



October 30, 2017

Richard Cordray
Office of the Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552



Via Mail and E-Mail



Director Cordray,

Since its inception the Consumer Financial Protection Bureau (“CFPB”) has taken many strides to work with the Federally Recognized Tribes of the United States. We the signatories applaud the work that the Bureau has done to protect the interests of Indian Country, such as working with the Navajo Nation to safeguard its citizens, the continued productive dialogue with several national intertribal organizations and the ongoing efforts to protect our communities from predatory practices. It is because of the Bureau’s continuing work with Indian Country that we are writing you today to express our concern over specific language recently used in a CFPB consent order. It is important to clarify that our concern is limited only to certain language used in the consent order and we have no position or interest in the merits of the claims, or to the named party of the consent order.

The specific language to which we refer is:

“... no Person may take into consideration any contention that state or federal law is inapplicable, or that lenders are not subject to state or federal law, because of lender sovereignty or a lender’s foreign, offshore, or tribal status or affiliation, or because of choice of foreign or tribal law.” (File No. 2017-CFPB-0017)

For those of us that spend our lives working in the field of Federal Indian law and policy, this language, as currently written, has some very troubling implications that go beyond the very limited scope and applicability of one innocuous consent order with a non-Tribal business.



Specifically, the above language suggests that state law may apply to conduct of a Federally Recognized Tribal Nation, and that the CFPB questions the validity of Tribal sovereignty. Absent more precise language to further clarify the CFPB's position, such assertions are in direct opposition of long standing Federal Indian law and policy. The Federal government has clearly limited the intrusive encroachment of state law within Tribal borders and has repeatedly affirmed Tribal sovereignty. Additionally, the Federal government has further recognized Tribal sovereignty through the extensive executive orders mandating formal Government-to-Government consultations in an effort to maintain a proactive relationship with Tribal nations.

Further concerns that exists are the external implications such language may have on businesses seeking opportunities to work and partner with Tribes in the industry. Is such language becoming boilerplate for CFPB consent orders? Will industry actors be targeted for entering into business relationships with Tribes? While we would deduce from the CFPB's track record in working with Indian Country that this is not the Bureau's intent, regardless these are the questions that surface when broad sweeping language implicating Indian Country is used by the Federal government. There are currently 567 Federally Recognized Tribes, many of which do not have the capacity to lose any viable opportunities for economic development, so there is a genuine concern being vocalized by our communities.

According to the United States Supreme Court the Federal Trust Responsibility is "*moral obligations of the highest responsibility and trust towards Indian tribes.*" The Bureau has accomplished some great work with Indian Country acting with *moral obligations of the highest responsibility and trust.* It is because of the CFPB's track record with Tribes that we trust you will hear our concerns today and take positive measures to address the aforementioned.

The signatories of this letter respectfully request an opportunity to meet with the CFPB to offer insight and guidance regarding Indian Country and federal Indian law and policy. We look forward to scheduling such a meeting at your or your senior staff's earliest convenience.

Respectfully,

Gary Davis, Executive Director
Native American Financial Services Association

Jacqueline Kus.een Pata, Executive Director
National Congress of American Indians

John R. Shotton, Chairman
Otoe-Missouria Tribe

Donald Duncan, Vice-Chairman
Guidiville Indian Rancheria

Russell Begaye, President
Navajo Nation

Mark Fox, Chairman
Mandan Hidatsa Arikara Nation

John Echohawk, Executive Director
Native American Rights Fund

Harlan Baker, Chairman
Chippewa Cree Tribe

Julie Kitka, President
Alaska Federation of Natives

Cristina Danforth, President
Native American Finance Officers Association

Louis Taylor, Chairman
Lac Courte Oreilles Tribe

Michael G. Anderson, Executive Director
Native American Contractors Association

Russell Begaye, Chairman
Coalition of Large Tribes

Chris James, President and CEO
National Center for American Indian Enterprise
Development

Sherry Treppa, Chair
Habematolel Pomo of Upper Lake