



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #TUL-13-057

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TITLE: Request for Consumer Financial Protection Bureau and Federal Deposit Insurance Corporation to Act Consistent with Executive Orders on Tribal Consultation and with Federal Policy Supporting Tribal Self-Determination and Self-Governance

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, pursuant to inherent sovereign rights of self-governance and self-determination, Indian nations have enacted tribal lending laws and have established tribal regulatory agencies to ensure compliance with such tribal lending laws, and federal laws; and

WHEREAS, pursuant to its inherent sovereign rights of self-governance and self-determination, many Indian nations have also established wholly-owned tribal businesses to provide short term online consumer lending services, pursuant to such duly enacted tribal laws authorizing the conduct of these business operations; and

WHEREAS, President Clinton's Executive Order 13175 titled "Consultation and Coordination with Indian Tribal Governments." Acknowledged that the United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights;" and

WHEREAS, in 2009, President Obama issued an Executive Memorandum directing all Federal agencies to develop a written plan of action that each agency will take to implement the policies and directives of E.O. 13175 and to consult and coordinate with tribal governments about this plan; and

WHEREAS, In July 2010, Congress enacted the Dodd–Frank Wall Street Reform and Consumer Protection Act, (“Dodd–Frank Act”), for the stated purpose of “promot[ing] the financial stability of the United States by improving accountability and transparency in the financial system . . . [and] protect[ing] consumers from abusive financial services practices.” 12 U.S.C. § 5301 – 5641, at § 5536; and

WHEREAS, the Dodd-Frank Act established the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) to protect consumers by carrying out Federal consumer financial protection laws. 12 U.S.C. § 5491; and

WHEREAS, pursuant to the Dodd-Frank Act, Congress expressly defined tribes as a “State”, thereby recognizing the authority of tribal governments to legalize, regulate, and conduct short-term online consumer financial services; and

WHEREAS, in April 2013, the CFPB issued a “Policy for Consultation with Tribal Governments” in order to “engage in meaningful government-to-government” dialogue” with tribal governments; and

WHEREAS, the CFPB has taken recent quasi-enforcement actions, such as issuing Civil Investigatory Demands (CID’s) against Tribally-owned online lending entities, without any prior consultation or working relationship in place with the Tribal regulatory agencies, which is contrary to the spirit of co-regulation as set forth by the Dodd-Frank and inconsistent with the tenants of federal Indian law; and

WHEREAS, the CID’s could reveal proprietary and confidential information to the CFPB, which could be passed along to State Attorney’s General in order to pressure or even prosecute non-tribal businesses, which provide services to Tribal online lending operations; and

WHEREAS, the CFPB should have a formal policy with tribal regulatory agencies, focusing on the preservation of confidentiality (unless a federal law is broken and enforcement action is required) of any information obtained from Tribal online lending businesses.

NOW THEREFORE BE IT RESOLVED, NCAI urges that the Federal Deposit Insurance Corporation (FDIC), the CFPB, and all other federal agencies act in a manner that is wholly consistent with its trust responsibilities owed to Indian Nations; and

BE IT FURTHER RESOLVED, NCAI calls for the Administration, and the CFPB and FDIC to work cooperatively and collaboratively with Tribal Nations as a “State,” thereby recognizing the authority of tribal governments to legalize, regulate, and conduct short-term online consumer financial services to ensure a system of co-regulation pursuant to the express terms of the Dodd-Frank Act; and

BE IT FURTHER RESOLVED, NCAI seeks to ensure all of the divisions of the CFPB adhere to the Bureau’s own tribal consultation policy as well as the federal policy of support and deference to tribal self-determination and self-regulation and recognize the special federal relationship between the United States and Indian Nations; and

BE IT FURTHER RESOLVED, in fulfilling its special trust obligations to Indian Nations, NCAI recommends that the CFPB work cooperatively with Tribal governments and Tribal regulators and keep all information provided by Tribes confidential and not disclose such information to State Attorneys General or State Consumer Protection Departments; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2013 Annual Session of the National Congress of American Indians, held at the Cox Business Center from October 13 - 18, 2013 in Tulsa, Oklahoma with a quorum present.


President

ATTEST:


Recording Secretary