COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT
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Mr. Bob Ibanez
Manager
NMTC Program, CDFI Fund
U.S. Department of the Treasury
601 Thirteenth Street, NW, Suite 200 South
Washington, DC 20005-3857

Dear Mr. Ibanez,

The Council for Native Hawaiian Advancement ("CNHA") hereby submits these comments in response to the New Market Tax Credit (NMTC) Program administered by the Community Development Financial Institutions (CDFI) Fund and the Internal Revenue Service (IRS).

Background

Founded in 2001, CNHA is a national network of over 150 Native Hawaiian Organizations dedicated to enhancing the cultural, economic, and community development of Native Hawaiians. CNHA delivers its mission through the administration of the Native Hawaiian Policy Center, operation of a Native CDFI Loan Fund, provisions of capacity-building and community initiatives, and coordination of the annual Native Hawaiian Convention in Hawaii each year. CNHA is most comparable to other Native organizations such as the National Congress of American Indians and the Alaska Federation of Natives. These comments are submitted based on consultation and convening with CNHA organizational members, with a particular emphasis on CNHA member organizations that have elected leaders by Hawaiian Home Land beneficiaries as defined under the Hawaiian Homes Commission Act, due to the significant relevance and similarity to trust lands and allotment lands of American Indians and Alaska Natives.

Hawaiian Homes Commission Act of 1920

In 1921, relying in part on the precedent of the General Allotment Act, which provided individual lands for American Indians under Federal protections, Congress passed the Hawaiian Homes Commission Act of 1920. The purpose of the Act was to rehabilitate the Native Hawaiian people by setting aside for Native Hawaiian settlement and agricultural use 200,000 acres of the 'Ceded' lands, i.e., the former Crown and public lands of the Kingdom of Hawaii that had been ceded to the United States upon annexation. The legislative history of the Act makes clear that Congress considered Native Hawaiians to be Hawaii's indigenous peoples, and sought to extend towards Native Hawaiians, federal policies similar to that of American Indians and Alaska Natives.

> Mr. WISE [Senator John Wise, Territorial Legislature]. The Hawaiian people are a farming people and fishermen, out-of-door people, and when they were frozen out of their lands and driven into the cities they had to live in the cheapest places, tenements. That is one of the big reasons why the Hawaiian people are dying. Now, the only way to save them, I contend, is to take them back to the lands and give them the mode of living that their ancestors were accustomed to and in that way rehabilitate them. We are not only asking for justice in the matter of division of the lands, but we are asking that the great people of the United States should pause for one moment and, instead of giving all your help to Europe, give some help to the Hawaiians and see if you cannot rehabilitate this noble people.

> Secretary LANE [Secretary of the Interior Lane]. One thing that impressed me there was the fact that the natives of the islands, who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty. . . . [T]hey are a problem now and they ought to be cared for by being provided with homes out of the public lands; but homes that they could not mortgage and could not sell.

(*House Committee on Territories, Rehabilitation and Colonization of Hawaiians and Other Proposed Amendments to the Organic Act of the Territory of Hawaii and on the Proposed Transfer of the Buildings of the Federal Leprosy Investigation Station at Kalawao on the Island of Molokai to the Territory of Hawaii, H.R. Doc. No. 839, 66th Cong., 2d Sess. at 4 (1920)*).

As a condition of the Hawaii Statehood Act in 1959, the State of Hawaii agreed to administer the Hawaiian Homes Commission Act, and in 1960, the state agency, Department of Hawaiian Home Lands (DHHL) was created to administer the Hawaiian Home Lands program and to manage the Hawaiian Home Lands trust, with federal oversight. Similar to the Bureau of Indian Affairs (BIA) at the federal level, the state DHHL is mandated at the state government level to manage the Hawaiian Home Lands trust. DHHL is headed by an Executive Board, the Hawaiian Homes Commission, composed of nine members who are appointed by the Governor of Hawaii and confirmed by the Hawaii State Senate.

The United States maintained its federal trust responsibility which requires United States consent to certain amendments made to the Hawaiian Homes Commission Act. Congress has subsequently acknowledged and reaffirmed this trust responsibility in various statutes. The United States affirmed its position in its brief filed by the United States Department of Justice before the United States Supreme Court in the case of <u>Rice v. Cayetano</u>.

The Hawaiian Homes trust lands are located in non-contiguous parcels throughout the State of Hawaii, with the majority of homestead communities located in remote, rural areas of the state. In enacting this statute, Congress intended to “rehabilitate” Native Hawaiians through the award of land for residential, pastoral, or agricultural homesteading, very similar to land allotments described in the General Indian Allotment Act of 1906. Despite the fact that over ninety years have passed since the enactment of the Hawaiian Homes Commission Act, there is still an extensive waiting list for residential, pastoral, or agricultural homestead land requests. According to the State of Hawaii DHHL 2011 Annual Report, the Department had 8413 residential leases awarded with 20,216 beneficiaries on the residential waiting list. Similarly, the report shows 1101 agricultural leases awarded with 17,803 beneficiaries on the agricultural lease waiting list and 408 pastoral leases awarded with 2929 beneficiaries on the pastoral lease waiting list.

NMTC Program

The Council for Native Hawaiian Advancement firmly supports the NMTC program, created in 2000, and its success in encouraging investment in communities where access to capital has previously served as a barrier to successful economic development. Over the past decade, the NMTC program has demonstrated that with the right incentives, investors are willing to invest in economically distressed and underserved communities. Many of our communities on native trust lands face challenges in attracting capital investments and the NMTC Program serves as an attractive tool for bringing capital to projects located on native trust lands.

In response to the question of whether the CDFI Fund should consider using different standards or methodologies for determining whether census tracts meet the statutory definition of low-income communities, CNHA strongly suggests that the CDFI Fund examine ways to expand eligibility for New Market Tax Credits to automatically include projects on lands that are designated as Substantially Underserved Trust Areas (7 USC 936f) hereafter referred to as “SUTA.” The 2008 Farm Bill (P.L. 110-246) codified the term, Substantially Underserved Trust Area , which applies to trust lands which are defined to be any land that: (1) is held in trust by the U.S. for Native Americans; (2) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands); (3) is owned by a Regional Corporation or a Village Corporation; or is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land.

The U.S. Department of Agriculture, through the Rural Utility Service (RUS) is authorized to provide grants and loans at rates as low as 2% to support the construction, acquisition or improvement of infrastructure on SUTA lands. This is a vitally important tool that recognizes that efforts to increase access to capital should include trust lands as a category in addition to low-income and rural communities. The New Market Tax Credit program would exponentially benefit and enhance economic development and capacity in native communities if all Substantially Underserved Trust Areas were made eligible for participation in the program.

This modification, which would have no cost to the U.S. government, would advance the incentives and awareness of economic development opportunities by capital markets. Access to capital is the lifeline to any healthy community and its ability to produce high economic impact. Inclusion of trust land areas will broaden the spectrum for private sector and financial institution dollars to consider projects in trust land areas, whether for energy, business, school facilities or marketplaces.

CNHA also supports reform in the area of qualification of census tracts. The CDFI Program identifies targeted populations, but the NMTC Program does not necessarily follow suit through the Internal Revenue Service code. This results in increased costs for an economic development entity and a reduction in the available tools for financing important projects in certain areas. CNHA supports making areas populated by more than 50% of a CDFI Program Low Income Target Population eligible for NMTC, or, in the alternative, making this factor a marker of high distress.

Increasing eligibility for the New Market Tax Credit on Substantially Underserved Trust Area lands would ensure that trust land areas and Native peoples are not left behind in accessing capital. We must complete the journey. We must connect the long standing needs of Indian Country and trust land areas to the mainstream capital programs developed for rural, underserved and low income populations and geographical areas.

If there are any questions or comments about this submission, please contact us at info@hawaiiancouncil.org or via telephone at 808-596-8155.

Sincerely,

Robin Danner
President and CEO