Blackfeet and Hopi had the highest per capita incomes.

The remaining eight reservations had per capita incomes of less than \$4,000. Papago and Pine Ridge had the lowest per capita incomes of about \$3,100.



Federal Reserve Bank of Minneapolis/**Community Affairs**

COMMUNITY DIVIDEND

Summer 1998

Social Compact announces call for nominations

by Issa Lara Combs,
Communications Manager,
Social Compact

Nominations are being accepted for the 6th Social Compact Awards, which recognize the innovative and successful industry and neighborhood partnerships that are strengthening and rebuilding America's lower-income communities.

"The goal [of the award] is to increase private investment in America's emerging neighborhood markets," explains Lynn Reilly Whiteside, Social Compact's chief executive. "The strategy is to demonstrate the opportunities for success, celebrate the market pioneers and promote the strategic business-community alliances that build market strength."

Each award-winning business and nonprofit community development group partnership will receive a \$10,000 grant and become the focus of a national recognition program launched at the National Press Club in Washington, D.C.

Partnerships are judged based on two criteria: the nonprofit community development group and local business's joint achievements at strengthening their community and the business's success in lower-income communities. Applications must be filled out by a neighborhood partner and a business partner. Both portions of the application must be submitted jointly by **no later than Sept. 30, 1998.**

All applicants will be profiled in a publication distributed to Congress, the media and business leaders. Judging will occur throughout the fall, and a group of finalist partnerships will be invited to Washington, D.C., for the competition, which will take place before a panel of national public- and private-sector leaders at the National Press Club on May 5, 1999.

Award program activities also include a Congressional Symposium, Federal Reserve Leadership Celebration and briefings with administration leaders.

For more information or to request an application, contact Amy Whittle, Social Compact Awards program director, 5225 Wisconsin

Ave., N.W., Suite 204, Washington, DC 20015; (202) 686-5161. To download an application from the World Wide Web, enter <http://www.socialcompact.org>.

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Tribal sovereign immunity: An obstacle for non-Indians doing business in Indian Country?

What is sovereign immunity, and what does it mean in the tribal context?

July 1, 1998

AUTHOR



Sue Woodrow

Assistant Vice President and Branch Executive, Helena

Article Highlights

- › Sovereignty intricacies complicate potential Indian Country investments
- › Tribal sovereignty laws, ideologies change
- › Perception of tribal law, court systems is largest obstacle

Native American tribes consider sovereign immunity to be crucial for the protection of tribal resources and the promotion of tribal economic and social interests. Because of the uncertainties surrounding this doctrine, however, this very same tool of self-determination may be viewed as a significant obstacle to the non-Indian investor, lender or developer who otherwise may be interested in doing business in Indian Country. Accordingly, questions that have long been asked are: what is sovereign immunity? and what does it mean in the tribal context?

Defining tribal sovereignty?

A sovereign state is one that is independent from all other authority, retaining the right and power to regulate its internal affairs without foreign interference. Sovereign immunity is the doctrine that precludes the assertion of a claim against a sovereign without the sovereign's consent.

Indian tribes are sovereign entities. The exact nature of tribal sovereignty, however, is not clear. One theory holds that tribal sovereign status is inherent. Tribal sovereignty is not granted to tribes by the United States but rather reserved as inherent in their status as governments predating the formation of the United States. The fact that the colonizing nations and, subsequently, the U.S. government entered into treaties with tribes supports this view.

A competing theory holds that notwithstanding original sovereignty, tribes today are only "quasi-sovereign." Tribes retain the attributes of sovereignty over their members and territory but only to the extent that sovereignty has not been limited or withdrawn by the federal government. In other words, tribes have been permitted to retain their sovereign status subject to the federal government's authority to revoke, limit or otherwise modify tribal immunity at its discretion.

Not surprisingly, over time the federal government has defined and redefined the breadth of tribal sovereignty. For example, the Supreme Court in 1832 characterized tribes as distinct, independent political communities, retaining their original natural rights, with the exception of the ability to deal with foreign nations. [1/](#) Contrast this rather broad interpretation with the Supreme Court's later assertion in 1978 that Native American nations are only quasi-sovereign authorities whose powers are restricted consistent with their domestic dependent status. [2/](#)

Without need to discuss further the merits of either theory, the law of tribal sovereignty as it has developed in the federal courts and by federal statutes, executive orders and treaties over the last two centuries now rests on several fairly well-settled tenets: 1) tribes have virtually unlimited authority over internal tribal affairs; 2) tribes are subject to the plenary, or absolute, power that Congress has over them; 3) tribes are presumptively immune from state law; 4) tribes cannot be sued absent their express consent or a waiver of their immunity; and 5) tribal sovereign immunity does not extend to individual tribal members except to the extent that tribal officials act within the scope of their official capacities.

Although these principles are well-established, how they (or any exceptions to them) apply in any given situation often is not clear, whether with respect to regulatory or taxation authority matters or to criminal or civil jurisdiction. The interests of the tribes, states and federal government all factor into any analysis, the variables of which make any determination of jurisdiction dependent on the specific case. Some of the uncertainty regarding the relationship between tribes and states, in particular, and thus the reluctance on the part of many nontribal entities to conduct business with tribes, can be attributed in part to the confusion surrounding the various legal roles a tribe may play or the legal status of a tribe. The federal government, through court decisions and legislation, has introduced numerous laws, rules and tests (and exceptions to those) that have further faded the bright line that originally delineated tribal sovereignty. The confusion is compounded by the variety of ways in which land in Indian Country may be owned or held, and the nature of the particular tribal, federal or state interests that may be involved. In brief, it is often difficult for a nontribal entity to know with whom it is dealing, with whom it is best to deal, and with what it is dealing.

To illustrate just some of the complexities, a tribe may or may not be organized under Section 16 of the Indian Reorganization Act of 1934 (IRA). A Section 16 IRA tribe will be organized under a constitution that defines the governing body, its powers and authority. Non-IRA tribes have their own governing structures. Whether a tribe is organized under Section 16 or not, it may also be incorporated under Section 17 of the IRA as a federal corporation, creating a legal entity distinct from the governmental entity of the tribe, that may, among other things, have the power to sue or be sued or to waive immunity without affecting the status of the tribal governmental entity. A tribe may also form business entities under tribal code or custom or under a state law charter.

Whether a nontribal entity does business with a tribal governmental entity, a Section 17 tribal corporation, a non-Section 17 tribal business entity or a business entity chartered by the tribe under state law will have significant bearing on a business transaction. For example, if a business venture is operated by or as part of the tribal government, the sovereign immunity of the tribe will extend to the tribal business. If a tribe operates a business as a separate entity, however, the business may be open to adverse legal action in state court and under state law.

Obscuring boundaries

In addition to the organizational intricacies that obscure the boundaries of tribal immunity are the regulatory authority and jurisdictional issues.

As a general principle of tribal sovereignty, state laws have no force in Indian Country, and state courts are without jurisdiction to hear lawsuits brought by non-Indians against tribes, tribal entities and tribal members with respect to transactions arising on reservations. Of course, there are numerous exceptions. Whether a tribe, state or the federal government has regulatory or civil jurisdiction over Indians or non-Indians on or off reservation lands depends on a variety of factors, including whether Congress has expressly granted authority to one or more sovereigns in a particular area.

For example, in 1953, Congress gave six states [3/](#) authority under Public Law 280 [4/](#) to assume state criminal and civil jurisdiction over tribal members in Indian Country, and it authorized all other states to assume civil jurisdiction, of which 10 did. Although the act only authorizes state courts to assert jurisdiction and not the application of state regulatory law, [5/](#) it significantly diminished tribal immunity.

Fifteen years later, in a partial reversal, Public Law 280 was amended to provide that thereafter, no state could assume civil jurisdiction under the act without the approval of tribal membership at an election. In addition to jurisdictional rights granted under Public Law 280, the Supreme Court has applied several tests when making regulatory or civil jurisdictional determinations, such as the preemption or infringement tests, under which states have been given, for example, specific taxation rights, rights to regulate on-reservation fishing and rights to require tribal members to acquire licenses to sell liquor on reservations.

Sovereignty issues involving land interests in Indian Country present similar challenges in proposed business transactions between tribes and nontribal entities. Ownership may include tribal trust lands, tribal fee lands, allotted trust lands held by individual Indians, fee land held by non-Indians, federal public land, and county and state lands, often resulting in adverse and competing tribal, state and federal interests. Tribal, state and federal jurisdictional authority varies with each. The nature of the property involved in a business transaction will determine whether, for example, a state court judgment can be enforced against real property in Indian Country.

This discussion illustrates some of the sovereignty issues the non-Indian investor, lender or developer may face when doing business in Indian Country. But perhaps the real obstacle posed by tribal sovereignty is not the uncertainty that state or federal law will apply or that disputes will be resolved in state or federal court but rather the lack of understanding of or confidence in tribal law and the tribal court systems. As tribes increasingly demonstrate capable self-governance through the continued development of their tribal courts and adoption of commercial and other regulatory codes, it is likely that the perception of tribal sovereign immunity as a barrier to the non-Indian seeking to do business in Indian Country will correspondingly lessen.

Susan Woodrow is a senior counsel at the Federal Reserve Bank of Minneapolis and an active volunteer at the Pine Ridge Indian Reservation in South Dakota.

1/ Worcester v. Georgia, 31 U.S. 515, 559 (1832).

2/ Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 208 (1978).

3/ Minnesota, Wisconsin, Oregon, California, Nebraska and Alaska.

4/ Act of Aug. 15, 1953, 67 Stat. 588 (1953); codified as amended at 18 U.S.C.A. §§1321-1326 and 28 U.S.C.A. §1360 (1988).

5/ The Supreme Court, in Bryan v. Itasca County, 426 U.S. 373 (1976), made it clear that the intent of the law was to grant states jurisdiction over private civil litigation involving tribal members in state law matters such as contract, tort, marriage, divorce and so on. *Id.* at 384 n. 10.

Model code addresses economic development in Indian Country

A model commercial code for Indian tribes is designed to encourage the business and lending communities to invest in Indian Country and foster economic development.

July 1, 1998

AUTHOR



Maylinn E. Smith

Indian Country historically has not been a hotbed of economic development. Non-Indian entities frequently do not evaluate opportunities for establishing viable business ventures within Indian Country, except perhaps in the natural resource-extraction arena. As a result, the economic development projects that do exist in Indian Country generally reflect some type of revenue-generating enterprise or activity established and operated directly or indirectly by the tribal government. Reasons given by non-Indian developers or investors for this lack of economic development within Indian Country are routinely summed up with two words: "uncertainty" and the "unknown."

Indians, non-Indians address strategies

The Montana Regional Strategies Initiatives (MRSI) held several meetings beginning in 1995 to explore issues contributing to low levels of economic development in the state. Indian and non-Indian participants met to address strategies to improve the business opportunities in the economically depressed regions of Montana, including Indian Country areas. Meeting participants identified several key factors perceived as barriers to economic development in Indian Country. One concern expressed repeatedly at these meetings was the lack of tribal laws that would provide some legal certainty with regard to commercial transactions.

Consequently, MRSI created the Tribal Business Code Development Task Force to evaluate various alternatives for addressing this concern. The task force ultimately recommended developing a model commercial code for tribes. The group decided on this approach because it believed it would likely have the broadest effect on economic development prospects in Indian Country in the shortest time.

In the spring of 1996, Professor Raymond Cross from the University of Montana-Missoula's School of Law offered MRSI the services of the Indian Law Clinic to develop a model secured transaction law. Gerald Sherman, community development officer with First Interstate BancSystem, Billings, Mont., sought funding from a variety of tribal and nontribal entities to help defray the costs of this project. Although several clinic students worked on the project, Morgan Damerow, now an attorney in the Seattle area, drafted the majority of the secured transaction law.

Drafting this model law was a multistep process similar to other tribal code development projects the clinic has undertaken. The clinic reviewed all existing tribal commercial laws and determined the areas of commercial law that tribes considered important. During the drafting process, the clinic incorporated as many of these provisions as deemed to be relevant into the model law. Several provisions were included as options for tribes to consider when drafting their own tribal commercial codes. In addition, based on discussions with various tribal entities or interests, the clinic considered current tribal needs and included provisions for handling problems frequently experienced in commercial dealing in Indian Country. The clinic used the secured transaction article of the Uniform Commercial Code as drafted by the National Conference of Commissioners on Uniform State Laws for provisions to incorporate into the model tribal law.

Model code provides uniformity, certainty

The final product is intended to be a culturally responsive document that recognizes the sovereign aspects of tribes and that can be used in the development of individual tribal commercial codes. The model law can be enacted independently or incorporated as part of a more comprehensive commercial code. In addition, the model law incorporates principles that are intended to reduce—if not eliminate—the perceived barriers to doing business in Indian Country. Because this model secured transaction law is designed to

provide a degree of uniformity and certainty in commercial dealing, it should minimize the perceived risks associated with doing business in Indian Country. This may in turn encourage the business and lending communities to invest in Indian Country and foster economic development.

The clinic continues to receive requests for this model secured transaction law from tribal entities and organizations. Given the expressed interest in this area of Indian law, the clinic would consider creating additional model tribal laws focusing on other commercial areas, provided funding can be located.

Maylinn E. Smith is director of the Indian Law Clinic of the University of Montana's School of Law.

What is a Uniform Commercial Code?

The Uniform Commercial Code (UCC) is a set of standardized laws drafted by the National Conference of Commissioners on State Laws that govern most, if not all, aspects of commercial transactions. The various laws, or articles, that comprise the UCC cover substantive areas of commercial law which deal separately with sale of goods, leases, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, warehouse receipts and bills of lading, investment securities and secured transactions. The UCC, which has been adopted by all states except Louisiana, provides the primary means by which risk will be allocated among parties in commercial dealings. Because the various jurisdictions that have adopted the UCC operate under substantially the same set of commercial laws, financial institutions and commercial entities are able to do business across jurisdictional boundaries with a large degree of certainty as to the rules that apply and the way risk will be allocated in the event something goes wrong.

In Indian Country, one hoped-for outcome of the model tribal law discussed in this article is that economic development will be promoted by providing a sound economic environment in which businesses and banks can operate. The model tribal law is modeled after Article Nine of the UCC, Secured Transactions; Sales of Accounts and Chattel Paper (the shortened title for which is "Uniform Commercial Code-Secured Transactions").

Federal Reserve Governor Meyer visits Ninth District Indian reservations

An interview with Federal Reserve Governor Laurence H. Meyer, who visited two Minnesota Indian reservations in May 1998.

July 1, 1998

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Authors' note: *On May 20, Federal Reserve Governor Laurence H. Meyer visited two Minnesota Indian reservations to discuss economic development with leaders of the reservation communities.*

At the Mille Lacs Reservation near Onamia, Governor Meyer was welcomed by tribal Chief Executive Officer Marge Anderson, who led a meeting with tribal officials and staff members at which a wide range of economic issues were discussed. At the Fond du Lac Reservation in Cloquet, Meyer, tribal Chairman Robert "Sonny" Peacock and other officials and staff members engaged in a dialogue about the economic outlook for tribes.

Governor Meyer also met with lenders from Cloquet-area financial institutions to discuss issues and opportunities relating to lending in Indian Country.

The Region, a quarterly publication of the Public Affairs Department of the Federal Reserve Bank of Minneapolis, recently interviewed Governor Meyer and discussed his visit to Minnesota's Indian Country. What follows is an excerpt of the article that will appear in the September 1998 issue of *The Region* in which Governor Meyer discusses his visit.

Region: What was your impression of your trip to northern Minnesota, including visits to the Mille Lacs and Fond du Lac reservations?

Meyer: My recent area of specialization at the Board has been Consumer and Community Affairs because I chair the oversight committee for this area. When I travel to Reserve Banks, I usually try to visit with community nonprofit organizations, bankers and local government officials to learn about the success of banks—and private/public sector partnerships in which they participate—in facilitating affordable housing, small business lending and general economic development in low- and moderate-income communities.

Because the Ninth District has a large number of Indian reservations, we decided to use this opportunity to acquaint me with the special challenges of banks lending and providing financial services on Indian reservations. The two reservations I visited each had casinos and both had taken advantage of the revenues from the casinos to invest in community development projects. In one case, I visited a quite extraordinary elementary school—both high-tech and attuned to the cultural values of the tribe—as well as a health clinic that incorporated traditional healers with all the modern facilities. It was very interesting to see this blending of technology and long-standing cultural tradition. On the other reservation, I visited a very impressive community college. In both cases I met with the Indian leadership and bankers, and had a good opportunity to explore ways to facilitate more effective relationships between banks and the reservations.

Most of the time on these trips I'm looking at urban areas, and this is one of the first times that I've seen these challenges in more rural communities.

Region: Did you come away with any new insights?

Meyer: I think I understand better the need for a two-way education process. Bankers have to be better educated about tribal law and about how the tribal court systems work. Also, tribes need to be better educated about what banks need to make loans—on Indian reservations or anyplace else. There have to be, sometimes, adaptations that take place; we have to sit around the table and build those relationships so they work more effectively. As we all know, bankers do not like uncertainty, so what we need to do is find ways to reduce what they view are the special uncertainties having to do with misunderstanding and the variation from tribe to tribe of the legal systems.

In the complete interview, Meyer discusses a wide range of topics from his professional life as a member of the Board of Governors to current changes in the banking industry. To obtain the September 1998 issue of *The Region*, call Public Affairs at (612) 204-5255. *The Region* is also available at minneapolisfed.org/publications_papers/pub_display.cfm?id=3598.

COMMUNITY DIVIDEND

Summer 1998

CDFI program receives applications for 1998 round

By Bill Luecht

The Community Development Financial Institutions (CDFI) Fund, U.S. Department of the Treasury, recently announced that it received 243 applications for its 1998 round of the CDFI Program. In all, there were 131 applications requesting a total of \$169 million for the Core Component of the CDFI Program and 112 applications requesting a total of \$6 million for the program's new Technical Assistance Component. The CDFI Fund will award up to \$40 million for the Core Component and up to \$5 million for the Technical Assistance Component. The Core Component provides direct assistance to the loans, investments and other activities. The Technical Assistance Component may be used for activities that enhance the capacity of CDFIs and entities proposing to become CDFIs which have capacity needs and significant potential for increasing their community development impact.

CDFI Fund's staff, in conjunction with staff from Federal Reserve Banks across the country, conducted 10 of the fund's 13 free informational workshops at which potential applicants were given an opportunity to learn more about CDFI Program's Core and new Technical Assistance Components.

"We were delighted with the tremendous response to the CDFI Program, especially to the new Technical Assistance Component," said CDFI Fund Director Ellen Lazar. "I am truly grateful to the Federal Reserve Banks and their dedicated staffs because they were a critical component of the fund's successful outreach to potential applicants."

A total of 425 individuals representing 33 states attended the 13 workshops. Fifty-four people attended the Minneapolis Reserve Bank's May 11 workshop. Workshops also were hosted by Federal Reserve Banks in the following cities: Boston, Chicago, Cleveland, Dallas, Houston, Los Angeles, New York, San Francisco and St. Louis.

The CDFI Fund's mission is to expand access to critically needed capital and financial services in underserved urban, rural and Native American communities, areas where one of the biggest obstacles to

economic development is a lack of access to mainstream sources of private-sector capital.

For more information, call the CDFI Fund at (202) 622-8662 or check the web site at <http://www.treas.gov/cdfi>.

Bill Luecht is public affairs officer at the U.S. Treasury Department's CDFI Fund, Washington, D.C.

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COMMUNITY DIVIDEND

Summer 1998

Applications accepted for 1999 Bank Enterprise Award program

On September 1, 1998, a Notice of Funds Availability (NOFA) for the 1999 Bank Enterprise Award (BEA) Program was published in the Federal Register, officially "opening" the fourth round of the program. According to the NOFA, \$25 million is being made available. However, the fund may award more than \$25 million if the money is available and it is deemed appropriate to do so.

The BEA Program recognizes the key role insured depository institutions play in community development lending and investing. The program provides incentives for banks and thrifts to increase their investments in community development financial institutions (CDFI) and to increase their lending and provision of financial services in distressed communities.

In an effort to assist banks and thrifts that may wish to apply and to inform others who may be interested in the program, the CDFI Fund is conducting a series of free informational workshops across the nation. The workshops will provide an overview of the BEA Program regulations, a review of the application materials and a forum to ask questions. Representatives from institutions considering applying to the BEA Program are encouraged to attend one of the workshops, although attendance is not required to submit an application.

For more information, please visit the CDFI Fund's web site at <http://www.treas.gov/cdfi> or call the fund at (202) 622-8662.

To obtain a 1999 BEA Program application, please send your request by fax to (202) 622-7754. Please include the following information in your request: institution name, requestor's name and title, mailing address, and phone and fax numbers.

Federal Reserve Bank of Minneapolis/**Community Affairs**

COMMUNITY DIVIDEND

Summer 1998

Resources

For free copies of recent issues of *Community Dividend*, community development articles or newsletters from other Federal Reserve Banks, contact Community Affairs at the Federal Reserve Bank of Minneapolis at (612) 204-5074.

Community Dividend

Spring 1998 features: HUD 184 loan program helps Native Americans achieve homeownership; Implementing NAHASDA: How the rule was written; The role of banking debt in community development

Fall/Winter 1997 features: Small town addresses big housing shortage; Assistant Secretary Retsinas' speech highlights housing conference; Bank CDCs: Building partnerships for community development

Summer 1997: Recycling resources; Success of the Community Reinvestment Fund; Spotlight on Anoka/Sherburne County Capital Fund

Summer 1997: Recycling resources; Success of the Community Reinvestment Fund; Spotlight on Anoka/Sherburne County Capital Fund

Spring 1997: Credit scoring and small business loans

Indian Issues

Lending in Indian Country: Cultural and Legal Issues video and guidebook explores many issues of interest to those seeking to do business in Indian Country. \$135. For a brochure and order form, call (800) 553-9656, ext. 5074.

Sovereignty: The Strength of Nations--and of Business, the theme for the winter 1997 issue of *Community Reinvestment*, explores the connections between sovereignty, nation-building and economic prosperity in Indian Country. Contact the Federal Reserve Bank of Kansas City, (800) 333-1010, ext. 2687; <http://www.kc.frb.org/comaffrs/cainfo.htm>.

Lending in Indian Country: Cultural, Legal, and Business Issues explores issues related to doing business in Indian Country. This 28-page publication offers sections on economic development, banking,

Internet addresses to obtain CRA ratings and future CRA evaluation schedules

Federal Financial Institutions Examination Council (FFIEC)
<http://www.ffiec.gov/cracf/crarating/main.cfm>

Federal Reserve Board
<http://www.federalreserve.gov/DCCA/CRA/default.htm>

Federal Deposit Insurance Corporation
<http://www.fdic.gov/databank/qbp/excra.html>

Office of the Comptroller of the Currency

successful projects and communication. Winter 1994.
Contact Federal Reserve Bank of Kansas City, (800)
333-1010, ext. 2687.

<http://www.occ.treas.gov/cra/cra.htm>

A Guide to Mortgage Lending in Indian Country provides banks with an introduction to issues frequently encountered when making mortgage loans to Native Americans. It includes background information about legal issues, highlights steps in the lending process unique to Indian Country, describes government loan guarantees and secondary market programs, and lists regional offices of relevant organizations and government agencies. July 1997. For a copy, send a request and a \$15 check to the Office of the Comptroller of the Currency, P.O. Box 70004, Chicago, IL 60673-0004.

Office of Thrift Supervision
<http://www.ots.treas.gov/news.html>

U.S. Department of Housing and Urban Development (HUD)
Office of Native American Programs (ONAP)

- *Our Home Series*, A series of publications relating to promoting homeownership in Indian Country.
- *Assessment of American Indian Housing Needs and Programs: Final Report*, HUD, Office of Policy Development and Research
- *Building Partnerships for Better Communities: Success Stories from Indian Country*, DU100C000018407

For more information on ONAP publications, contact Jackie Kruszek, (303) 675-1690, ext. 3306.

Web Sites

1998 Community Development Investments Directory

- <http://www.federalreserve.gov/dcca/directory/>

Access the web sites listed below for the latest resources available for Indian Country, including up-to-date information on NAHASDA and the national Office of Native American Programs.

- <http://www.codetalk.fed.us>
(NAHASDA - 1996/Reference Documents/Federal Regulations)
- <http://www.hud.gov/progdesc/insec184.html>
- <http://www.onaben.org/prog/prog.html>
(ONABEN - A Native American Business Network)

The following site has 1990 U.S. Census information on population and housing, including American Indian and Alaska Native reports.

- <http://govinfo.kerr.orst.edu/stateis.html>

We, the Americans series

<http://www.census.gov/apsd/www/wepeople.html>

Follow up on HUD 184 program article

An update on the HUD 184 residential mortgage loan program for Indian Country.

July 1, 1998

In the [Spring 1998 Community Dividend](#), we published an article discussing the U.S. Department of Housing and Urban Development (HUD) 184 loan program for residential mortgages on homes located in Indian Country. To give you the most complete and up-to-date information, we offer the following additional information.

As we stated in the article, no mortgage insurance is required for loans made under this program. However, HUD does require a 1 percent loan guarantee fee on all loans. The fee may be paid in cash or financed in the mortgage and may be paid by the borrower or the seller. Also, HUD does require that the borrower make a down payment, generally based on 2.25 percent of the lesser of the property's appraised value or the acquisition cost, which is the sales price plus the closing costs. (If the appraised value or acquisition cost is \$50,000 or less, the down payment is generally based on 1.25 percent.) The down payment may be a loan from a third party, such as a tribe or not-for-profit organization, or a gift from a relative, tribe, or not-for-profit organization.

Furthermore, while HUD will not allow refinancings using the 184 program, it will allow the borrower who owns a home to refinance using another program. In other words, the borrower may pay off a HUD 184 loan early if he or she can obtain financing through another HUD or Federal Housing Administration program or from another source.

Finally, we note that the procedures for processing HUD 184 applications have been updated. In particular, no longer should the lender submit the application package to the HUD Office of Native American Programs (ONAP) field office to request a prequalification commitment. This step has been eliminated.

For complete information about the HUD 184 loan program and its technical requirements, please contact ONAP at (303) 675-1600 or visit www.hud.gov/offices/pih/ih/homeownership/184/.