

# ACCESSING CAPITAL IN INDIAN COUNTRY

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## HEARING

BEFORE THE

## COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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JUNE 17, 2015

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## ACCESSING CAPITAL IN INDIAN COUNTRY

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WEDNESDAY, JUNE 17, 2015

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. John Barrasso, Chairman of the Committee, presiding.

### OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

The CHAIRMAN. Good afternoon. I call this hearing on Accessing Capital in Indian Country to order.

Today, we will hear our witness' perspectives on how to improve access to capital and their experiences working with Federal partners. As Chairman, I have made it a priority to focus on issues that will help Indian communities to prosper and to enjoy healthier lives.

Fundamental to these goals is the need to build sustainable tribal economies and create jobs in Indian communities. Economic development and the capital necessary for that development are significant needs in Indian communities.

Between 2006 and 2010, when the U.S. unemployment rate was just under eight percent, the average unemployment rate in Indian Country was nearly 15 percent. Also, the Wyoming American Indian unemployment rate from 2009 to 2011 was 67 percent.

That development relies on capital to start, support, and maintain businesses of all sizes. Indian and tribally-owned businesses face unique challenges beyond those that non-Indian businesses in general, face. For example, many tribes are located in remote areas, far away from transportation, distribution, or communication systems suitable for sustainable commerce.

Individual Indians do not have as many small business owners when compared to other groups. For the most part, they also do not receive business or financial assistance from tribes. These businesses, however, tend to employ more people than other small business owners.

In general, business capital is typically secured in the private sector, through banks, credit unions, and other individual groups. The Federal Government's role has expanded to provide access to capital programs through various agencies in the form of loans, loan guarantees, and financial education. To attract investors, that

role also includes promotion and marketing assistance and tax incentives.

This Committee has received testimony in prior hearings relating to economic development that accessing capital is still quite problematic for Indian and tribal businesses. I am looking forward to today's hearing and hearing solutions to improve access to capital from our witnesses.

Before we turn to the witnesses, I would ask other members if they have a statement. Senator Crapo?

**STATEMENT OF HON. MIKE CRAPO,  
U.S. SENATOR FROM IDAHO**

Senator CRAPO. Thank you very much, Mr. Chairman. I appreciate your holding this hearing today on access to capital for Indian Country. Regardless of location, access to capital is one of the most important fundamentals of business and economic development.

I had the pleasure yesterday of addressing some folks from the National Center for American Indian Enterprise Development. I see some of them here today, Mr. Watchman and others. We appreciate the efforts you are undertaking as well.

We know the challenges Indian Country faces in accessing essential business resources are significant. In fact, some of our witnesses today have noted in their testimonies that Native people are most underserved demographic in terms of access to capital.

In addition to available financing resources, other challenges arise for tribal businesses including infrastructure, transportation, proximity to markets and the availability of a skilled workforce.

I have further remarks, Mr. Chairman, but I would submit the rest of my remarks for the record.

I appreciate your holding this hearing. I am going to be pulled out and back a bit today, so I apologize in advance to our witnesses and others.

Thank you again, Mr. Chairman, for holding this hearing and for the attention of all of you here to this critical issue.

The CHAIRMAN. Thank you very much, Senator Crapo.

Today, we will hear from the following witnesses: Ms. Alejandra Castillo, National Director, Minority Business Development Agency, U.S. Department of Commerce; Mr. Derrick Watchman, Chairman, Board of Directors, National Center for American Indian Enterprise Development from Mesa, Arizona; Mr. Ross Hill, President and Chief Executive Officer, Bank2, Oklahoma City, Oklahoma; and Mr. Dante Desiderio, Executive Director, Native American Finance Officers Association in Washington, D.C. Thank you all for being here.

I want to remind the witnesses your full testimony will be made a part of the official hearing record, so please try to keep your statements to five minutes so we may have time for questions.

I look forward to hearing your testimony, beginning with Ms. Castillo.

**STATEMENT OF ALEJANDRA CASTILLO, NATIONAL DIRECTOR,  
MINORITY BUSINESS DEVELOPMENT AGENCY, U.S.  
DEPARTMENT OF COMMERCE**

Ms. CASTILLO. Good afternoon Chairman Barrasso, Vice Chairman Tester, and members of the Committee.

My name is Alejandra Castillo. I serve as the National Director of the Minority Business Development Agency, also known as MBDA, at the U.S. Department of Commerce. I am pleased to be here today to discuss the important topic of Accessing Capital in Indian Country.

While there are many programs within the department that benefit Native stakeholders, most of the department's work to improve access to capital for Native-owned firms and other minority business enterprises is done by MBDA.

Through our nationwide network of 44 business centers, we help MBEs to reach their full entrepreneurial potential by serving as a strategic partner for business growth and development through the delivery of technical assistance, access to public and private contracting opportunities, access to markets as well as by providing advocacy, research and education to the benefit of over 5.8 million minority firms across the Country.

Native business owners, especially tribal government and Native entrepreneurs living in Indian Country face many obstacles when starting and growing a business. Access to capital continues to be the number one impediment for Native businesses and other minority businesses.

By any socioeconomic indicator, Native Americans are the most underserved population in the Country. This means that financial literacy, credit history and access to lending institutions on or near Native lands may be lower than in other areas of the Country. Many Indian reservations need improved infrastructure and are geographically isolated which makes it even more difficult for a business to thrive on Indian lands.

Despite these indicators, many tribes have succeeded in creating thriving economies. Many Native people have successfully launched businesses. These success stories are often driven by relationship building.

When it comes to access to capital, MBDA can help communities to build these relationships. We are focusing our efforts at helping firms access a broad spectrum of capital and financing.

MBDA has a long history of partnering with Native American entities such as the National Center for American Indian Enterprise Development, the American Indian Chamber of Commerce of New Mexico, the United Tribes Technical College, and the Indian Pueblo Cultural Center, to name a few.

We understand that while Native-owned businesses might be classified as MBEs, the United States owes a unique trust responsibility to the various Indian tribes and Native Americans.

We believe the best way for tribes to effectively self-govern is to empower tribes and Native people to create jobs and opportunities on and off reservations, thus ensuring that a strong economic multiplier effect is created. What better way to do that than through the creation and growth of Native-owned firms.

That is why Native-owned businesses are welcome to avail themselves of the assistance of any of our 44 centers, 6 of which are strategically located nearly major Native population centers such as Anchorage, Alaska; Fresno, California; Santa Fe, New Mexico; Bismarck, North Dakota; Tulsa, Oklahoma; and Bridgeport, Connecticut.

When a Native-owned firm comes to MBDA seeking assistance, our business centers are ready to provide individual, tailored consulting services designed to help them develop viable and sustainable business development strategies, identify capital for their growth, target potential private and public sector contracting opportunities and assist them in becoming export ready.

Our technical assistance is designed to ensure that Native firms and MBEs are able to grow in size, scale and capacity. Additionally, MBDA advocates for MBEs including Native-owned firms in the traditional banking space through relationships with national banks and countless community banks.

We also work closely with other Federal agencies outside the Department of Commerce such as the Small Business Administration and Treasury to leverage existing programs that increase capital opportunities for MBEs through micro lending, community development, financial institutions and other loan guarantee programs.

Through these partnerships, MBDA has served thousands of Native American businesses. This year, to date, our network center has served 1,100 American Indian and Alaskan Native firms. Further, over the past six fiscal years, FY 2009 through FY 2014, MBDA has assisted Native American clients in accessing over \$1.8 billion in capital.

However, we do not limit ourselves to the work with traditional sources of capital. MBDA is pursuing alternative sources of capital for minority businesses. We created a new access to capital team whose work has been twofold, (1) to educate clients and firms about the type of alternative capital and (2) to advocate on their behalf with the kind of financial resource partners that minority-owned firms have a difficult time accessing.

Finally, MBDA is expanding access to alternative financing with a large portfolio of alternative capital providers including marketplace lenders, angel investors, mergers and acquisition firms in the middle market space and others.

MBDA makes these relationships available to Native businesses through its national network of MBDA centers. Fostering the success of Native-owned firms is something MBDA takes seriously.

Chairman Barrasso and Vice Chairman Tester, thank you for the opportunity to speak to you today. I am happy to take any questions.

[The prepared statement of Ms. Castillo follows:]

PREPARED STATEMENT OF ALEJANDRA CASTILLO, NATIONAL DIRECTOR, MINORITY  
BUSINESS DEVELOPMENT AGENCY, U.S. DEPARTMENT OF COMMERCE

#### **Introduction**

Good Afternoon Chairman Barrasso, Vice Chairman Tester, and members of the Committee. I am Alejandra Castillo, and I serve as the National Director of the Minority Business Development Agency, also known as MBDA, at the U.S. Department of Commerce. I am pleased to be here today to discuss the topic of "Accessing Capital in Indian Country."



There are many programs within the Department that benefit tribes, including programs that offer grants to tribal governments for the purpose of economic and infrastructure development, programs that help tribal businesses export their goods overseas, and tourism projects that help attract more revenue to tribal lands. We are here today to discuss access to capital, but accessing capital is one prong of the business development strategy. The Department has many programs which can help Native-owned businesses thrive.

My testimony today will outline MBDA's mission and vision in assisting the Nation's 5.8 million minority-owned businesses, which also include businesses owned by American Indians and Alaska Natives. For the purpose of this hearing, I will highlight MBDA's research findings on access to capital and steps MBDA is taking to create a more robust and sustainable ecosystem to help minority businesses obtain more capital for their current and future needs. Finally, I would like to share some specific examples of American Indian and Alaska Native firms that have grown as a result of working with MBDA.

#### **The Minority Business Development Agency: Overview**

For over forty-five years, MBDA has been working aggressively to expand the economic footprint of minority business enterprises (MBEs).

MBDA serves as the only federal agency tasked to help MBEs realize their full economic potential through technical assistance, public and private contracting opportunities, advocacy, research, education, and by serving as a strategic partner for growth and development. The bulk of this work is accomplished through our nationwide network of MBDA Business Centers. Each Center provides services that assist businesses in accessing capital, contracts, and new markets, as well as helping them to grow in size and scale.

#### **Research Findings: Disparities in Access to Capital**

In 2010, MBDA released a report entitled, "Disparities in Capital Access." Some of the key findings included:

- Minority-owned firms receive lower loan amounts than non-minority firms. While the average loan amount for all high-sales minority firms was \$149,000, non-minority firms received an average of \$310,000 or more than twice the amount;
- Minority-owned firms are more likely to be denied loans. Among firms with gross receipts under \$500,000, loan denial rates for minority firms were about three times higher compared to those of non-minority-owned firms. For high sales firms, the rate of loan denial was almost twice as high for minority firms as for non-minority firms; and
- Minority-owned firms receive lower loan and equity investment amounts. Minority firms averaged \$29,879 in external debt compared with \$36,777 for non-minority firms. Minority firms had the most trouble obtaining external equity with \$2,984 on average compared with \$7,607 on average for non-minority firms.

Native business owners, especially tribal governments and Native entrepreneurs living in Indian Country, face many obstacles when trying to access capital. By any socioeconomic indicator, American Indians, Alaska Natives, and Native Hawaiians are the most underserved population in the country. This means that financial literacy, credit history, and access to lending institutions on or near Native lands may be lower than in other areas of the country. Many Indian reservations lack sufficient infrastructure such as adequate sewers, water, roads, and broadband. Many tribes are geographically isolated and therefore struggle to attract skilled workforces, teachers, and health professionals—which in turn, makes it more difficult for businesses to thrive on Indian lands. But despite these grim statistics, many tribes have succeeded in creating thriving economies and many Native peoples have successfully launched businesses. All things being equal, access to capital is really a relationship business and that's where MBDA shines.

#### **Minority Business Development Agency: Working with Native Communities**

MBDA has a long history of partnering with our tribal and Native American colleagues, such as the National Center for American Indian Enterprise Development, the American Indian Chamber of Commerce of New Mexico, the United Tribes Technical College, and the Indian Pueblo Cultural Center. We embrace the rich culture of Native American tribes and we understand that while native-owned businesses might be classified as MBEs, the United States owes a unique trust responsibility to the various Indian tribes and Native Americans. We believe that the best way for tribes to effectively self-govern is to empower tribes and Native peoples to create

jobs and opportunities on- and off-reservation. That is why six MBDA Business Centers are located in geographical areas with large American Indian and Alaska Native populations: Anchorage, Alaska; Fresno, California; Santa Fe, New Mexico; Bismarck, North Dakota, Tulsa, Oklahoma; and Bridgeport, Connecticut.

When a Native-owned firm comes to MBDA seeking assistance with access to capital, our Business Centers provide individually tailored consulting services to them. These services include helping them identify their immediate and long-term business needs; establishing projected growth tracks; implementing targeted plans of action for increasing the firm's size, scale, and capacity; and providing strategic support to promote the achievement of the firm's desired outcomes.

Additionally, MBDA advocates for MBEs, including Native-owned firms, in the traditional banking space through relationships with national level banks and countless community banks through MBDA's national Business Center network. We also work closely with another federal agency outside the Department of Commerce, the Small Business Administration, on increasing opportunities for MBEs to pursue micro-lending opportunities. Through these partnerships and our steadfast commitment to the American Indian and Alaska Native community, MBDA has served thousands of Native American businesses. This year, to date, our entire network of centers has worked with nearly 1,100 American Indian and Alaska Native firms. Further, over the past six fiscal years, FY 2009–FY 2014, MBDA has assisted American Indian and Alaska Native clients with accessing nearly \$1.87 billion in capital.

#### **New Strategies to Improve Access to Capital for Minority-owned Businesses**

In addition to providing access to traditional sources for capital, MBDA is pursuing alternative sources of capital for minority-owned firms. We created a new Access to Capital Team whose work has been two-fold: to educate clients and firms about the types of alternative financing available, and to advocate on their behalf with the kind of resource partners that minority-owned firms have a difficult time accessing. Minority firms lack adequate access to venture capitalists, angel investors, mergers and acquisitions firms, firms with Internet-based platforms, and the many other firms that act as ever more important alternative sources of capital. As I mentioned earlier in my testimony, access to financial institutions by Native-owned businesses, particularly those in rural areas, is exacerbated by geography.

While putting experienced staff to work on the issue is important, it would be nothing without top-level engagement. That is why last October I spoke at the Minority Finance Forum, hosted in partnership with the Association for Corporate Growth in Chicago. I addressed over 800 investment bankers, private equity groups, bank fund managers, family offices, merger and acquisition companies, and banks. While there, I highlighted the need for minority-owned firms to play a role in the middle market and break the barrier in accessing capital. This message was well-received by the attendees. MBDA will continue to engage firms like these to help expand access for minority-owned firms.

Since we understand that many Native business owners might not attend minority business conferences in favor of those focused on Native enterprises, MBDA and other bureaus within the Department have been actively engaging Native business stakeholders. This past March, for instance, I spoke at the 29th Annual Reservation Economic Summit (RES), the leading American Indian enterprise development summit where Native American businesses gather with CEO's, policy makers, and elected leaders to shape the future of economic development in Indian Country. MBDA has also assisted The National Center with coordinating an "access to capital" workshop for the RES conference held this past March in Las Vegas. Additionally, the Department of Commerce, through the Secretary's Office, the Census Bureau, and SelectUSA, a program within the International Trade Administration, has contributed to this week's RES–DC Conference to make it a success.

Finally, MBDA is also engaged in the use of alternative finance through partnerships with a large portfolio of alternative capital providers including Internet based lenders, angel investor networks, micro lenders, Community Development Financial Institutions, and other investors in the middle-market space. Through our Business Center Network, these resources are available to MBEs including Native-owned firms.

#### **MBDA Native American Client Success Stories**

MBDA has been successful in assisting Native-owned businesses access capital. I would like to highlight two examples of our work.

Given Oklahoma's high Native American population, it is no surprise that 85 percent of the Tulsa MBDA Business Center clients are Native American, including tribally-owned and individual Native-owned firms. One such client is Cherokee

CRC, an award winning environmental, construction, and professional services company with Tribal 8(a) and HUBZone certifications. In Fiscal year 2014, the Tulsa MBDA Business Center helped the firm secure \$68 million in contracts and \$15 million in financing. The company is tribally-owned so all profits from these endeavors are returned to the Cherokee Nation. The tribe is currently constructing four new health clinics and a hospital with profits from Cherokee CRC and other tribally-owned businesses.

Another example is Terra Firma II, a construction management company located in Seattle, Washington founded in 2002 by Michael Giomi, a tribal member from the Walker River Paiute tribe of Schurz, Nevada. Terra Firma II was significantly impacted by the economic downturn in 2007/08 and faced difficulties procuring any type of funding for new development based on its past debt with an institutional lender. Prior to working with the Seattle MBDA Business Center, Terra Firma II's growth was extremely limited.

After Terra Firma II, became an MBDA client, the Seattle staff provided the company a detailed, four-step growth plan. The plan was set in motion in June 2012 and one year later, Terra Firma II secured a \$400,000 loan with Cobalt Mortgage, thereby ensuring it had assets and equity. The fourth step, which is still in process, is to assist the client in securing a new business line of credit so that it can have working capital for private, public, and Native American developments, thereby creating even more jobs.

#### **Conclusion**

Chairman Barrasso and Vice Chairman Tester, I want to thank you and this Committee for the opportunity to speak with you today. Fostering the success of American Indian and Alaska Native-owned firms is paramount to upholding our Nation's commitment to fostering economic prosperity in Indian Country. As we move forward, the Committee can be assured that MBDA will continue to do everything it can to improve access to capital for Native American firms and to promote the diversity of businesses in Indian Country to public and private sector procurement officers. We know much still needs to be done and we welcome your support of our work. I am happy to answer any questions you may have.

The CHAIRMAN. Thank you very much for your comments and your testimony.

Next, Mr. Watchman.

#### **STATEMENT OF DERRICK WATCHMAN, CHAIRMAN, BOARD OF DIRECTORS, NATIONAL CENTER FOR AMERICAN INDIAN ENTERPRISE DEVELOPMENT**

Mr. WATCHMAN. Good afternoon. Thank you, Chairman Barrasso, Vice Chairman Tester and members of the Committee.

I am Derrick Watchman, a member of the Navajo Nation, and I appreciate your invitation to share my views based on my experience in banking and business in Indian Country.

Over the years, I have worked with my tribe and have led the Native American Banking Group at Chase Bank. I also worked at Wells Fargo Bank. I started my banking career at Prudential Capital Corporation.

I chair one of the Navajo CDFI boards and also serve as a board member to the Native American Bank. As chairman of the National Center, I thank the Committee for keeping economic and energy development on your front burner.

And at yesterday's BIA loan guarantee listening session and Buy Indian Act, we felt, that was very effective. These and other topics that were discussed yesterday are being discussed right now in our training sessions at our RES D.C. conference at the Omni Shoreham Hotel. In our conference, we are also talking about access to capital where we are bringing together banks and potential borrowers.

This hearing is also being streamed at our conference today. I want to say hello to all our conference participants at RES D.C.

I was asked to discuss how tribal governments, the banks and the Federal Government can facilitate access to capital in Indian Country. First, for tribes, I believe there are some fundamentals that are needed. We need to have a business-friendly governance and government environment.

We also need to have reasonableness in exercising sovereign immunity and resolving disputes. We also need to establish a better understanding of the different types of financial assistance and programs related to debt obligations.

To achieve these goals, it is very helpful for tribal governments to establish a uniform commercial code system, a commercial system that resolves dispute resolutions in a fair and equitable manner in tribal courts.

A financial management system needs to have expert financial managers who understand the capital markets, financing, the need for business plans, feasibility studies and also to understand the credit soundness of projects.

Finally, I believe tribes need to understand and really look at credit enhancement and how to minimize what is called sovereign risk by the many credit rating agencies. Credit worthiness can be a big hurdle, especially when major banks pull out of some deals where a tribe has declared a default.

Generally, tribes can access capital through conventional means if they are flexible in exercising their sovereign immunity, but many businesses with high margins and low risk can be financed. Lower margin projects and start-ups are always challenging to finance.

Infrastructure projects, which are badly needed in Indian Country, are very hard to finance, especially if there is limited Federal funding or because tribes have little tax base, it is hard to do bonds based on limited tax bases. Tribes themselves, however, are increasing access to capital through self financing of their business and economic development projects. Tribes have also established conventional banks, for example, the Native American Bank and Bank2. They have also created credit unions, Native CDFIs and revolving loan funds.

Some tribes operate online investing or online lending facilities primarily to generate revenue for their tribes. All of these tribes are exercising their sovereign right to develop and their sovereign right to create jobs.

Yesterday at RES D.C., many speakers remarked how the appetite for financing is increasing and surging. Banks attending our RES conference are listening to our potential borrowers and they are willing to finance projects, but we need help.

I have some suggestions as to how the Federal Government, primarily through Congress, can assist in accessing to capital. For the Department of the Interior, we believe that we need to increase the BIA loan guarantee program and the staff for this fiscal year and fiscal years to come.

In my written statement, I identified how this BIA loan guarantee program can be expanded. Did you know that for every dollar

put into the BIA loan guarantee program, it leverages that dollar by 15 times? That is a great program.

That is why the National Congress of American Indians and NAFOA have repeatedly urged Congress to improve and increase the allocations to the BIA loan guarantee program. Right now it is set at \$7 million. We urge you to double that program to about \$15 million which would generate over \$250 million in private activity loans.

In 2006, Congress increased the authorized level for this program to \$1.5 billion. Unfortunately, with only \$8 million in authorization, it has only created about \$100 million in annual conventional loans. We believe the BIA loan guarantee program needs to be expanded. This program is not a handout or a grant program. It is a highly effective leveraging tool and this tool works.

I have some recommendations also for the Department of Treasury through their CDFI program. We recommend that we appropriate at least \$16 million to the Native CDFI Assistance Program. I think the House Appropriations Committee did that.

We also recommend increased funding to the New Markets Tax Credit Program for Indian Country. This program is very beneficial and allows for tribes to focus their dollars to private activity loans.

We also recommend full deployment of the TED bond allocations to finance projects in Indian Country and again, a broader use of the Community Reinvestment Act Program which requires banks to provide more in capital and services to tribes, tribal CDFIs, and Native businesses.

For the Department of Treasury, we recognize MBDA, but we also request that we address and want to hear from the Secretary of Commerce on how and when they are going to fund and implement the Office of Native American Affairs.

There is a statute which does create the program but many of the Indian activities have been channeled through the MBDA program. We recognize Ms. Castillo for her help but we really want to have a separate program through the Department of Commerce. We think that is very effective.

In closing, I want to thank the Committee. We are willing to work and look at ways of increasing capital to Indian Country. Thank you.

[The prepared statement of Mr. Watchman follows:]

PREPARED STATEMENT OF DERRICK WATCHMAN, CHAIRMAN, BOARD OF DIRECTORS,  
NATIONAL CENTER FOR AMERICAN INDIAN ENTERPRISE DEVELOPMENT

Good afternoon, Chairman Barrasso, Vice Chairman Tester and members of the Committee. I am Derrick Watchman, a Navajo Nation tribal member, and appreciate your invitation to share my views on access to capital based on my experience in banking and business in Indian Country.

For many years as JP Morgan Chase Bank's Vice President and Senior Relationship Manager of the Native American Banking Group, I provided tribal financial and banking services, including structuring over \$500 million in tribal credit transactions and treasury services. As a 90 percent guarantee, it can greatly lower the bank's exposure and suit tribal or Indian borrower preference for tribal court jurisdiction for dispute resolution. Earlier I worked at Wells Fargo Bank handling Native American banking and financing, and at Prudential Capital Corporation as a private placement banker. I also have overseen operations of some mid-sized and smaller financial institutions lending in Indian Country as Board Chair of a Navajo Community Development Financial Institution (CDFI), and long-time Board member of the Native American Bancorporation Co., holding company for Native Amer-

ican Bank, N.A. (NAB), with 33 shareholders, mostly tribes and Alaska Native Corporations. The NAB is one of the largest users of what is commonly called the BIA Loan Guarantee Program that provides a federal guarantee for 90 percent of the value of a commercial loan and can be subject to tribal court jurisdiction. I've dealt with regulatory challenges to tribal energy and infrastructure development as a former federal energy official and now as CEO of one of my tribe's most successful enterprises. And I've served on Boards of tribal financial and business development organizations, including the Native American Finance Officers Association (NAFOA) and the National Center for American Indian Enterprise Development (NCAIED), and now chair NCAIED's Board of Directors.

Let me first take a moment to thank this Committee for keeping economic and energy development in Indian Country on the front burner so that decision-makers remain focused on solving the vexing challenges we face. In testimony last June 25, 2014, at your Oversight Hearing on "Economic Development: Encouraging Investment in Indian Country," NCAIED President and CEO Gary Davis urged the Committee to continue holding hearings, listening sessions and briefings to promote action on key issues. The Committee has been extremely responsive, especially this week, by conducting this hearing, meeting on the BIA Loan Guarantee Program, and facilitating yesterday's Listening Session on the Buy Indian Act and the CDFI Fund Programs.

These topics and other business related issues are among the many training sessions at NCAIED's Reservation Economic Summit and Trade Show in Washington, D.C. (RES D.C.) going on this week at the Omni Shoreham Hotel. RES D.C., like all of our RES conferences, offers business and procurement assistance to Indian tribes, tribal enterprises, and individual American Indian and Alaska Native business owners (for example, see RES D.C. offerings at [www.res.ncaied.org/resdc-2015-agenda/](http://www.res.ncaied.org/resdc-2015-agenda/)). In addition to trainings and business matchmaking, we've initiated the RES Access to Capital Fair for potential borrowers to meet with bankers and other financing entities. Right now, this hearing is being streamed into RES D.C. for hundreds of the conference's participants to witness this important discussion on Access to Capital in Indian Country.

### **Essential Elements for Facilitating Access to Capital in Indian Country**

When invited to testify, I was asked to discuss the elements that are essential for facilitating access to capital in Indian Country, and to build on testimony previously presented on this general topic. Most witnesses will point to the need for more federal funding, and rightly so based on the federal trust responsibility stemming from the U.S. Constitution, U.S. treaties and statutes. Yet, the federal funding provided has always been inadequate to meet Indian Country needs, and often it has been dispensed through grants and mischaracterized as "hand outs" on which tribes and tribal members can become dependent.

Funding shortfalls certainly exist in federal programs intended to facilitate access to capital through bond, loan and loan guarantee programs. Perhaps federal decision-makers justify cuts as limiting the Federal Government's financial exposure. Yet the result is frustrated tribal and other native borrowers, and bankers and other financing entities trying to assist them, because program funding (supply) serves too few applicants (demand). A prime example is the perennial underfunding of the BIA Loan Guarantee Program. Yearly requests to increase funding for this important program are ignored! NCAIED, NAFOA, the National Congress of American Indians (NCAI), and other Indian Country interests have repeatedly urged Congress to appropriate \$15 million for the program's credit subsidy, but the House Interior Appropriations bill for FY 2016 includes only \$7.7 million and a cap of \$100.4 million on the aggregate value of loans that can be guaranteed. That's the level provided last year, and it's already been exhausted, with four months still to go before FY 2016 begins. Unless the Senate Interior Appropriations Subcommittee is more responsive and adds more funding, Indian Country will be denied—again—the best tool available to access capital from the private banking sector!

This kind of outcome has got to change. This loan guarantee program is not a "hand out" to anyone. It's not a grant program. It's a leveraging tool to incentivize private lenders to finance tribal projects, tribal enterprises, and businesses owned by American Indians and Alaska Natives. The tool works, and it could infuse hundreds of million more dollars into Indian Country, as I will explain later in my testimony. So, before continuing, I urge this Committee's members to call your colleagues on Appropriations today to approve funding closer to \$15 million for FY 2016.

Next, I want to address what I think are the essential elements for facilitating access to capital in Indian Country, and what are some of the roles that the Federal

Government, tribal governments, and bankers can play to accomplish this essential goal.

*Federal Facilitation of Tribal Self-Determination*

As context for my remarks, I harken back to the National Native American Economic Summit that convened in Phoenix, Arizona in 2007, with assistance from NCAIED and other national tribal organizations and the Department of Interior's Office of Indian Energy and Economic Development (OIEED). A preparatory white paper outlined some considerations for federal and tribal policy makers<sup>1</sup>—listed below because of their relevance to this hearing's topic:

For Federal Policymakers

- Shift maximal decisionmaking power into indigenous hands;
- Invest in institutional capacity-building, the kind that enhances the capacity of Native nations to govern in effective ways of their own choosing and that backs up economic development activity in their communities;
- Tolerate diversity in governmental forms and development strategies;
- Make available the financial resources that are necessary if Indian nations are to develop financial resources of their own; and
- Support and grow government-to-government relationships that treat development not as paternalism but as partnership.

For Tribal Policymakers

- A clear distribution of roles among the various arms of government and adequate separations of powers;
- Effective and non-political dispute resolution mechanisms;
- Secured transactions codes and other legal provisions that guide commercial activity and that are enforced for everyone;
- Effective and transparent financial management;
- Strategic clarity (with strategies that are aligned with community ideals and backed with community support);
- And, depending on the nation's plans and goals, specific supports for economic development activity such as small business services, zoning arrangements, clean and efficient land title and leasing processes, business regulations, and so on.

As the above considerations for tribal policymakers suggest, self-determination not only is key but it affords the freedom to determine the tribes' own futures and "the right to make the decisions—from development strategy to government form to systems of laws to the exercise of jurisdiction over lands and people—that will bring those futures to life."<sup>2</sup>

The 2007 Summit's National Native American Economic Policy Report<sup>3</sup> made many recommendations on strengthening governance (e.g., law reform, community planning, financial management skill development, financial jurisdiction) as a way to facilitate access to capital.

*Tribal Governance Development and Tools to Access Capital*

Fast forward to this Committee's June 2014 oversight hearing, and the testimony of Key Bank Executive Vice President William M. Lettig that focused on access to capital and noted important elements that must be addressed in order for a tribe, tribal enterprise and often even an individual Indian borrower to access and obtain desired capital. I rephrased them below:

- A tribe must duly authorize proposed relationship with private lenders or investors;

<sup>1</sup>"The Nature and Components of Economic Development in Indian Country," Stephen Cornell and Miriam Jorgensen, 17–18 (May 2007)(commissioned for the National Congress of American Indians Policy Research Center for the purpose of stimulating discussion at the National Native American Economic Summit).

<sup>2</sup>Id. at 18. The authors pointedly distinguished the terms "self-determination" and "selfgovernance" from those terms' usage in the context of self-determination contracting and selfgovernance compacting.

<sup>3</sup>*Native American Economic Policy Report—Developing Tribal Economies to Create Healthy, Sustainable, and Culturally Vibrant Communities*, produced by the National Congress of American Indians and the Department of Interior, Office of Indian Energy and Economic Development (2007).

- A tribe, tribal enterprise, or other Indian borrower and the private capital entity need clear and enforceable business and credit agreements; and
- A tribe and its tribal enterprise(s) must develop dispute resolution processes, including acceptable arrangements on sovereign immunity and choice of law, and doing so in collaboration with private sector capital players will help lead to more mutually acceptable outcomes and consummated deals.

In my experience, the fundamentals for tribal access to capital are: business friendly governance; reasonableness in exercising sovereign immunity and resolving disputes; and understanding of various types of financial assistance and related obligations (e.g., the difference between grants and loans). Very helpful are: tribal uniform commercial codes or similar ordinances; a good tribal court system with commercial dispute resolution mechanisms and adjudicators with some business law experience; and sophisticated financial management by people who understand the capital markets, financing, the need for business plans and feasibility studies, credit soundness of projects (will they make money to pay a debt burden), the risks and rewards of tribal taxes, and credit worthiness and the “sovereign risk” aspect of credit ratings.

As to tools for accessing capital, tribes have a variety of choices. Commercial loans, equity investments and sometimes even bond issuances can be relatively easy to pursue and close, if the tribal project will have a high profit margin or good, steady returns. Other projects are harder or more expensive to finance due to lower margins and longer lead times to profitability (e.g., manufacturing and government contracting). Infrastructure projects, so key to facilitating further development, are the most challenging, because federal funding is limited and sporadic, and financing is nearly impossible if the infrastructure generates no revenue stream to cover debt repayment. Unlike state and local governments, tribes have limited or no ability to impose or increase taxes to repay lenders or bondholders. Federal loan guarantees help if they can enable lenders to finance larger projects, minimize lenders’ exposure to risk, and are enforceable in tribal courts. The BIA Loan Guarantee Program offers those benefits.

Tribes themselves are doing more now than ever before to increase access to capital for their tribal members, for other tribes, and for other private sector borrowers. Many tribes self-finance their business and economic development projects, choosing to reinvest proceeds from gaming or government contracting—rather than incur debt—to expand existing operations or diversify into new ventures. Many tribes have established financing entities, whether they are conventional banks, credit unions, Native CDFIs, revolving loan funds, or on-line lending or investing facilities.

While the field of tribal on-line lending has become controversial, it is essential to respect tribes’ rights as sovereign governments and their economic responsibilities to provide for their tribal members and communities. Pursuant to U.S. treaties and statutes, the Federal Government has recognized the inherent sovereign right of tribal governments to engage in self-sustaining economic activities as a means to govern effectively and provide for their people, and to create appropriate regulatory authority to govern how tribal enterprises may operate on the reservation. For economic development, preservation of the right of tribal self-determination is paramount, and essential to foster financial empowerment among tribes, tribal enterprises and American Indian entrepreneurs. Currently, the Consumer Financial Protection Bureau (CFPB) has taken actions and floated proposals on short-term lending that concern tribal governments engaged in on-line lending. As tribes stressed to the CFPB earlier this week as a tribal consultation meeting, the CFPB must engage in government-to-government discussions and hear what the tribes have to explain about the rigors of their own tribal laws and regulatory schemes, rather than presenting proposals to which tribes are expected to respond. In the spirit of the CFPB’s Tribal Consultation Policy, CFPB must realize and acknowledge the impact of its actions may have had and can have on tribal economies, including tribal bank accounts, and engage in more dialogue and formal consultations with tribes before taking any formal action on proposals that may affect tribal government rights and interests, including self-determination of their activities pursued to achieve economic self-sufficiency.

So many tribal communities are located in remote, impoverished areas and have struggled to establish business enterprises that generate sizable revenues and employment. The Internet has offered new horizons for these tribes, as well as most other communities, as this Committee recognized when it held its oversight hearing several years ago about access to the Internet in Indian Country. The tribes engaged in short-term, online lending may have no other viable form of sustainable economic development available. Thus, any rules contemplated for short term lend-



ing that could affect tribes must be considered only in the context of tribal consultation.

Furthermore, any federal actions that could limit Internet use, or cause a chilling effect on economic activity over the Internet, must be scrutinized carefully to avoid curtailing or even abrogating tribal rights to self-determination and self-sufficiency.

As a former banker, my interest is in greater penetration of traditional banking institutions providing access to capital in Indian Country. It's exciting to me that there are at least two dozen native-owned banks (whether wholly, majority or partially owned by tribes) operating across the country. Chickasaw Nation's wholly owned Bank2, represented here by CEO Ross Hill, is a very successful one. Unique among the native-owned banks is the Native American Bank, with 33 shareholders, including over two dozen tribes and ANCs, investing together to extend financing to tribal and commercial projects that otherwise would have remained unbankable and undoable.

Increasing numbers of tribes and other native applicants have applied to the Community Development Financial Institutions (CDFI) Fund to establish and expand CDFIs to provide their communities greater access to capital. Last June, the Committee heard testimony from Gerald Sherman, Vice Chairman of the Native CDFI Network, who reported 68 certified Native CDFIs located in 21 states, and about 60 emerging Native CDFIs preparing for certification. Through this Native CDFI network, more borrowers' needs for small and micro loans are being met, and more financial literacy training has helped native clientele improve access to conventional financial services, such as consumer loans, mortgages, tax preparation services, and small business credit.

Tribal and native business organizations also play important roles in expanding access to capital in Indian Country through the policy, business development and training conferences they conduct throughout the year. For example, for over 45 years, NCAIED has been assisting tribes and Native American businesses with how to conduct market studies and business planning, how to interface with banks and negotiate financing, and how to prepare proposals, negotiate contracts, and secure bonding. Most recently, NCAIED has launched a remarkable web-based business development assistance tool through its *Native Edge* web portal, proactively utilizing technology and the Internet to provide economic opportunities, trainings, business development services, and much more, to tribes and Native businesses anywhere, anytime. Pertinent to this hearing, NCAIED has future plans to add a new component of the *Native Edge* that will facilitate "Access to Capital" by enabling tribes, tribal enterprises and other Native-owned businesses to search for, identify and communicate with lenders and investors interested in, willing to and experience in doing business in Indian Country.

#### *Greater Flexibility of Banks and Bank Regulators*

Traditional banks have approached Indian Country borrowers with starts and fits. While eager to finance lucrative large ventures, many major banks have been reticent to engage in smaller tribal and individual native business lending. Of course the Great Recession made matters much worse, as federal regulators tightened lending requirements, conventional lending dried up, and federal efforts to spur community bank lending ended up benefitting the banks more than potential borrowers. Near default on a few tribal financing packages also chilled interest in Indian Country lending. Bank regulators got extra tough on bank balance sheet reviews and further limited the amounts banks could lend. With few loans being made, and the one-time increase for the BIA Loan Guarantee Program in the Recovery Act went mostly unused.

As the U.S. economy continues to improve, banks should refocus attention on Indian Country's needs for capital and bank regulators should ease up somewhat. Banks should be attending tribal and native business conferences geared toward business and economic development. Lenders should listen to native borrowers' needs and challenges, and learn to be more creative and flexible. Rather than insist on hard-asset collateral for a business loan, perhaps a bank could consider verification of the business' growth potential and cash flow analysis as collateral, as recommended by Native American Natural Foods President Mark Tilsen in Senate testimony last year. Certainly major banks should entertain offers from tribal and other native banks to participate in projects needing more financing than the smaller banks' balance sheets can support. That kind of partnering is beneficial for all involved. Furthermore, conventional banks of all sizes should consider mentoring Native CDFIs, and offer to partner with them in ways that can enhance Native CDFIs' lending activities and assist in their growth.

*Greater Federal Support as Leverage to Increase Tribal Access to Private Capital*

Based on my experience in energy policy and development, major project financing and micro lending, and tribal enterprise financing and management, I offer the following general recommendations for prompt federal action, primarily by Congress, to:

- Restore parity among tribes striving to protect and enhance their original land base, or to reacquire some of the lands they lost, by confirming the Secretary of Interior's authority to acquire land in trust for any federally recognized tribe;
- Streamline or reduce regulatory review and approval of leasing, rights-of-way and other actions that impede development and appetite for private sector investment;
- Extend or make permanent existing Internal Revenue Code provisions for Accelerated Depreciation, Employment Tax Credits and other tax credits that pertain to Indian lands;
- Enact tax reform provisions that promote fairness and economic growth for tribes by treating them as sovereign governments with taxing authority, and fashioning ways for them to: access tools utilized by other governments, such as issuing tax exempt debt, collecting excise taxes, remote sales taxes, and other taxes; and afford tax credits or possibly even tax holidays to private investors providing capital for projects on reservations with high rates of poverty and unemployment; and
- Facilitate access to capital by expanding existing programs that leverage federal funds in various ways to target, or otherwise incentivize use of, the federal allocation to Indian Country projects and other financing needs—such as the BIA Loan Guarantee Program, Low Income Housing Tax Credits and loan guarantee programs that facilitate mortgage lending, and the CDFI Fund's Native American CDFI Assistance and New Market Tax Credits set aside for Community Development Entities (CDEs) focusing exclusively or primarily on Indian Country.

Within the last bullet on expanding access to capital, I would like to emphasize the following recommendations for programs of the Departments of the Interior, Treasury and Commerce. I will leave it to others to address access to capital issues and very worthwhile programs of the Departments of Agriculture and Housing and Urban Development that promote rural housing and community development in Indian Country.

**Specific Recommendations to Leverage Federal Support**

*1. Department of the Interior*

*Increase Funding for the BIA Loan Guarantee Program's Credit Subsidy and Staff Support:* The Senate must respond immediately to Indian Country requests to increase the credit subsidy for the Indian Loan Guarantee Program to \$15 million for FY 2016 to keep pace with the burgeoning demand for business and economic development capital in Indian Country. Overseen by OIEED, the loan guarantee and loan subsidy programs have incredible potential to leverage a small federal investment to facilitate substantial conventional lending for business and economic development. BIA-certified lenders lend to Tribes and Indian businesses on reservations and submit to tribal court jurisdiction. OIEED also operates a revolving credit facility that assists Indian borrowers with lines of credit for working capital, payrolls for hiring new employees, and assurances sufficient for sureties to provide performance bonds to tribal and other Native-owned contractors. Below are some examples of projects that became realities because lenders were able to use BIA guarantees:

- Construction of new hotel on a Montana reservation that leads to a glorious national park, creating new tourism, retail and government traffic and 25 additional jobs, financed with a \$5.5 million loan;
- Five guaranteed loans totaling \$15 million helped build the Indian Pueblo Cultural Center, owned by 19 Pueblos in New Mexico, and launch successful, revenue generating operations and create about 200 jobs, many held by Native Americans;
- A \$12 million guaranteed loan enabled the Alaska Native village of Huna Totem Corporation, Inc. to complete renovation of the old Point Sofia Cannery site to develop a successful tourist destination for visiting cruise ship guests, creating about 130 yearround and summer jobs;
- Seldovia Native Association, Inc., used an \$8.3 million guaranteed financing to construct the Dimond Center Hotel, creating about 40 full and part time jobs;

- Tuba City Partners, LLC deployed a \$5.8 million guaranteed loan to build a commercial office building in the community of Tuba City on the Navajo reservation, creating over 50 jobs during construction, and generating revenues from space leased for public and private offices and tourist related shops; and
- \$10 million guaranteed as part of a \$13 million tribal economic development authority's project in Nevada.

These projects are just some of the worthwhile uses of BIA loan guarantees in recent years. As I stressed earlier, tribes and native organizations have long advocated for substantially expanding the funding and the authority for use of BIA guarantees. For example, in January 2009, NCAIED, the Native American Contractors Association (NACA) and National Congress of American Indians (NCAI) promoted "Native American Business Provisions" in the American Economic Recovery and Reinvestment Act that proposed \$148 million for a BIA Guaranteed Loan and Surety Bonding Program to (1) expand commercial lending, (2) implement unused authority for issuing supplemental surety bond guarantees to facilitate award and performance of stimulus infrastructure and other construction-related projects, and (3) use the guarantees to help ensure tribal participation in renewable and other energy development projects. Unfortunately, however, this higher level of funding never materialized. The guarantee program has been woefully underfunded for years and unable to satisfy the increasing demand for its guarantees. The Small Business Administration (SBA) loan and loan guarantee programs are far larger, but they require dispute resolution in federal court, among other challenging requirements less amenable to tribal borrowers.

Recognizing the need to expand the program, in 2006 Congress authorized a major increase in the aggregate limit on guaranteed loans from \$500 million to \$1.5 billion. However, in the last several years, Congress has not appropriated anywhere near enough funds for the program to allow lending to increase towards that authorized level. The current total of aggregate loans is only about \$600 million. So if Congress had approved \$15 million last year, as Indian Country urged, about \$250 million in loans could have been approved. Instead, Congress approved only \$7.7 million for the program and capped the total loan principal at only \$100 million. Already, that entire funding allocation has been used up—with four months remaining in this fiscal year—and a backlog of pending loan applications approaching another \$100 million! Congress must right-size the credit subsidy with at least \$15 million for FY 2016.

In parallel with doubling the loan guarantee program's credit subsidy, Congress should increase funding for the OIEED to strengthen its lending staff by adding personnel with more banking experience. Not only must the staff review and process the increasing volume of loan guarantee applications more quickly, but OIEED also should have the capability to consider new, innovative ways to leverage even further the value of its loan guarantees, such as proposals to: (1) waive the 20 percent equity requirement more often; (2) consult with fellow agencies to explore whether and how their respective loan guarantee programs can somehow be used to supplement and satisfy the unmet needs of Indian Country borrowers; (3) enable creation of a secondary market for segments of loans that carry the BIA guarantee; and (4) establish some kind of "Preferred Lender" designation for lenders with strong track records of originating and servicing guaranteed loans. The latter two proposals are discussed further below.

## 2. Department of the Treasury

### a. Community Development Financial Institutions Fund

As the Committee has received testimony on many aspects of this important program already, let me reiterate briefly just two key recommendations:

*i. \$16 Million for Native CDFI Assistance:* For this account, the House Appropriations Committee has agreed to the requests of Indian Country, recognizing the benefits of the CDFI Fund's Native American CDFI Assistance initiative in expanding access to small and micro loans for individuals and small businesses. The program's assistance also facilitates financial literacy and entrepreneurial development training in Native communities across the country. This program is another great example of how a modest federal investment catalyzes greater capital access in Indian communities.

*ii. Increase New Market Tax Credit Allocations For Indian Country:* The House Appropriations bill includes \$23.1 million for the CDFI Fund's New Market Tax Credits (NMTC) Program, about \$1.8 million less than the President's budget request for FY 2016. We hope the Senate approves the higher figure, with a directive to set aside some of the allocations' use in Indian Country. Through this program, the CDFI Fund makes NMTC allocations to Community Development Entities

(CDEs) to help finance projects in low-income urban neighborhoods and rural communities lacking access to capital needed to support and grow businesses, create jobs and sustain healthy local economies. In the past, NMTC allocations have helped finance projects in Indian Country, but none of the last two rounds of allocations went to the CDEs that primarily or exclusively serve Indian Country. Lack of NMTCs has reduced urgently needed financing for business and community development projects in native communities across the country. Either the CDFI Fund can determine, or Congress can mandate, that a certain percentage of NMTCs be allocated to qualified CDEs whose primary mission is to invest in native communities and who possess the required cultural competency and understanding of relevant legal and financial complexities involved. Since the CDFI Fund is open to making some adjustments, we urge this Committee to press for allocation of a greater percentage of the NMTCs to CDEs that focus on community, housing, economic and business developments in Indian Country. Congress also should act to make NMTC authority permanent and to set aside a percentage of any future NMTC allocations for qualified CDEs whose primary mission is to serve Indian Country, if the CDFI Fund opts not to do so administratively.

**b. Other Recommendations**

First, another attempt should be made to distribute TED bond allocations to finance projects in Indian Country. The first round of allocations took a kind of pro rata approach; the second round focused more on the readiness of a tribe's project for TED Bond financing. Since a substantial amount of the allocation remains undistributed, there should be a renewed effort to determine a better approach to achieve full deployment of this valuable economic development financing.

Second, there should be broader, more effective use of the Community Reinvestment Act (CRA) to encourage more banks to invest in native communities and in Native CDFIs that serve such communities. Federal bank regulators should work to ensure that the CRA regulations explicitly recognize lending, services, and investments in Indian Country. Greater CRA attention should be paid to, and more value should be placed on, mortgage lending activity on tribal trust lands. This approach could attract to Indian Country numerous lenders who previously have met their Native American goals by lending to tribal members living in urban areas or other non-trust lands.

**3. Department of Commerce**

At this Committee's January 28, 2015 Oversight Hearing on Indian Country Priorities for the 114th Congress, NCAIED recounted its efforts along with a dozen other national and regional organizations to urge the elevation and enhancement of the Office of Native American Affairs within the Department of Commerce and within the SBA. NCAIED recommended that the Committee hold an oversight hearing on the efforts of Commerce to address Indian Country's economic and business priorities and implement two laws that Congress passed for that purpose:

- The Indian Tribal Regulatory Reform and Business Development Act (Public Law 106-447), directing the Commerce Secretary to establish a Regulatory Reform and Business Development on Indian Lands Authority to identify and remove obstacles to investment, business development, and wealth creation in Native communities;
- The Native American Business Development, Trade Promotion and Tourism Act (Public Law 106-464), codifying an existing office with a new name, the Office of Native American Business Development. The Act prescribes duties for the Office Director to fulfill, including to: (1) ensure intra- and inter-agency coordination of federal programs assisting business and economic development, and expansion of trade; (2) carry out a Native American export and trade promotion program; (3) conduct a Native American tourism program; and (4) report annually to the Senate Committee on Indian Affairs and House Committee on Natural Resources on the operation of the Office and any recommendations for legislation deemed necessary.

Our goal has long been a stand-alone Office of Native American Affairs, with a staff and its own budget, to carry out the duties prescribed by Congress, and make more accessible to Indian Country all of the various agencies and programs under Commerce's vast reach. Since the Minority Business Development Agency (MBDA) has done more than any other division within Commerce to try to fulfill some of the above-reference statutory duties, we appreciate MBDA National Director Alejandra Castillo's willingness to participate in this hearing today. We also believe it is essential to hear from the Secretary of Commerce how and when she plans to

fund and expand the staff of a stand-alone Office of Native American Affairs that reports directly to her, as Congress intended.

As noted in previous testimony, NCAIED has extensive experience working with MBDA, having launched the first Native American Business Enterprise Center (NABEC) funded partially by an MBDA cooperative assistance agreement and operated as many as four NABECs for many years. When MBDA decided a few years ago to support only Minority Business Centers, NCAIED opted to move beyond stationary centers and expand access to capital and business development assistance through our RES conferences and new *Native Edge* business portal. We have maintained a good relationship with MBDA and are open to exploring new ways to work together to serve tribes, tribal enterprises and other Native businesses and entrepreneurs, whether the assistance is to: find jobs or qualified talent to fill jobs; find contract opportunities or sources qualified to fulfill partnering or procurement needs; find lenders willing to finance business expansion or project development; or learn from myriad training videos and online tutorials about how to write a business plan, market products and services, set up business accounting systems, and so on. NCAIED's new web portal, *Native Edge*, can provide access to these and other types of assistance virtually, at any time of the day or night.

The Department of Commerce operates so many agencies and programs that could benefit our Native communities, and link them with opportunities domestically and globally. It is essential that the Department embrace that challenge by increasing the authority and funding of its Office of Native American Affairs. NCAIED and other native business and tribal organizations will be delighted to work with the Secretary and her staff to develop strategies and plans to fulfill the intent of Congress articulated in the Native American Business Development, Trade Promotion and Tourism Act of 2000.

In closing, I want to thank you, Mr. Chairman and the Committee, for the opportunity to present these views and reiterate our requests to increase support for the existing programs that invest federal dollars as leverage to multiply exponentially the amount of private capital invested in Indian Country. I realize that some of the legislative recommendations are appropriations issues, and some are beyond this Committee's jurisdiction. So, on behalf of NCAIED, I offer our commitment to work with you and your staff on legislation to amend the Indian Finance Act or develop other approaches to expand access to capital in Indian Country.

The CHAIRMAN. Thank you very much, Mr. Watchman.  
Mr. HILL.

**STATEMENT OF ROSS A. HILL, FOUNDER/PRESIDENT/CEO,  
BANK2**

Mr. HILL. Good afternoon, Chairman Barrasso, Vice Chairman Tester and members of the Committee. Thank you for allowing me to be here today.

I am the founder, President and CEO of Bank2 in Oklahoma City. Bank2 is a small community bank with approximate assets of \$118 million. Bank2 is owned 100 percent by the Chickasaw Nation.

Bank2's mission is to build better lives with a direct focus on the Chickasaw Nation individual members and Native Americans all across America. We have Native American customers, loan and deposit customers in all 50 States.

Bank2 has provided capital for commercial purposes, to individual Native Americans, Native American businesses, tribes and tribal housing authorities since our inception. We have utilized the HUD-184 Home Loan Program, the HUD-Title VI Program, the USDA, SBA, FHA and BIA Loan Guarantee Programs to do this.

Since our inception, we have provided approximately \$1.5 billion in capital for loans in Indian Country. We believe our consistent, intentional service to Indian Country makes us uniquely qualified to testify before this Committee. Through our experiences, we can

provide the Committee with success stories of what really works and what needs to be fixed.

The BIA Commercial Loan Guarantee Program is truly the only guaranteed loan program that can be widely used for nearly any need on tribal lands. The program could become a vital source of growth and development of Native America if five things were addressed.

First, is to fund the maximum loan commitment authority annually. Typically, it is funded about 20 to 30 percent of the maximum authorization. This year is a prime example of the problem. The BIA is already out of commitment authority.

Second, is to fix the loan guarantee. The loan guarantee is not even in the same league as the SBA and the USDA loan guarantee and thus, it is not respected by many financial institutions and limits participation by banks in what would otherwise be an attractive market.

The guarantee needs to be strengthened so that it creates a secondary market for the guarantee portion of the loans. Viable models exist in other government programs such as the SBA and the USDA.

Third, would be to fix the TSR problem. The BIA must address this problem immediately. It has a detrimental effect on all forms of real estate lending on reservations. Until this issue is fixed across all of Indian Country, no true economic expansion will occur.

Fourth, is to create accountability within the BIA Loan Program. It needs to function at much higher level to become a viable catalyst for access to capital.

Fifth, is that banks should be allowed to secure additional forms of collateral to cover the unguaranteed portion of the loan that are not required to be shared with the BIA in the event of default.

The HUD-184 Indian Home Loan Program is perhaps the best thing Congress has ever created for Native Americans. This program is a model that works for Native America. Sadly, the First Americans have the least amount of home ownership of any segment of our society. The HUD-184 Program is changing this fact.

The program has helped thousands and thousands of Native Americans become homeowners, but perhaps as many as 200,000 homes are still needed on reservations alone. The economic impact of satisfying this need could reach as much as \$40 billion on the U.S. and Indian Country economies.

Think of this to picture that. The City of New Orleans has 200,000 homes. The demand is high, the need is great and the opportunity for real economic impact is unquestionable. The program is not perfect, the Office of Native American Programs at HUD has a huge shortage of manpower and that must be addressed. The program is also in desperate need of technology so that it can continue to function at a high level and meet the demands of an expanding program.

The HUD ONAP Title VI Guarantee Loan Program is an amazing program to help Native American tribes build more housing. To date, only 68 projects have been funded. We believe a great deal more marketing and training is necessary to raise awareness of this program. The financial impact of this program could be significant in Indian Country.

I thank you for the opportunity to testify before the Committee. I pray this testimony proves to be a valuable source of information for you.

[The prepared statement of Mr. Hill follows:]

PREPARED STATEMENT OF ROSS A. HILL, FOUNDER/PRESIDENT/CEO, BANK2

### **Introduction**

Chairman Barrasso, Vice Chairman Jon Tester and Members of the Committee, thank you for inviting me to testify today on Accessing Capital in Indian Country.

My name is Ross Alan Hill, and I am the Founder, President and CEO of Bank2.

Bank2 is a small community bank headquartered in Oklahoma City, OK, with total assets of approximately \$118 Million. Bank2 is 100 percent owned by the Chickasaw Banc Holding Company and the Holding Company is 100 percent owned by the Chickasaw Nation. The Holding company was formed in 2001 and the Bank began operations in January of 2002.

Bank2's mission is to "Build Better Lives" with a direct focus on Chickasaw tribal members and on Native Americans across the entire country. We have customers with loans or deposits in all 50 States. Our customer base consists of consumers, small businesses, medium size businesses, tribes and tribal housing authorities.

Bank2 has provided capital for commercial purposes to individual Native Americans, Native American businesses, tribes and tribal housing authorities since our inception. Bank2 has been active in providing capital for housing and commercial ventures to individual Native Americans, Native American housing authorities and to tribes since 2004.

We have utilized numerous Federal Government programs to assist us with these efforts, including the HUD-184 Home Loan Program, the HUD Title VI Loan Program, the USDA, SBA, FHA and BIA Loan Guarantee Programs.

Since our inception, we have provided approximately \$1.5 billion dollars of capital in the form of loans to Indian country. In each of the past 6 years, over 80 percent of all of our loans have been made to individual Indians or tribal entities. Just this year we have made loans to tribes, tribal housing authorities and individual Native Americans totaling \$41 million dollars. We anticipate closing an additional \$20 million in loans during the next 30 days.

We have provided capital in the form of loans for many different businesses including; trucking companies, an oil field servicing company, a forest firefighting company, a coffee house, an auto body shop, an oil lube shop, a natural gas distribution company for rural Oklahoma and Arkansas, an art gallery, a real estate holding company and a commercial development company. We have made loans to various Native American housing authorities for the construction of apartments, new maintenance facilities, office buildings, housing developments and rental units. We have financed thousands of home loans for Native Americans in all 50 states and on tribal trust lands.

We have received numerous awards for this activity including the "Access to Capital Award" in 2011 presented by the U.S. Department of Commerce Minority Business Development Agency and the Oklahoma Native American Business Enterprise Center. Bank2 was recognized by the prestigious American Banking Journal as the number one community bank in 2009 and the number three community bank in 2010 based upon earnings. Bank2 was named one of the "Top Places to Work in Oklahoma" in 2013 and 2014.

We believe our consistent and intentional service to Indian country makes us uniquely qualified to testify before this committee. Through our experiences we can provide this committee with success stories of what really works and what needs to be fixed. In many of these situations, we believe we know what is necessary to fix the problem(s).

We have made Indian and Indian country loans from Alaska to Florida and from Hawaii to Maine. I have personally visited every tribal headquarters in Oklahoma and hundreds across America. We do not claim to know everything about Native America, but we do believe we can offer a great deal of input about what works and what is broken, especially concerning government guaranteed lending designed to provide access to capital in Indian country.

We pray our testimony proves to be very valuable to this Committee.

### **BIA Commercial Loan Guaranty Program**

#### *Eligible Borrowers*

- Tribes

- Housing Authorities
- TDHES/Alaska Corp.
- Individual Enrolled Native American
- Native American Owned Business (51 percent or more)

*The Purpose of the Program*

The purpose is to encourage eligible borrowers to develop viable Indian businesses through conventional lender financing. The direct function of the Program is to help lenders reduce excessive risks on loans they make. That function in turn helps borrowers secure conventional financing that might otherwise be unattainable.

*Funds may be used for:*

- Business loans
- Operating capital
- Equipment purchases
- Business refinancing
- Lines of credit
- Real estate
- Construction

*Positive Aspects of the Program:*

- Designed specifically to benefit Native American businesses and individuals
- Typically works well on smaller loan sizes and start ups Offers a 90 percent guaranty
- Helps tribes to promote economic development on and off of reservations
- Promotes economic opportunity for American Indians, Indian tribes and Alaska Natives while protecting trust resources
- Interest rates and terms are similar to conventional commercial loans

*Examples of BIA success stories:*

2-New Native American Business Loans

—\$350,000 loan to provide working capital for government contracts on a start up business. The business was to provide firefighting equipment and man power to fight forest fires for the U.S. Forest Service. A start up business is typically a hard loan to make for a bank because of the failure rates, but the BIA guaranty allowed us to help fund the start up and provide working capital for the business to operate and grow. This particular customer had gone to 16 other banks seeking financing before arriving at Bank2. Bank2 along with the BIA helped make this business idea a reality. Today this is a thriving business.

—\$375,000 loan to provide capital for the purchase of furniture, fixtures and equipment for a restaurant. Restaurants also are typically hard to finance as the failure rate exceeds 80 percent. This combined with the fact it was a new business start up made this loan most difficult to approve. The use of the BIA guaranty allowed us to make this loan and provide the capital needed to start the restaurant.

*Negative Aspects of the Program:*

- Often takes several months to gain approval of loans
- Slow turn times for TSR's
- Larger loans must go through multiple approval levels
- The approval process and time frames are not clear
- No secondary market for the guaranteed portion of the loans
- Program capacity is not sufficient to meet the demand
- BIA loan guaranty fund is out of money for this year even as you read this testimony

*Examples of BIA problems:*

3-New Native American Businesses Not Able to Secure a BIA Loan

—\$477,000 loan to purchase a sports bar. Our customer applied through BIA in late February of 2014. We received a preliminary approval in early April. A few weeks later we received an email stating that “. . .the Division Chief (for the BIA) wants all requests to go to a committee,” but the date and time of the committee meeting had not been determined. This was a purchase transaction and thus had contractual time lines to which must be adhered. The contract had time constraints of which the BIA was fully aware. The BIA ignored the time constraints of the con-



tract. The borrowers asked the bank to make the loan directly to them without the BIA guarantee otherwise the Native American borrowers would lose the business opportunity. The bank complied but the borrowers were forced to provide the bank with considerable additional collateral and this created a hardship on the borrower. Bank2 and the customer were able to close the transaction within the contractual time frame. Again, restaurants are a high risk business and if the BIA would have responded on a timely basis, the loan could have been made with the BIA loan guarantee and would not have created a hardship on our Native American customers.

—\$2,100,800 loan to refinance an auto body shop business property and equipment. The Native American customer insisted upon using the BIA loan program to refinance his business. We actually warned the customer using the BIA loan program could be a mistake because of the length of time and the uncertainties surrounding the approval process for larger loans. After months of attempting to secure a BIA loan approval and guaranty we suggested to a very frustrated Native American that we change the request to an SBA loan. Even though the loan was large and complex, the SBA approved the loan in short order and we closed the loan.

—\$9 million dollar loan for the purchase and operation of a rural natural gas distribution system by a Native American. The bank was forced to use the USDA loan program even though the loan guaranty percentage was less, due to the size and complexity of the loan. In fact, many times we are forced to use other government guaranteed loan programs because there is no secondary market for BIA guaranteed loans.

*Problems with BIA Guarantee Limits Access to Capital:*

*Some background on the secondary market issue:*

We have talked with three different secondary market buyers and all have agreed that in a nut shell, the structure of the BIA program limits the ability to enforce the guarantee. One of our primary outlets for the secondary market told us that the BIA has acknowledged that this is not likely to change. According to our outlet, "...while the BIA realizes that the development of a secondary market is congressionally mandated, the functionality of that market is not a primary concern of the BIA."

There remains a problem with the requirement for the lender to submit any claim on the guarantee and limits the bank's ability to sell BIA loans in the future. It is unlikely that this issue will disappear in the near future without this committee's actions. This is primarily due to the fact that the BIA has the right to review the loan once the claim is submitted for payment by the lender and then determine whether or not the guaranty is valid. Intentionally, the vetting process is nowhere near that of the SBA or USDA at the time the loan is made. We believe the BIA may be trying to increase the likelihood that the tribe (or tribal member) will be able to obtain the loan, which on the surface maybe a good thing for Native Americans and their businesses. However, this also means that the BIA reserves the right to review the process at the time the claim is made and deny the claim. Thus, the BIA guaranty is not unconditional. Consequently, without this committee's actions to require the BIA to fix or change their processes and their guaranty to mirror those of the SBA and the USDA and satisfy the Congressional mandate, it is unlikely to create a functional secondary market for the BIA loans. Thus access to capital on reservations and tribal trust lands will continue to be restrained. If this committee truly wants to increase capital for commercial purposes in Indian country, a change in process to mirror that of the USDA or SBA program would enable a secondary market to be established and if properly done, would not impede the mission of the BIA which is to provide funding for tribes and tribal members.

*Why it works and why it doesn't:*

*Why it Does Work:* Smaller loans that are not time sensitive can be approved at local levels and have worked well for us in the past. The BIA's flexibility in getting the loans approved helps Native Americans and their businesses. SBA and USDA do not loan on trust lands; therefore, the BIA may be the only option for these loans.

*Why it Does Not Work:* The vast majority of loan requests are time sensitive, if you have a program such as the BIA program that does not recognize this fact, most requests will never make it to closing. Additionally, the larger loan requests appear to be the ones that fall out or move to other programs because the current system is not efficient. The time sensitive and larger loans often don't have the flexibility to wait and go through what can be a lengthy approval process. The larger loans require a loan guaranty because many of these lenders are small banks and need the loan guaranty to avoid violation of regulatory lending limits. Additionally, many banks desire to earn income by selling off the guaranteed portion of commercial

loans on the secondary market as described above. The BIA loan guaranty does not afford this opportunity to banks and thus limits the capital available for Indian country. Remember, the BIA loan guaranty is the only one that will cover loans on tribal trust lands.

#### *Recommendations*

- BIA guaranty on tribal lands should be increased to 95 percent
- Separate non shared collateral should be permitted to cover non guaranteed percentage similar to the Title VI program
- During the approval process BIA should review and approve the lenders capacity for reporting and monitoring
- For lenders with approved reporting and monitoring, BIA assumes lenders reps and warrants for monitoring requirements during the life of the loan
- Increase staffing and improve technology across the country to accommodate the increased demand for TSRs, recording of land documents, surveys, environmental (particularly on allotted lands) and business loans
- Annually fund an adequate amount to meet the demand of the program
- Fix the guaranty so that the guaranteed portion of the loan can be sold in the secondary market
- Require the BIA to report semi-annually to this committee on the progress they have made to fix the many problems they are creating for tribal lending

#### **HUD-184 Home Loan Program**

##### *Why there is a need for the program*

- Housing related spending is estimated to be 17.6 percent of GDP.<sup>1</sup> Obviously, housing is a huge part of the U.S. economy.
- 1996–2003 study indicated 90,000–200,000 units were needed to house Native Americans who were homeless or lived in overcrowded or substandard dwellings.<sup>2</sup>
- 41 percent of housing on reservations is considered inadequate, compared to 6 percent nationwide.
- The legislature deplored the fact that there are 90,000 homeless or underhoused Indian families, 30 percent of Indian housing is overcrowded and less than 50 percent is connected to a public sewer.<sup>2</sup>
- About 40 percent of on reservation housing is considered inadequate and living conditions on the reservations have been cited as “. . . comparable to Third World.”<sup>3</sup>
- Overcrowded homes, or homes with more than one occupant per room, are common on Native American lands. Of the homes on Native American lands, 8.8 percent are crowded compared to 3.0 percent nationwide. Although crowding is partially linked to stronger kinship ties that exist within Native American communities, it also highlights a serious shortage of safe, affordable housing. A 2006 study on homelessness on tribal lands in Minnesota found that 99 percent of doubled up responders, or individuals staying in another individual’s house, would “prefer to be in their own housing if they could find or afford it.” Doubling up is often a last resort.<sup>4</sup>

<sup>1</sup>CoreLogic. Housing Related Spending Makes Up 17.6 Percent of GDP, <http://www.corelogic.com/blog/authors/molly-boesel/2013/11/housing-related-spending-makes-up-176-percent-of-gdp.aspx#VXr7o00o7cs>, Accessed: June 10, 2015.

<sup>2</sup>Cooper, Kenneth J. Housing Shortage Forces Native Americans to Use FEMA Trailers, America’s Wire Maynard Media Center on Structural Inequity, <http://americaswire.org/drupal7/?q=content/housing-shortage-forces-native-americans-use-fema-trailers>, Accessed: June 10, 2015.

<sup>3</sup>Native American Aid. Living Conditions, [http://www.nrcprograms.org/site/PageServer?pagename=naa\\_livingconditions](http://www.nrcprograms.org/site/PageServer?pagename=naa_livingconditions), Accessed: June 10, 2015.

<sup>4</sup>American Indian Relief Council. Living Conditions, [http://www.nrcprograms.org/site/PageServer?pagename=airc\\_livingconditions](http://www.nrcprograms.org/site/PageServer?pagename=airc_livingconditions), Accessed: June 10, 2015. Wilder Research. Homeless and Near-Homeless People on Northern Minnesota Indian Reservations (Saint Paul: Wilder Research, 2009), <http://www.wilder.org/Wilder-Research/Publications/Studies/Homelessness%20in%20Minnesota.%202009%20Study/Homeless%20and%20Near-Homeless%20People%20on%20Minnesota%20Indian%20Reservations,%20Full%20Report.pdf>, Accessed: June 10, 2015.

- Homeownership is the single largest source of wealth creation for Americans. Fully 31 percent of American wealth is in home equity, and Americans of color have 61 percent of their wealth in home equity.<sup>5</sup>

*The Purpose of the Program*

The purpose of HUD-184 Indian Home Loan Guarantee Program is to provide a home mortgage specifically designed for enrolled American Indians and Alaska Native families, Alaska Villages, tribes, or tribally designated housing entities. HUD-184 loans can be used, both on and off native lands, for new construction, rehabilitation, purchase of an existing home or refinance.

Because of the unique status of Indian lands being held in trust, Native American homeownership has historically been an underserved market. Working with an expanding network of the private sector and tribal partners, the HUD-184 Program endeavors to increase access to capital for Native Americans and provide private funding opportunities for tribal housing agencies with the HUD-184 Program.

*Funds may be used for:*

- Single Family to a quad plex
- Construction
- Purchase
- Refinance
- Professional homes such as doctors, teachers, executives, etc.
- Retirement senior independent living
- Group homes
- Supportive housing
- Student housing

*Positive Aspects of the Program:*

- Designed specifically to benefit Native America's access to capital for home ownership
- Office of Loan Guarantee within HUD's Office of Native American Programs, (ONAP) guarantees the HUD-184 home mortgage loans
- Loans are underwritten by the Lender and/or HUD-184 office
- Loan Guarantee Certificates are issued by ONAP on behalf of HUD
- Loans are made to enrolled Native Borrowers
- Guaranty is 100 percent, this encourages lenders to serve the Native communities
- This increases the marketability and value of the Native assets and strengthens the financial standing of Native communities
- Collateral consists of one real estate property per loan
- Single family up to a four plex
- Homes can be on fee simple or tribal lands
- Loan terms and rates are similar to other Ginnie Mae loans not to exceed 30 years in length
- Loans are credit qualifying assumable
- LTV is 97.25 percent with a 1.5 percent guarantee fee
- No prepayment penalties

*Examples of HUD-184 Success Stories:*

*New Native American Multi Unit Home Projects*

—465 Tribal Home Loan Project. We have closed and funded over 120 HUD-184 home loans for one tribe. We have over 100 more in the pipeline to be completed over the next 90 days. The program is a long term lease with the tenant owning the home at the end of the lease. The tenant donates an acre of land. This provides the opportunity for a tribal member to build a brick 3-4 bedroom home on fee simple land across the tribe's geographic territory. Usually, the home is built on family land but the family has not had the income or credit capacity to construct a home. It has simply been beyond their means to construct a home. So the tribal housing authority can utilize the HUD-184 loan program and borrow the money, lease the home to the individuals which provides most of the benefits of homeownership. Once the loan has been paid in full, the tribe transfers ownership of the home to the trib-

<sup>5</sup>The Greenlining Institute. *Economic Equity Homeownership*, <http://greenlining.org/issues-impact/economic-equity/homeownership/>, Accessed: June 10, 2015.

al member. The tribal member's net worth takes a giant leap forward since they now own the asset. They have financial security and peace of mind. For the first time in their lives they own a home and possess personal wealth.

—28 Low/Moderate and Senior housing projects. Another example was a project we completed building 7 quad plexes in Alaska. This affordable housing project was part of a multi funded, multiple purpose project. The community consists of affordable housing, senior housing, single family homes and some maintenance buildings. The funding for the quad plex buildings was very complicated and consisted of Alaska Energy Grant Funds, NAHASDA, and a HUD-184 loan. These buildings are a combination of low income and market rate with some units being handicapped accessible. The ONAP office worked diligently with the bank to complete funding for the project. In fact, all parties worked as a cohesive team to accomplish this project. In our minds, it was a model for cooperative/creative funding to bring capital to Indian country and provide affordable housing.

#### *Examples of Individual Home Loans*

Late last year we completed a home loan for an Alaskan Native living above the Arctic Circle.

We have used the single close HUD-184 home loan to help Native Americans build homes on many reservations and on fee simple land.

We have closed thousands of home loans for Native Americans across the country.

#### *Negative Aspects of the Program:*

- Intermittent refinance opportunities
- Understaffing at ONAP
- Slow turn times for TSR's from BIA
- Slow turn times for LGC's
- Slow turn times on claims paid
- Program shutdowns
- Manual process/lack of technology from ONAP

#### *Examples of HUD-184 Failures:*

##### *Moratorium of Refinancing*

During the period from October 1, 2012 to April 4, 2014 (550 days) Native Americans with HUD-184 home loans on fee simple land were not permitted to refinance their home loans through the HUD-184 program. This was during an extremely low rate environment. ONAP said that they were forced to stop allowing refinances due to being out of loan commitment authority. We argued that HUD already had the loan on their books and the borrowers would simply be refinancing the current balance at a lower rate. Therefore, the HUD-184 program did not have any more exposure. In fact, it would have been just the opposite because the borrowers payments would be lower, thus enhancing their ability to repay the loan. HUD would not have any more exposure to loan guaranty amounts and what exposure HUD did have would be reduced by allowing the rates to be lowered. Plus, the HUD-184 program would receive a refinance fee from the borrower.

This was a huge disservice to Native American borrowers. We have calculated that it cost, just our Native American customers approximately \$45,391,207 in additional interest. One can only image what this cost all Native Americans in the HUD-184 program. I believe it could top \$200 million dollars.

We worked diligently with ONAP, congressional representatives, The National Congress of American Indians and anybody else that would listen to the problem. No one seemed to be able to fix what I believe to be a very, very simple solution. It makes me ask, why?

##### *Slow turn times for TSR's from BIA*

In the Yerington, Nevada area, the BIA is unable or unwilling to issue final TSR's. They state there is an ongoing Congressional audit, due to errors in the legal descriptions on their leases and ultimately their mortgages and Title Status Report (TSR). Unfortunately, the BIA issued many initial TSR's with which lenders used to close loans. Now lenders are unable to receive final TSR's and that prevents lenders from filing the loan notes and mortgages. Without a final TSR or filed note and mortgage ONAP is unable to issue a Loan Guarantee Certificate. Multiple lenders have these issues. Bank2 currently has three loans in a pool that are three years old and considered severely delinquent by Ginnie Mae. Many lenders are in this situation. Bank2's senior management has worked with senior management from ONAP to try and resolve the issue with BIA. Thus far, the BIA has refused to fix the issue. We are experiencing this issue in other BIA offices as well. Discussions

with other lenders indicate they are having the same issues and some have indicated they have suspended lending on tribal trust lands because of the BIA. Likewise, Bank2 is unable to continue to make loans in many tribal trust land areas because the BIA will not resolve the issues. The people hurt are the hundreds, if not thousands of Native Americans that want to buy a home but cannot do so because the BIA will not issue final TSRs. As a result this is limiting access to capital in Indian country and perpetuating poor housing conditions on many reservations.

#### Slow turn times in the ONAP office paying claims

The claim filing process is a manual paper process. All submissions are sent via FedEx to HUD versus an e file process. FHA and VA allow e filing. With the reduction in staffing and paper files getting shifted around to different desks and/or physical locations, ONAP has lost or misplaced files repeatedly.

Of the claims paid in 2013 and 2014, the average time of payment was 168 and 79 days respectively. HUD-ONAP commitment is to pay claims in 45 days.

Once a claim has been processed there is no reimbursement documentation sent to the lender. This is very confusing any time amounts are adjusted with no explanation.

Delays in processing claim payments and corrections to guarantees create problems with delinquency ratios and remaining in compliance with GNMA.

Compliance issues could affect GNMA's willingness to grant commitment authority which would hinder the lenders ability to lend to Native Americans.

#### *Why it works and why it doesn't:*

*Why it Does Work:* ONAP has a dedicated and knowledgeable staff. They are small in numbers but great in commitment, expertise and tenure. The program has a 97.75 percent LTV and is 100 percent guaranteed loan for the lender. It is flexible enough to work well with the vastly different Native American housing programs, yet specific enough in its scope to avoid massive amounts of minutia. The staff understands the transactional side of a home purchase so most loans are able to close. Tom Wright has been with the program since inception and provides strong leadership and corporate knowledge to his staff.

*Why it Does Not Work:* ONAP is extremely understaffed, underfunded and is decades behind in technology. Lenders hear horror stories about their peers being stuck with loans on tribal lands on which they can't get LGC's or TSR's. This puts the lender at risk for a 100 percent loss on large loans. Banks can no longer assume such risk. The BIA is largely responsible for these problems.

The process is broken. It is still 100 percent manual from start to finish and is extremely labor intensive. In a highly regulated environment, banks are unwilling or unable to justify the extra employee expense and risk to offer the program.

#### *Recommendations:*

- Increase staffing for ONAP. There are very dedicated and knowledgeable staff currently at ONAP but there is zero chance to operate efficiently with the limited number of staff they have currently
- Invest in technology. It is difficult to understand why this remains one of the only loan programs that requires a complete manual process. Specifically, issuance of case numbers, loan guaranties and payment of claims
- Develop a better government to government process with ONAP, BIA and tribes for acquiring TSR's early in the loan process
- Require the BIA to provide TSR's on a timely basis consistent with what a title company would provide in the market place
- Require the BIA to report semi-annually to this committee on the progress they have made to fix the many problems they are creating for tribal lending
- Develop a better government-to-government process with ONAP, BIA and tribes for delinquent loans
- Allow proven lenders to "self issue" firm commitments like FHA
- Allow proven lenders to "self pay" claims—automate the case number process like FHA

### **ONAP Title VI Guaranteed Loan Program**

#### *Eligible Borrowers*

- Tribes
- Tribal Housing Authorities
- THDE's that are recipients of NAHASDA Grant Funds

### *The Purpose of the Program*

The purpose of the Title VI loan guarantee program is to assist IHGB recipients (borrowers) who want to finance additional grant eligible construction or development at today's costs. Tribes can use a variety of funding sources in combination with Title VI financing, such as low income housing tax credits. Title VI loans may also be used to pay development costs.

With the flexibility of the Title VI program, tribes can structure their loans to meet the requirements of their project and negotiate a variety of repayment terms with the lender. Loan terms can range up to 20 years, and payments may be made monthly, quarterly, or annually. Additionally, interest rates can be fixed, adjustable or floating, and are based on an index.

### *How Funds may be used:*

- Low to moderate income housing
- Indian Housing Assistance
- Housing Development includes infrastructure, 1–4 units and multifamily
- Housing Services
- Housing Management Services
- Crime Prevention and Safety Activities
- Model Activities (with HUD approval)

### *Positive Aspects of the Program*

Benefit tribes and lenders. Tribes benefit by building more housing at today's costs and using the loan to leverage additional funds from other sources and improved financial services from lenders and permit flexible financing terms. Additionally, tribes are not required to use land as collateral for loans.

Likewise, lenders benefit from administering Title VI loans. Some of these benefits include: limited risk exposure, reduced costs, increased loan marketability and improved opportunities to market financial services and credit towards meeting community reinvestment goals.

*Guaranty is 95 percent* the lender is allowed to collateralize an additional 5 percent with separate collateral that applies first to the lender. This is typically a Certificate of Deposit (or other cash deposit) resulting in a loan that is 100 percent covered and has minimum risk to the bank.

*Collateral* is the pledge of future IHGB funds. The tribe, housing authority or TDHE leverages IHGB funds to finance affordable housing activities today by pledging future grant funds as security for repayment of the guarantee obligation to HUD for their 95 percent guaranty. The lender is allowed to have additional collateral separate from the IHGB funds such as a CD for their 5 percent that is not guaranteed. This is negotiated with the tribe. The additional collateral is the only asset pledge to the loan.

*Loan terms* can be fixed rate and/or variable up to 20 years. Often the Construction period can be an adjustable rate and then fixed for the remaining amortization. Pre payment penalties are allowed and typical. (Match funding) not assumable.

### *Examples of Title VI Success Stories*

—\$7 Million dollar loan to a tribe on the west coast (closing 6.18.15) The project is providing funding for an on reservation, 45 low income housing units (various types) for senior housing, supportive housing and transitional housing (defined as transitioning housing preparing from rental to home ownership), a community center and related buildings. Bank2 will utilize the Title VI loan program to provide a 20 year market rate interest loan. In addition, plans call for the Title VI to be combined with normal HUD-184 single close home loans on the reservations.

Another example (in the discussion stages) is for senior housing on a reservation using the HUD-184 program. The concept includes several quad plexes on adjoining lots. This loan format would be creating a senior community on the reservation using the lender's fund and not government funds. This approach allows all income levels to live in the senior housing units.

### *Negative aspects of the program*

- Slow turn times from BIA for TSR's
- Narrow scope of the program

### *Why it Does Work:*

HUD has a dedicated and knowledgeable employee that is devoted to the program. The program has a 95 percent guarantee and allows the lender to collateralize the additional 5 percent. Like the 184 it is flexible enough to work well with the vastly different Native American low income housing programs, yet specific

enough in its scope to avoid massive amounts of minutia. There has never been a loss on a Title VI loan.

*Why it Does Not Work:*

The program is connected to low income housing and collateralized by NAHASDA funds. This puts the lender at risk on the guarantee if proper oversight and monitoring of NAHASDA reporting are not completed. Mixed use properties can be problematic if they serve non low income members of the community. The program is too small. Since 1996 only 68 Title VI loans have funded. The need far outweighs this number.

*Recommendations:*

- More Tribal and Lender Training and Education
- Explore additional collateral sources other than NAHASDA funds including AR, investments, cash and or other chattel. The impact would allow tribes to expand the purpose of the program beyond affordable housing to include more traditional economic development.

**Other General Recommendations**

*Environmental reviews* are required on all loans on tribal lands in some form. Many of the tribes have environmental staff or departments trained to complete this requirement. However, on allotted lands it can fall to the BIA. This can create delays and additional expense to the borrower. The requirements are different for different agencies. More confusing are the different requirements for various regions of the same agency. Lenders and loan guarantee programs would benefit from standardized environmental requirements across all government lending agencies is needed.

*BIA TSR* issues affect all three programs upon which my testimony has touched. The problems created by the lack of speed and responsiveness of the BIA have a dramatically negative impact to the economic well being of Indian country. It must be addressed and corrected. We believe without some sort of accountability the problem will not be corrected. We also believe market place Service Level Agreements (SLA's) should be established, monitored and real consequences should exist if SLA's are not met. This is too important. The BIA needs to get it right for Indian country and for lenders. Ask yourself this question: Would you put up with the issues the BIA creates?

*Kill the Red Tape* on issues that clearly make no sense and actually cost the American tax payers huge sums of money. Following are two loans that illustrate this point.

*Examples*

Bank2 has a loan that was in foreclosure. While in foreclosure the home burned and was a total loss. The insurance company issued a check to both the borrower and Bank2. The borrower refused to sign the insurance check for \$97,000 and hired an attorney. They made an offer to sign the insurance check over to Bank2 if Bank2 would forgive the outstanding balance of the loan (approximately \$7,000) and allow the customer to retain the land valued at \$5,000. Bank2 asked HUD to approve the offer that would have resulted in a \$7,000 loss to the American tax payers. It took ONAP over a year to come to the final decision that they were unable to approve the offer. The only recourse Bank2 has is to continue with the foreclosure process, raze the home to the ground once it receives the property and submit a claim to HUD. At that point the claim is estimated by Bank2 and our attorneys to exceed \$50,000. The inability of the Director of ONAP to accept the offer from the borrower will result in American tax payers paying an additional \$43,000 in claims. Unfortunately this story doesn't stop there. We have been advised ONAP cannot accept vacant land; Bank2 will be required to sell the property before submitting our claims. This will undoubtedly add more expense to the claim. This type of red tape causes undue burden on banks and unnecessary expense on tax payers.

Another example is a HUD-184 single close home construction loan in California. The customer passes away prior to completion of construction. Her son wants to complete construction and HUD agrees to allow Bank2 to make the advances from the escrow account to complete the home. Upon completion, the son wanted to assume the loan, as is allowable by state law as the heir. However, the son previously defaulted on his own HUD-184 loan and HUD won't approve his assumption of the outstanding loan. Additionally, HUD approves excess construction funds to be applied to the mortgage as payments until resolution with the borrower's son is found. Meanwhile, the tribe considered first right of refusal, but was unsure whether they would implicate themselves by evicting the son, in the legal issues with rights of heirs. Ultimately, the son filed suit against Bank2 and created additional legal fees

to add to the mounting expenses surrounding the unpaid mortgage, misapplication of loan proceeds at the direction of HUD, and indecision due to uncertainty on the part of all parties involved.

Clarity needs to exist regarding jurisdiction and recourse. Red tape and confusion are inherent to the homes on Native American lands. With the additional time and effort involved in dealing with these challenges, increased cost occurs with no offset other than capital that would otherwise be allocated to housing. Lenders are hesitant to provide loans when outcomes similar to the examples above or worse occur with no foundation of how to take appropriate action. ONAP must be free to have contingency plans for life. There are much better remedies to these issues than law suits that add considerably to customer and lender frustration, and to tax payer expenses.

*Provide adequate funding for adequate staffing of programs.* We feel most of the problems with the HUD-184 program stem from the ONAP office being under funded from a staffing standpoint. Without question the staff works hard and is dedicated to the program but there is only so much a handful of people can do. The program has grown but the staff level has not grown and thus it has created many problems as outlined in this testimony.

In the case of the BIA guaranteed lending program, we have reasons to believe that at least part of the problems have to do with limited staffing or staffing that is not dedicated to the loan program.

#### **Conclusion**

We are committed more than ever to meeting the capital needs of Native America. It is a worthy cause. We believe if the programs we have testified about were properly funded, staffed and held accountable, much of the access to capital problems in Indian country would be alleviated. We pray the Committee will take the appropriate steps to ensure these things are done.

I would like to express my sincere gratitude to the committee for allowing me to testify. This was a great honor and a unique opportunity.

The CHAIRMAN. Thank you very much, Mr. Hill. I assure you that it is.

Mr. Desiderio, I will call on you next, please.

#### **STATEMENT OF DANTE DESIDERIO, EXECUTIVE DIRECTOR, NATIVE AMERICAN FINANCE OFFICERS ASSOCIATION**

Mr. DESIDERIO. Thank you, Chairman Barrasso, Vice Chairman Tester, Senator Hoeven and Senator Franken.

My name is Dante Desiderio. I am member of the Sappony. I am pleased to be here as the Executive Director for NAFOA, a national organization representing tribal governments in economic development.

We can state confidently access to capital and access to effective capital impacts all tribes at every stage of development. While the need for capital to flow freely into Indian Country is great, existing Federal capital programs have failed to drive economic growth and development that is profoundly needed in Indian Country. We think it is time to take a different look at these programs and ask ourselves why they are not working to reach their full potential.

I want to start by looking at two programs that are actually working. The first program is the Indian Loan Guarantee Program. We have heard from two bankers about the value of that program. I want to bring up a couple of points of why that works and maybe why we should use that as a model for other programs.

First, it acts as an important bridge between the private sector banks that are willing to lend to Indian Country and the tribes that have difficulty securing capital. It also works because it is a tract of money for both tribes and banks. It has longer term loans that are more suitable for any government and it is an attractive



loan for the private sector because of the guarantee. However, the program is not reaching its potential because the total amount of Federal funds budgeted is around \$7 million or \$8 million for all of Indian Country.

Another program that is working but falling short of meeting its potential is the Native American CDFI Assistance Program at the Department of Treasury. The program has been successful for important reasons that can serve as a guide for future capital policy.

First, Treasury set aside the Native program from the larger CDFI program. The Native CDFI program provides flexible capital that is targeted to serve the local needs of each tribal community. Finally, the capital program is paired with technical assistance that helps build economic and business capacity in the tribal communities. The program works but again, its entire budget is around \$15 million for all of Indian Country.

I also want to use my time to take a look at two additional programs that are actually not working for Indian Country but are well funded. Combined, these credit programs represent over \$10 billion in Federal investment.

The first is the New Markets Tax Credit Program which allocates \$3.5 billion in tax credit funding for community and economic development. Tax credits serve as a key role for tribes. Tribal governments generally issue debt and tax credits act similar to an equity investment for a portion of the project.

This makes more projects feasible, makes projects more cost effective and it is much easier for tribes to attract private investment. This all sounds great for tribes but the tribes have largely been left out of the \$3.5 billion Federal program.

We received word yesterday that the Chickasaw Nation became the first Native-focused entity to receive an allocation in the past three years. Congratulations to Chickasaw and regrets to the rest of Indian Country that did not get their awards.

The other Treasury tax credit program that leaves out tribes is the \$6.7 billion Low Income Housing Tax Credit. States submit their housing priorities in the form of a qualified allocation plan for approval from the IRS. Then the Federal Government allocates the funds directly to the States with no method for tribes to receive a direct allocation.

The experiment of leaving tribal needs to the States has categorically failed. Tribal governments have the longest housing waiting lists in the Country and the highest housing need. We need to have that program give direct allocations to the tribal governments.

Capital programs for developing nations are viewed by the World Bank and the International Monetary Fund as long term investments, investments that build trade, international relations and long term prosperity for both the entities of the nations that receive the funds and those nations that contribute the funds. Congress should view Federal capital programs for Indian Country in the same lens. When tribes succeed, local economies prosper and the investment pays dividends back to the Federal Government.

I want to conclude my remarks by simply stating our goal coming into this hearing. Congress should increase their investment in developing all stages of tribal government economies, one, by fully investing in the direct tribal programs already working for tribes and

two, by opening existing Federal programs in tax credit and other lending programs to tribes.

Thank you, Senators, for inviting NAFOA to testify. Thank you for your commitment to Indian Country.

[The prepared statement of Mr. Desiderio follows:]

PREPARED STATEMENT OF DANTE DESIDERIO, EXECUTIVE DIRECTOR, NATIVE  
AMERICAN FINANCE OFFICERS ASSOCIATION (NAFOA)

Thank you for the invitation to provide testimony to the Senate Committee on Indian Affairs (Committee). NAFOA thanks Chairman Barrasso and Ranking Member Tester for your leadership of this Committee and your interest in economic growth and development in Indian Country.

NAFOA, in its first few decades, was focused on building the foundation for economic development for tribal governments. This work focused on two necessary elements. The first was working to convince banks, capital markets, and any institution, public or private, to lend to tribal governments. The second was building strong accounting and operational policies that made sense for tribal governments and provided the necessary framework to attract private capital.

Both of these areas, access to capital and financial management, remain a core part of NAFOA's work. However, NAFOA's role in growing tribal economies has grown along with how tribal governments are pursuing economic development. Tribal governments have come to view the revenues derived from economic growth as a necessity to supplement or fully fund vital programs and services. This tribal government reliance on economic growth and development has made Congress and the Administration's role in promoting growth and development much more important as well.

The subject of today's hearing of access to capital comes at a time when tribal governments from all across the country can attest with experience that access to cost-effective capital that works for Indian Country is lacking. It is lacking in both access and in being effective in meeting its intended purpose.

This lack of effective access to capital is prevalent in tribal governments in early stages of economic growth that need flexible and initial seed capital and in tribal governments in advanced stages of growth that need significant amounts of cost effective capital to fund multifaceted projects. The lack of effective capital programs can potentially impact every tribal government at any stage of growth. This means financing for needed health care centers, tourism projects, and infrastructure are delayed, not built to their full capacity, funded in more costly ways, or never built at all.

NAFOA's testimony will identify some impediments and barriers facing tribal governments when accessing capital. While identifying impediments and barriers is helpful in understanding challenges, it does not always offer a pathway forward to creating policy solutions. Therefore, our testimony will also draw attention to existing capital programs that are working for Indian Country and offer recommendations that will allow capital to flow into Indian Country. Our recommendations will fall along five main themes:

- Creating parity between tribal governments and other governments when accessing the capital markets.
- Increasing funding and support for programs that are working, including the Indian Loan Guarantee Program at the Department of Interior and the Community Development Financial Institutions Program at the Department of Treasury.
- Demanding that existing federal programs that could work for tribes change their structure to include tribal governments and provide capital that is proportionate to the level of need.
- Clearing the way for tribes to effectively participate in the multi-billion dollar tax credit markets for housing and development.
- Creating incentives for banks to lend to emerging tribal communities either directly or through partnerships.

The conversation on access to capital has to start with analyzing challenges that are characteristic of tribal markets. Noting these characteristics helps inform the private and public capital markets on ways to effectively serve as good partners in capital formation for tribal growth.

### **Distinctive Sovereigns**

The first characteristic to recognize is that tribal governments occupy a unique role among sovereigns. Tribal governments do not enjoy full independence as a nation and do not fit neatly into the existing categories of states, localities, authorities, or other sub-national entities. This is especially problematic when it comes to accessing the capital markets. This status or characteristic defines the capital needs of tribal governments as nations and sovereigns. It also defines the well-intended policies that often miss the mark in providing capital to Indian Country by treating tribal governments as individual lenders, commercial entities, or as a mixed governmental entity that requires additional caution. This lack of clarity in federal policy carries over to the private sector markets that view lack of clarity as risk.

### **Government Revenue Generation Models**

Tribal sovereigns are different from domestic sovereigns in regard to their source of revenue generation. States and local governments rely on sales, property, and other varied revenue schemes to fund programs and services. This model to date has proven largely ineffective for most tribal governments. A few tribes have customized this model to work by collecting sales taxes from businesses recruited to the reservation, however; this model has only worked for a very small number of tribes located near population centers with the ability to attract large retailers. In general, tribal governments have limited tax bases with the inability to create a property tax on trust lands or to tax populations with limited income.

As a result, tribes are forced to rely on revenues from insufficient and decreasing federal programs and revenues derived from economic development. Economic development for tribal governments disproportionately carries greater significance among the family of domestic governments, yet the focus on supporting and fostering capital programs for economic growth for tribal governments has been disproportionately underserved.

In general domestic sovereigns, such as states, municipalities, and authorities rely on public financing to fund their capital budgets, build infrastructure, and foster growth. The municipal or tax-exempt debt market is one of the largest publicly-traded markets in the world. The market size is a direct outcome from the demand investors have for this type of debt. The interest received by investors is generally tax-exempt making it highly attractive. The demand also keeps rates low making it cost effective for state and local governments. The rates are in effect subsidized by the federal and, at times, state governments.

In a glaring inequity, tribal governments do not have the same access to this tax-subsidized tax-exempt market. Tribes are prohibited from accessing the tax-exempt market for projects deemed to be outside of what is termed “essential government functions.” Ironically, this means that tribes are not able to use the public market for economic development purposes—the greatest area of governmental need and the main revenue generator for programs and service.

Recently, the Department of Treasury filed a report concluding this inequity should be eliminated and that Congress should provide tribes with broadly equal access to tax-free debt. A limited amount of authority for tribes to issue tax-free debt for economic growth was created in The American Recovery and Reinvestment Act; however, a series of external factors like shorter-term issuances for economic development purposes and additional requirements placed on the funds has left a portion of this funding pool idle to date.

The tax-exempt rules regarding tribal access to capital serves as an example of well-intended policy missing the mark. The assumption that tribal government capital access should carry additional cautions since the revenue model differed from other domestic sovereigns proved to be bad policy. Adding provisions that restrict capital use or make it more costly and time consuming don’t work in the long run for tribes and for the capital markets. Additional restrictions and unclear definitions such as “essential government functions” create uncertainty. The capital markets tend to either steer clear of or charge a premium for uncertainty, making capital more costly or inaccessible.

- Congress should implement the recommendations submitted by the Department of Treasury to provide tribal governments the right to access the tax-exempt bond market on equal terms to states. The recommendations would open the market for tribal government use of tax-exempt debt for purposes of building public works and creating economic development for public use.

### **The Role of Federal Capital in Early Development**

Tribal governments, as nations, do not have access to a development bank such as the World Bank or the International Monetary Fund as a means to form capital

for long-term infrastructure development and economic growth. Instead, tribal governments rely on piecing together and navigating the diverse and sundry Federal Government development and capital programs in lieu of a development bank. Tribal governments in early stage development use federal capital programs to transition to the private markets.

The agencies that have a role in providing tribal governments with access to capital include the Department of Treasury, Department of the Interior, the Small Business Administration, the U.S. Department of Agriculture, the Department of Housing and Urban Development and the Department of Commerce. Within these agencies there are a number of bureaus, authorities, agencies, and programs having nuanced terms, conditions, and intended uses.

Navigating the capital programs that serve Indian Country to find the most suitable and cost effective solution is difficult. To be fair to the multiple agencies that serve Indian Country, there have been recent efforts to coordinate amongst agencies and refer tribal governments to appropriate sources *See Federal Funding Guide—Indian Country*. However, even with this coordination, there is a stark realization that the amount of funding dedicated for tribal government use is extremely limited. This is especially true when considering the important role this capital plays in developing tribal economies and fostering long term sustainable access to capital. An examination of a few successful programs dedicated to early stage economic growth may serve to illustrate this point.

- The Department of the Interior, through its Indian Loan Guarantee Program, serves as an important bridge in building a relationship between private sector banks that are willing to lend to Indian Country and tribes that have difficulty securing capital. The program has long-term loans that are needed for any government, an enviable default rate at fewer than two percent, and an incentive in the form of a loan guarantee up to ninety percent to minimize the risk to community banks willing to lend to the tribal market. The guarantee also helps banks make larger loans internally or with the help of other lenders. This program serves an important role for initial and early tribal government growth; however the total amount of federal funds allocated for the program for lending is around \$8 million. Even with a leverage of 10:1, it only provides \$80 million in lending authority—for all of Indian Country.
- The Department of Treasury, through its Community Development Financial Institution Fund (CDFI), provides flexible capital targeted to serve the local needs of tribal communities through the Native American CDFI Assistance Program (NACA). An element of the NACA program success is that funding needs are determined locally by each community and the capital serves the overlooked needs of small initial development. The capital program is paired with technical assistance from the CDFI which builds business and economic capacity. There are currently around 70 Native CDFI's. This much-needed and highly-successful program shares a \$15 million allocation for all 70 CDFI's serving Indian Country averaging just over \$200,000 for each CDFI.

These two successful programs have a combined federal budget of \$21 million. This commitment from the Federal Government to early stage capital targeted to Indian Country is grossly underfunded. USDA programs have increased funding more recently; however, the amounts previously dedicated to tribal governments lagged the rest of the population in simple per capita spending measurements.

- Congress should increase funding for these two successful programs significantly. The early stage development programs are a lifeline for tribal economies mired in generational economic stagnation and depression-era unemployment rates.

### **Public-Private Capital for Community Development**

Tribes, as governments, often need greater amounts of funding for development projects that have the ability to impact economic growth on a larger scale. Federal support for this type of project becomes even scarcer than early stage development capital. Tribes rely on federal program support but do not have the ability to leverage federal program revenue in the same manner as state governments since tribal appropriations are considered discretionary federal spending. Thus, while a state can go to the private market and leverage future tax and program revenue, tribes cannot go to the same private markets and leverage future federal funding. This is the case even when the federal funding is in place of the same tax or revenue base that is used by states.

In addition, capital programs that are specifically designed for the purpose of leveraging and attracting capital to public projects have left tribes out. Three pro-

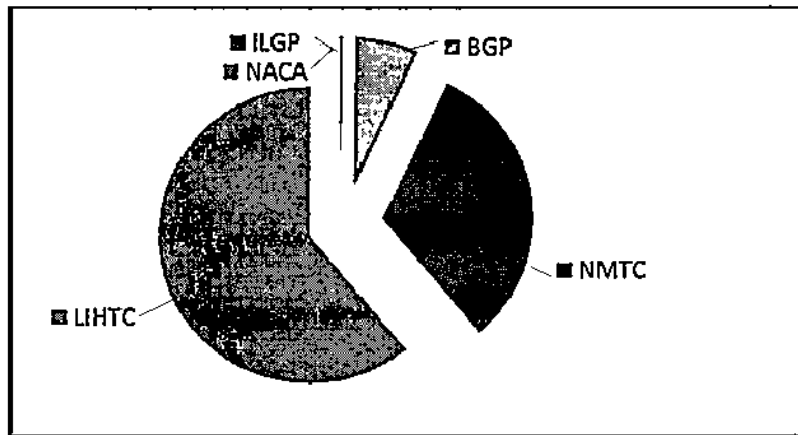
grams in particular within the Department of Treasury, representing billions in potential investment, need to be fixed immediately to include tribes.

- **New Markets Tax Credits**—The New Markets Tax Credit Program (NMTC) falls under the CDFI Fund within the Department of Treasury. The program is funded at \$5 billion with \$3.5 billion in tax credit funding available annually. Tax credits serve an important role for tribal governments since tribal governments can only issue debt and tax credits act similar to an equity investment for a portion of the project. This makes more projects feasible, cost effective and much easier for tribes to attract private investment. All of this sounds great for tribes, but there has been no allocation for tribal Community Development Enterprises (CDE) in the past two years. It is inexcusable for a federal agency to exclude tribal governments from billions in federal funding for community and economic development. Treasury is expected to announce the next round of funding imminently and tribes are concerned that it will be a third straight year of being shut out.
- Congressional oversight is needed to correct this omission. Treasury has refused to consider a tribal set aside despite bi-partisan letters from Congress specifically requesting a tribal set aside. The agency has considered per-capita funding allocations as a way of justifying their actions. However this has never been an adequate method for meeting tribal government or other government needs when it comes to community development. Tribal populations are relatively small (not by our own planning) and the needs of our governments tend to be far greater than our respective tribal populations. The same deference of need over population or per capita spending for capital programs has been afforded to other governments including rural states for its tax-exempt private activity bond allocations. Wyoming's population is around five-hundred thousand citizens. While other more populous states are granted \$95 per capita in allocation, Wyoming and other rural states are granted the authority to use private activity tax-exempt debt at allocation levels that are far greater than their population at a minimum of \$291,875,000. This example is a clear recognition that the infrastructure and development need of the state is often greater than its population—especially in less populated areas. Tribes should be considered in the same light. There has been no visible effort by the Department of Treasury to accommodate tribal governments or accommodate their substantial need.
- The CDFI Fund also has another program, the CDFI Bond Guarantee Program that has inadvertently left out tribal governments. This program allocates \$750 million in the form of direct lending or relending to banks and CDFIs. The loans tend to have lower rates and carry longer terms of up to almost thirty years, making it a viable program for tribal governments. Tribes were inadvertently left out of funding initially when the CDFI Fund chose land as the preferred form of collateral. This left little room for tribes unable to collateralize loans using trust lands. The CDFI Fund has been willing to include tribal comments and entertain alternatives for tribes in an effort to make the program more accessible, however; Congress should ensure that promise is kept and the Bond Guarantee Program includes tribes.
- Finally, the Department of Treasury, through the Internal Revenue Service (IRS), has not ensured tribal access to the Low-Income Tax Credit (LIHTC) Program. This federal program passes money through to the states who submit a Qualified Allocation Plan to the IRS for approval. There is no allocation for tribal governments even though it is a federal program and states often exclude tribal needs from their funding plans or provide funding at levels that barely impact the overall tribal need. This program holds great promise for meeting the dramatically underfunded housing needs of tribal governments who wrestle with the longest housing waiting lists and highest housing needs in the nation. Given the need and the fact that it is a federally-funded program, at a minimum, the IRS can simply require states to include tribal needs in their Qualified Allocation Plans or more to the point, the Federal Government is neglecting its trust responsibility by bypassing tribes altogether and should have a direct allocation for tribes.
- Congress, in its oversight role, should ensure tribes are included in these multi-billion dollar capital programs. This no-cost policy fix should ensure tribes receive funding according to their need and in a manner that accommodates tribal government characteristics. That means:
  - Congress should mandate a set-aside for tribal governments in the New Markets Tax Credit Program of ten percent.

- Congress should strongly encourage, and if necessary, mandate that the CDFI Bond Guarantee Program accept the use of third party guarantors and the use of tribal government revenues to back loans given to tribes and tribal entities. For example, Congress can ensure the program authorizes a tribal government to back a loan to its housing authority using separate economic or other program revenue as collateral.
- Congress should change the Low-Income Housing Tax Credit program by authorizing the program to fund tribes directly or at the very least, grant bonus points for tribal housing applicants in any state review process.

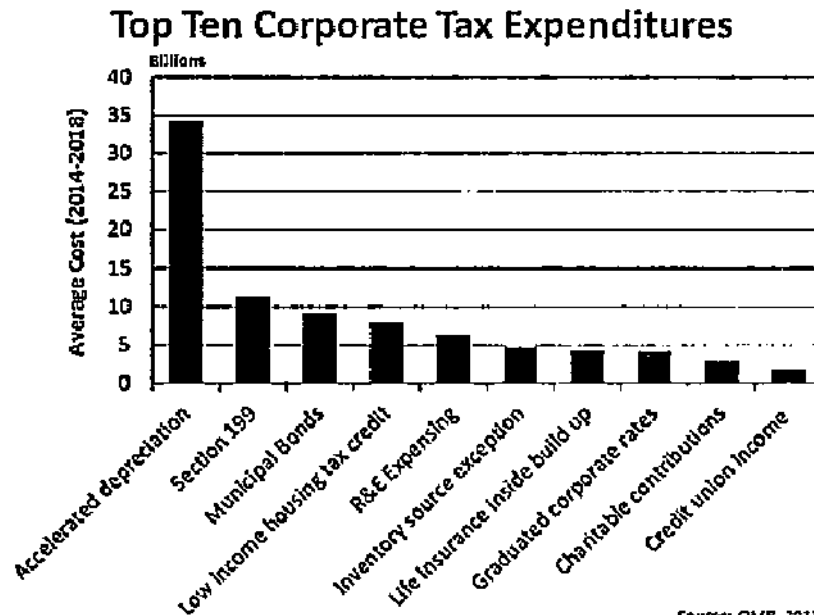
It is worth noting the funding gap between the programs directed to Indian Country and two of the programs that leave Indian Country out. The chart below is by no means inclusive of all direct funding programs, but it is illustrative of the vast potential impact for tribes if a nominal portion of the untapped existing federal program funding were opened to tribal governments.

The chart represents the funding comparison of the Indian Loan Guarantee Program (ILGP), the Native American CDFI Assistance Program (NACA), the CDFI Bond Guarantee Program (BGP), the Low-Income Housing Tax Credit Program (LIHTC), and the New Markets Tax Credit Program (NMTC). The two tribal programs are included as the top most slivers in the pie chart.



Ironically, the three large programs that make up the bulk of the chart are within the Department of Treasury with two in the CDFI Fund. The same CDFI Fund that houses the NACA program that has been so successful at serving tribes by providing a set aside and capacity building. Applying the same concepts of creating a separate tribal program that accommodates tribal characteristics to the NMTC Program and the Bond Guarantee Program seems like it should be an obvious fit for the agency. Simply opening these programs to Indian Country would be a significant accomplishment and one that should already exist.

Low-Income Tax Credits occupies the largest slice of the pie chart in light blue. The annual expense of credits in 2014 was \$6.7 billion almost doubling the outlay of the New Markets Tax Credit Program shown in purple on the chart. According to the Congressional Budget Office, this outlay makes the LIHTC program one of the ten largest corporate tax programs as indicated in the chart below.



The LIHTC are allocated across all 50 states based on population. In 2012, each state received about \$2.20 per person. This amount rises each year with inflation. However, the LIHTC program also recognizes that the housing needs of low-population states like Alaska and Wyoming are often greater than the funding allows. The LIHTC program has accommodated these governments by adding an allocation floor of slightly over \$2.5 million.

- Congress has already seen the wisdom and results of providing incentives in the form of tax credits to encourage private investment in public works. The problem to date is that tribal governments are sitting on the sidelines while neighboring governments are making full use of the programs worth billions in public community and infrastructure development. This type of community and infrastructure development is sorely needed by tribal governments to create sustained growth. The investment is already being made and accommodations are already being given to other governments—Congress needs to act now before another year goes by with tribes acting as spectators in federal capital programs.

#### **Federal Investment**

Capital programs for developing nations are viewed by the World Bank and the International Monetary Fund as long-term investments. Investments that build trade, build inter-national relations, and build long-term prosperity for both the nations receiving funds and nations contributing the funds. Congress should view federal capital and incentive programs with the same lens. The same investment validation that holds for the World Bank is also true for investments in tribal economies. Tribal economies are often the core economic driver not just for their tribal citizens, but for the surrounding communities and even for entire regions.

Funding early stage capital programs and public-private incentive programs has already proven to be successful in building businesses, public-private partnerships, and capacity. Additional investment and simple inclusion is needed.

We want to thank the Committee for all of its work on behalf of Indian Country.

The CHAIRMAN. Thank you very much for your testimony. Thank you all for testifying.

We are going to start with some questioning. I will start with Senator Hoeven.

**STATEMENT OF HON. JOHN HOEVEN,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator HOEVEN. Thank you, Mr. Chairman.

I thank you and the Ranking Member for holding this hearing. I thank all of our witnesses for being here to testify.

I have had an opportunity to work on individually-owned Native American businesses on the reservation and also tribally-owned. I would like you to address each from the standpoint of capital needs or the most effective programs you have run across in terms of how we help individually-owned Native American businesses on the reservation and also tribal enterprises. Both have capital requirements. I would like your sense of what is most effective for each, thinking if we can develop both, that certainly helps the overall economy on the reservation.

Many individual-owned Native American businesses can actually provide services to some of the larger tribally-owned businesses. You want to have a good network of both. I would like to understand what programs you think are most effective for each, starting with Ms. Castillo.

Ms. CASTILLO. As I stated in my testimony, we look at a broad spectrum of capital and financing opportunities because there are different needs based on where you are in the growth spectrum.

Take, for example, businesses. We look at capital from the micro lending perspective, we look at capital from the traditional banking perspective, we look at capital in terms of capital investments, in terms of growth and that is why I mentioned alternative capital opportunities.

Again, MBDA is focused on not just evaluating the capital that is out there, but what capital is really needed by these different firms and by these different organizations or entities. We believe in knowledge transfer, as you pointed out. Larger companies can be that source of not just mentorship and technical assistance, but they can also be the source of teaming.

Again, this is a capital access hearing but I also want to underscore that capital access is just one of what we consider to be three prongs of the issue which is access to capital, access to contracts and access to markets.

I will tell you what has been most effective at the smaller level. Micro lending can be that source of at least being able to jump start a business. Again, if we want to focus on helping businesses growth and thrive, we need to look at a much broader perspective.

That is why our agency is looking at other alternative sources of capital, even mergers and acquisitions type of capital. We want to make sure we are looking at capital from a growth perspective, not just in terms of starting but hopefully in helping them thrive as well.

Senator HOEVEN. Let me go to Mr. Desiderio next with the same question. What are your thoughts in terms of what is most effective for individual enterprises and tribally-owned enterprises?

Mr. DESIDERIO. I am really glad you brought this up, Senator Hoeven. This is a very important distinction when we look at Federal policies that are going to try to develop tribal economies versus Federal policies that are going out to individually-owned Native businesses.



Tribal governments are much different and need much longer term capital, much more patient capital. We do not have the ability to go to the market and raise equity, so we rely on long term, patient capital to grow enterprises. It is a much different role.

The tribal governments are looking at those enterprises to fund programs and services. We should be extending these long term capital programs, these windows. There are some programs that are underfunded like the Indian Loan Guarantee Program. That is open to Native businesses and tribal governments and goes out to almost 30 years.

The bond guarantee within Treasury can also but we have been left out of that pool of money. USDA provides some of capital for infrastructure development but it is very difficult to navigate and pull together those programs to develop infrastructure for the individual businesses to locate on the reservation.

I just want you to keep in mind these are two different functions. The long term patient capital is needed to build the infrastructure and the tribal businesses to provide those program services, even the telecommunications infrastructure that is needed for business development.

Senator HOEVEN. I want to come back to Mr. Hill and Mr. Watchman. What do you need to provide money on the reservation? Do you need loan guarantees? Do you need regulatory relief? What do you need to put your capital out there in Native American businesses on the reservation?

Mr. HILL. I believe the BIA Loan Guarantee Program, if it were to function at a high level, would provide much of what is needed for Native America, businesses, both private and tribal, on reservation. The program is not adequately funded, nor is it administrated properly.

Senator HOEVEN. I have to stop you there. Not funded adequately. I have used the BIA loan program, so I understand more funding, more resources allocated but your next statement was what, that it is not administered properly? What is the impediment there?

Mr. HILL. The BIA is not very accountable to their customer or to the banks. The process for approval is subject to individual offices and subject to different edicts handed down from Washington from time to time. The process is not one that can be counted on, nor is it one that can be counted on in a timely basis.

Senator HOEVEN. How would you fix it?

Mr. HILL. My written testimony gives some great examples of how to fix that. It needs to be accountable. They need to have a service level of accountability to their borrowers. Most of these transactions, many of these, are time sensitive. Without any accountability to the approval process, it is almost impossible to complete a time sensitive transaction.

Senator HOEVEN. You have specifics in your testimony?

Mr. HILL. Yes, sir.

Senator HOEVEN. Thank you. I am going to look at that.

I understand I am over my time, so I will stop there. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hoeven.  
Senator Franken.

**STATEMENT OF HON. AL FRANKEN,  
U.S. SENATOR FROM MINNESOTA**

Senator FRANKEN. Thank you, Mr. Chairman and Mr. Co-Chairman for this very important hearing.

I am sorry, Ms. Castillo, but I came in after your testimony. But from the three of you, I was hearing that the BIA Loan Guarantee Program is underfunded. Mr. Hill just talked about it being badly administered. It is hard to get more funding for a program that is badly administered.

What I am hearing is that \$7 million is next to nothing and sort of embarrassing, I think. Of the number of programs mentioned, I heard the CDFI Assistance Program. I wanted to ask Mr. Desiderio about that.

Bois Forte Band of the Ojibwe is located at the top of Minnesota close to the Canadian border. With some technical assistance grants, the Band set up a credit union. I think it was the only new credit union chartered in 2013. The credit union is now working on getting its certification as a Native CDFI.

Could you walk us through an example of how a Native CDFI works on the ground and how it addresses the community's capital needs?

Mr. DESIDERIO. The Native CDFIs are established in tribal communities or in communities they are set to service. For example, if they are setting up in South Dakota and want to focus on small business development, they have the flexibility to focus on the need of that community and also provide technical assistance. There is some funding set aside for that.

That is really why the program works because it is left up to the communities to determine their needs and also gives technical assistance to help the borrowers along. The funding is an issue with the CDFI.

Senator FRANKEN. Every year, I write the Appropriations Committee asking for more funding.

Mr. DESIDERIO. We have 70 Native CDFIs that if you average it out, it is about \$200,000 each, which is not enough for technical assistance and loans.

Senator FRANKEN. Mr. Watchman, in your testimony, you talked about the need for more funding. How would that translate for support for economic development in Indian Country?

Mr. WATCHMAN. The way I look at it is that because commerce and activity in Indian Country is under trust land, that is always a challenge. In order to do a conventional loan, you need credit enhancement. That is where the loan guarantee programs help to do it.

As a former banker, you go into a situation and look at trust land, there are many different obstacles. As a bank, you have many different checklists you have to follow, so trying to reconcile the tribal court and title to land makes it challenging.

At the end of the day when you risk rate a credit, it risk rates very high in terms of very risky. The BIA Loan Guarantee Program and HUD programs help to enhance the credit. I am also on the board of the Native American Bank. It helps us to lend to Indian Country.

The issue you have, for example, an individual Indian borrower on a reservation is confined and subject to tribal laws, so they cannot say we want to waive tribal law and use the State law. That cannot be done.

On the tribal side, in many cases, for big commercial loans, a tribe can say, we are going to provide a waiver and we are going to waive our tribal laws and use a State law. In many cases, credit enhancement is needed so that more loans can be done. That is how I look at it.

Senator FRANKEN. There are bands of tribes in my State that have a great need for capital. Because of that, they would be considered a high credit risk but that is exactly why they need the capital.

I know I am out of time but can I take a little bit longer?

Mr. Hill, you talked about TSR. I visited a couple of tribes in Arizona and that seemed to be a big issue, making sure the title is resolved on these homes. Can you explain what the problem is and why this is so important to solve? Very often who owns these homes is in question, right?

Mr. HILL. That is true. I am not sure I can explain the problem adequately. Essentially, we have trouble getting clear title to the property. If any of you were to buy a home or to try to buy a business and buy the real estate the business sits on, you go to a title company and they issue a title commitment and the bank is ready to close because there is clear title.

The BIA is struggling to provide the clear title and it is their responsibility. In my written testimony, I actually ask if you could imagine being in that situation yourself, what would you do about it. That is the situation on many reservations today. There are two stories in my written testimony that go into great detail about this.

Without a title commitment, without proof they own that property and it can be obligated, we cannot close a transaction and get a guarantee on the loan. Without the BIA addressing this problem and making it a serious matter and fixing their ability to issue those title commitments, most loans will not be completed and funded that could be.

Senator FRANKEN. Would everyone agree that is something that needs to be addressed? Mr. Desiderio?

Mr. DESIDERIO. It does. It does need to be addressed. It is an issue. Some tribes have been very progressive in taking that on. The issue of titling and the issue with a lot of these other infrastructure issues is where the Federal programs come in to really deal with a lot of this.

The capital programs should be enhancing all that and building infrastructure and getting the long term debt we need to do that. It is an issue and there are other issues besides the titling that we have to work through as well.

Senator FRANKEN. Thank you. I would like to thank all the witnesses, especially Mr. Desiderio.

The CHAIRMAN. Thank you, Senator Franken.

Senator Tester?

**STATEMENT OF HON. JON TESTER,  
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Mr. Chairman.

First of all, I want to thank all of you for your testimony. I think it is very important that this Committee hears the financial capital challenges in Indian Country.

As I look in the crowd, there is a tremendous group of tribal leaders out there who just do an incredible job on each and every one of their reservations and quite frankly, a lot of folks who look from a more global standpoint. We thank you all for being here for this hearing.

I will start with you, Ms. Castillo, and kind of move down the line. The Minority Business Development Agency provides many services to minority-owned firms and technical assistance to institutional networking. Which services do tribes use the most?

Ms. CASTILLO. I believe they use all of our services. I will start with access to capital but also access to contracts. It is okay to have the capital, but you need to have the customers and the clients. That is where I think there are a lot of opportunities.

As a matter of fact, we started a Federal procurement center here in Washington, D.C. to help MBEs be able to access Federal contracts. Let us not forget the private sector. It is helping them understand how to compete for a contract, how to respond to the contract and how to be successful with the contract.

Senator TESTER. I appreciate that. Minority business includes a lot of different groups. What percentage of your work is done with Native Americans?

Ms. CASTILLO. I would say that at least 30 percent or more is done with Native Americans.

Senator TESTER. How much of your work is done with Native tribes that are non-gaming?

Ms. CASTILLO. I do not have the exact number.

Senator TESTER. I would like to get that.

Ms. CASTILLO. I would be delighted to provide that.

Senator TESTER. I do not mean to establish ranks of Native Americans but the truth is that it seems to me that gaming tribes, because they have some capital to work with, it makes up for a lack of capital coming from this end, have a few more advantages.

Ms. CASTILLO. Senator, our Bridgeport, Connecticut MBDA center actually hosted a conference to bring participants to look at Native American businesses beyond gaming. I wanted to highlight that because part of our work is to diversify industries in which Native American firms are participating.

Senator TESTER. As long as we are going down that line, what kind of outreach do you do? Do you expect tribes to come to you or do you actively pursue them?

Ms. CASTILLO. We do both. As a public servant, I travel the Country extensively and so do our business centers which are on the ground doing outreach directly with the different businesses, as well as the different organizations participating in RES national as well as RES D.C. here.

I would also tell you that we work very closely with the different offices of the members on this Committee to make sure that we can leverage those outreach opportunities.

Senator TESTER. Mr. Watchman, you started your testimony talking about the fact that Indian Country needs to have a business friendly environment, reasonableness with their governance, a uniform commercial code, solid dispute resolution and predictability.

You can tell me if you do not know if you don't. How many tribes meet those targets?

Mr. WATCHMAN. We all know there are over 550 tribes. All have their distinct government and different governing laws.

Senator TESTER. All of this has to be done under the sovereignty overlap.

Mr. WATCHMAN. I will say very few.

Senator TESTER. That is exactly what I figured you probably would say, which means there is a lot of opportunity for success.

You are sitting here and there is a fellow sitting right behind you that is pretty good at this stuff. What kind of work are you able to do to be able to help educate tribes on how to develop a business friendly environment, all the things you listed? What kind of capacity do you have to help tribes?

Mr. WATCHMAN. The National Center for American Indian Enterprise Development actually started four decades ago to try to help Indian entrepreneurs and Indian tribes get into businesses. We do have the platform.

Senator TESTER. What are your limiting factors?

Mr. WATCHMAN. Capital. We are nonprofit.

Senator TESTER. I have talked to you before and I applaud the work you are doing. I think it is critically important work. As I said yesterday, if you are waiting for us to fix your problems, it is going to be a long wait. The truth is if you can help with this governance issue, I think it can help a lot.

I want to go to you, Mr. Hill. How big is your bank?

Mr. HILL. About \$118 million in total assets.

Senator TESTER. How much of your loans are off reservation?

Mr. HILL. I do not have that number. The majority would be, I believe but I will get that.

Senator TESTER. I wanted to make sure that there were some off and some on. The majority you think is off reservation and there are some that are on reservation.

Is your level of default on loans similar or is it worse in Indian Country? Are they similar?

Mr. HILL. We have only had one default in Indian Country of all the commercial loans we have made. It was on reservation. The default rate is very, very low.

Our past due percentage is an industry leading percentage. Eighty percent of all our loans or more over the past six years have been to Native American borrowers on and off reservation.

Senator TESTER. That is pretty darned good. Your regulators must be pretty happy.

Mr. HILL. I hope so.

Senator TESTER. Do you have a lot of problem with the regulators?

Mr. HILL. No, sir.

Senator TESTER. Get that on the record.

Mr. HILL. I have a lot of problems with all the many regulations, not the regulators themselves.

Senator TESTER. The TSR problem Senator Franken spoke of and that you mentioned in your testimony, it is paralyzing. Unless you have a clear title, you are done until you get it.

Whose problem is that? Is that BIA's problem or is that the tribe's problem? Is it a little bit of each? We can get BIA off the dime if we get the Chairman to prod them a little bit and he would. The question is, maybe it is not their problem.

Mr. HILL. The vast majority of the problems we have experienced, it has been the BIA's problem. Having to make loans in all 50 States, home loans in particular, the BIA is a problem and many times even concerning home loans much less commercial loans.

Senator TESTER. I am sorry for going over, Mr. Chairman.

Is it the fact they do not have the manpower to do the research, or is it the fact there are so many fractionated interests that you cannot find the people who own the land, or is it both?

Mr. HILL. I think sometimes it may be both but I believe there is just a lack of commitment at the BIA office to remedy the problem.

Senator TESTER. I certainly appreciate your testimony. I think access to capital in Indian Country is an incredible inhibitor to increase the economy and reduce poverty, and reduce the necessity for the safety net programs at the Federal level.

I want to say thank you for the work you are doing. I very much appreciate it. We need to stay in touch to figure out how we can empower you. You put down some pretty clear recommendations. Hopefully, Mr. Chairman, we can work in a bipartisan way as well, we always do on this Committee, to come up with some solutions to help empower these guys to be able to do their job to help the people sitting in the audience.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Tester.

Ms. Castillo, when I took a look at your written testimony, you note that your agency has been engaged in expanding the economic footprint of minority businesses and enterprises. Your new access to capital team assists these enterprises in pursuing alternative sources of capital such as venture capital.

Could you talk about what strategies work best for increasing capital for Indian businesses along these lines?

Ms. CASTILLO. I will go up to the elemental level which is our 44 centers. It is being able to engage with the business itself to be able to look at what is their current state of affairs in terms of their financing, their customers, their goods or services, being able to start a strategy for business development or growth and being able to identify the capital that is really needed.

It could be anything from a micro loan or a conventional loan or something that could assist in terms of exporting and leveraging those opportunities, whether it is Ex-Im Bank, OPEC or others, but being able to assess and work with them very closely. Again, we are focused on helping them grow and succeed. It is more on the individual touch in terms of the businesses.

The CHAIRMAN. That leads to the question of how much has the capital acquisition increased for Indian businesses since this access to capital team has been deployed?

Ms. CASTILLO. I do not have those numbers with me but I would be delighted to work with your team to ensure we can give you that.

The CHAIRMAN. We would like to have that information because we want it to succeed.

Mr. Watchman, your written testimony noted that new market tax credit allocations have helped finance projects in Indian Country. None of the last two rounds of allocations went to entities primarily or exclusively serving Indian Country.

Without these credits, the ability to access capital to support and grow businesses, create jobs and sustain healthy economies is diminished.

Can you elaborate on what barriers there are that inhibit the allocation of tax credits to projects in Indian Country?

Mr. WATCHMAN. There are several barriers. One is that there are many CDEs out there, there are only a few that can actually accept that but there is a big need out there. There is not a lot of allocations to spread out to Indian Country.

I mentioned there are over 550 tribes. There are 70 or so CDFIs and there are several CDEs. Their job is to help facilitate capital. You have to get competitive. In some cases, it is just a matter of what is written in the proposal and how the readers like it and make their allocation. It is not an easy fix.

I mentioned earlier that if this Committee and others in the House can increase the appropriations not only to the tax program but also the BIA and maybe recommending some set asides to directly allocate to Native American or new market tax credit providers. That is one way to help facilitate more capital acquisition to Indian Country.

The CHAIRMAN. Mr. Hill, I wanted to follow up on your written testimony and your answers to some of the questions about the BIA delays or failures in issuing the final title status reports.

These reports would identify trust land ownership interests used to help secure home mortgage loans and guarantees and without the final report, loans cannot be guaranteed. Access to capital is then limited which results in poor housing conditions on many of the reservations.

What kind of costs has Indian Country incurred due to these delays or these failures?

Mr. HILL. I do not think I would be able to calculate a figure for you, especially off the top of my head. I think the cost is significant.

The restriction of capital is directly tied to the restriction of capital to Native America. There is no question about it.

The CHAIRMAN. Mr. Desiderio, your written testimony stated that the cost effective capital that works for Indian Country is lacking in both access and being effective in meeting the intended purposes. You made that very clear.

You recommended creating incentives for banks to lend to emerging tribal communities, either directly or through partnerships. Can you elaborate a bit on what types of incentives you think would be effective in increasing bank participation in Indian Country?

Mr. DESIDERIO. Sure, and may I follow up on the new market tax credit for the record?

The CHAIRMAN. Yes, please do.

Mr. DESIDERIO. There are a couple of things within Treasury. The New Market Tax Credit Program falls within the CDFI fund. This is the same CDFI fund that has found the wisdom of doing a set aside for tribal governments because tribes are unique.

That program is working really well but they failed to create a set aside in the New Market Tax Credit Program. It is not a matter of more appropriations, it is just a matter of fitting in tribes.

There has been the argument of the Department of Treasury using some per capital qualifiers for this and Indian Country's need is always greater than our population, so that is not a fair pool to put us in.

There is also the idea that Treasury farms out their decision making by getting readers who are outside of Treasury that do not always understand Indian Country. We would like more Native participation in that process.

Finally, we also tried to advocate that tribes should be put into the rural category which is less competitive. That would give us a greater chance of getting some of those CDE credits.

Those things can be done administratively. In the long term, I think a set aside with the allocations would help. The greatest need in the Country is for tribes, so it makes sense.

Just looking at incentives, the reason I brought up these couple of programs that work for Indian Country is we do need technical assistance on the ground. There are programs that provide that but we also need guarantees to provide that initial stage of capital.

If you look at Wyoming, Montana and the tribes in those respective States, there have been tribes that set up commercial codes and things like that but they really need seed capital on the ground, initial capital and also they need to make that transition from the public sector to the private sector.

Those loan guarantees are the greatest incentive for that. As was discussed before, that money is very well invested by the Federal Government because it is leveraged and it would help if we also had the ability to sell those loans in the secondary market to clear the way for more loans.

That also would help in clearing up capital, clearing up those guarantees and making that program work. The greatest incentive is to really assure banks to take that first step into Indian Country.

The CHAIRMAN. Thank you very much.

Senator Franken, any additional questions?

Senator FRANKEN. No. The need in Indian Country is so great. I wonder sometimes, the tribes that need it the most, need economic development the most, are probably the worst credit risks, in a sense, and there are tribes doing a lot better than others, depending on where they are situated.

I want to make sure that the bands that need it the most get the opportunity to do economic development on their land because they have such high unemployment rates. They need something and they need it the most.



I have something in mind for one of my bands that I would like to get into but not here in the hearing.

I want to thank you all for the work you do. I am grateful for your testimony. It would be nice if we could get some of these places where BIA does not seem to have the focus or the follow through, to get them to do it. Thank you.

The CHAIRMAN. Thank you, Senator Franken.

If there are no more questions for today, members may also submit follow up written questions for the record. The hearing record will be open for two more weeks.

I want to thank each of you for being here as witnesses today. Thank you for your time and testimony.

The hearing is adjourned.

[Whereupon, at 3:24 p.m., the Committee was adjourned.]



## A P P E N D I X

### PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians is pleased to provide comments regarding last Wednesday's hearing, entitled "Access to Capital in Indian Country." Indian tribal governments have a unique status in our federal system recognized in the U.S. Constitution and numerous federal laws, treaties and federal court decisions. American Indian and Alaska Native tribes have a governmental structure, and have the power and responsibility to enact civil and criminal laws regulating the conduct and affairs of their members and reservations. Tribes operate and fund courts of law, police forces, and fire departments. Tribes provide a broad range of governmental services to their citizens, including education, transportation, public utilities, health, economic assistance, and domestic and social programs.

As such, access to capital is of great interest to NCAI and our respective member tribes. This is because access to capital presents a very real opportunity to protect and enhance the many governmental functions and services provided by Indian tribes. Tribes are continuously seeking new economic opportunities to attract businesses and jobs to reservation lands, where unemployment rates consistently rank among the highest in the Nation and the reality of little to no outside business investment is far too real. Tribal access to financing tools and capital markets is needed to make critical decisions regarding citizens' needs, sustain economic growth, and provide employment opportunities for tribal citizens and the surrounding community.

In addressing the barriers to revenue generation in Indian Country, it is critical that Congress acknowledge the unique problems and challenges of Indian Country and more consistently recognize the governmental status of Indian tribes. In expressing our views on potential areas to improve access to capital, we do so as partners in American growth and, like each of you, as elected governmental representatives.

#### Areas Where Access to Financing Tools and Capital Markets can be Improved:

- Tribal Government Tax Exempt Bonds
- Tribal Allocations of Clean Renewable Energy Bonds ("CREBs")
- Set-asides for New Markets Tax Credit and Low Income Housing Tax Credit
- Integrated Planning for Infrastructure and Economic Development

#### **Tribal Government Tax Exempt Bonds**

Recognizing that tribal governments should be treated on par with state governments, Congress passed the Indian Tribal Governmental Tax Status Act in 1982 to provide comparable governmental tax treatment to tribes for federal tax purposes.<sup>1</sup> Among other provisions, the Tribal Governmental Tax Status Act, codified as section 7871 of the Code, provides that federally recognized tribes are treated like states with respect to tax exempt government bonds, with the following restrictions:

- An absolute prohibition on the issuance of private activity bonds, except for certain tribal manufacturing bonds subject to wage and employment tests that are virtually impossible for modern manufacturing facilities to meet
- Government bonds issued by tribes were required to meet the essential governmental function test

"Essential governmental functions" for this purpose were limited to those functions "customarily performed" by state and local governments with general taxing powers (e.g., schools, roads and sewers).

The American Recovery and Reinvestment Act authorized \$2 billion in bond authority for a new category of bonds to be allocated amongst Indian tribes, known as "Tribal Economic Development (TED) Bonds." TED Bonds were intended to pro-

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<sup>1</sup>Title II of Pub. L. No. 100-203, 96 Stat. 2605 (1982).

vide tribes with more flexibility to use tax-exempt financing than is allowable under the current “essential governmental function” standards as noted above. The TED Bonds are dollar-limited to an amount too small to use for many projects, require projects to be located on Indian reservations, and prohibit the financing of gaming facilities. The law required Treasury to conduct a study of the effectiveness of the new bonding authority, and to recommend to Congress whether it should “eliminate or otherwise modify” the essential governmental function standard for Indian tribal bond financing. The Treasury study was completed in December 2011.

The core recommendation of the study was that Congress should adopt the same standard for tribal government bonds as applies to governmental bonds issued by State and local governments. The Treasury Department clearly recommended repealing the “essential governmental function” standard for Indian tribal governmental bond financing. The study explains that it is making this recommendation “[f]or reasons of tax parity, fairness, flexibility, and administrability . . . .”

Treasury also recommended that Congress adopt what it called a “comparable” private activity bond standard so that Indian tribal governments could issue some private activity bonds. Such bonds would be subject to a national volume cap, and Treasury would be authorized to make allocations among Indian tribal governments.

Treasury recommended that Congress limit Indian tribal bond issuances in two respects: (1) No bonds could be used for gaming projects, and (2) some kind of project location restriction would apply. With respect to the latter, Treasury recommended that Congress provide more flexibility for the financing of tribal projects than it did for the TED Bonds under ARRA. Specifically, Treasury recommended that tribal bonds be allowed to finance projects that are located on Indian reservations, together with projects that both: (1) are contiguous to, within reasonable proximity of, or have a substantial connection to an Indian reservation; and (2) provide goods or services to resident populations of Indian reservations.

TED Bonds present an enormous opportunity for tribal governments to engage in revenue-generating development at a size that makes these projects economically viable. When issuing tax-exempt bonds, investors are willing to accept lower interest rates than they would on comparable bonds subject to tax on interest.<sup>2</sup> Because payments made on TED Bonds are not taxable, the effective rate of return on a 7.7 percent taxable bond is the same as a 5 percent untaxed TED bond.<sup>3</sup> This means that with TED Bonds, tribes are able to finance revenue-generating projects at a fraction of the rate they would end up paying over the long-term life of a non-exempt bond. However, because of the unworkable restrictions placed on these bonds, most tribes are unable to take advantage of the opportunity to finance projects at favorable interest rates.

In particular, NCAI has serious concerns about the “project location restriction”—even in its modified form as proposed by the Treasury Department. The requirement that the financed project provide “goods or services” to reservation residents would limit the use of tax-exempt debt for many tribal economic development projects. Further, many tribes lack the reservation land base needed for revenue-generating facilities or the land base is so remote that it would be impossible to provide adequate services to their tribal communities from that location. Tribes that have had their lands taken away, which includes newly restored tribes and tribes located where population density puts land possession at a premium, nonetheless have the same demands on governmental services as tribes with large, local land bases. The requirement for proximity to an Indian reservation would also eliminate a tribe’s ability to meet statewide government contracting requirements.

Based on considerations of parity, tribal governmental bonds—as distinguished from private activity bonds—should not be subject to a “project location” restriction of any type. It is our understanding that state and local governments are not subject to any territorial restrictions, except with respect to private activity bonds, such as industrial development bonds, where they are subject to a “substantial connection” test, which has been liberally interpreted by the IRS. The “substantial connection” test is illustrated in Private Letter Ruling 8442023 (July 12, 1984). In this ruling, the IRS permitted an industrial development authority to finance a hotel approximately 10 miles outside its jurisdictional boundaries because the issuer was able to show that there would be a direct, material benefit to the issuing jurisdiction. This approach would provide Indian tribes with the flexibility to finance nearby projects that directly benefit the tribe as a whole. In sum, a “substantial connection” or

<sup>2</sup>See Treasury Department Fact Sheet: Tribal Economic Development Bonds, available at <http://www.treasury.gov/resource-center/economic-policy/tribal-policy/Documents/Tribal%20Economic%20Development%20Bonds%20Fact%20sheet%202014.pdf>.

<sup>3</sup>See Tax Exempt Bonds and Borrowing for Indian Tribes, Orrick, Herrington & Sutcliffe LLP, available at [http://www.nafoa.org/pdf/10555\\_Tribal\\_Finance.pdf](http://www.nafoa.org/pdf/10555_Tribal_Finance.pdf).

“nexus” test applies to state and local governments, and Indian tribal governments should be accorded the same treatment.

Congress should remember that tribal governments do not have the typical taxing base of state and local governments and their business revenues are the core revenue base that enables tribes to become less dependent on federal resources and address the enormous needs of their respective communities.

#### **Tribal Allocations of Clean Renewable Energy Bonds (CREBs)**

Tribal governments are able to compete with state and local governments for allocations of CREBs for energy development projects. However, to date, no tribal government projects have received a CREB tax credit allocations since the provision was enacted. As we have suggested in the case of the New Markets tax credit, there should be a set-aside for tribal projects under the CREBs provision.

#### **Tribal Inclusion in Community Development Financial Institution (CDFI) Fund Bond Guarantee Program**

Under the CDFI Bond Guarantee Program, the Treasury Department guarantees the full amount of bonds issued in support of CDFIs that make investments for eligible community or economic development purposes. These loans tend to have lower rates, and can be used for activities that promote community revitalization and stability, job creation, financial services, community facilities, housing and businesses for the benefit of low-income people, and economic development. While the CDFI Fund has expressed willingness to fund tribal operations that meet the loan parameters, tribes have been inadvertently left out due to the CDFI Fund's preferred use of land as collateral, as most tribal land is held in trust by the federal government. More efforts should be made to guarantee tribal access to this program going forward.

#### **Set-asides for New Markets Tax Credit and Low-Income Housing Tax Credit**

The New Markets Tax Credit (26 U.S.C. § 45(D)) was established in 2000 to spur new or increased investments in operating businesses and real estate projects located in low income communities. The program has traditionally been a successful tool for attracting private capital to Indian Country. However, neither tribal organizations nor Indian reservation-focused applicants received a single dollar in the 2013 or 2014 rounds of NMTC funding. NCAI urges Congress to address this problem by creating a set-aside for Indian reservation-focused applicants and by amending 26 U.S.C. § 45(D)(i)(6) to direct Treasury to prescribe regulations to ensure that Indian reservations (as well as non-metropolitan areas) receive an allocation of qualified equity investments.

Similarly, the Low-Income Housing Tax Credit (LIHTC) is too frequently unavailable to tribes. Indian tribes have great numbers of low-income tribal members and long waiting lists of members who need housing. Unfortunately, the LIHTC allocations are provided only to state governments, who most frequently use criteria that benefit only urban areas. We urge that a set-aside be created for tribal governments to ensure that the needs of their citizens are met.

#### **Integrated Planning for Infrastructure and Economic Development**

Tribes may already use Native American Housing and Self Determination Act (NAHASDA) funds for the basics of planning for housing, including related infrastructure like water, power and sewage. However, NCAI encourages Congress to provide greater resources for integrated planning for economic development and jobs.

Because of separated federal funding streams, tribal planning processes tend to silo into plans for housing, transportation, power, telecommunications, environmental compliance, water and sewage. But at the local level, this infrastructure has to be connected.

In addition, there is a growing emphasis on planning for economic development and jobs and recognition of the importance of business agglomeration. Industries tend to cluster in certain regions, and it is important for tribes to plan and build businesses and jobs that complement their existing strengths.

Tribal industries tend to cluster in certain areas such as:

- Gaming/Hotel/Recreation/Entertainment
- Agriculture, Oil & Gas, Timber
- Commercial Real Estate
- Government Contracting—638 and 8(a)
- Retail—Indian owned and taxed businesses
- Housing

- Roads
- Health Care
- Education
- Law Enforcement
- Native Arts & Crafts

All of these industries need access to capital, and capital follows well-developed plans for development that will generate revenues and repay the loan. Thus, greater integration of housing and economic development planning is needed to draw this much needed capital to Indian Country.

NCAI looks forward to working with Congress in working to provide greater access to capital in Indian Country.

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PREPARED STATEMENT OF TRIBAL D, INC. (TRIBAL D)

Chairman Barrasso, Vice Chairman Tester, and Members of the Committee:

Tribal D, located in a HUBzone on the Fort Hall Reservation in Idaho, appreciates the opportunity to submit testimony for the record of the Senate Committee on Indian Affairs in connection with the June 17, 2015, hearing on “Accessing Capital in Indian Country.” We appreciate the Committee’s attention to efforts to promote economic development for Tribal governments.

Native American tribes are rich in heritage, human capital, natural resources and self-determination. The challenge for most tribes is how to integrate their vast resources to optimize their self-governance objectives and access capital. Tribal D focuses on the most critical aspects of tribal infrastructure and compliance to maximize efficiency in program and economic development. We recognize that in order to make sound policy and financial decisions we must first collect uniformly gathered, reliable data to track progress over time in a format usable to Tribes. For example, Tribal D provides capability to gather, real time, data pertinent to member land allotments, appraisal information and lease revenue. When rolled up, this kind of Tribal data provides decision support for Tribal Land Use directors.

Furthermore, a reliable data collection and monitoring system that tracks measurable outcomes supports Tribal governments in optimizing their revenue, empowering their community, and sustaining profitable businesses. With a thorough understanding of a particular situation, and an understanding of data gathered, Tribal governments can better understand how economic development has occurred, and then strategically target their financial resources in order to access more capital and to improve job opportunities within their Tribal government.

Over the last decade several hearings have been held that conclude that Tribes don’t have the management information system capacity to generate their own data. As a result they cannot accurately measure the success of programs or completely understand the current economic situation of their Tribal government’s economy. Tribal D was developed to address this limitation and assist Tribes in making the necessary Investments to build their capacity and go after new capital and business.

Tribal D echoes testimony that has been presented before this community over the last decade that recognizes the role that data plays in assisting Tribal governments in collecting reliable data that will allow them to track progress over time. As data is collected, tracked, and analyzed through simple, but informative digital dashboards, Tribal governments can now use accurate data to analyze their performance and the direction that they need to pursue to gain access to additional capital.

Sustaining viable business and accessing capital on Tribal land is critical for economic development for Native American communities. Executive leadership teams overseeing tribal enterprises benefit when they can monitor strategic plans for their businesses. In addition, by understanding the data, Tribal leaders can hold their business managers accountable for results. Integrating and understanding data helps tribes set strategy and objectives for revenue, expenses, and profitability to measure sustainable progress for tribal business.

In conclusion we believe with augmented management approaches and pertinent data for decision support, Tribal Government objectives to increase capital can be met. Tribal D looks forward to working with this Committee on the important issue of helping Tribes create access to capital.

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PREPARED STATEMENT OF HON. ERMA J. VIZENOR, CHAIRWOMAN, WHITE EARTH NATION

Dear Chairman Barrasso and Ranking Member Tester,

Thank you for holding the hearing recently on the very important topic of Accessing Capital in Indian Country. With the high unemployment rates at most large rural reservations across the nation, this issue of providing more capital is critical for us to begin to whittle down our unemployment numbers and continue to build the economic growth of our reservations.

The White Earth Nation has a good, educated work force, but yet our unemployment rate in reality we believe is well above 32 percent. Why? Simply because we do not have enough jobs for people who want to raise their families and continue to live on the reservation. How can we move this issue forward? Provide federal tax incentives to businesses that wish to move their current or future operations into Indian Country.

Many studies have been done on this issue and all point to the need for jobs. We know the only way for economic viability in Indian Country is for incentives to bring industry directly to the reservation. Like so many other areas of this nation, we believe that once capital sees the return on investment it will be provided from Indian Country, much more will follow quickly.

At the White Earth Nation, we have many reports, research studies, and various other tools to demonstrate the positive effects that can be made to Tribal lands when capital is invested in these important communities for the nation. Please let me know which documents you need.

I look forward to any questions you or your Committee staff might have regarding this issue.

The White Earth Reservation is located in northwestern Minnesota on the eastern edge of the agriculturally-rich Red River Basin, transitional agricultural/forested lands and forested lands. Approximately 21,000 persons are enrolled members of the White Earth Band with approximately 10,000 residing on or near the Tribal reservation. Our tribe is heavily reliant upon the modest proceeds from a Tribal casino and federal grant programs to sustain basic Tribal services. Casino and public sector jobs in services, education and government largely employ our people.

With a 32 percent unemployment rate, limited business development, and few job opportunities on the Tribal reservation much more needs to be done. To date a lot of Tribal efforts have been successfully directed at basic Tribal government infrastructure for community facilities, and delivery of services. More still needs to be done in that area, but also with infrastructure in support of economic development. Recently we have had conversations with well-respected international site selection consultants that have confirmed that we need to invest in building and site infrastructure that is attractive to multi-national firms that have the ability to bring in the number of jobs that are needed. At the other end of the spectrum—with considerable evidence in Indian Country that small business entrepreneurship holds the best promise for family economic advancement—additional resources are needed in that area also.

What is common to both ends of the spectrum—large firm and small entrepreneur—is that the business infrastructure does not exist—the designated land, land ownership control, sewer/water/road infrastructure—apart from a small industrial park in Mahnomen that has about 10 acres remaining. Financial resources are needed in support of this development effort.

Of the approximate 990,000 acres within the boundaries of our Tribal reservation only about 10 percent are directly controlled by the Tribal government and are mainly underlying our Tribal village housing projects or are wildlife areas, with a significant portion of the rest in private—non-Native ownership—competing for use as agricultural land within the Red River Valley or in forested areas as recreational home sites, timber areas. So the challenges are daunting.

With grant funds from the ICDBG program of HUD we are starting the construction of a Workforce Development Center situated in one of our Tribal villages adjacent to our Tribal workforce development offices. Recent evidence with a DOL-funded Pathways Out of Poverty training program has confirmed that in order to be successful in training and employing our youth we need to do training on-reservation and that we must have supportive services—transportation, day care, etc. available rather than to expect them to successfully commute to off-reservation training venues. Likewise it is evident that we also need to have jobs available on-reservation to a much greater extent than acknowledged previously.

With the federal New Market Tax Credit program there had been hope that this program via at least one project in our area would have resulted in significant jobs and been a catalyst for others as this program was meant to serve low income areas

such as ours. That project failed based upon factors out of our control—65 modest paying jobs—that never materialized.

Another related challenge is that with very few sizable industrial facilities—one—on our Tribal reservation it is near impossible to successfully finance larger industrial buildings as their value is approximately one-half, if even that, of the construction cost, when appraised after construction, due to the uncertainty regarding value if the property were to be liquidated by a lender. The previously-mentioned failed New Market Tax Credit project would have bridged this gap if it had been successful.

As I stated earlier we are heavily reliant upon the modest net revenues of our Tribal casino and reoccurring non-competitive and competitive federal grants. So when it comes to “Accessing Capital in Indian Country” I would offer the following requests/recommendations to Congress:

- Continue, strengthen and expand funding for the Native American set-aside within the USDA Rural Business Development Grant program—this importantly provides for funding smaller scale projects
- Continue the New Market Tax Credit program with more attention focused on Tribal projects driven by Native Americans and providing more incentive for successful Tribal projects
- Provide incentives to private sector financiers doing business on or near Tribal reservations for the benefit of Native business development/employment
- Restore federal tax credits for businesses engaged in development of new facilities and jobs on Tribal reservations
- Continue and strengthen the funding of Native Community Development Financial Institutions technical assistance, seed funding
- Expand the Tribal Promise Zone program to allow more Tribes to participate or provide for a similar program to the Promise Zone program and prior Empowerment Zones, Enterprise Communities, to increase and focus the delivery of federal resources to high unemployment Tribal areas of the U.S.

