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OPPORTUNITIES AND CHALLENGES FOR ECONOMIC DEVELOPMENT IN INDIAN COUNTRY

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

EXAMINING ECONOMIC DEVELOPMENT IN INDIAN COUNTRY

NOVEMBER 10, 2011

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

Available at: http://www.fdsys.gov/

U.S. GOVERNMENT PRINTING OFFICE

74–393 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
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Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

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OPPORTUNITIES AND CHALLENGES FOR ECONOMIC DEVELOPMENT IN INDIAN COUNTRY

THURSDAY, NOVEMBER 10, 2011

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:03 a.m., in room SD–538, Dirksen Senate Office Building, Hon. Tim Johnson, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN TIM JOHNSON

Chairman JOHNSON. Good morning. I would like to call this hearing to order.

During my time in Congress, I have enjoyed a strong working relationship with American Indian tribes in South Dakota and around the country and have advocated for policies to help improve the quality of life for American Indians.

While progress has been made, many Native communities continue to face significant challenges, including staggering unemployment rates, inadequate health care, crowded and unsafe housing conditions, high crime rates, and educational inequalities. This is unacceptable.

Fostering small business growth is a vital step toward increasing employment opportunities and improving local economies throughout the country during these difficult economic times. Small business growth in Indian Country is no exception. Encouraging the startup and growth of Native American-owned businesses is an important priority to me as Chairman, and that is why I have called this important hearing and invited all of you to testify here today.

For many years I have worked to ensure Native communities in South Dakota and across the country have adequate infrastructure in place to foster an environment where economic development can take place, from being an original cosponsor of the legislation that created the NAHASDA block grant for housing to helping fund the Mni Wiconi rural water system to supporting tribal bus transit programs.

Today, the Committee will examine what challenges continue to hinder economic growth in Indian Country, including the lack of access to capital, small business lending, financial education, and support for startup businesses. With unemployment rates reaching an astonishing 80 percent in some areas of Indian Country, we must do better to address the problems that cause this persistent cycle of unemployment.

While it is sometimes easy to become discouraged when considering all the obstacles that face Native communities, we will also hear about the great work so many are doing to help address these persistent problems.

In South Dakota, and in other States, there are many small business owners, community development institutions, community banks and credit unions, and dedicated public servants working every day to improve the economic climate on tribal lands. Just this past August, I had the honor of visiting Eagle Butte on the Cheyenne River Indian Reservation in South Dakota where I was able to hear directly from small business owners about the challenges they face and the important assistance they received from the Four Bands Community Fund. The leaders of these small businesses—ranging from Lakota Archery to Bonnie's Quilting Boutique—really demonstrated for me the strength of the Native entrepreneurial spirit and how important CDFI programs are to small business growth in Indian Country.

I am very pleased we are joined by such a great panel of witnesses here today, and I thank them for being here.

I also want to acknowledge and thank Senator Akaka. We are all fortunate for his service on this Committee and as the Chairman of the Indian Affairs Committee. I am proud to serve on the Indian Affairs Committee under his leadership where we have considered many of these important issues.

I will now turn to Ranking Member Shelby for his statement.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman. Thank you for calling this hearing.

Economic development is a challenging endeavor even in prosperous times. In Indian Country, however, the problems are more acute and persistent and have been made worse by our current economic situation.

The statistics reveal the severity of this problem. The average income of an Indian living on a reservation in 2009 was $8,000 compared with $14,000 for Indians living off reservations and $21,000 for the average U.S. citizen at that time. To compound the difficulties, the average poverty rate for Indians on reservations is 28 percent compared to 15 percent for other Americans.

Despite some well-known successful gaming operations and other business ventures pursued by tribes, a majority of those living in Indian Country are still struggling. The economic development successes experienced by some tribal governments have not delivered improved living standards to all who live on the reservations. Unemployment remains high and access to capital for business formation is virtually nonexistent.

Much of the research and work that our panelists have focused on over the years highlights the inherent difficulty of doing business on reservations. Due to the unique relationship between American Indians and the U.S. Government, the Bureau of Indian Affairs is the trustee of Native lands. Such an arrangement requires that the Bureau approves each development effort a tribe seeks to undertake. Businesses seeking to locate on a reservation

must navigate murky regulatory waters in dealing with both the tribal government and the Bureau of Indian Affairs.

Additionally, each reservation is governed by a unique set of laws and courts. The patchwork of legal rules and regulations has discouraged business activity on reservations, especially by financial institutions. The problem is only made worse by what some have described as a casual approach to the rule of law. Banks lending on some reservations find that they have no recourse when someone defaults on a loan because their tribal courts are unwilling to enforce the contract. These legal and regulatory obstacles have long hampered economic development.

I hope that we learn today what steps can be taken to alleviate these problems which have impeded economic development in Indian Country for far too long.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Shelby.

Are there any other Members who wish to make a brief opening statement?

Senator TESTER. Mr. Chairman, if I might.

Chairman JOHNSON. Senator Tester.

STATEMENT OF SENATOR JON TESTER

Senator TESTER. Well, thank you, Mr. Chairman, thank you, Ranking Member Shelby, for calling this hearing together. I want to welcome the whole panel. To the two people from Montana, Martin Olsson and Sue Woodrow, thank you very much for being here today and for your testimony.

I also want to thank you, Mark Tilsen. I believe you are probably responsible for these, and I do not know if Adam Healy was the one that got you to come or not, but I have not eaten these yet, and I have not heard your testimony, but you can come back anytime.

[Laughter.]

Senator TESTER. I want to thank you all. Like many in this body, economic development and job creation are my top priority, and they are important in every American community, and Indian Country is no exception. Like many places, Indian Country has its haves and it has its have-nots. A handful of tribes located in more populated areas have become wealthy with casinos.

On the positive side, they have used Federal incentives to do exactly what Congress intended, and that has allowed them to make up gaps in services left by inadequate Federal budgets.

On the negative side, too many people think gaming tribes are the norm in Indian Country, and they are not. The rates of unemployment and poverty in the vast majority of Indian Country are dramatically higher than the rest of the Nation. In some communities, many in Montana, we see unemployment rates as high as 70 percent, and the lack of private investment is absolutely crippling in getting those numbers down.

Unfortunately, the tough economic conditions in this country is—Indian Country has been living through it. Challenges stem from many sources: rural isolation, lack of institutional investment, poor health care, inadequate educational institutions, and in some cases tribes were just cheated out of their opportunities which resulted

in what some experts have described as "a cycle of poverty." Rather than each new generation building on the past, the vicious cycle repeats itself over and over again and prevents American Indians from achieving their full potential, and this cruel cycle affects almost every aspect of American Indian life.

So tribal members have told me that they do not have much to lose, so there is not much hope, and hopelessness and despair affect kids and adults struggling against feelings of suicide and it causes public safety issues and a whole lot more.

Where there are challenges there are opportunities, and Indian Country is full of opportunities. They hold great potential for traditional and renewable energy. They have a potential for agriculture, agricultural tourism, tourism, Government contracting, and small businesses. In many cases they need off-reservation private investment to capitalize on those opportunities, and it is not there. So we need to figure out ways we can make that happen.

Tribes need to adopt a Uniform Commercial Code, predictable probate laws, and reliable lien filing systems that will give outside investors the confidence they need. They need also consistency in Government if they are going to be able to succeed in the world today and create jobs and move that unemployment rate down.

I look forward to hearing from the witnesses today and talking to them about potential solutions to making inroads into investment in Indian Country.

Thank you all for being here.

Chairman JOHNSON. Senator Merkley.

STATEMENT OF SENATOR JEFF MERKLEY

Senator MERKLEY. Thank you, Mr. Chair.

For the tribes in the Northwest and certainly in Oregon, economic development has long been tied to timber, fishing industry, and other natural resource areas, but only a few tribes still have a timber land base, and for them they are working on diversification, and for other groups that do not have that base, they are looking at any form of tribal business that can provide jobs and economic development in the community.

One bright spot for our State has been the Oregon Native American Business and Entrepreneurial Network. The graduates of that program have established a number of small businesses in partnership with a fair number of banking partners from Seafirst Bank, Key Bank, U.S. and National Bank, but we do not have enough bright spots in the economy of our Native American communities, and I look forward to learning about the experiences that you are bringing here today.

Thank you so much for coming to D.C. to address the Committee as we wrestle with this.

Chairman JOHNSON. Thank you all.

I would like to remind my colleagues that the record will be open for the next 7 days for opening statements and any other materials you would like to submit.

Now I would like to briefly introduce the witnesses that are here with us today. I am proud that we have two witnesses from my home State of South Dakota here today. Our first witness is Mr. Mark Tilsen, the cofounder and president of Native American Nat-

ural Foods, located in Kyle, South Dakota, on the Pine Ridge Indian Reservation. Founded in 2006, Native American Natural Foods makes the popular Tanka Bar, a protein bar made of buffalo meat and cranberries. They also make other buffalo food products.

Mark, thanks for being here today. I must say I have enjoyed a few Tanka Bars over the years.

I am pleased that my good friend Senator Tester suggested Mr. Martin Olsson as a witness. Mr. Olsson is the president of Eagle Bank located on the Flathead Reservation in Montana. Eagle Bank was chartered by the Confederated Salish and Kootenai tribes and is one of only a handful of Native- owned or controlled banks in the country.

I am delighted Ms. Tanya Fiddler, executive director of the Four Bands Community Fund, a Native CDFI on the Cheyenne River Indian Reservation in South Dakota, is here with us today. Four Bands was created in 2000 and has become the leading organization on the reservation in the areas of small business training and lending and financial education. Tanya, thank you for offering your insights.

Mr. Dante Desiderio is executive director of the Native American Finance Officers Association. The association works to improve the quality of financial and business management of tribal governments and their business entities and supports the development of Native American financial professions.

And Ms. Sue Woodrow, community development advisor at the Helena, Montana, branch of the Federal Reserve Bank of Minneapolis. Ms. Woodrow has worked at the Fed since 1990 where she has focused on community development with a focus on Indian Country legal issues.

We welcome all of you here today and thank you all for your time, especially those of you who have traveled great distances.

Mr. Tilsen, you may proceed.

STATEMENT OF MARK A. TILSEN, PRESIDENT, NATIVE AMERICAN NATURAL FOODS

Mr. TILSEN. Thank you, Chairman Johnson, Senator Shelby, and Members of the Committee. I am impressed by your understanding of the challenges we face already just from your opening statements.

Native American Natural Foods is located in Kyle in the middle of the Pine Ridge Indian Reservation. We are sort of a new approach to economic development, and I want to say that we grew out of the CDFI movement. You know, Kyle is the location of the Lakota Fund, which was the first reservation-based CDFI formed in 1985. When it was created in Kyle, there were two Native American businesses, and now there are literally hundreds of Native American businesses. We have a reservation-based Chamber of Commerce with several hundred members that have all grown out of the CDFI movement.

The CDFI movement provides the essential first rung for first-generation entrepreneurs both in terms of financial literacy, and in most of the large land-based tribes, it is the only commercial lender of any kind. And your support of the American Indian CDFI pro-

grams is essential and their growth is essential for the future of economic development.

We are also excited here on Pine Ridge that we have a new tribal transportation program that this Committee supported, and it is new and growing and it is helping. It is becoming another central part of the infrastructure to have a public transportation system on a reservation that is extremely large. And your ongoing support is really critical for that, and I would like to thank you for your support of our tribal transportation program.

I am going to defer to Ms. Fiddler on the particulars of the CDFI and talk a little bit about what we are trying to do with Native American Natural Foods. My cofounder and myself, Karlene Hunter, who has been National Indian Business Woman of the Year—she wanted to be here, but she is at another conference—have been involved in both community development and economic development projects on the Pine Ridge Reservation since the early 1970s and 1980s. We were involved in creating the first radio station on the reservation and helping build the first tribal college. The reason I tell you that is I want you to know that we are experienced entrepreneurs who have worked very, very hard to build economic development in the community.

What we have learned with Native American Natural Foods, the product you have on your desk there is called the Tanka Bar based on *wasna,* that traditional food. That product is an example of Indian entrepreneurship. It was created by some grandma probably several thousand years ago who understood that you could preserve meat naturally. That product is now the number one selling dried meat snack in the natural food category in America. All across the country, it is in thousands of stores, and it is sold both in health food stores, it is sold on 275 Indian reservations, and it is sold through the Internet.

What is significant here is that we have one of the most economically and geographically isolated places in the country, and we have built a national brand. This year we will gross close to $2 million.

The challenges that that faces for us is that as we try to—we built this whole brand, but we are not able to create any equity to keep up with growth. We have had a challenge trying to match the—we are unable to qualify for a BIA loan. Well, we did have a BIA loan that started the company in terms of doing exponential growth because we cannot meet the 20-percent equity requirement, and there is no provision to allow that to be raised. We used a lot of—working on an isolated reservation, we use a lot of Federal programs, so one of our investors is the Empowerment Zone which manages EZ funds in the reservation tribal charter. So what happens there is that they are forced into a position as a nonprofit to guarantee the loan to qualify for SBA. So, again, the dots do not connect. You cannot use the SBA program.

So when we try to bring in outside equity from the social investment community, we are told, well, you cannot use tribal investment or social investors because they are not making a pure financial decision even though they are the only ones with the courage, dedication, and commitment to invest in these poor communities and create opportunities for the youth.

So there are a lot of dots that do not connect here even though there are resources in the system. As you all know, there is something close to $30 billion in the job act for small business, but every small business will tell you that there is not any lending going on. And the dots are not connecting in that aspect.

On the CDFI side, there is no guarantee for people who invest into the CDFIs. There are many people who want to invest in there, but we need to create an opportunity to increase that investment.

You know, the CDFIs are really essentially important on that first ring, but we need them to have more resources and more power to help us as we try to grow these companies to be exponentially successful, to be large enough to have a real impact on the unemployment and economic needs of the community.

I am sorry for running over my time.

Chairman JOHNSON. Thank you, Mr. Tilsen.

Mr. Olsson, you may proceed.

STATEMENT OF MARTIN M. OLSSON, PRESIDENT, EAGLE BANK

Mr. OLSSON. Chairman Johnson, Ranking Member Shelby, and Members of the Committee, thank you for inviting me to participate in this important hearing on economic development in Indian Country. My name is Martin Olsson. I am the president of Eagle Bank in Polson, Montana.

The Confederated Salish and Kootenai tribes recognized the need to support credit available for their membership. Over 40 years ago the Tribal Credit Program was created with a modest investment to assist tribal members with small balance short-term credit needs not adequately addressed by banks, and over the years net revenues were retained to grow the fund. This program has grown into a $45 million fund providing short-term unsecured, educational, home ownership, and commercial loans, and as reserves have grown, the program has been able to return dividends to the tribes.

The tribes also have a smaller fund for small-dollar loans and a grant program patterned after the Montana Department of Commerce Indian Equity Fund. The tribes are dedicated to providing credit opportunities and grants to tribal members and their small and startup businesses that may not have other access to capital.

After nearly two decades of research and discussion, the tribes organized Salish and Kootenai Bancorporation and chartered Eagle Bank in 2006. The bank is charged with providing the traditional financial services for all residents and businesses within the Flathead Reservation and to provide services for the underserved such as small-dollar loan and deposit accounts and check cashing that many banks no longer provide.

Eagle Bank also works with tribal and other funding programs to leverage credit for small and startup businesses and serves as an advisor and grant reviewer for the Montana Department of Commerce Indian Equity Fund, the tribes grant program, and the tribes economic development committee.

Eagle Bank has worked with programs offered by the FDIC during the crises. The temporary unlimited FDIC coverage on non-interest-bearing accounts has provided significant relief in maintaining deposit accounts for the tribes, and I hope this temporary cov-

erage will be made permanent not only for Eagle Bank's somewhat unique requirements, but also for all smaller community banks' ability to compete with too-big-to-fail institutions.

I also hope the FDIC would consider unlimited coverage on interest-bearing balances on a fee basis for those willing to participate.

Lacking improved FDIC coverage or the return of excess deposit bond coverage, the majority of a tribally owned bank's earning assets may be required to be invested in securities, restricting funds available for lending.

Access to capital on reservations has been an ongoing problem with three primary challenges limiting that access: uncertainty created by tribal governments' willingness to support access to capital, uncertainty created by lack of consistency in secured transactions, and financial literacy.

A major impediment to access to capital is the uncertainty in lending within the jurisdiction of a sovereign entity. Some tribes are very proactive in developing statues that support lending and have consistent enforcement through their tribal courts, and other tribes continue to maintain a more protective environment for their membership.

Tribal governments need to understand that in order for capital to be available, lenders must be assured there is a clear, consistent recourse in the case of a default through an independent and unbiased tribal court system. Recipients of the benefit of the capital must also be accountable for repaying their debts.

Tribal governments also need to develop and adopt uniformity in regulating transactions secured by real and personal property as they exercise their inherent sovereignty.

Financial literacy is very important on reservations. With no established bank relationships and low credit scores, many people fall prey to predatory lenders and check cashers.

In conclusion, I believe there are opportunities for economic development in Indian Country, but significant challenges remain. The Confederates Salish and Kootenai Tribes approach, including chartering Eagle Bank, is making a difference on the Flathead Reservation, but chartering or purchasing a bank may not be appropriate for many tribes.

Thank you. I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Olsson.

Ms. Fiddler, you may proceed.

STATEMENT OF TANYA FIDDLER, EXECUTIVE DIRECTOR, FOUR BANDS COMMUNITY FUND

Ms. FIDDLER. *Hi hanne was'te.* Good morning to Chairman Johnson, Ranking Member Shelby, and the other Members of the Senate. As Senator Johnson said, I am the executive director of Four Bands Community Fund, a nationally recognized Native CDFI that serves the Cheyenne River Reservation in north-central South Dakota. I also wanted to note that I am the Chair of the South Dakota Indian Business Alliance and Cochair of the Native CDFI Network.

Let me begin by saying *Pilamaya ye,* thank you, for the opportunity to appear before you on behalf of the people and organizations that are working to create Native private sector economies

throughout the State of South Dakota and on reservations nationwide.

I prepared a written testimony to address the opportunities and challenges for economic development from the perspective of the Native CDFIs. This was quite an undertaking because of the complex landscapes we work within. As important as providing access to financial products and services and development services is for a CDFI, we also have to factor in the economic conditions and infrastructure limitations that exist on our reservations and throughout many rural communities. Our purpose is to strategically and entrepreneurially respond to those factors, meeting people where they are at and providing a path for them to reach for their dreams. In the time allotted, I wanted to at least say three things of all my testimony that I think are important for the Committee to understand.

First, the mission of Four Bands is to create economic opportunity by helping people build strong and sustainable businesses and increase their financial capability to create assets and wealth. We do this by taking an integrated asset-building approach to entrepreneurship development in an area of high poverty, low incomes, and remote access. Cheyenne River encompasses Dewey and Ziebach counties, two of the poorest counties in the Nation. Sixty-two percent of the residents in Ziebach live below the poverty level. People often travel 50 to 100 miles on poorly maintained roads to access basic goods and services.

Since our inception we have provided over $3 million in credit building, micro enterprise, and small business loans to help create and expand over 100 businesses on the reservation. Over 300 people have completed our business training classes, and hundreds more have attended our Talking Circle workshops to develop skills and the capacity for personal and business development.

Because of the lack of equity and ownership on the reservation, we also have an IDA program that has invested $300,000 in our customers, both adult and youth, who have invested in themselves by creating savings and completed trainings to attain assets like home ownership, business, and higher education.

Four Bands has become the go-to organization on the reservation when it comes to creating a private sector economy. We also incubate the Cheyenne River Chamber of Commerce and conduct a lot of market analyses of the reservation economic opportunities for sound planning to help our businesses and our loan fund identify the correct sectors, products, and services that are needed locally and that can be provided by a local entrepreneur. We cannot afford to speculate on the potential market opportunities since people's livelihoods are at stake.

This is the community development side of CDFI that builds community capacity and human capital. The financial institution side leads me to my next point, and I want to say "*wulpy la tanka*" to the CDFI fund that means with great thanks—to the Treasury Native Initiatives Program. If it were not for this, none of us could be doing this work and have the successes that we have. Many of us in America believe that entrepreneurship grows and sustains a healthy economy, but in many cases banks cannot lend in remote areas, and sometimes they do not even exist in real Native commu-

nities, as we heard earlier. My number is 86 percent of reservation lands do not have financial institutions within their borders. We are fortunate on Cheyenne River. We have three banks serving our community, but none of them report the credit history on their clients. That makes it even more challenging for a business to startup and secure affordable capital.

As a Native CDFI, we invest in what appears on paper to be very high risk, low-profit target market, but to date we have only written off 2.8 percent, about $100,000 of over $3 million in lending to the poorest of the poor in the country, which I think is very wonderful for us.

We see the strengths and assets in our people and have developed internal systems and external relationships that mitigate risk and have helped us support the creation of 400 jobs. I think this is important. If banks cannot but we can, we are even more vital to a diversified economic development strategy in reservation communities.

Our tribe agrees and supports our work for reservation-wide financial literacy and entrepreneurship development in our homes, in our schools, and in our business community. The tribe is the major economic developer, and our work complements and feeds their efforts for workforce and private sector development.

Finally, I think it is important to know that we are seeing results. I am going to run out of time, but I will tell you briefly the economic momentum on our reservations in South Dakota that have Native CDFIs is two to three times that of the State of South Dakota in this time of recession. We are playing catch-up, though. Our median household incomes are still less than half of the national average, but we have had a 55-percent increase in median household income in our reservation communities.

I will end there.

Chairman JOHNSON. Thank you, Ms. Fiddler.

Mr. Desiderio, you may proceed.

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

Mr. DESIDERIO. Thank you, Chairman Johnson and Senator Shelby and Members of the Banking Committee for hosting this hearing. I know how important Indian issues are to the Committee and we appreciate you addressing the economic challenges and opportunities in Indian Country.

My name is Dante Desiderio and I am a member of the Sappony and Executive Director of NAFOA, and NAFOA has had the privilege of helping Tribal communities grow their local economies for the past 29 years and we do that by bridging the gap between the banking community and the investment community and Indian tribes. We also do that by building capacity, and we do it by working directly with tribes to develop effective economic policy.

And I want to use my time today to address three specific low-cost or no-cost policy recommendations. The first two are designed to get rid of uncertainty and bring capital into Indian Country, and the last recommendation is the design to look at some of these barriers and challenges that are getting in the way of Tribal Governments being able to grow and develop economically.

Over the past three decades that we have been helping tribes, we have seen industries grow and mature. We have seen Tribal communities prosper, and we have seen Native Americans having the opportunity to move home to find jobs and, more importantly, move home to professional careers on the reservation. But we still have a long way to go. We all know the statistics. The American Indians have the highest unemployment rate. We are still at the lowest end of just about every social and economic indicator, including having the highest suicide rate, and that is a true sign of lack of opportunity.

And as a Nation, we all struggle with the sustained economic downturn and the effects of a stalled economy and we are now living in the age of austerity, with Congress having the challenge of trying to cut another $1.5 trillion from the Federal debt.

This all makes finding solutions even more challenging and urgent. So three immediate solutions come to mind. The first solution is for Congress to remove the uncertainty created by imposing an essential government function test when Tribal Governments want to raise capital through the tax-exempt debt market. Every other government uses this tool effectively, but when Congress authorized Tribal Governments to use tax-exempt debt to raise capital, they put in an essential government function test and they did not adequately define the term. Because the language is unclear and because the regulatory agency interpreted Congress's intent too strictly, the capital markets now steer clear of Tribal debt, equating uncertainty with higher risk and higher cost.

The second fix, or the second solution is providing clarification on how tribes are included as governments when it comes to qualifying as accredited investors. It is important that Indian tribes specifically are listed as governments in the Securities and Exchange Commission definition of government body used in Regulation D. The current definition is extremely broad, and because tribes are not specifically referenced in the definitions, we see the financial markets are hesitant to extend us the benefit of the doubt and the regulatory agency is not willing to interpret tribes as fully included. Fixing this oversight is simple and will help tribes raise capital in the same manner as every other government, without added administrative costs and legal burdens. This helps tribes to help themselves.

And finally, I want to discuss implementing the existing Indian Tribal Regulatory Reform and Business Development Act. This Act provides that the Secretary of Commerce convene an authority to perform a comprehensive review of the laws, including regulations, that stand in the way of investment and development on Indian lands. The authority terminates when the report of recommendations is submitted to Congress, meaning there is no added bureaucracy. This type of report could significantly impact development on Tribal lands. It could address things like probate, leasing, appraisals, and some of the structural impediments that Senator Shelby mentioned in his opening statements.

We all recognize these are difficult and challenging times, but we also recognize this is not a time to throw up our hands and do nothing. It is frustrating enough for Native people and all Americans to deal with the impact of an economic downturn, but as we

have seen in the past, it is even more frustrating to see the rest of America recover without Indian tribes.

We need to support programs that work and clarify language and laws and regulations that do not. It is clear when tribes succeed economically, so do local and State governments. And we are grateful for the Committee for dedicating the time and attention to this matter and we would be happy to help as the Committee moves forward to implement any of these recommendations.

Chairman JOHNSON. Thank you, Mr. Desiderio.

Ms. Woodrow, you may proceed.

STATEMENT OF SUSAN M. WOODROW, COMMUNITY DEVELOPMENT ADVISOR, FEDERAL RESERVE BANK OF MINNEAPOLIS

Ms. WOODROW. Chairman Johnson, Ranking Member Shelby, and Members of the Committee, thank you for this opportunity this morning. My remarks will focus on the efforts of the Federal Reserve Bank of Minneapolis to promote Tribal legal infrastructure development that will support private sector business growth in Native communities. I want to emphasize that these remarks reflect my views and not necessarily those of others in the Federal Reserve System.

Let me explain why the Federal Reserve is involved in this work. The mission of the Community Development or Community Affairs Program is to support the Federal Reserve System's economic growth objectives by promoting fair, impartial access to credit and financial services, including in low and moderate income communities.

The Minneapolis Federal Reserve Bank's district includes more than 40 Indian reservations. Accordingly, for the past two decades, we have sought to assist Native communities to overcome the significant barriers they face accessing credit and financial services. As Mr. Olsson noted in his testimony, one significant barrier is the lack of or inadequate Tribal laws governing secured lending. By secured lending, I mean extensions of credit collateralized by a borrower's personal property, which includes anything that is not land or affixed to land. These types of transactions in all State jurisdictions are governed by Article 9 of the Uniform Commercial Code. State law generally does not apply within Tribal jurisdictions, however, and we have found that across Indian Country, with a handful of exceptions, secured transactions law is largely incomplete, outdated, or nonexistent.

The result is that lenders face very uncertain rules and, thus, higher risk, actual or perceived, doing business in Native communities. Consequently, loans and other business deals are frequently made at higher costs or not made at all.

To address this, the Federal Reserve Bank of Minneapolis has provided substantial assistance to tribes across the country that choose to adopt the Uniform Law Commission's Model Tribal Secured Transactions Act, a comprehensive template law substantially similar to State law but specifically tailored for Tribal environments. We have also helped facilitate several State-Tribal compacts that enable tribes that have adopted the Model Act to utilize these States' UCC filing systems for the filing of liens under Tribal law. These arrangements complete the tribes' secured transaction

systems in a manner that offers certainty and reliability for lenders and for borrowers while at the same time preserving Tribal sovereignty and Tribal jurisdiction.

We are also involved in working with the Uniform Law Commission to launch an initiative to draft a Model Tribal Probate Code to help ameliorate the significant problem of fractionated interests in Indian-owned allotted lands. This has the potential to eventually free up untold land value for use as collateral or for development while again maintaining Tribal sovereignty and Tribal jurisdiction. To move forward, however, this initiative needs funding to ensure it has broad participation from tribes and Native legal organizations.

The Minneapolis Federal Reserve also works closely with many Indian Country partners and others to provide Native entrepreneurs a voice through broad cross-sector coalitions, including the Montana, South Dakota, Minnesota, and soon, North Dakota Indian Business Alliances. These Alliances collectively have significantly helped elevate the dialog about the importance of supporting Native entrepreneurship and private sector development in Indian Country, regionally and nationally.

Because these initiatives are still recent or pending and because good data on Tribal business environments and outcomes are lacking, we cannot thoroughly assess their efficacy at this time. However, we are monitoring progress and in time will provide feedback on which approaches are associated with improved economic performance and small business development in Indian Country.

In closing, many tribes, Native organizations, and Indian entrepreneurs have been working diligently to meet these challenges, but much remains to be done. With continuing support for Native grassroots leadership and appropriate outside assistance, however, I see many more opportunities for tribes and their citizens to further develop the legal and civic institutions that will support small business growth in Indian Country. Thank you.

Chairman JOHNSON. Thank you, Ms. Woodrow. Thank you for your testimony.

As we begin questions, I will ask the Clerk to put 5 minutes on the clock for each Member.

Ms. Fiddler, your written testimony points to the impressive economic data showing an increased number of employed individuals in median income on the Cheyenne River and other reservations in South Dakota over the past decade. How does Four Bands plan to sustain this growth and leverage it for more private capital investment?

Ms. FIDDLER. Well, as the capacity of the community has been coming up and people have been getting introduced into banking, savings, and changing their financial behaviors, folks are starting to, like with the IDA program, invest in themselves, but also their first introduction to microloans, start to get the equipment that could be collateralized on larger and larger loans.

The other trick to this, it is kind of a different way of thinking about it, but this financial literacy and entrepreneurship development work, we have integrated into our K through 12 school system and we are replicating it on the Pine Ridge and Crow Creek Reservations. So that is kind of a funny answer. When we think

of sustainability, we are talking about a deep investment to raise the skill level of every kid on our reservation, and we impact 2,000 children a year, with financial literacy and entrepreneur in their core subject area so it does not push up against No Child Left Behind or the other requirements in education. We made sure that our curriculum meets the education standards.

So we are kind of hoping we work ourselves out of a job there eventually, that the skill levels have come up and that people start to change behaviors, we have these ABCs of financial literacy and entrepreneurship begin to change behaviors and realize that they contribute to the economy, the buying local, the research that we have uncovered with the business-to-business market, our institutional market plays with Tribal Governments, and the school systems, where are they spending their money, trying to get people to bring the money back home. As the tax revenue increases for the tribe, all of a sudden, the economy gets more and more functional and our role would be able to back out.

People will have credit histories, because we also warehouse through a nonprofit collaboration with the Credit Builders Alliance here in D.C. to report credit histories on our clients. So now they are actually doing some credit as an asset, building a credit identity that is going to help them access affordable products.

So there are a number of different ways that we look at this, but I think most strategically identifying the opportunities for entrepreneurs to fill local gaps, next steps out are connecting them regionally and hoping that the State of South Dakota sees our reservations as contributors to economic development strategies, not just these isolated places, but that there is more engagement.

And on the part of rural, as well, sustainability for us on Cheyenne River means that the national dialog on job creation includes rural places as much as the urban centers, where most of our jobs occur. But we have to look at the assets in rural and see what we are contributing. There is infrastructure development with energy, highways, and things like that that are going to impact us locally because we do have those assets, wind assets and those kinds of things.

Chairman JOHNSON. Mr. Tilsen, you have recently encountered difficulty finding a lender willing to loan Native American Natural Foods money to increase the company's capacity due to increase product demand. How critical was the loan you received from a CDFI to your business being able to meet increased consumer demand?

Mr. TILSEN. The truth of the matter is, if it was not for our local CDFI, we would have never been able to originally launch the company, and if it was not for the CDFI clearinghouse out of Los Angeles in cooperation with the Minnewaukan Sioux Tribe and the American Indian Land Tenured Stewardship Foundation, we would have had to probably close down last May because we did not have any way to access the money because of the problem of not being able to use a Federal guarantee on the SBI side or the BIA side. So the dots did not connect.

So we created a complicated transaction in which the tribe made a donor-designated grant to the American Indian Land Tenured Stewardship Foundation, which is one of our equity investors. They

pledged that $250,000 to the CDFI clearinghouse clearinghouse CDFI in Los Angeles, and that gave us a million dollars' worth of lending.

But you have got to understand, this is a very complicated transaction that we had to do in order to save the company, and that is what I am talking about in terms of a lot of these programs do not connect.

I will give you another example. A lot of our reservation-based businesses, we used to work with the American Indian Employment Tax Credit. But because we have marginally profitable businesses, that tax credit, we cannot fully use it and it is not transferable to our minority investors, who are often much more successful and profitable than us. So just by making that credit transferable to the minority investor, you would create an opportunity to increase investment and equity in the small business.

And there are a series of things like that where we see opportunity where we just do not—we spend a lot of our creative energy trying to get these dots to connect to grow these businesses.

And our situation is not unique. I can tell you about a hotel on the reservation, a current entrepreneur is trying to open a movie theater. Everybody is having the exact same problem as the—first-generation entrepreneurs are reinvesting back into the community, trying to make it grow into this second-level tier, and equity is our big challenge.

Chairman JOHNSON. Mr. Olsson, your written testimony makes it clear that chartering a bank may not make sense for every tribe. Can you expand upon what other tribes might learn from your experiences on the Flathead Reservation in determining whether or not it makes sense to charter a bank, and is a credit union easier to charter?

Mr. OLSSON. Senator, in the case of the Confederated Salish and Kootenai Tribes, the reservation was open to homesteading in 1910 and a significant part of the developable real estate is owned by non-Native Americans. You have less than 25 percent of the residents on that reservation have claimed Native American status as heritage in the 2010 Census. This provides a broad basis that a bank can utilize for gathering deposits and make loans.

Banks, as you well know, are somewhat regulated, and that may be a topic for discussions down the road. But in those cases, you have severe limitations on what you can do in banking in transactions with affiliates. If you are on a reservation that is not as diverse as the Confederated Salish and Kootenai Tribes, you may not have a sustainable base to support a bank and be able to have adequate lending to generate revenues.

I commented in my written testimony that perhaps a credit union may be a more viable opportunity in some of these instances, because you are dealing with individuals, small loans, those kinds of things, but you are not in a spot that you need to provide a profit for the bank and the shareholder and your regulatory requirements for assisting members in a credit union appear to be at least somewhat less stringent than banks.

Chairman JOHNSON. Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman. I will help move this on. Thank you.

Chairman JOHNSON. Senator Tester.

Senator TESTER. Thank you, Mr. Chairman, and I want to, once again, thank all the witnesses for their testimony.

I am going to start with Martin Olsson. In your testimony, you address technical assistance for entrepreneurs in Tribal communities. You point out some room for improvement, to say the least. One of the deficiencies that you point out is some of the folks responsible for technical assistance may not have any business experience themselves, which I find unfortunate, and that may be an understatement, too.

Can you give me an idea of who these folks work for? Do they work for government agencies? Are they private technical assistance folks, or——

Mr. OLSSON. We have, in our area, at least, we do have some contract providers of technical assistance and we also have some Tribal employees who are providing technical assistance under some of the Tribal business entities.

Please do not misunderstand me. The people that I know and work with are highly dedicated. They work hard. They are really trying to do what they are charged to do. But unfortunately, at least on the area I am familiar with, you have a lot of small businesses that what you really need to do is mentor them in understanding how to manage a checkbook to keep track of records for a small business. You do not need to be developing a business plan or a chart of accounts or a QuickBooks accounting system because the individuals have not grown in their financial literacy to that level.

I tend to be a little crossways sometimes with our TA providers because I have told them repeatedly, if they are bringing in a grant application that I am charged with reviewing or a loan application, if the information provided is not a business plan that the potential recipient has participated in preparing and understands and is able to use that to mark guideposts for his business, then it is absolutely worthless.

Senator TESTER. Right.

Mr. OLSSON. So mentoring may be a better way to go if we can put something like that together. I am not sure how something like that could be organized or funded.

Senator TESTER. Well, you answered my second question already, and that was if you had any ideas on how we could put a greater focus on mentorship, and maybe some other folks on the panel have the same experience that Martin Olsson has. Mark Tilsen.

Mr. TILSEN. I wanted to add, on the other side of the situation, we are a company that is investigating look at the New Market Tax Credit, but in terms of technical assistance, that means we need expertise in integrated supply chain, just-in-time supply chain management in order to make that next goal, and within the current structure, there are not any resources to pay for those consultants. So if the CDFI funds could have money to contract experts to help with exponential growth, I think it would allow us to better utilize tools like the New Market Tax Credit.

Senator TESTER. OK. Tanya, did you have a comment?

Ms. FIDDLER. Real quick, that Four Bands, our model is a little bit different. We have a business coaching model. We connect peo-

ple with mentors on a case-by-case basis, bigger businesses when we have bigger loans. We are able to do that. So we would be happy to advise or have people in. We actually have anywhere from five to six Native Nations that come visit us on Cheyenne River a year to learn how we do things, because my coaches are the loan originators, but all of the business planning is driven by the client. We do not do for anybody because it is important for them to have the skills. And then coming out the other side of it, we offer workshops that are specific. We have check-ins, and we are trying to get better at doing our job with folks.

Senator TESTER. Yes. I think the point that I found somewhat distressing is the fact that if we are going to have folks that are going to be able to be successful in the end, which is what we are about, creating jobs and successful business interests, those technical assistance folks, no matter how well-meaning they might be and how hard they work, they have to have the business experience that can relate to the level of business they are working with, whether it is startups or whether it is expansions like you are talking about. So if there are ways we can help in that, that would be good.

I want to talk about trust property real quick, because my time is running out. Trust property is something that is pretty unique to Indian reservations and it is something that I know, Martin, you have worked with. I know, Sue, you are an expert on it. But there are many financial institutions that, quite honestly, do not have a clue about what it is about, and we have had experience through you, Martin, with one of them, and we got to the bottom of it, but it takes a while.

The question is, and this is for both Martin and Sue, is—and you can go first, Sue—is there a role for regulators like the Fed and FDIC and NCUA for credit unions in helping financial institutions understand the issues unique to Tribal communities as it relates to trust lands?

Ms. WOODROW. Thank you for the question, Senator, and certainly, there is always room on the education front to help financial institutions understand these things.

The one thing that I would like to point out, and I am going to circle back to the Uniform Law Commission's proposed Model Tribal Probate Code Initiative, is that we need to begin tackling the trust land issues. Vast areas of land in Indian Country are tied up and unable to be used as collateral to access credit——

Senator TESTER. That is right.

Ms. WOODROW. ——or for development purposes. This particular initiative will begin to tackle just one small piece, and that is to tackle the problem of fractionated interests in allotted lands. This initiative needs funding to move forward. The intent, as reflected in our preliminary stakeholder meetings is to include a broad representation not only of Federal agencies that are involved in this, but also key stakeholders from tribes, Native legal organizations, and others to come together and really work on tackling this issue.

So I encourage support for this initiative to get off the ground. I think it is a critical one.

Senator TESTER. OK. Martin, from your perspective as a banker, can the regulators have an impact on knowledge about trust lands?

Mr. OLSSON. There is a definite need for education, both on behalf of banks who do not participate in trust financing as well as a lot of Tribal Governments where trust property financing is not currently being utilized. The role and scope of that education is something that, I think, needs to be addressed. I am not sure who is the best to take that lead, but you know me, Senator Tester. I am always reluctant to suggest a regulatory agency provide additional guidance.

Senator TESTER. Got you. Point well taken. Thanks, and I ate one of the bars and they are great. Keep business going.

[Laughter.]

Chairman JOHNSON. Senator Akaka.

Senator AKAKA. Thank you. Thank you very much, Mr. Chairman, for your leadership in holding this important hearing.

Chairman Johnson, Senator Tester, and I also serve together on Indian Affairs, where we have been examining economic development and job creation opportunities and challenges in Native communities. Sustainable economic development provides a key to self-determination for Indian tribes. Even though some Native communities have seen improvements in economic development opportunities, most Tribal economies continue to suffer high unemployment. It is important for us to look at where tribes have been successful and support those efforts, because when tribes succeed economically, it does not just benefit their members. It also contributes to creating jobs and boosting economies of local communities and States, as well. So when we invest in Indian Country, we are making investments that impact all of us, investments that will help us navigate the road to American economic recovery.

It is also important to talk about the limitations of restrictions in Federal law or policy that hinder economic prosperity and self-sufficiency in Indian Country and to examine what we in Congress need to do to remove those barriers. I look forward to address the economic development needs in Indian Country and surrounding communities.

I would like to ask Ms. Sue Woodrow, the Federal Reserve Bank of Minneapolis has been proactive in identifying the needs in Indian Country to encourage economic development in Native communities. Mr. Olsson has testified that one of the big problems with access to capital for independent businesses is lack of financial literacy. In your view, how can we continue to improve our efforts to empower Native communities to make informed financial decisions?

Ms. WOODROW. Thank you for your question, Senator. I would agree with Ms. Fiddler that the need to support financial education efforts is imperative in Indian Country, and I know that there are a few ways that this can be done. One way is by supporting the development of culturally and economically relevant curricula for schools.

Continued support for community development financial institutions is imperative. Currently, CDFIs are among the primary providers of financial education in Native communities. Support of small business sector growth in Native communities is also important. Where we have areas of high unemployment, small business growth will provide jobs, provide opportunities for people to actu-

ally work and have an income and, therefore, have something to financially manage. It is very difficult to learn financial management when you have no money to manage.

And last is to encourage Tribal Government policies that require financial education in their schools.

Senator AKAKA. Thank you very much.

Dr. Desiderio, your Association testified at a recent hearing of the Indian Affairs Committee on the impacts the Carcieri decision has had on economic development in Indian Country. Can you describe those impacts for this Committee?

Mr. DESIDERIO. Sure, Senator Akaka. First, I want to make a comment based on what Ms. Woodrow had talked about in building capacity, and I think we do focus a lot of efforts on building the capacity on the Tribal side, and our organization certainly does that. But there is also building the capacity on the other side of this, which is the banking community, investment community, and I think that is part of our job in NAFOA, is to bring those two together. And I think when we do that, we bring more competition and we bring better rates, more affordable capital.

One of those—it is difficult enough to do financial transaction on its own, and like we have heard today, it is more difficult in Indian Country. You do have trust land issues to deal with. You also have sovereignty issues to deal with. And that gets to your question of this added uncertainty that the capital markets need to deal with when they want to do business with Indian Country.

As it was in my testimony today, we have that uncertainty when we deal with trying to raise money for tax-exempt bonds using the bond market for that. Our administrative costs are higher and our capital costs are usually higher because of that uncertainty. We also have uncertainty when we want to invest and partner with other tribes, and we pay more each year for those administrative costs.

And the Carcieri decision, *Carcieri v. Salazar*, basically adds another layer of uncertainty, another layer of legal costs to our financial transactions, and I think, besides turning 75 years of Federal policy on its head, there is now this idea that you need to have this Carcieri test for financial firms to do business in Indian Country, and the problem with that is that nobody has really come out with a firm idea of what the decision—what tribes are going to be impacted on the decision. So it absolutely adds an additional layer of uncertainty and cost for tribes to transact business.

Senator AKAKA. Well, thank you very much as you relate that to the Carcieri decision. Uncertainty has really plagued the Indian communities. Thank you very much for your response.

Mr. Chairman, my time has expired, but I have other questions here that I would like to ask.

Chairman JOHNSON. I will go to a second round.

Senator AKAKA. All right.

Chairman JOHNSON. Mr. Desiderio, what barriers do you see that limit access to capital in Indian Country and what role does your organization and your individual members play in helping to eliminate these barriers?

Mr. DESIDERIO. Well, I think as some of the panelists have suggested, it is difficult to set up businesses and access capital on res-

ervations, and you have another layer of issues to deal with. There was a study that was conducted and funded by the Casey Foundation a few years ago which set out to examine banking in Indian Country, and it is obvious that Indian Country is some of the most unbanked or underbanked parts of the country. And I think until we get our Native consumers and businesses and tribal enterprises in a position where they have competition, where they have different choices for short-term loans, home loans, business loans, and enterprise loans that tribes are going to be in a position of paying more for capital or struggling to make these businesses and enterprises work.

Our organization plays a role in trying to bridge that gap and trying to educate the banking community into coming into Indian Country, and I think one of the tools that we have is the Community Reinvestment Act, which tribes are eligible but for some reason the Indian community is not considered a lot of times when banks are making the decisions to invest outside of the specific communities where they bank, so this is a which-comes-first situation. We need banks in Indian Country, we need community reinvestment funds in Indian Country, and we need to continue to educate both on building the capacity side for the investment and banking community and the tribal community. And, you know, also on the building capacity side, one of our missions, which we take a lot of pride in, is to build the next generation of financial and economic leaders, and we do have programs where we do send—you know, we do give scholarships, and we do send our kids to the Lead Program which builds business skills and leadership skills. And we also are working with Wall Street to give Native kids that opportunity to go and learn how things work in different investment communities. So it all helps to build that capacity.

Chairman JOHNSON. Ms. Fiddler, do you see the CDFIs competing with the banking industry and with the credit union industry or complementing those entities?

Ms. FIDDLER. On both the Cheyenne River and Pine Ridge reservations, we have a credit union, the Community First Credit Union on Cheyenne River, and Lakota Funds is sponsoring to start a credit union on Pine Ridge, and we are looking forward to it for the opportunity to complement each other's work.

The one thing that we do not do as a revolving loan fund is take deposits. You know, the credit union model and getting them up and running, we will have helpers when it comes to this financial education that we are trying to provide reservation-wide and carry that. The credit unions that are working in our communities are taking some of that on. They have a different dialog when they work with a consumer, and we need places where folks can be depositors. And like I said earlier, hopefully their creditworthiness reported out. We gave testimony last year on behalf of Native communities on the CRA re-look that they were doing, and I would like to send that to the Committee after the fact here because there were a lot of recommendations. It is not about regulation and creating more complex systems, but including some innovations that help people get credit. The banks in my community get credit for their work in distressed communities, you know, more tagging like that, you know, possible investment, that could take place that

they would get credit for, because my local banks do not know they can do that.

So I do not see us competing, but I see us being ahead and competing in a positive way when we have a better product and service in a low-profit, low-margin area. I think that has to be considered. So it gets all of us performing to the needs of the consumer and looking at them, that that is driving it, not necessarily our ideals or a top-down philosophy. You really have to engage and realize what your local community can support and is willing to support to have conscience in what we do in these places, because there are too many opportunities for payday lenders. We have got them downtown on Main Street, you know, that kind of thing now. And as much as we do in the financial education side, folks are free to make those choices. But if there are not alternatives for them to develop real banking relationships—and we do that with our youth. We are walking them in, introducing them to banks, opening up savings accounts so they can begin to develop that relationship.

Coming out of poverty, I was not comfortable going into a bank until I was in my mid-thirties. I was terrified just because of the unknown. So we try to do that to complement the relationship of the bank in the community with what we are doing with our clients.

Chairman JOHNSON. Mr. Tilsen, what role does trust land circumstances play in developing resources?

Mr. TILSEN. Karlene Hunter and I are also the owners of Lakota Express, and we have a 6,000-square-foot paid-off building that sits on 5 acres of tribal trust land that we cannot leverage to grow our business with. We can leverage the building, but we cannot leverage the complete asset that we have invested and paid off over the last 10 years. That is just one example.

When we are dealing with trying—you know, the buffalo industry is growing at a tremendous rate right now, but the average age of the Native buffalo producers is over 60, and a lot of young people are interested in getting into that, but they cannot access capital even if they own their own land. And so they do not have the 20-percent equity requirement to be able to access that.

I think there may be some models to look at, like the 874 loan program that has opened up mortgages for houses, that maybe there could be a model similar to that that would allow some kind of leverage to help people get over that barrier. I am not exactly sure. Or looking at creating an equity bank that people could then use some of that equity.

But I also really want to emphasize here that doing economic development on the Indian reservation where all the power exists outside the reservation and the historical model of subsidizing businesses, their capital and labor to move on to the reservation has never worked at wealth creation. Now that we have a pool of growing entrepreneurs in Indian Country and a growing population in Indian Country, we really have to recognize that the leadership, the creativity, and the courage is in the Indian community, and we have to figure out how to make sure that the minority investor can take the tax advantage, but the power, direction, and authority, both because of sovereignty and because those are the people who are creating the wealth, have to be the ones that hold the power.

But we have to have a way to incentivize these minority investors, whether it is in the new market tax credit, whether it is creating some insurances inside the CDFI program, whether, you know, it is structurally within the American Indian employment tax credit. It is essential to me that the leadership be allowed to lead, people like Tanya, people like Mr. Olsson who are right there on the front lines, because we are often dictated to by all these Federal agencies, and you cannot get the lines to dot. There needs to be from the Federal level a little bit more risk taking to allow some flexibility and allow the leadership.

I want to use as an example, if you would just indulge me for a second, the Partnership for Sustainable Communities, which our reservation is one of those. It is a unique opportunity that gets the tribe, State, Federal, county programs to all work together to come out with a sustainable plan, and there has been—you know, it is a great project, and people are very excited about it on Pine Ridge. Currently the hearings going on on the House side are going to eliminate—they are going to make it—the new proposal is that Federal agencies will not be able to talk to each other in trying to find solutions to sustainable development and cooperation in that, which is the language that is on the House side today. That is the opposite direction that we need to go. If we are going to solve economic development, we need to create more flexibility on the ground level, and the leadership has to come from the people who are actually doing it and reverse this model if we are going to go from dependency to independence.

I have seen this time and time again, and I am a big believer in this, both in terms of sovereignty but in effective use of Federal, State, tribal, and entrepreneurial dollars.

Chairman JOHNSON. Mr. Olsson, how do you deal with the collateral you have? Do you go to tribal court or State court when enforcing your rights?

Mr. OLSSON. Senator, where we have a large population that is not Native American within the reservation, it makes a bigger challenge for banks who are dealing in collection areas. Obviously, we are prohibited from inquiring to any nationality or if you are a tribal member at the time a loan is originated. Unfortunately, at the time you end up looking at a collection issue, what we typically do then is to, number one, verify whether or not the individual is an enrolled member of the tribe before we proceed with a collection action. If they are an enrolled member with the tribe, then we do go ahead and utilize a tribal court system for all collection actions.

If we are dealing with a trust property issue, that is a piece where you know up front that the individual is a Native American within the reservation. You have to go through a fairly detailed application process and approval by the BIA or their delegated authority before you can perfect a mortgage on trust property.

Fortunately, we have not had to look at any collection actions on trust property or any real estate at this point, so we feel fairly good about that. But if we do come into a point that we have to look at a collection action on trust property, that will go through the tribal court system.

Chairman JOHNSON. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. Olsson, thank you for the work that your bank has done in the community to assist tribal members whose needs were not being met by traditional institutions. In addition to the programs that Eagle Bank runs, you also observed that the programs that are available for the first-time home buyers and students can be effective. So my question to you is: How could you expand your coaching services into a more formal program of financial literacy? And what would the benefits be?

Mr. OLSSON. Senator, one of the premises when Eagle Bank was chartered was to develop financial literacy and work closely with the underbanked within our market, whether they are tribal members or not. Unfortunately, in the current economic environment, our resources are extremely limited, as is our staff time.

What we would hope to be able to do is either through increased revenues and retained income or perhaps if there may be some type of grant program available, we would like to be able to offer dedicated staff to the financial literacy and training. We just are not able to do that at the moment. So if you have got some good ideas on how we can increase staff, why, that would be greatly appreciated.

Senator AKAKA. Well, thank you very much for that. We certainly want to tell you to try to work on it.

Mr. OLSSON. Thank you.

Senator AKAKA. Ms. Fiddler, can you describe for us the Four Bands youth and entrepreneur internship program and the benefits you have found by bringing students into this program?

Ms. FIDDLER. Thank you for the question, Senator. Back in the day—it was about 2005, 2006—when these match savings programs were coming about, our tribe, one of our tribal programs for poverty alleviation, wanted to invest in youth individual development accounts. But the problem is that the kids need to earn the money somewhere in order for them to be eligible for match monies. Meanwhile, our business community, being a low-profit area, cannot afford the employees and kinds of things that they need, and the wonderful thing about our Native business community is that they are always giving back, whether they can or not. They are just a generous place. So we matched up businesses with these young people that were needing to earn some money, for higher education for the most part. They do 100 hours of internship with a local business. We pay them a stipend. They save half of that stipend, and many of these kids are saving all of their stipend to go on to college. And then there are the teachable moments. That includes financial education as part of their internship that they have to do. They have to complete asset training, so if it is higher education, we do have some young single mothers that are looking to get into home ownership through our Habitat for Humanity office. So they are completing home buyer training. So whatever the asset that they identify in the internship, they save for, we match, and the businesses are getting the benefit. Many of the businesses, because they are—you know, not knowing what the workforce looks like, many of our local businesses have actually picked the kids up after. So we have gotten nearly 100 kids that have completed the program. Most of them made their goals, are on to college. Now we are studying out to see if they are completing, and the majority of

the kids are still working on their higher education. Our young lady is still working on getting a home for her and her new baby, that kind of thing.

So it was an innovative way to address all the shortcomings that we had with lack of jobs, you know, lack of experience, and our business has not been able to afford to take on the employees that they need. So they jump up and volunteer to help us out in that way. So that in a nutshell is the youth entrepreneurship.

Senator AKAKA. Thank you very much.

Mr. Tilsen, your success in creating food products that promote a Native American way of wellness that feeds mind, body, and spirit is impressive and inspiring. But the difficulties that you have had in securing support to keep your company alive and growing is sobering. The number of agencies and banks you have had to visit is daunting. If you were to give advice to a Native American entrepreneur who is interested in starting a business in Indian Country, what are the important lessons you could provide based on your experiences?

Mr. TILSEN. Focus and flexibility. You know, we started out with the model of—we launched a natural food company in the middle of a food desert on an isolated Indian reservation because we wanted to figure out how we could create a product that would impact our growing rate of diabetes in the community. Our original business model thought we could distribute it nationally and make enough money to subsidize it and make it available at an affordable rate within our school system. That business model has not succeeded at that goal. We still have this—we have got a lot of young people involved, and a lot of young people love the Tanka brand. We faced the reality of not making it affordable.

So we have to be flexible in that, and we have to try to hunt out each agency. There is a lot of talk about food deserts right now and a lot of talk about diabetes, but, again, trying to connect those dots and making those resources available to get the product into the schools, you know, we are all over the country, but we are not in the high school across the street from my office except for maybe on a special occasion.

So that is a real challenge, and I guess that is why it takes a lot of focus and a huge amount of networking, and you have to stay focused on your mission and your goal. And we go back to our mission every day with every decision, and it is the support of the entire network within the CDFI community, within the social venture network community, within the local community where so many people want you to succeed. You know, right now there are 50,000 people that interact with the Tanka brand that are listening on the Internet right now, people all over the country and all over the reservation through with Web broadcast, and that is the encouraging part. But how do you connect those dots to make it work? That is the challenge. And I think it takes a lot of focus, and it takes the flexibility to try to connect these dots all the time. That is why it is such a great honor to be here because we are able to tell this story.

Senator AKAKA. Well, thank you very much. I want to thank our witnesses very much for your responses.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you all for your testimony and for being here with us today. I am grateful to all of you for the important work you do to make economic development a reality in Indian Country. As Chairman of this Committee, I will continue to work to improve the lives of all American Indians, and we need to continue supporting your efforts.

This hearing is adjourned.

[Whereupon, at 11:29 a.m., the hearing was adjourned.]

[Prepared statements and additional material supplied for the record follow:]

PREPARED STATEMENT OF CHAIRMAN TIM JOHNSON

During my time in Congress, I have enjoyed a strong working relationship with American Indian tribes in South Dakota and around the country and have advocated for policies to help improve the quality of life for American Indians. While progress has been made, many Native communities continue to face significant challenges, including staggering unemployment rates, inadequate health care, crowded and unsafe housing conditions, high crime rates, and educational inequalities. This is unacceptable.

Fostering small business growth is a vital step toward increasing employment opportunities and improving local economies throughout the country during these difficult economic times. Small business growth in Indian Country is no exception. Encouraging the startup and growth of Native American-owned businesses is an important priority to me as Chairman, and that is why I have called this important hearing and invited all of you to testify here today.

For many years, I have worked to ensure Native communities in South Dakota, and across the country, have adequate infrastructure in place to foster an environment where economic development can take place—from being an original cosponsor of the legislation that created the NAHASDA block grant for housing to helping fund the Mni Wiconi rural water system to supporting tribal bus transit programs.

Today, the Committee will examine what challenges continue to hinder economic growth in Indian Country, including the lack of access to capital, small business lending, financial education, and support for start-up businesses. With unemployment rates reaching an astonishing 80 percent in some areas of Indian Country, we must do better to address the problems that cause this persistent cycle of unemployment.

While it's sometimes easy to become discouraged when considering all the obstacles that face Native communities, we will also hear about the great work so many are doing to help address these persistent problems. In South Dakota, and in other States, there are many small business owners, community development institutions, community banks, and credit unions, and dedicated public servants working every day to improve the economic climate on tribal lands.

Just this past August, I had the honor of visiting Eagle Butte on the Cheyenne River Indian Reservation in South Dakota, where I was able to hear directly from small business owners about the challenges they face and the important assistance they received from the Four Bands Community Fund. The leaders of these small businesses—ranging from Lakota Archery to Bonnie's Quilting Boutique—really demonstrated for me the strength of the Native entrepreneurial spirit and how important CDFI programs are to small business growth in Indian Country.

I'm very pleased we are joined by such a great panel of witnesses today, and I thank them for being here. I also want to acknowledge and thank Senator Akaka. We are all fortunate for his service on this Committee and as the Chairman of the Indian Affairs Committee. I'm proud to serve on the Indian Affairs Committee under his leadership, where we've considered many of these important issues.

PREPARED STATEMENT OF MARK A. TILSEN

PRESIDENT, NATIVE AMERICAN NATURAL FOODS

NOVEMBER 10, 2011

Thank you, Chairmen Johnson and Senator Shelby, for this time to share the story of Native American Natural Foods as well as the challenges and opportunities facing entrepreneurs in Indian country, in our case the Pine Ridge Indian Reservation, home of the Oglala Sioux Tribe.

I would also like to thank Senator Johnson and Members of the Committee for your support of the tribal transportation program. It is a great asset to our growing business community to finally have a new and growing public transportation system.

I also want to acknowledge and thank you for your ongoing support of the Native American CDFI programs. Lakota Funds was the first Native CDFI when it was started in 1985. At that time, there were only two Native American businesses on the Pine Ridge Reservation. Today there are hundreds. Many of them are members of the Pine Ridge Area Chamber of Commerce, which I am also proud to represent here today. Lakota Funds and other Native CDFIs provide the necessary "first rung" on the economic ladder for most first-generation entrepreneurs on many reservations. The CDFIs are the primary source for learning financial literacy. On many reservations, they are the only commercial lenders of any kind.

Your work has had a positive impact on the lives of many. I hope my input here today will help you to find more ways of helping the Oglala Lakota people make the transition from dependence to a self-sufficient, sustainable economy.

Native American Natural Foods (NANF) was founded by my long-term business partner, Karlene Hunter (Oglala) and South Dakota's 2004 Native American Business Woman of the Year, and myself Mark A. Tilsen. Ms. Hunter and I have been involved in economic and community development projects on the Pine Ridge Indian Reservation since the 1970s. Ms. Hunter was the first registrar of Oglala Lakota College and one of its first graduates to earn a master's degree. I served as the first development staff person for Lakota Communication, Inc., from 1979 to 1986, and coordinated the development and launch of KILI 90.1 FM, the first 100,000-watt Native American community-controlled radio station in America.

Karlene Hunter and I started Lakota Express, Inc., a successful marketing and management company, 17 years ago. The company was launched in Ms. Hunter's basement in Kyle, SD, in the center of the Pine Ridge Reservation. We have run the company at a profit from its beginning. Focused on direct marketing and fundraising, Lakota Express has raised more than $30 million in net revenue for its reservation-based clients. While we are proud to have helped build the first library on the Pine Ridge Indian Reservation, helped cofound the Pine Ridge Area Chamber of Commerce, trained more than 100 staff people, and helped to strengthen many important organizations on the reservation, we also know it is not enough.

Working with our local CDFI, the Lakota Funds, we began to study distance-neutral business opportunities that had the potential to be large enough to have a positive impact on the health and economy of the Oglala Lakota Oyate (people). It was during this period that we began to learn about brand value and modern brand strategy, and that many of the newest, most successful companies in the country were based on the value of their brands.

In 2006, we reinvested our profits back into the community and applied our experience in marketing to a new strategy by founding Native American Natural Foods, LLC. We decided to enter the natural food market by creating a brand based on modernized versions of naturally healthy Native American foods.

With the help of the Northwest Area Foundation, the Lakota Funds (CDFI) became our first equity partner as a model of community ownership.

We started out wanting to create healthy alternative snacks for Native youth in an effort to help slow down the out-of-control juvenile obesity and diabetes rates affecting the youth in reservation communities and to bring the healthy impact of buffalo back into their diets.

We created Tanka Bar based on a centuries-old traditional recipe called "*Wasna,*" which was made of dried fruit and smoked buffalo meat. *Wasna* was carried by Lakota hunters and warriors for hundreds of years, so I like to call it America's true first fast food.

In October 2007, we launched our first product at the Black Hills Powwow as an Internet-only product, but the story was picked by the Associated Press. Only 10 days after our launch, we were on the cover of the "Dining In" section of the *New York Times.* The response was great, but it overwhelmed our production with requests for product literally coming from all over the world.

Working with our long-term banking partners at the First National Bank of Gordon, NE, and the Bureau of Indian Affairs, we obtained a $916,000 loan with a 90 percent guarantee and interest rate subsidy. This loan enabled us to contract with a large co-packer and to launch the Tanka Bar nationally.

It is important to note that this loan was only possible because of the personal guarantee signed by Ms. Hunter and myself and the equity in Lakota Express, Inc. In March 2008, we launched Tanka Bar nationally at the Natural Products Expo West in Anaheim, CA, to a great response from retailers and national distributors.

For the first 6 months, we doubled our sales every month until August 2008, when orders stopped. The markets froze, retailers were no longer adding new products, distributors were cutting back or canceling orders, Internet orders slid by more than 50 percent and our operating losses began to grow.

In order to keep Native American Natural Foods alive and growing, we sold shares to the Oglala Oyate Woitancan Empowerment Zone (EZ) a tribally chartered development agency that managed USDA funds under the EZ Program. With the help of a PRI from the Northwest Area Foundation to the American Indian Land Tenure foundation, we were able to raise a total of $750,000 in equity.

As Native American Natural Foods continued to grow at more than 200 percent per year along with the increased price for buffalo, in the winter of 2010, we hit a cash crises and began to seek help to refinance. But because we were running with a negative equity balance sheet and no way to fully capitalize our assets that are on trust lands or add the value of the brand we are building to our balance

sheet, we did not meet the required 20 percent equity to qualify for a guaranteed loan under the BIA loan guarantee programs.

We presented our case to every major bank in western South Dakota. While many of them were impressed with our growth opportunities, they did not feel the loan would pass the equity requirement of the auditors, even if we were able to secure a Government guarantee.

During this process, we had the help of Brian L. Brandt, President, Center for Business and Economics of the Northern Plains. Mr. Brandt said:

> My experience (and the experience of many of our colleagues and clients) is that most of the lending officers at community and regional banks that serve the Midwest (and in particular, in Indian Country) lack the financial sophistication required to understand the business models followed by most successful emerging businesses—low collateral and low inventory levels, and financing operating capital out of projected growth. Virtually none of the high tech companies we now use as models—from Apple to Microsoft to Google (which over time have created 125,000 high paying jobs) would have ever qualified for any kind of bank loan from any community bank in the U.S.
>
> On numerous occasions with Native American Natural Foods (among others) after laying out a growth plan (that included testimony from retailers and distributors alike that backed up the conservative financial forecasts)—forecasts that would have easily allowed both debt service and repayment out of verifiable growth—we'd still get the question, "Yes, but where's the collateral?"
>
> The $30 billion of the Small Business Lending Fund (from the Small Business Jobs Act of 2010) that many in Congress thought would provide a solution was poured into community banks and went primarily to their balance sheets. Very little of it has found its way into community small businesses.

We then decided to seek a loan with the First National Bank of Gordon, NE, asking SBA to provide a guarantee under the SBA 7a Program. We were turned down this time because of the Empowerment Zone, which is a tribally chartered organization. The SBA mistakenly believed it needed the tribe to waive sovereign immunity. After our attorneys at Patton Boggs here in Washington, DC, solved that problem, the SBA then wanted the Empowerment Zone to sign the guarantee because it owned 20 percent of the company. But, because the Empowerment Zone is a nonprofit tribal development agency established to administer USDA funds set up through its program, its board was not willing to approve the guarantee.

By the spring of 2010, Ms. Hunter and I had over-extended our resources to the point that we were seriously looking at shutting down operations. But first, we decided to reach out nationally to any tribe or lender who was willing to help.

The Clearinghouse CDFI Fund of Los Angeles, whom we had met during a tour of the reservation organized by Oweesta Corp., a national Native American CDFI that supports Native economic development throughout Indian Country, decided that it would be willing to make its first-ever loan to a reservation-based business if we could get the BIA to approve the loan. We were not able to get the approval. The Clearinghouse CDFI then said that if we could find a guarantor to put up 250,000 in equity, it would approve a $500,000 loan with a second $500,000 if we could meet specific performance and equity goals.

The Shakopee Mdewakanton Sioux Tribe made a donor directed recoverable grant to the American Indian Land Tenure Foundation, which was used to put up a CD in the American Indian National Bank. And the Clearinghouse CDFI completed the initial $500,000 transaction and kept Native American Natural Foods alive and growing.

In the coming weeks, we expect to complete the second $500,000 loan from the Clearinghouse CDFI. But we still have not found the necessary equity capital to build Native American Natural Foods into the large, high-performance company needed to real have the economic and social impacts that Indian country requires. We are currently studying the use of New Market Tax Credits to access the equity and capital to facilitate this growth.

I share this example with you to show the extremes that we had to go through just to survive. And even with the help of the top-rated attorneys at Patton Boggs, we were unable to utilize the Federal loan programs that were intended to help businesses in our situation. This causes great concern for Native American businesses that do not have our national reach or the highly experienced and committed help we received from Patton Boggs. Do they really have a chance to grow?

There is no doubt that being a cash-constrained business increases our risk and our operating costs and limits our growth.

Native American Natural Foods: A Success Story Striving to Happen

As we celebrate the fourth anniversary of Native American Natural Foods, let's look at what we have accomplished:

- We now have nine products—six ready-to-eat shelf-stable products and three heart healthy frozen buffalo hot dogs.
- We have created 16 full-time jobs on the reservation and the equivalent of four part-time jobs. For most of our employees, this is their first private-sector job.
- Our products are distributed nationally by United Natural Foods (UNFI), KeHE/Tree of Life, and Nature's Best.
- They are also sold by the case through our customer care center (800-416-7212) and directly to the consumers on Tankabar.com.
- Tanka products are sold in more than 4,000 locations in all 50 States and more than 275 Native American reservations.

While Tanka products are a popular item at Mount Rushmore, they are not sold in the U.S. Senate cafeteria or any Government building in Washington, DC, with the exception of the National Museum of the American Indian.

Syndicated industry sales data by Spins for August 2012 shows the Tanka Bar has grown by more than 202 percent in sales, representing more than 50 percent of the growth in the category. And four of our products are now in the top 16 nationally. This data is based on actual cash register scans at the store level and proves customer acceptance of the product.

Tanka Bar Spicy Pepper Blend was recognized in 2010 by Backpacker Magazine as one of the best new products of the year. In May 2011, Golf Digest Magazine named Tanka Bar as a bar that every golfer should have in the bag.

Tanka products are the official snack of the Oglala Sioux Tribe; certified as Native American Made by the Intertribal Agricultural Council; USDA-approved; certified by the Gluten Intolerance Group (GIG); and certified as a sustainable product by Green America. We have won numerous awards for both entrepreneurship and our products. Most recently, we were given the 2011 Innovation Award by the Social Venture Network.

We have built this brand through the innovative use of social media. Every staff person has been trained and is expected to use social media every day to build brand awareness. By building a cross-publishing platform, we have built a Web experience that attracts more than 50,000 visitors per month and empowers our staff to interact with consumers and retailers nationally, effectively breaking the economic isolation of the reservation.

Social media has enabled us to build the Tanka brand without having to buy any advertising other than what is required by some national retailers. Just last month, we were approved to start selling our product into Whole Foods, the largest natural food retailer in the United States.

Looking to the Future

The future of Native American Natural Foods is one of hope and opportunity that is limited by our access to affordable capital and business-based on-the-job training opportunities for Native American youth.

Anyone who watched ABC's powerful news magazine 20/20 presentation, "Hidden America: Children of the Plains," cannot help but see the challenges we face and that the needs are great. I view the show as a challenge to all of us who profess to want to improve the conditions of Indian people, to do more, to think bigger, to reach across the fence, the reservation boundaries, or political barriers to find solutions. This type of stagnant historical poverty has become the norm on South Dakota's Indian reservations. We find this unexcitable. It is time for change.

Here are a few solution-based ideas that we see on the ground level—or the front lines, you may say—that would help:

- *We need to recognize* that the solution to economic development in Indian country is within the creativity, courage, and commitment of Indian people.
- *We need to look at the population growth on South Dakota Indian reservations as opportunity, not as a problem.* Work with these young people to give them the opportunities so they can see a future of hope and promise and become the entrepreneurs of tomorrow!
- *We can no longer subsidize off-reservation businesses* with capital and subsidize labor and expect it to grow the economy. We need to find ways to incentivize

larger, more profitable companies to support Native-controlled business from minority ownership positions.

- *Renew the American Indian Employment tax credit for job creation.* But this credit has to be transferable to the minority shareholder at 100 percent value to encourage larger, more profitable companies to partner with reservation-based businesses.
- *Create a 4-year Tax Holiday* for all profits made from investments on reservations where the unemployment rate is more than 30 percent.
- *Make exceptions to the 20 percent equity requirement.* Within the authorizing legislation of the BIA Loan program, there is a provision to allow for exceptions to the 20 percent equity requirement, but it is seldom or ever used. There needs to be a requirement to waive this for growing businesses within impoverished areas. And exceptions made for that business that lost equity, but was able to survive the economic downturn of 2008.
- *Support equity from Indian country's CDFIs, CDCs.* Also, in cases like ours in Indian Country where CDFIs, CDCs and other nonprofits—whether they are chartered by a State or a tribe that holds minority ownership as the result of managing Federal, State or foundation funds in the project—should not be required to provide a guarantee for a business in which they do not hold any decision-making authority.
- *CDFIs:* Please continue to grow the Native American CDFI program; expand its capacity to provide technical assistance contracting to larger growing businesses to help plan and execute expansion.
- *Support New Markets Tax Credits for reservation-based business.* Native American Natural Foods has had preliminary discussions regarding a New Markets Tax Credit transaction that may assist us in obtaining equity for our corporation. Equity is extremely difficult for small businesses, yet vital for obtaining debt capital and continued growth. I understand this program has helped many small businesses and has created thousands of jobs across the country. This is an extremely important initiative at this time.
- *Healthy Foods Initiative:* The recent emphasis on "healthy foods" in this country is a concept we certainly support. As the creators of a healthy snack food, we recognize the important role nutrition plays in health care, education, and worker productivity. However, we are concerned that the current policy emphasis for "Healthy Foods" is seemingly focused solely on creating grocery stores in "food deserts." We encourage those involved in this initiative to strongly consider supporting those businesses that are actually creating "healthy foods"; such as companies like Native American Natural Foods. Grants and loan dollars earmarked for those creating and promoting healthy foods will provide a much better return than what is projected from additional grocery stores and markets.
- *Agricultural:* I understand U.S. Senator Casey from Pennsylvania is planning to introduce a new bill, which through USDA, will create a new loan fund, backed by a partial Federal guarantee similar to the SBA 7A program, for helping support a new generation of local farmer entrepreneurs to provide fresh local food to meet the rapidly growing demand across the country for locally grown foods. It includes some funds for technical assistance to help ensure the success rate of these new farm entrepreneurs. This is a much-needed program and needs to include a Native American set-aside for the larger land-based Tribal areas. We would also like to see the bill increase to create lending opportunity for Native Americans who wish to become buffalo producers.
- *Return the buffalo to the economy and diets of Indian people.* We also would like to see a tax-incentive to encourage investments with Native American buffalo producers. While the buffalo industry is growing fast and doing well, there is little opportunity for Native American buffalo producers to enter the industry. In 2010, we were only able to purchase about 22 percent of the buffalo needed for the Tanka Bar from Native producers. The historical record supports an argument that the last time the Lakota People had a healthy sustainable economy it was based on the buffalo. This record also shows that the Buffalo were destroyed as an act of war to subjugate Indian people. It is clear that many Native peoples and tribes would like to return to a partial buffalo-based economy. And the Federal Government has a responsibility to support these efforts every way possible. We have a collective vision of returning buffalo to 1,000,0000 acres of Native lands in the next 10 years and have launched the Tanka Fund to make this dream a reality.

- *Investor protection.* In order to attract more investments on to reservation-based CDFIs, their needs to be some deposit insurance and some tax incentives to help CFDIs provide higher levels of funding as a business grows.
- *The BIA Loan Guarantee Program.* Needs to be expanded to tribes who invest in private businesses outside of their own. Currently, the largest tribal lender in Indian country is the Mdewakanton Sioux Tribe. They only lend to tribal enterprises. But in order to incentivize more tribes to lend or invest in small businesses there needs to some protection on investments.
- *Transportation:* We would like to see you continue to grow the much-needed public transportation programs in Indian country. You have started a great and much-needed program that needs to be supported to grow.
  - We would also like to make you aware of the challenges in shipping and receiving. When shipping LTL; trucks only come to the reservation two times per week, even UPS who markets itself as logistic does not acutely guarantee overnight shipping from the reservation.
- *U.S./Mail:* It is a business necessity to have daily mail delivery on the reservation. Any cut back in mail service will increase the economic isolation of the reservation.
- *State/Tribal Gaming Compacts:* The Federal Government needs to use its influence with States to make sure that investments that are made by tribes are allowed to grow to their full potential. For example, the Mdewakanton Sioux community made one of the largest business loans ever on the Pine Ridge Reservation to the Oglala Sioux Tribe to build a new casino and hotel. But, the State refuses to allow them to put in all the machines they could because of the States protectionist policy toward off reservation private casinos. This interferes with the growth of commerce on the reservation. It is also true that protectionist policy limits competition that reduces value of the protected industry over all.
- *Business evaluations:* How business value is evaluated in Indian country is a large and complicated issue since many businesses are on trust land and not easy transferable. It is also true that successful businesses; owe our success to our relationships with our vender/distributors and, most importantly, our customers.
  - *Brand Value:* What bankers often refer to as blue sky, but currently there is no method to establish Brand Value without selling the company. But if your goal is like ours to build a sustainable economy on the reservation, you do not want to sell. But even when we sell equity to a tribe's nonprofit or social investors who see the value in our triple bottom line approach of money, people and lands, we are told that these investors do not count as real investors because they are not making a financial decision that can be used to establish value. As if the lender or Government bureaucrat has some right to decide what an investors motivation is. It also ignores the reality that only a courageous investor with deep belief in helping to give people opportunity's that have been denied it throughout all of history would make such a investment. Last, it ignores the fact that social and sustainable investing is growing and needs to grow as a result of limited Government recourses to fund market based solutions to the problems of poverty and changes in our environment. It is estimated that socially motivated investing is now over $60 billion and growing.
  - *Facilitate the use of Confirmed Market Forecast as collateral for Small Business*—Some mechanism has to be created (if it does not already exist in the form of the CDFI) to provide operating capital to growing businesses based on a high-degree of due diligence and verification of the growth potential of that business. The lending model simply has to be decoupled from the requirement for hard-asset collateral and coupled to verification of the growth potential and cash-flow analysis for businesses, as is the practice for most of the new and emerging business models.
- *Support small sustainable business growth by making lending to small businesses a banking requirement.* It is common knowledge and most experts agree that small business is the key to job creation. But every small business owner I know will tell you that the Banks are not lending to small business. While the banks have received the $30 billion of the Small Business Lending Fund (from the Small Business Jobs Act of 2010. According to both CNN and The Huffington Post, (among many others,) 87 percent of the community banks that potentially qualified didn't apply. Out of the ones that did apply, 40 percent of

those ultimately didn't qualify. Of those that did qualify, many, like M&T Bank and MB Financial are holding onto their cash and cynically using the money to acquire other banks and buy investments for their portfolios. Dozens more like Security Business Bank of San Diego are simply swapping their Federal rescue money for potentially cheaper financing from the same source: the Government.

Mark Wilson, a former bank examiner for the Federal Reserve characterizes the program this way: "This is a below-the-radar bailout for community banks. What we lack here is oversight and true accountability."

Existing Federal programs aimed at making critical operating capital available to emerging and growing businesses have failed to have any significant impact on job creation and the only impact Indian country is to create false hope as we waste precious time chasing funds from a system that does not work. The result is forcing many small businesses into using credit cards to pay for operating supplies. I have had to do it times. Often costing them 12 percent–16 percent or even more than 20 percent interest. In effect, the banks can increase profit by not approving loans. Worst yet are the predatory lenders that victimize our small business and our employees.

- *Create regulation* that grades banks and their access to capital on how well they serve smaller independent businesses as well as sustainable business models.

  While we in small business are often required to use our creative energy's to navigate the Federal, State, and banking bureaucracy in order to survive, we are not the ones lobbying for less regulation or oversight. We want clean air, clear water, safe food, better schools and affordable college education. But we also want and need a level-paying field. Ninety-nine percent of the American people support small independent businesses. Indian people are at the bottom of the 99 percent percentile in America and are hungry for opportunity. The Oglala Lakota people are people in transition from poverty to sustainable healthy communities. There are more Indian business owners than any time in history. There are more Indian people in college than ever before. The coming generations is asking for our help. We need to open the doors of opportunity by doubling and tripling our efforts to give access to markets and capital. Native American Natural Foods is proud to be part of this transformational movement and look forward to working with all of you to find solutions to the many problems we face.

I would like to thank Chairman Johnson and Members of this Committee for allowing me to share my thoughts here today. Your tenure in the Senate is at a pivotal time in American history. The streets, coffee shops, Web sites and social networks of America are filled with frustration as the poverty and neglect that has besieged Indian reservations is now spreading across America.

I challenge each of you to please listen to the American people who want and need change. America has the courage, talent and resources to build a healthy, sustainable, fair and just economy. You have the power, use it wisely. Inaction is not an option.

PREPARED STATEMENT OF MARTIN M. OLSSON

PRESIDENT, EAGLE BANK

NOVEMBER 10, 2011

Chairman Johnson, Ranking Member Shelby, and Members of the Committee, thank you for inviting me to participate in this discussion of Opportunities and Challenges for Economic Development in Indian Country. You have asked that I comment on several topics regarding Eagle Bank's role in encouraging economic development and challenges and opportunities.[1]

Economic Development and the Organization of Eagle Bank

The Confederated Salish and Kootenai Tribes of the Flathead Nation (Tribes) have been proactive in economic development for many years, investing in tribal enterprises with the intent of promoting tribal employment and generating net revenues. Tribal businesses include resort and gaming operations, electronic and component manufacturing, information technology development, energy development, and environmental restoration. The Tribes have recognized the need for developing al-

[1] This statement reflects my views and not necessarily those of the Board of Directors of Eagle Bank or the Confederated Salish and Kootenai Tribes of the Flathead Nation.

ternative sources of revenues to support their governmental and economic development needs, and the tribal enterprises are generating welcome dividends.

The Tribes also recognized the need to support credit availability for their membership. Over 40 years ago the Tribal Credit Program was created with a modest investment to assist tribal members with small balance short-term credit needs that were not adequately addressed by traditional financial institutions, and over the years net revenues were retained to grow the fund. This program has grown into a $45 million fund providing short-term unsecured loans, educational loans, home ownership loans and commercial loans, and as reserves have grown, the program has been able to return dividends to the Tribes.

The Tribes also have a smaller fund for small dollar loans supporting tribal member economic development—Sovereign Leasing and Financing—and have instituted a grant program patterned after the Montana Department of Commerce Montana Indian Equity Fund.[2] The Tribes are dedicated to providing credit opportunities and grants to tribal members and their small and start-up business that may not have access to capital from traditional financial institutions.

The Tribes' desire to expand into banking was a natural extension of their economic development goals and their desire to provide financial services for under-served members. After nearly two decades of research and discussion, the Tribes organized Salish and Kootenai Bancorporation[3] and chartered Eagle Bank in 2006. The bank is charged with providing the traditional financial services for all residents and businesses within the Flathead Reservation, and to provide services for the under-served population such as small dollar loan and deposit accounts and check cashing that many financial institutions no longer provide.

The Role of Eagle Bank

The Flathead Reservation was established by the Hellgate Treaty of 1855 and encompasses approximately 1.3 million acres of some of the most scenic agricultural and recreational areas of Western Montana. The Reservation overlays the majority of Lake County and portions of Flathead, Missoula and Sanders Counties and was settled by several bands of the Salish, Kootenai, and Pend d'Oreilles Tribes.

During the early part of the 1910s the unallocated portions of the Reservation were opened to homesteading and, as a result, the majority of the residents within the exterior boundaries of the Reservation are not tribal members. The 2010 Census reports only 24.7 percent of the residents claimed American Indian/Alaska Native for their ancestry, making the Tribes the minority within their own reservation.

Land ownership also reflects the population status with the majority of the Ag and developable real estate held in fee status, rather than Trust, and the Tribes are working to reacquire real estate holdings as they become available and budgets allow.

The influx of people following the homesteading days led to significant economic development on fee land, and banking and commerce evolved over the past century in a manner more reflective of off-reservation development. Unfortunately, trust property issues and lending to Native Americans were not addressed appropriately in the past, and the Tribes have worked hard to improve the understanding that banking and commerce need to be more inclusive and responsive to their inherent Sovereignty.

Eagle Bank is one of five banks domiciled within the Flathead Indian Reservation and the market is also served by branches of two larger out of market banks and a branch of a large out of market credit union. This is an unusually high concentration of financial institutions located within an Indian reservation, and is the direct result of the opening of the Flathead Reservation to homesteading.

Eagle Bank is charged with serving the general market with traditional banking services, but is also charged with providing financial services to the under-served. These services include (1) small dollar consumer loans, both secured and unsecured, (2) small dollar deposit accounts with access to debit and ATM cards, (3) check cashing for noncustomers who reside within the Reservation, (4) trust property loans, and (5) providing "coaching" on deposit accounts and access to credit. Eagle Bank would like to expand its "coaching" to a more formal program of financial literacy, and will do so when limited staff and resources permit.

Eagle Bank also works with Tribal and other funding programs to leverage credit for small and start-up businesses, and serves as an advisor/grant reviewer for the

[2] The Montana Department of Commerce Indian Equity Fund provides for two $7,000 grants to Native American owned business on each reservation in Montana and one $7,000 at large grant.

[3] Salish and Kootenai Bancorporation is the only bank holding company organized under Section 17 of the Indian Reorganization Act of 1934.

Montana Department of Commerce Montana Indian Equity Fund, the Tribes grant program and the Tribes economic development committee.

Eagle Bank Model

Eagle Bank opened at arguably the worst time, and continues to struggle with profitability during the most severe economic conditions since the Great Depression. The historic low interest rates are a major detriment to profitability because volatile tribal deposits[4] require maintenance of excessive short-term/overnight funds that provide no margin. In a more "normal" interest rate environment, the bank would be able to realize positive margins on liquidity and an improved profitability.

The tribally owned bank model may have limited usefulness on many reservations because of the regulatory limitations on banks and their dealings with affiliates and operational limitations. In the case of Eagle Bank, the Flathead Reservation market offers a broad range of customers, tribal and nontribal, to support both deposits and loans, but the potential customer base on other reservations may not be broad enough to support a commercial bank.

Regulatory limitations on dealings with affiliates have evolved over the years to address insider abuses of the past, but do not reflect the unique relationship between a tribe and a tribally owned bank. The tribe is the dominate economic driver on most reservations, and for the tribe and its bank to be successful, the bank needs the ability to work with the tribe and the affiliated entities on a scale that is not allowed under current regulations.

The primary operational limitation is the dependence upon tribal deposit accounts and the manner in which they can be held. Many tribes compact for services with the BIA and under the terms of many of those compacts, the deposits associated with the services must be both interest bearing and secured. Temporary FDIC coverage of interest bearing transaction accounts (with restrictions on rate paid) during 2010 provided relief, but the elimination of that coverage has increased the difficulty of providing tribal accounts.

If the majority of the deposits are tribal and volatile, it is very difficult to provide adequate coverage by pledging securities and maintain adequate levels of liquidity. Additionally, current yields on securities have been too low to cover FDIC assessments and fixed costs to maintain the deposits.

The temporary unlimited FDIC coverage on noninterest bearing transaction accounts has provided significant relief in maintaining deposit accounts for the Tribes, and I hope this temporary coverage will be made permanent, not only for Eagle Bank's somewhat unique requirements, but also for all smaller community bank's ability to compete with the perceived too-big-to-fail institutions.

I would also hope the FDIC would consider unlimited coverage on interest bearing deposits on a fee basis for those willing to participate. The elimination of privately offered excess deposit bond coverage during the economic crises has placed additional burdens on community banks in general and Eagle Bank in particular.

Lacking improved FDIC coverage or the return of excess deposit bond coverage, the majority of a tribally owned bank's earning assets may be required to be invested in securities to secure those deposits, restricting funds available for lending. There are a couple of third party providers working on multibank sweep accounts designed to increase FDIC coverage for excess deposits and it will be interesting to see how successful these products will be.

If the potential deposit mix of a reservation is not broad enough to allow a tribally owned bank to have a diversified deposit base, it may be more appropriate for a tribe to partner with an existing bank to provide services on the reservation or to sponsor a credit union to promote access to financial services for its membership. Partnering may provide some return on a tribal investment, but there would be no return on sponsoring a credit union, and there would be additional regulatory restrictions on what services a credit union could provide the tribe and its business affiliates.

Challenges to Access to Capital

Access to capital on reservations has been an ongoing problem for Native Americans, and I have observed three primary challenges limiting access (1) uncertainty created by tribal governments' willingness to support access to capital, (2) uncertainty created by lack of consistency in secured transactions, and (3) financial literacy.

Tribal government uncertainty—One major impediment to accessing credit from financial institutions is the uncertainty in lending within the jurisdiction of a Sov-

[4] Overnight funds average in excess of 25 percent of assets, and deposit swings in excess of 40 percent of assets have occurred.

ereign entity. Each federally recognized tribe is a sovereign government and is responsible for developing its own governing laws, statues and court systems. Some tribes are very proactive in developing statues that support lending and have consistent enforcement through their tribal courts, and other tribes continue to maintain a more protective environment for their membership.

Banks are reluctant to lend in an environment that is not governed by a strong, consistent court system that will allow collection of debt, and bank regulators have been increasing critical of loan administration not based upon solid, well documented credit administration and collection practices.

This creates a difficult environment for banks—there is a perception banks are discriminating against Native Americans by not lending on reservations, but if secured credit is extended on some reservations, there is the very real potential that the bank will have no recourse in the case of default. Within the past year, Eagle Bank was not successful in civil actions in 2 of the 3 courts approached—a Washington tribal court refused to schedule a hearing, and a Montana tribal court scheduled a hearing, but when Eagle Bank appeared as scheduled, no one else appeared, not even the judge.

I believe this to be more of an educational issue rather than a jurisdictional issue between sovereign tribal governments and financial institutions organized under either State of Federal charters. The Confederated Salish and Kootenai tribal court is an example of an unbiased court that is consistent in its treatment of collection actions. Creditors can be confident that a collection action filed with this court will receive a fair hearing, and the court will rule on the merits of the case.

Tribal governments need to understand that for capital to be made available within reservations, those receiving the benefit of the capital must be accountable for repaying their debts and the tribal governments must take responsibility to assure lenders have a clear, consistent recourse in the case of a default through an independent and unbiased tribal court system.

Lack of consistency in regulating secured transactions—In addition to a consistent and unbiased court system, it is necessary to develop and adopt uniformity in regulating transaction secured by real and personal property. Trust property issues vary from reservation to reservation, and even though there are established procedures in place for perfecting mortgages on individually owned trust property and assignment of leasehold interests in tribal trust property, the ability to sell foreclosed real estate is often limited on some reservations. Credit underwriting must take into consideration the ability to sell foreclosed real estate, and this may have an adverse impact on the ability of a Native American to borrow.

The inability to adequately record and search liens on nontitled personal property creates nearly as much uncertainty in lending as an unresponsive or inconsistent court system. Susan Woodrow's testimony today will address the ongoing efforts to develop a uniform tribal secured transaction code and I strongly support this effort.

Financial literacy and technical assistance—Financial literacy continues to be a challenge accessing capital and is not limited to Indian Country. There is a significant population that does not have the basic financial understanding and/or training to successfully manage deposit accounts, complete loan applications or understand the importance of credit ratings. Many banks have taken the approach, and perhaps rightfully so from a profitability and litigation point of view, that if a potential borrower does not have the ability to complete a loan application and does not have a predetermined credit score, the application will be rejected.

Many Native Americans do not understand the significance of credit scores and the impact low scores have on their ability to not only borrow money but their cost of insurance and other credit dependent services. A primary negative factor for many Native American's credit score is medical collections. Many tribal members assume the IHS or the tribal health services are responsible for their health care, but often medical payments are not processed timely and the bills are not paid in their entirety. Medical providers routinely submit these unpaid bills to collection agencies, and because the tribal member assumes they are not responsible for payment, they to not respond to the collection activities. I routinely see credit scores in 500 range with medical collections the primary derogatory items.

With no established banking relationship and low credit scores, many people fall prey to predatory lenders and check cashers. Once this pattern of borrowing and check cashing is established, it is very difficult for the individual to break free of a very expensive credit environment.

There are numerous programs available for education of first time home buyers, out-reach through the school systems and technical assistance for small businesses. The first time home buyers programs appear to have value and the out-reach programs through the schools appear to be of benefit for those students that are reached. Unfortunately many students who need the basic financial education do

not take the elective courses or who do not advance far enough in the school systems to participate in the out-reach.

I am disappointed with some of the technical assistance programs I have observed. These are generally presented through a grant funded program and the TA providers are minimally paid individuals with little or no successful business experience. I am not suggesting that the providers are not very motivated and work hard to assist their clients, I am only suggesting that without personal successful business experience, it is hard to provide the financial training necessary to build a solid basis for someone attempting to start or expand a small business.

Most TA providers follow a set pattern of developing a business plan (generally from a canned program) including at least three years projections and setting up basic accounting systems with balance sheets, income statements, cash flows and break even analysis. This may be an appropriate approach for those small business owners who have a general understanding of business and bookkeeping, but for those folks who do not have a good understanding of managing a check book, this approach is not appropriate.

An example—I participate in reviewing grant applications for small Native American businesses, and recently I reviewed an application for a woodcutter. His business is to cut firewood and supply the wood to needy folks under a tribal program. He needs to understand what his fuel costs are to go to the woods, cut the firewood, and deliver it, what his costs are to maintain his equipment are make his loan payments. Anything in excess of those costs will provide for his personal living expenses. If he understands these costs, he could keep track of them by maintaining receipts in an envelope and basic notes of loads hauled, income and expenses on the back of that same envelope. He does not need a QuickBooks accounting system providing balance sheet, income statement and cash flow information when he will most likely not even use a checking account.

His grant application included a "text book" business plan, including forecasts and cash flows, all prepared by a TA provider, and the TA provider commented that the applicant had difficulty understanding the cash flow analysis.

Unfortunately the level of technical assistance training is not well matched to the needs of the small business owner, and for the most part, the technical assistance is only given in an attempt to apply for a grant or a loan. I feel strongly that all technical assistance should be directed to the understanding and management of the business, not to apply for a loan or grant, and should be provided by trainers with successful business experience and in a manner consistent with the level of sophistication of the business they are advising. Perhaps a partnership with a minority financial institution that would assist with funding financial literacy in local communities would be an option. As noted above, Eagle Bank is charged with providing financial literacy, but limited resources and staffing have prevented development of a more formal program.

Opportunities

There are many opportunities for banks to assist with credit needs in Indian Country, and as Federal funding becomes more difficult, commercial lending can, and should, step up to fill the gap. Housing is a prime example.

Many reservations have limited individual home ownership and the tribal housing authority owns and rents most units. The HUD 184 loan program offers an alternative to rental units, can increase the amount of housing available, and free limited tribal resources for other pressing needs. Robert Gauthier[5] is a strong advocate for the HUD 184 loan program, and it his opinion that freeing tribal housing resources by increasing home ownership must begin with educating tribal governments of the value of home ownership before attempting to educate the potential homeowners and the financial institutions that could serve those homeowners.

This is an educational issue that does not appear to be addressed in the current technical assistance programs. Perhaps some level of support could be directed to this specific need, recognizing that educating tribal governments is a very unique challenge and may not be adequately addressed by conventional contract providers. Without educating tribal governments, expansion of individual home ownership or small business development on many reservations will continue to be very slow.

In conclusion, I believe there are opportunities for economic development in Indian Country, but significant challenges remain. The Confederates Salish and Kootenai Tribes approach, including chartering Eagle Bank, is making a difference

[5] Robert Gauthier is the Chairman of Eagle Bank and was instrumental in the development of the HUD 184 guaranteed loan program. He has been involved in Native American housing issues for nearly 30 years and consults on Native American housing and infrastructure issues.

on the Flathead Reservation, but chartering or purchasing a bank may not be appropriate for many tribes.

The primary challenges limiting access to capital have not changed significantly during the nearly 30 years I have worked on the Flathead Reservation, but I am optimistic progress is being made.

I thank you for the opportunity to provide my comments this morning. I look forward to answering any questions that you may have.

PREPARED STATEMENT OF TANYA FIDDLER

EXECUTIVE DIRECTOR, FOUR BANDS COMMUNITY FUND

NOVEMBER 10, 2011

Pilamaya ye, thank you!

Chairman Johnson, Ranking Member Shelby, and distinguished Members of the Senate Committee on Banking, Housing, and Urban Affairs—*Mitakuyapi, Tuktel He Najin Oyate Wiyankapi Win Lakota emaciyapi na Tanya Fiddler English emaciyapi, k'sto.* To all of you, my Lakota name is "She Stands Where the People Watch Her Woman" and my English name is Tanya Fiddler. I am an enrolled member of the Cheyenne River Sioux Tribe. I am the Executive Director of Four Bands Community Fund, a nationally recognized Native CDFI that serves the Cheyenne River Sioux Reservation in north central South Dakota. I am also the Chair of the South Dakota Indian Business Alliance (SDIBA) and Cochair of the Native CDFI Network (NCN). Let me begin by saying *Pilamaya ye,* thank you, for the opportunity to appear before you on behalf of the people and organizations that are working to create Native private sector economies throughout the State of South Dakota and on reservations nationwide.

Introduction

The mission of Four Bands Community Fund is to create economic opportunity by helping people build strong and sustainable small businesses and increase their financial capability to create assets and wealth. This is no easy feat on the Cheyenne River Sioux Reservation. Similar to other rural reservation communities we experience substantially higher rates of poverty and unemployment than mainstream America and face a unique set of challenges to economic growth. Lack of physical, legal and telecommunications infrastructure, access to affordable financial products and services, and limited workforce development strategies are common challenges that our growing Native business owners face and must overcome in order to be successful in our economy.

The Cheyenne River Reservation encompasses Dewey and Ziebach Counties, two of the poorest counties in the Nation. Sixty-two percent of the residents in Ziebach County live below the poverty level. People often travel 50 to 100 miles on poorly maintained roads to access basic goods and services. The median household income is $27,000, nearly half of the United States average. The Bureau of Indian Affairs estimates that we have an 88 percent unemployment rate.

Most residents of Cheyenne River have little expertise with banks, savings accounts, or effective use of credit. The Bank On Initiative estimates 21 percent of households are unbanked and 26 percent are underbanked in Dewey and Ziebach counties. The majority of Native communities, 86 percent, lack a single financial institution within their borders to access affordable financial products and services. We are fortunate to have three banks on the Cheyenne River Reservation but none of them report credit histories for their customers, adding to our challenges when it comes to small business lending. In other places without a local bank, like the Pine Ridge Reservation, the Native CDFI is developing a Native-owned Credit Union to responsibly meet the needs of their population.

Despite these economic conditions, there is evidence to show that the work of Four Bands and other dedicated community and economic development organizations is beginning to pay off. According to data from the South Dakota Department of Labor, U.S. Census Bureau 2000, and U.S. Census Bureau 2005–2009 American Community Survey 5-Year Estimate, South Dakota's reservation counties with operating Native CDFIs have experienced significant growth over the last decade and have an economic momentum index that exceeds the State of South Dakota's index. From 2000 to 2009, the median household income on the Cheyenne River Indian Reservation increased 51 percent—surpassing the State's average by 24 percent. During that same timeframe, our reservation saw a 20 percent increase in employment—nearly triple the State's average of 7 percent. The neighboring Pine Ridge Reservation where Lakota Funds has been operating for 20-plus years saw similar results. From this data, we can determine that Native CDFIs are a proven solution to revi-

talizing reservation communities. More importantly in the world of business development, our reservation communities are demonstrating that we have the economic momentum for strategic investment that is critical for economic development. Yet, we have the huge task of securing partners at the State and local level for private investment and inclusive economic development strategies that will help us overcome the poverty and unemployment we experience. This is where the U.S. Treasury CDFI Fund program comes in!

Growing the Private Sector on Cheyenne River

Four Bands has developed and implemented a number of strategies that contribute to the successful development of our local economy. A CDFIs greatest investment is in human capital—the community development financial institution model provides financial products *in combination with* development services, such as business and financial education, training and technical assistance, that increase entrepreneurial skills and financial capability for our tribal members. We realize that reversing multigenerational poverty requires a comprehensive approach to several issues at once, therefore, our core program areas include: (a) Business & Entrepreneur Development—offering loan products and customized services aimed at creating businesses and developing entrepreneurial skills; (b) *Mazaska K'sapa Nitawa* (Your Money Wisdom)—helping develop sound financial management practices and asset building skills for adult individuals and families; and (c) *Wicoicage Sakowin kin un Wicakagapi* (Building for the Seventh Generation)—building long-term employment and life skills of our youth.

Since Four Bands began lending in 2002, our community impact has been steadily climbing as our programs experience significant growth. In 2002, we provided services to 84 clients and disbursed 19 loans. By 2010, those numbers progressed and we served 576 clients and disbursed 105 loans. On average, 80 percent of our loans are used to finance start-ups. We recently reached the $3,000,000 mark in lending, and as a direct result have created over 100 Native-owned businesses and nearly 400 jobs since our inception.

A unique challenge in our area is the creditworthiness of our client base. Over 55 percent of our clients have no credit file and of the 45 percent who do have credit histories we've seen their average score 100 points lower than the national average. With this in mind, we have created a Credit Builder Loan program that has made 62 loans, totaling $130,500, to help individuals create and repair credit histories, resulting in improved credit scores for nearly 90 percent of these clients within the first 6 months of participating in the program.

We also run an Individual Development Account (IDA) program, or matched savings program, that was launched in 2005 to help create owner's equity in assets like home ownership, business start up and higher education. Overall, $300,000 in savings match has been committed in our IDA savings program for 52 adults and 95 youth to achieve their goals and move beyond poverty. The Federal program that supports IDA programs, Assets for Independence under the Office of Community Service, is currently being recommended for a 63 percent cut in funding in the House version of the 2012 budget. This program is one of the few resources available to invest in community asset building efforts.

In 2008 Four Bands launched a comprehensive public education campaign called Making Waves as part of the *Wicoicage Sakowin kin un Wicakagapi* (Building for the Seventh Generation) program in order to replace poverty and unemployment with financial literacy and entrepreneurship on the Cheyenne River Reservation. This program promotes the *ABCs of Financial Literacy and Entrepreneurship*®—key behaviors that people can incorporate into their lives. Through the implementation of the Making Waves Teacher Toolkits and Trainings, over 2,000 Cheyenne River Youth in 60-plus classrooms on our five reservation schools have been exposed to concepts of financial literacy and entrepreneurship. The Making Waves program had the support of tribal government, the school system and business community implementing the "Make Money Matter" and "Shop Cheyenne River" strategies that encouraged wise management of financial resources and local shopping habits. The Making Waves strategy has spread to the Pine Ridge and Crow Creek Reservations where they are implementing the *ABCs of Financial Literacy and Entrepreneurship*® as well.

Because of limited data and limited resources, we have also conducted in-depth market analyses in order to identify prime sectors for development and to keep dollars in the local economy. Our report, "Business Opportunities in the Cheyenne River Reservation Market," released in September 2008, has been used by local entrepreneurs to identify customers, competition, successful marketing strategies, effective business operations, and potential business opportunities. As our economy has matured, we found the need to analyze the business-to-business market and are

currently working on the final version of a similar report to help boost our economy to another level.

As demands for our products and services continue to grow, Four Bands has developed into the "go-to" place for:

- Adult entrepreneurs with limited access to capital, business training, and coaching that assist in building sustainable businesses;
- Adults and families committed to financial independence and wealth creation; and
- K–12 youth interested in learning about entrepreneurship and planning for a sound financial future.

We understand the complex challenges of business development in our local environment and are able to assist businesses that are dealing with local, Tribal, State, and Federal jurisdictional issues.

Identifying and Overcoming Barriers

In our State, we are fortunate to have the South Dakota Indian Business Alliance working to enhance Indian business development by leveraging partnerships and resources of diverse institutions and organizations. SDIBA's policy agenda addresses four sectors of economic development in Indian Country: Governance, Infrastructure, Finance, and Resources. More detail on SDIBA's policy recommendations can be found in Appendix A of this document. Through the work of SDIBA, our State's Tribes have celebrated two recent victories in influencing policies that support Indian business development. In March 2011, our Governor appointed the first-ever Secretary of Tribal Relations for South Dakota to emphasize the importance of Native American economic development and foster a better relationship between the State and South Dakota's nine tribes. Also, Tribal identification cards are now accepted as a legitimate form of identification and facilitate Tribal members in doing business throughout South Dakota.

In the near future, SDIBA will be releasing a report titled, "Native American Entrepreneurship in South Dakota's Nine Reservations," which is a result of an in-depth market analysis of the small business development environment on South Dakota's nine Indian reservations. Native entrepreneurs in reservation communities face many of the same challenges that non-Native, rural entrepreneurs face when trying to start or grow a business: isolated geographical locations, lack of access to small business capital, and lack of access to peer networks. The "Native American Entrepreneurship in South Dakota's Nine Reservations" report identified the challenges that Native entrepreneurs on South Dakota's other reservations face and include:

- Difficulty in securing collateral because of the trust status of Tribal lands
- Lack of affordable financial products and services
- Lack of entrepreneurship training and support services
- Lack of equity investment in Native-owned enterprises
- Inadequate telecommunications and transportation infrastructure

Some of the barriers identified in the report are similar to those identified in the Native American Lending Study conducted 10 years ago by the Department Treasury's CDFI Fund. Native CDFIs are *the key organizations* that have been working to create innovative solutions to overcome these barriers. Additionally, the CDFI Fund's research found that there exists a significant difference in the amount of capital investment in Indian Lands and Hawaiian Home Lands compared to the rest of the United States. The CDFI Fund's Equity Research Report estimated that the investment gap between Native American and Native Hawaiian economies and the United States overall totaled $44 billion.

This March, the U.S. Census Bureau released 2007 Statistics for American Indian- and Alaska Native-Owned Businesses in the United States. This data showed the fruits of labor by Native economic development practitioners across the Nation. In 2007, there were about 237,000 American Indian- and Alaskan Native-owned firms generating $34.4 billion in gross receipts and employing 184,000 paid workers. Between 2002 and 2007, American Indian- and Alaskan Native-owned firms outpaced the growth of nonminority firms with a 28 percent increase in gross receipts and an 18 percent increase in number of firms.

However, according to the U.S. Department of Commerce Minority Business Development Agency, there is still an entrepreneurial parity gap between American Indian and Alaskan Native firms. If American Indian and Alaska Native firms' gross receipts reflected the 2007 adult American Indian and Alaska Native population share, receipts would have amounted to more than $160 billion—about $126 billion

more than the actual figure. Paid employment would have totaled nearly 829,000—about 4.5 times the actual employment. The number of American Indian and Alaska Native firms would have been over 383,000 firms—nearly 147,000 additional firms.

This entrepreneurial parity gap is the focus and opportunity for Native CDFIs throughout Indian Country. With investments from and partnerships with the Department of Treasury and other agencies, we continue to create innovative economic development strategies that are addressing these disparities. The Native CDFI Network, a member network formed in 2009, works to unite Native CDFIs in these efforts and to serve as a national advocate for Native communities throughout the Nation. Their policy agenda, included in Appendix B, outlines several key recommendations to overcome the unique financial and economic barriers that exist in Indian Country. For example, NCN supports establishing a supportive financial infrastructure that promotes economic stability in Native communities. In order to achieve this policy priority, NCN strongly recommends giving the Native Initiatives permanent language in the CDFI Fund's authorizing statute to secure future investment for Native Americans. We also work to demonstrate our impact in order to build private investment throughout Indian Country. One of the most significant tools for this is the New Markets Tax Credit program under Treasury that has been successful in attracting outside investment to leverage local efforts for the development of business, housing and community facilities that are needed for sustainable economic development.

Conclusion

Numbering 69 today, Native CDFIs are making a difference, have created economic development momentum within the communities they serve, and are still the main source of capital access and resources for Native business development. These unique financial institutions are helping to develop local businesses, create jobs, expand affordable housing, and build the skills of Native people throughout the Nation. More importantly, Four Bands' investment in our reservation youth is creating a new culture of entrepreneurship and financial capability, giving us all hope for a strong economic future.

APPENDIX B

South Dakota Indian Business Alliance

SDIBA

2011 POLICY PRIORITIES AND RECOMMENDATIONS FOR INDIAN BUSINESS DEVELOPMENT THROUGHOUT SOUTH DAKOTA

In October 2010 the SD Indian Business Alliance conducted an Indian Policy Roundtable discussion to assist in developing strategies to support and expand Native entrepreneurship development on and off reservations. SDIBA and its partners have created the following policy recommendations on the local, tribal, state and federal levels that address challenges and barriers experienced by Indian businesses and partners.

The Recommendations align with SDIBA's "Strategic Approach to Sustainability for Business Development in Indian Country" and are broken out into the four keys areas identified in the strategy.

Policy Priority #1 - Governance: The first tier of the model is the foundation for Indian business sustainability and identifies development in the areas of separation of tribal government and business, the need for independent tribal courts, private sector-supportive policies at the tribal and state levels as well as long term strategic planning.

Enhance and promote strong partnerships with tribal, state and federal agencies to remove institutional barriers affecting Indian business development.

Recommendations:

1. Recognize Tribal identification cards as a legitimate form of ID to facilitate tribal members doing business throughout South Dakota.
2. Educate stakeholders on the unique challenges of reservation economic development and innovative solutions to overcoming these challenges (best practices).
3. Increase opportunities for data collection and integration within tribal and state economic development strategies.
4. Evaluate and revise regulations and policies that expand the Native private-sector throughout the State and on Reservations.
5. Create partnerships with Tribes and TERO to require preference for locally-owned Indian businesses in order to strengthen reservation economies.

Policy Priority #2 – Infrastructure: The second tier of the model builds on good governance and addresses the legal, physical and human capital needs of Indian businesses including commercial, business employment and zoning laws and regulations; utilities, roads, telecommunications challenges; and the need for workforce development and industry specific economic development strategies.

Identify financial, governmental and collaborative opportunities that will create and leverage existing resources for infrastructure development.

Recommendations:

1. Identify successful zoning and land-use planning models being used in Indian Country and support implementation at the local level.

APPENDIX B

2. Create "Reservation Maps" and reports that highlight the economic opportunities for Native entrepreneurship development and feature these reports on websites and other literature.
3. Build on economic data, especially in the area of workforce development, to develop effective strategies for skill building and job creation in key sectors across the state.
4. Increase telecommunications infrastructure through public and private partnerships.
5. Hold quarterly stakeholder meetings to share innovative development models.

Policy Priority #3 – Finance: Access to capital is increased when sound governance and infrastructure are in place for the third tier of the model. Partnerships with commercial lenders, loan guarantee programs, CDFIs, tribal loan funds, equity funds and other debt and equity providers are essential to ensure we are meeting the financing needs of entrepreneurs in low-income, low-wealth communities.

Expand debt and equity resources available for Native-owned micro and small business through innovative products and services.

Recommendations:

1. Expand innovative financial products like individual development accounts and the GOED supported equity fund program.
2. Increase utilization of loan guarantee programs for traditional lenders and CDFIs that are serving Native entrepreneurs.
3. Share best practices during public events and conferences that will demonstrate the value of investment in Native entrepreneurs.
4. Expand financing incentives like CRA and tax-incentive financing that will increase access to capital for Native-owned businesses.
5. Increase access to affordable capital for tribal and community development loan funds to meet business financing needs.

Policy Priority #4 – Resources: The final tier of the strategy addresses the numerous personal, professional and business management tools needed for successful micro and small business owners.

Support collaborative resource development and connect Native entrepreneurs to new and existing resource networks.

Recommendations:

1. Work with partners to create a virtual resource center on SDIBAs website and distribute messages to announce new opportunities and events.
2. Approach SBA and SD SBDCs to identify strategies for getting technical assistance resources into local business networks (Chambers, CDFIs) that provide direct service to reservation entrepreneurs.
3. Convene listening sessions for Indian business owners to share their successes and challenges.
4. Ensure that entrepreneurial support organizations, like CDFIs, are listed in tribal and state resource directories.
5. Invite professional development service providers to identify themselves on SDIBAs website in order for Native entrepreneurs to access mentors and services.
6. Share best practices in K-12 entrepreneurial development to promote self employment as a strategy for job creation.

APPENDIX B

Policy Agenda

Uniting & Strengthening Native CDFIs

NATIVE CDFI NETWORK

APPENDIX B

A Decade of Transformation

In 2001, the U.S. Department of Treasury's CDFI Fund released the Native American Lending Study. At the time, only two Native CDFIs were in existence. The findings of this study served as a catalyst for the Native CDFI field, and over the last decade Native communities have undergone an amazing transformation. Today there are nearly 60 CDFIs in existence with another estimated 60 in the pipeline.

These unique financial institutions are helping to develop local businesses, create jobs, expand affordable housing, and build the skills of Native people throughout the nation. Native CDFIs are renewing traditional Native values of self-sufficiency, wise resource management, and entrepreneurship. The Native CDFI Network, founded in 2009, works to unify Native CDFIs to form a strong national voice that will ensure the work of Native CDFIs continues to grow.

APPENDIX B

Policy Priorities & Recommendations

Policy Priority #1

Establish a supportive financial infrastructure that promotes economic stability in Native communities.

Native communities are faced with some of the nation's most distressed economies and poorest living conditions. The Native American Lending Study, published in 2001 by the US Department of Treasury revealed a lack of investment by mainstream financial institutions in these communities, resulting in lack of access to capital for Native American, Native Hawaiians, and Alaska Natives.

Recommendations:

1. Give the Native Initiatives permanent language in the CDFI Fund's authorizing statute.
2. Provide training and technical assistance to emerging and mature Native CDFIs, including underwriting and credit counseling.
3. Increase access to funding from federal agencies and designate Native CDFIs, including CDFI loan funds and not solely CDFI banks, as preferred lenders for loan guarantees offered by all federal agencies, including USDA and SBA.
4. Update the Native American Lending Study.
5. Increase access to public and private funding for CDFIs.
6. Deem Native trust lands as qualified investment areas for New Markets Tax Credits.

Policy Priority #2

Provide innovative financial products and services that adapt to the unique needs of Native economies and support self-sufficiency.

Without exposure and access to the mainstream financial industry for generations, many Native people do not understand the importance of financial management or how to begin building assets. The technical lingo and stringent terms of mainstream financial institutions discourages Native people from doing business with them. Developing fundamental financial management skills is essential to building healthy Native economies.

Recommendations:

1. Provide funding to support the CDFI Fund's Native Individual Development Account (IDA) Initiative.
2. Encourage tribes and federal agencies to develop a standard process for financing mortgages on trust land.
3. Implement mandatory financial education and entrepreneurship for children in grades K-12.
4. Increase access to financial education and entrepreneurial technical assistance for Native Americans, Native Hawaiians, and Alaska Natives.
5. Support financial products with flexible terms that address the circumstances of Native communities.
6. Share innovative strategies for green workforce, housing, and business development.

Policy Priority #3

Encourage fair and sound lending practices in Native communities.

The lack of banks, credit unions, and alternative lending institutions in and around Native communities, has made Native communities prime targets for predatory lending vehicles like high-cost loans against tax refunds, payday loans, pawn shop transactions, car title loans, high-interest credit cards, and mortgage loans with excessive fees or interest rates. Payday loans average 400% interest rates, and thrust borrowers into a downward spiral that eats up assets and often creates delinquent credit for Native individuals and families.

Recommendations:

1. Promote the use of the Earned Income Tax Credit (EITC) and Volunteer Income Tax Assistance (VITA) sites.
2. Enforce a small-loan interest rate cap of 36% Annual Percentage Rate (APR) or less.
3. Restrict Refund Anticipation Loan (RAL) marketing and lending at tax time.
4. Ensure a strong and well-enforced Community Reinvestment Act that effectively serves Native communities.
5. Conduct lender outreach and education to attract financial institutions to Native communities.

APPENDIX B

NATIVE CDFI NETWORK

c/o Four Bands Community Fund
Box 932
Eagle Butte, SD 57625

www.nativecdfi.org

tel 605-964-3687
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PREPARED STATEMENT OF DANTE DESIDARIO

EXECUTIVE DIRECTOR, NATIVE AMERICAN FINANCE OFFICERS ASSOCIATION

NOVEMBER 10, 2011

The Native American Finance Officers Association (NAFOA) has been a resource for tribal leaders and finance professionals for 29 years. NAFOA has focused its efforts on building capacity, developing effective tribal economic policy, and building relationships with the investment and banking community in an effort to promote tribal economic growth. In our years of service to tribes, we recognize there is a clear role for Congress in creating laws that keep tribes from continuing to occupy the bottom of the socioeconomic statistics. To that end, we are grateful the Senate Committee on Banking, Housing and Urban Affairs has focused an entire hearing on the economic challenges and opportunities of Indian Country. And, we are hopeful this hearing is the first step to addressing our concerns.

Indian Country Economic Background

Over our nearly three decades of service, NAFOA has witnessed exceptional economic growth for a number of Indian tribes. Over the same period of time, the overall economic growth for Indian Country in general has improved substantially as well. An analysis of socioeconomic change between 1990 and 2000 showed that Indian Country economies grew at a faster pace than the economy as a whole. In fact, over the last 30 years the inflation adjusted per capita income of Indians on reservations grew by 83 percent compared to 64 percent for the U.S. population as a whole. While these gains are remarkable, our per capita income remains one-third of the U.S. average. If incomes were to continue to grow at their 1990s rate, the gap would not close for another 55 years.

Most Americans are familiar with the success of a relatively small percentage of gaming tribes that are located near metropolitan centers or Alaska Native Corporations that have successfully entered the mainstream economy through Government contracting. However, the economic potential of too many tribes remains unfulfilled. Many tribal governments lack the ability to provide the basic infrastructure that most U.S. citizens take for granted, such as passable roadways, affordable housing, plumbing, electricity, and telephone service.

Economic development in Indian Country lags behind the rest of the Nation and impacts nearly every aspect of reservation life and tribal governance. For generations our communities have faced economic conditions that are even more pronounced than those of the current economic crisis. Eight of the ten poorest counties in America are home to Indian reservations. While economists worry as the national unemployment rate settles closer to 9 percent, data shows that unemployment among Native people was 15 percent in 2003 and has not dropped below 10 percent for generations. To compare directly to the Great Depression, the 2000 Census recorded unemployment for American Indians on reservations at 22 percent compared to the unemployment rate during the Great Depression of 25 percent.

The 2000 Census reported the per capita income for American Indians and Alaska Natives living on reservations at $7,942, merely one-third the U.S. average for all races, which was $21,587. Low average income, coupled with high unemployment, means the poverty rate for Indian families on reservations is 36 percent, which is two-and-half-times the national average.

Homes in Indian Country reflect the pronounced challenges of persistent poverty. Eleven percent of Native households lack kitchen facilities, 17 percent lack telephone service and 12 percent lack complete plumbing, while less than 1 percent of the U.S. population lack any of these facilities. Only half of reservation homes are connected to public sewer lines and our homes are almost three times more likely to be overcrowded than the national average. In addition, there is a tribal average of 3 in 10 households without basic means of communication.

These substandard economic and quality of life indicators have a social toll as well. Health disparities are prevalent and suicide rates (a symptom of lack of opportunity) are high with over 60 percent more incidents than the average in America. Alcoholism on reservations and diseases like Tuberculosis are both over 500 percent higher among Indians.

What Works?

Despite the challenging social and economic conditions on reservations, there are a number of recent economic successes resulting from tribes exercising their sovereignty and utilizing available Federal tools to grow their local economies and provide their citizens with a better quality of life—the goal of every government. For example, a few tribes located near major metropolitan centers have seen startling success by creating destination gaming enterprises. Some tribes further from popu-

lation centers operate economic enterprises that serve to create reservation jobs and provide revenue for Government program support.

For example, in the 1960s, rural Neshoba County in Mississippi was once one of the country's most economically depressed areas. Neshoba County is home to the Mississippi Band of Choctaw Indians who lived under depressed economic and health conditions. Nearly all houses on the reservation were considered substandard: 90 percent had no indoor plumbing; one-third had no electricity.

In the 1980s, the Tribe worked hard to turn conditions around by building the infrastructure necessary to draw industrial jobs to the reservation. After completing an industrial park, the tribe convinced a division of General Motors and the American Greetings company to locate on the remote reservation. Soon after, the tribe diversified its economy by creating service sector enterprises. Today, the tribe is the State of Mississippi's second largest employer with over 8,000 employees on its payrolls. After generations of living in the worst economic conditions, the tribe has become a regional economic leader in the south.

Tribal governments, when given the right tools, can effectively lift their communities out of poverty and fully participate in the American economy. Not only can tribes raise their economic profile, but they have proven time and again that investing in tribes is an investment in rural America. Surrounding communities, and sometimes entire regions, are also beneficiaries when tribes succeed economically.

The researchers at the Harvard Project on American Indian Economic Development and others have found time and time again that creating an environment which supports tribal self-determination and tribally driven economic development is the most effective strategy for confronting the persistent poverty in many Indian communities. This same conclusion was drawn in a report prepared for the Department of Health and Human Services in 2004. The report concluded that of the more than 100 Federal programs available to assist tribes or tribal members with economic development, none stands out as the most beneficial for every tribe. Rather, the researchers concluded, "the Federal Government's ongoing commitment to Indian self-determination, tribal self-governance, and tribal sovereignty has had a positive impact on [business and economic development] in Indian country." In acknowledging this reality, it is vitally important that Federal policy makers give tribal governments the tools necessary to create vibrant economies on reservations that empower tribal leaders to govern effectively.

Tools for Empowerment and Growth

The Community Development Financial Institutions (CDFI) program at the Department of Treasury has seen success in Indian Country for a few compelling reasons. First, the program is designed to not only meet locally identified needs but be implemented locally as well. This fully supports the principal that self-determination and tribally driven programs cited as keys to success. The CDFI program has also been successful because of the way that tribes were included in in the program. A portion of the program was set-aside for Native participation and it included technical assistance. Congress should continue to support this successful program and look to expand the participation beyond the grass roots level to include broad tribal economic needs using the same formula that has seen success.

While CDFI's represent programs that work in Indian Country, the tax-exempt debt available to tribal governments represents a financing tool that has not worked. Tax-exempt bonding authority for tribal governments has not realized its potential because language related to its allowable use was unclear, the regulatory agency interpreted Congress' intent too strictly, and capital markets have steered clear—equating uncertainty with risk.

Congress first authorized tribes to issue tax-exempt bonds in 1982. At that time, it limited tribes to issuing tax-exempt bonds for "essential governmental purposes," but did not define the term. In 1984, the Treasury Department issued Regulations that defined an essential governmental function very broadly for tribal purposes. Among other things, this included matters treated as essential governmental purposes for States and local governments under Section 115 of the Internal Revenue Code, in addition to the many commercial and industrial activities eligible for funding under the Snyder Act and the Indian Self-Determination Act.

In 1987, Congress modified the broad regulatory definition of an essential governmental function by amending the law so that it did "not include any function which is not customarily performed by State and local governments with general taxing powers." The 1987 amendment does not affirmatively define an essential governmental function, but simply excludes certain types of facilities from the eligibility list.

Congress' intent was simply to limit tribes to the same essential governmental functions that apply to State and local governments. However, conflicting views as

to what Congress intended are paralyzing the ability of tribes to access the low-cost benefits of tax-exempt financing—the very benefit that was intended for tribes by the 1982 Act.

Even tribes that have sought financing projects that would appear by any other measure to be essential have been denied mostly because there is a commercial component that would also utilize the service. For example a tribe attempted to secure financing for a water distribution system and reservoir only to be disallowed because it would also serve the tribe's commercial enterprise. The same held true for a tribe trying to establish a parking garage. Other State and local governments typically provide roads, water, parking to attract businesses with no challenges to their bond offerings. State and local governments routinely finance golf courses, marinas, and convention centers. Even the new stadiums are built with the proposed use tax-exempt financing although some are finally questioning the public benefit.

Included in the American Recovery and Reinvestment Act (ARRA) was an allotment of $2 billion in tax-exempt bonding authority for economic development purposes. The bonding authority allocations were divided into two $1 billion tranches to be utilized by interested tribes at two separate intervals. Both tranches were heavily subscribed by tribes, however; over 90 percent of the allocations went unused. Tribes were not able to secure credit in this difficult banking environment and the tax-exempt market has simply overlooked tribes because of past uncertainty and difficulties of their own in managing the strained debt of distressed State and local governments.

As part of the ARRA, the Department of Treasury is required to submit a report on the viability of the use of the essential government function test for tribal governments. The current law, with its focus on the essential governmental function test, tends to hamstring intergovernmental efforts, as well as, public–private partnerships. Uncertainty and risk are two formidable roadblocks to raising capital. Congress should act to provide clear guidance and do away with the essential government function test for the tribal use of tax-exempt financing. Tribes need access to one of the most effective government financing tools to meet basic citizen infrastructure needs and develop a revenue stream for local tribal government programs.

There is similar confusion and uncertainty when it comes to tribes having the ability to raise capital as governments or invest in other tribal governments. To achieve parity with other Government entities, it is important that Indian tribes be included and specifically listed as governments in the Securities and Exchange Commission (SEC) definition of "government body" used in Regulation D. The current definition of governmental body as proposed is extremely broad and already implicitly includes Indian tribes as it includes any "jurisdiction of any nature" and any "body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature." Indian tribal governments regularly exercise all of these forms of governmental powers, however, because they are not specifically listed as such, the financial markets are hesitant to extend the definition to tribal governments and regulatory bodies do not afford tribes the benefit of inclusion.

Congress should remove the barrier imposed on tribes by this lack of clarity. It only serves to increase administrative costs, deter investment, and serve as a barrier for economic growth.

The need for consistent laws and regulations would greatly help Native American communities. In 2000, Congress recognized this need and enacted the Indian Tribal Regulatory Reform and Business Development Act. This Act provided for regulatory reform in order to encourage investment, business, and economic development with respect to activities conducted on Indian lands. In short, Congress asked for a comprehensive review of the laws (including regulations) that affect investment and business decisions concerning activities conducted on Indian lands. The law also set out to determine the extent to which those laws unnecessarily or inappropriately impair investment and business development on Indian lands and determine the financial stability and management efficiency of Indian tribal governments. An authority was to be established in the Secretary of Commerce called the Regulatory Reform and Business Development on Indian Lands Authority that was to report its findings to the President and Congress. However, the Act was never implemented and many constricting laws and regulations remain.

Congress has agreed that tribal governments need the tools to access and attract capital and investment, but has not authorized their full use. Because of built-in uncertainty, added cost and risks, tribes have not been given the full opportunity to succeed. In addition, Congress has also recognized the need to identify and remove existing barriers, but no action has been taken.

To be successful, Congress should give tribes full use of Government financing authority, include tribes as accredited investors with the SEC, and, in its oversight role, encourage the responsible agencies to identify and remove barriers to growth.

We know what works and look forward to working with the Committee to ensure these barriers are removed and programs are supported that promote self-determination and local control. These actions hold the promise of creating quality jobs on the reservation and in surrounding communities.

PREPARED STATEMENT OF SUSAN M. WOODROW

COMMUNITY DEVELOPMENT ADVISOR, FEDERAL RESERVE BANK OF MINNEAPOLIS

NOVEMBER 10, 2011

Chairman Johnson, Ranking Member Shelby, and Members of the Committee, thank you for this opportunity to discuss economic development in Indian Country.[1] This is a very broad topic, and I will mainly discuss one aspect of it—promoting the growth of a vibrant private business sector in Indian Country. In particular, I will emphasize that, despite many challenges, tribes have promising opportunities to strengthen the legal and civic institutions that support private enterprise in Indian Country. My primary point is that tribes can overcome the challenges and seize these opportunities, and that they can do so with appropriate outside assistance. The remainder of my remarks will address how tribes can develop a legal and civic framework to promote business development.

Let me briefly explain why the Community Development department of the Federal Reserve Bank of Minneapolis is involved in helping to strengthen the institutional foundations of the Indian Country business sector. The mission of the Federal Reserve's Community Development, or Community Affairs, program is to support the Federal Reserve System's economic growth objectives by promoting fair, impartial access to credit and financial services. In pursuing that mission, Community Development staff members serve as conduits for information to facilitate relationships between bankers and community organizations and to help them develop new insights and approaches to meeting local credit needs. Toward this end, Federal Reserve Banks may specialize on issues that are relevant within their respective geographic districts. The Federal Reserve Bank of Minneapolis covers the Federal Reserve's Ninth District, which stretches from the Upper Peninsula of Michigan to Montana and includes more than 40 Indian reservations. Accordingly, for the past 20 years or more, the Community Development department of the Federal Reserve Bank of Minneapolis has sought to assist tribes and their members in overcoming the significant barriers they often face in accessing credit and financial services for consumer and business purposes.

From early on, we learned that actual or perceived differences in legal institutions between reservation and off-reservation areas are one of the barriers to financial services access in Indian Country, and much of the outreach and technical assistance we have targeted to tribes has been related to developing their commercial and business laws. We also realized that the lack or inadequacy of these laws especially impacts independent small businesses in Indian Country, which typically do not have the resources, powers, and privileges that tribal governments have to arrange financing for larger deals. With that in mind, the Federal Reserve Bank of Minneapolis has supported numerous initiatives aimed at enhancing the private sector business environment in Indian Country. (Additional information on our initiatives and those of our partners is available on our Indian Country Currents Web page at *www.minneapolisfed.org/indiancountry*.)

As an attorney, I have been encouraged to play a lead role in these efforts over the last decade. Based on that experience, I see significant opportunities to boost small business development in Indian Country by fully and effectively implementing the Uniform Law Commission's Model Tribal Secured Transactions Act for collateralized lending. Other important efforts include working with the Uniform Law Commission to develop a Model Tribal Probate Code that will free up land value and facilitate its use as collateral by helping to ameliorate the significant problem of fractionated interests in Indian-owned allotted lands, and to provide Indian entrepreneurs a civic voice through voluntary, cross-sector coalitions like the Montana, South Dakota, Minnesota, and North Dakota Indian Business Alliances.

Because these initiatives are still recent or pending, and because good data on tribal business environments and outcomes are lacking, we cannot provide a thor-

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[1] These remarks reflect my views and not necessarily those of the Federal Reserve Bank of Minneapolis or the Federal Reserve System.

ough assessment of their efficacy at this time. However, the Federal Reserve Bank of Minneapolis will monitor progress and, over time, provide feedback on which approaches are associated with improved economic performance and small business development in Indian Country.

The Opportunity for Private Sector Development in Indian Country

In our outreach work, we see many signs that the private business sector in Indian Country is underdeveloped. Documenting these impressions with hard data at the local level is not always easy because, as noted by leading scholars,[2] data on the private sector in Indian Country are generally scarce. However, some revealing data are available in South Dakota, which is unusual in that it has several counties lying entirely within reservations (or nearly so) and bordering similarly remote and rural counties that are entirely outside of Indian Country. This uncommon political geography means that data from the U.S. Census Bureau's County Business Patterns can be used to compare the number of nonagricultural private sector establishments, employees, and payrolls for these adjacent reservation and nonreservation counties.[3]

For example, Ziebach and Dewey counties in north-central South Dakota lie mostly on the Cheyenne River Reservation, with only a bit of Dewey County included in the Standing Rock Reservation. Bordering them to the south are the nonreservation counties of Haakon and Stanley. According to the 2009 County Business Patterns data, Ziebach and Dewey counties together hosted 8,100 residents and 122 nonagricultural private sector establishments with 764 employees receiving just over $22 million in annual pay. Despite a significantly smaller combined population (4,900), Haakon and Stanley counties together were home to considerably more nonagricultural private sector establishments (186), employees (1,580), and pay (over $41 million).

Similar patterns are common for other pairs of reservation and nonreservation counties in South Dakota. These gaps partly reflect the generally lagging State of economic development on reservations. From another perspective, however, they also reveal the potential opportunities to boost reservation economies by expanding their private business sectors, including retail and professional services as well as manufacturing.

Institutional Challenges

The underdeveloped State of the private business sector in Indian Country is not an accident. It reflects the difficult history of dislocation and dependence that tribal societies experienced well into the twentieth century. These experiences directly stripped tribal societies of their traditional sources of wealth and disrupted the formation of new enterprises. They also sapped traditional tribal governing institutions and inhibited the bottom-up development of new institutions adapted to the modern economy. By the 1970s, when tribes finally gained a robust degree of self-governing autonomy within the United States, reservations had a weak private sector and lacked the types of legal infrastructure and civic institutions that help the off-reservation business sector grow.

Let me illustrate the challenges involved by discussing the impact that inadequate commercial law has on entrepreneurs in Indian Country. In particular, I will focus on the lack of clear laws and institutions to support the use of personal property as collateral to secure loans and other extensions of credit. By personal property, I mean tangible and intangible property, such as machinery and accounts receivable, that is not land or affixed to land. These types of transactions outside of Indian Country are governed by Article 9 (titled Secured Transactions) of the Uniform Commercial Code (UCC), which has been uniformly adopted by all 50 States as well as the U.S. territories. Within Indian Country, however, the State of secured transactions law is largely incomplete, outdated, or nonexistent, and highly nonuniform.

Federal Reserve Bank of Minneapolis President Narayana Kocherlakota captured the essence of the problem in a speech he gave in Helena, Mont., earlier this year:[4]

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[2] The State of the Native Nations, Harvard Project on American Indian Economic Development, Oxford University Press, 2008, p. xxi.

[3] Most government establishments are excluded from the County Business Patterns data. Exceptions include Government-sponsored wholesale liquor establishments, retail liquor stores, book publishers, federally chartered savings institutions, federally chartered credit unions, and hospitals.

[4] Economic Development in Indian Country, April 14, 2011. Available at *www.minneapolisfed.org/news_events/pres/speech_display.cfm?id=4650.*

> In the United States, the bulk of our practical, everyday business law is State, not Federal, law. But tribes are sovereign, to varying but significant degrees, with respect to State law. That is, State laws and State legal procedures and institutions often do not apply, or do not clearly apply, to business disputes on reservations. Unless appropriate tribal laws and institutions are in place, the result can be a vacuum, a real or perceived lack of business law and related institutions on reservations. Not surprisingly, this has a chilling effect on business and economic development.

The lack of fully developed laws to support collateralized lending that President Kocherlakota referred to is a widespread impediment to economic development, and especially private sector business development, in Indian Country. While tribal governments may be able to negotiate loan terms for large-dollar initiatives, small businesses located within tribal jurisdictions do not have such negotiating power. The lack of laws that establish the rules for these kinds of transactions creates a high-risk environment for lenders and other creditors. The result is either no deals or high-cost deals to compensate for the risk.

Of course, some tribes and lenders are aware of this problem and have implemented a number of remedies. Some tribes have simply adopted by resolution the secured transactions law of an adjacent State. Others have hired attorneys or engaged law school students to draft unique tribal secured transactions laws or, more often, discrete components of such laws, such as provisions governing the processes for repossessing collateral upon default. Some tribes have accommodated the needs of lenders by entering into contracts with special provisions that incorporate by reference the provisions of Article 9 as enacted by a particular State for discrete financing deals. Most tribes, however, have no laws governing secured lending. In these tribal jurisdictions, the law of various State jurisdictions is typically left to fill the vacuum on a transaction-by-transaction, and very uncertain, basis.

Although these varied approaches have accommodated a degree of lending and economic development on reservations, most have significant defects. Tribes that have simply adopted State secured transactions laws often find them culturally inappropriate (for example, because they do not prohibit using, and thereby placing at risk, sacred or historically significant objects as collateral) or inadequate (for example, because State secured transactions laws incorporate by reference other State laws that the tribe has not adopted). High legal costs have prohibited many tribes from engaging legal counsel to draft customized tribal secured transactions laws, and those that have engaged counsel to do so often fail to keep their statutes up to date as the related laws in surrounding States have evolved. For example, UCC Article 9 was significantly revised in the late 1990s, and by the early 2000s the revisions had been adopted by all of the States. Many tribes that had based their laws on State Article 9 versions prior to the revisions have not similarly updated their laws and, as a result, many provisions in the tribal laws have been rendered essentially unworkable in the current secured lending environment.

Another significant issue with tribal secured transactions laws is the lack or inadequacy of mechanisms for publicly filing liens in collateral. Secured transactions laws necessarily rely on public lien-filing systems to perfect security interests in collateral for purposes of determining priority of those interests vis-a-vis other creditors or parties of interest such as trustees in bankruptcy. States generally administer their UCC filing systems in a central location, typically within the office of their Secretary of State or banking division. Without a sound, credible UCC lien-filing system that readily allows electronic public filings as well as searches of debtors and liens against collateral, a secured transactions law is incomplete and thus ineffective. In my experience in reviewing the laws and processes of dozens of tribes, a sufficient, reliable, and easily accessible tribal-based lien-filing system does not exist. This is not surprising. Filing systems are complex and costly to implement and maintain.[5] Some tribes' secured transactions laws identify the office of the clerk of the tribal court or tribal secretary as the location to file a security interest. However, in my experience, the actual mechanisms for filing financing statements as well as continuations, amendments, and terminations, often do not exist. Discussions with staff in the appointed offices generally reveal no filings and no staff awareness of actual processes to file financing statements or conduct lien searches pursuant to public requests. Other tribes defer unofficially to a State filing system for lien filings under tribal law. The result, often, is that lenders and others face confusing and uncertain rules, and thus risky legal environments, that either deter

[5] In a recent conversation with the business manager of a State UCC-filing office, it was noted that its soon-to-be implemented updated UCC-filing system is costing approximately $500,000. This cost is for the programming alone, and does not include staffing costs or maintenance.

them from doing business in Indian Country or raise the costs of doing business in tribal jurisdictions.

Seizing the Opportunity To Improve the Institutions of Business Law in Indian Country

The development challenges resulting from the lack of satisfactory institutions for collateralized lending in Indian Country are formidable. Nonetheless, with some assistance, tribes are meeting the challenges and seizing the opportunities for developing institutions that support private sector business development in Indian Country. I will illustrate this by summarizing the drafting, adoption, and implementation of a Model Tribal Secured Transactions Act (MTSTA).[6]

In response to tribal leaders' concerns about the lack of affordable credit for business development and consumers in their communities, a special committee of attorneys attacked the issue with an approach pioneered by State Governments. Like tribal governments, State governments face the dilemma of exercising their sovereign independence while ensuring that their laws are sufficiently similar to other States' laws to encourage commercial activity, including cross-border business. To address this need, States often base their laws on model statutes drafted by the Uniform Law Commission (ULC)—a group of lawyers, judges, legislators, legislative staff, and law professors appointed by State governments "to research, draft and promote enactment of uniform State laws in areas of State law where uniformity is desirable and practical."[7] In 2001, the ULC formed a special committee to extend this approach to tribes, by drafting a Model Tribal Secured Transactions Act (MTSTA). The idea was to develop model legislation that tribes could adapt to local cultural and business needs while still providing a solid, stand-alone law sufficiently similar to State law so as to encourage cross-border commerce (*e.g.,* a secured loan from an off-reservation lender to a business located on the reservation). The MTSTA was to be available at no cost to tribes.

Along with more than a dozen ULC commercial law experts, I served as an advisor to the MTSTA drafting committee from its inception. To ensure that tribal concerns were identified and appropriately addressed, we were advised by legal counsel for several California rancherias and representatives from 10 Indian tribes, including Crow Nation, Sac and Fox Nation, Navajo Nation, Chitimacha Tribe of Louisiana, Oneida Indian Nation of New York, Cherokee Nation, Confederated Tribes of the Warm Springs Reservation, Chickasaw Nation, and Little Traverse Bay Bands of Odawa Indians. Their active participation was critical to the project.

With the completion and publication of the MTSTA in August 2005, I and other members of the drafting committee made ourselves available to explain the model act to interested tribal governments. We published a comprehensive accompanying guide on how tribes could adapt and implement the law, and over the last 5 years have made dozens of presentations to tribal representatives, community development specialists, bankers, and other important stakeholders around the country.

In 2006, Crow Nation, situated in southeastern Montana, became the first tribe to adopt the MTSTA. Their experience illustrates some of the challenges of implementing it effectively. Explaining the 100-page act to tribal legislators required a strong commitment from individual leaders within the tribe. Official tribal business is conducted in the Crow language, so additional effort was required to translate key legal concepts into Crow.

Passage of an adapted version of the MTSTA by the Crow Legislature did not end the implementation challenges. The tribe recognized the need (discussed earlier) for a reliable public lien-filing system to complete their secured transactions system. I worked with the Montana Secretary of State's Office and the tribe to facilitate discussions about utilizing the State UCC lien-filing system as the tribe's official filing system. The result of negotiations was a Joint Sovereign Filing System Compact that officially recognizes Montana's UCC filing system as the location for filing financing statements pursuant to the Crow Nation's Secured Transactions Act. The arrangement does not infringe on tribal sovereignty or tribal jurisdiction. The State of Montana simply provides a ministerial function on behalf of and at no cost to the tribe. Because these filing systems are complex and costly to implement and administer, the arrangement offers the tribe a reliable and recognized public filing system that lenders and other creditors know and trust. The arrangement is a win-win for the State and the tribe.

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[6] Further information on the development of the MTSTA is available on our Indian Country Currents Web page at *www.minneapolisfed.org/indiancountry* and in the articles cited there.

[7] "About the ULC", ULC Web site, *www.nccusl.org/Narrative.aspx?title=About%20the%20ULC.*

The official compact signing ceremony was held in February, 2007, in the Mansfield Room of the U.S. Capitol and was attended by a large number of Crow dignitaries; the Montana Secretary of State and other State officials; Montana's three U.S. Congressional delegates—Senators Tester and Baucus, and Representative Rehberg; and representatives of the ULC and the Federal Reserve, as well as several other Federal agencies and Native organizations.

The Crow-Montana compact set a precedent. The following year, the Oglala Sioux Tribe on the Pine Ridge Reservation in southwestern South Dakota, having also enacted the MTSTA, entered into a similar UCC-filing arrangement with the South Dakota Secretary of State; and just last month, the Leech Lake Band of Ojibwe signed a joint powers agreement with the Minnesota Secretary of State to do the same. Statewide initiatives are now under way in Montana and South Dakota to encourage the remaining tribes in those States to enact the MTSTA and consider entering into similar filing system compacts with their respective States. The hope is to establish a reasonably uniform and reliable lending environment throughout Indian Country across the region.

The Federal Reserve Bank of Minneapolis recognized that enactment of the law and establishment of a credible filing system arrangement were not all that was needed to create a sound legal environment for secured lending in tribal jurisdictions. Together with the ULC, the Federal Reserve Bank of Minneapolis has hosted two multiple-day training sessions for tribal judges and attorneys on the MTSTA, and I have provided several shorter training sessions for tribal judges on the model act. In addition, we have hosted workshops for those tribes that have enacted the law to ensure that local lenders have an opportunity to learn about the new legal environment for lending in these tribal jurisdictions. We will continue to provide such support to tribes in our District that adopt the law and establish appropriate filing system arrangements. To date, and to the best of our knowledge, more than 25 tribes have either adopted or are in some stage of reviewing the MTSTA for enactment. Demand for our technical assistance in these matters is significant, which is promising in that more and more tribes seem to be taking an interest in enacting the model law.

Further Challenges and Opportunities

ULC Model Tribal Probate Code Initiative. The need for additional model tribal laws addressing a variety of issues that impact business development is great. One initiative being considered by the ULC is a model tribal probate code that would provide tribes with a comprehensive legal framework to address the significant problem of land fractionation moving forward, and that would be consistent with and further supplement the American Indian Probate Reform Act of 2004 (AIPRA).[8] Pursuant to Federal policy of the times, fractionation of lands allotted to individual Native Americans in the early part of the twentieth century has rendered vast areas of Native American-held land useless for development purposes or as collateral for loans, because land parcels are held in joint ownership, often by dozens or even hundreds of owners. The effect has been to tie up untold land value that could otherwise serve as collateral or contribute to development. Comprehensive and thoughtful probate laws are needed to help address some of the issues that land fractionation has caused. The ULC has hosted several preliminary meetings with key stakeholders from across the country who heartily support the effort. A modest amount of funding, however, is needed to enable the ULC to proceed in a way that ensures Native attorneys and other experts are able to fully participate as advisors to the drafting process.

Indian Business Alliances. Concurrent with our work assisting tribes with commercial law development, the Federal Reserve Bank of Minneapolis has provided technical and organizational assistance to establish coalitions of diverse institutions and organizations with the mission of supporting Native private business development. The Montana Indian Business Alliance (MIBA), South Dakota Indian Business Alliance (SDIBA), and Minnesota Indian Business Alliance (MNIBA), established in 2006, 2007, and 2008, respectively, share a common mission and strategic approach to developing and supporting Native entrepreneurs. These alliances are made up of representatives of tribal, State, and Federal governments and their respective agencies; tribal colleges and other educational institutions; community development organizations; foundations; financial institutions; corporations; nonprofits; and Native small businesses.

By working together, IBA members have helped to elevate the dialogue, regionally and nationally, about the importance of incorporating Native entrepreneur development into strategic discussions regarding Indian Country economic development.

[8] 15 U.S.C. §2201 *et seq.,* Public Law 108-374, October 27, 2004; 118 Stat. 1173.

The IBAs focus their work in four strategic areas: governance, infrastructure, finance, and resources.

Governance includes such things as development of tribal policies that are favorable to private business, comprehensive ethics codes and systems, and constitutional reform to institute independent courts and other dispute resolution mechanisms. *Infrastructure* includes the development of legal and regulatory infrastructure; physical infrastructure such as telecommunications networks, zoned industrial sectors, and road enhancements; and workforce development. *Finance* incorporates all sources of business funding, including commercial lenders, community development financial institutions, equity funds, microloan funds, and other gap financing sources. And *resources* include such things as technical assistance and education for business owners, financial education, credit counseling and repair programs, and business mentoring.

The IBAs tackle their objectives through conferences, workshops, policy forums, webinars, and research initiatives; and each hosts a comprehensive Web site featuring, among other things, resources for tribal governments and small business owners. Notable initiatives and accomplishments of the IBAs include: (1) significant work on capital access issues, including a survey of nonbank and commercial bank lenders in Montana and their lending to Native businesses, and related analyses of the capital access environment for Indian entrepreneurs; (2) support for input into the development of the Montana Department of Commerce's Indian Equity Fund which provides small equity grants to Native small businesses; (3) an in-depth research initiative examining the business environments on all of South Dakota's reservations; (4) advocacy for tribes' adoption of the MTSTA and filing system arrangements with their respective States; (5) Statewide policy forums; and (6) Indian business directories.

Together, the IBAs have provided a significant voice for Native entrepreneurs in our Northern Plains and Rocky Mountain regions. We are also pleased to announce that, according to North Dakota Indian Affairs Commissioner Scott Davis, North Dakota has begun the process of forming a North Dakota Indian Business Alliance aligned with the common mission of the MIBA, SDIBA, and MNIBA.

The Challenge of Assessing Results

The efforts and opportunities I have described for strengthening the institutional foundation of the private sector in Indian Country are new, and some have not yet taken shape. Their newness makes it nearly impossible to assess their effectiveness at this time. However, the passage of time alone will not fully solve the assessment challenge, for—as indicated above—data on the business environment and business outcomes on reservations are very limited.

Over time, the Federal Reserve Bank of Minneapolis intends to contribute on this front, too, because we are committed to a fact-based, realistic approach to economic development in Indian Country. In the near future, we expect to gather at least anecdotal information from bankers and other lenders regarding their perceptions of and experiences with new tribal business laws. We are gathering information about business laws and other business environmental factors on a number of reservations in order to statistically assess how these factors relate to the best measures we have of economic outcomes and well-being on reservations. I am hopeful that we will be able to make at least some preliminary findings available next year.

Additional Initiatives

I have focused on the Federal Reserve Bank of Minneapolis' institution-focused program for promoting private sector development in Indian Country. Although this has long been our primary program related to access to financial services in Indian Country, we recognize that financial services access and economic growth in general depend on a wide array of factors. Accordingly, we and our Community Development colleagues from around the Federal Reserve System engage in many other Indian Country initiatives, including efforts aimed at enhancing personal financial education and credit counseling, access to housing finance, reservation employment and transportation opportunities, and tribal usage of Federal financial programs.[9]

This year, Community Development staff from the Board of Governors of the Federal Reserve System and multiple Reserve Banks collaborated to host tribal leaders and officials from nine Federal agencies at daylong "Growing Economies in Indian Country" dialogues in Phoenix; San Diego; Portland, Ore.; Billings, Mont.; Bangor,

[9] For further information on Indian Country initiatives at all of the Reserve Banks, *see*, the Community Development links at *www.federalreserve.gov/communityaffairs/national/reservebanks.htm.*

Maine; and Lac du Flambeau, Wis.[10] The workshop series engaged nearly 600 tribal leaders, community organizations, and financial institutions in a dialogue about the short-term and long-term opportunities for growing economies in Indian Country. The results of these conversations are being summarized and compared in order to identify follow-up steps for the Reserve Banks and others. In addition, and as a continuation of this work, the Federal Reserve is planning to organize a national summit as a way to gather key stakeholders. This forum will be designed to provide an opportunity to share thinking on where additional research and data collection may be useful, to identify promising practices observed in the field, and to make policy recommendations that will address economic development strategies and solutions.

Conclusion

The challenges to economic growth in Indian Country are numerous, but over the past decade we have seen many tribal governments and individuals meet those challenges and create new opportunities. Mr. Chairman, in your letter inviting this testimony you stated that "Fostering small business growth is a vital step toward increasing employment opportunities and improving local economies in Indian Country." We wholeheartedly agree. We are well aware of the legacy of barriers and gaps that history has placed in front of Native American entrepreneurs, including barriers to accessing capital and financial services. Speaking personally, I can say that the legacy of weak legal and civic organizations important to small business growth and financial access is a particularly challenging barrier that I have witnessed on reservations across the United States. I am pleased to say, however, that our efforts at the Federal Reserve Bank of Minneapolis, such as the initiatives on model tribal codes, IBAs, and Indian Country economic research that I have described, allow us to work with tribal leaders and other Native and non-Native partners to remove these barriers. I have seen much progress in institution building in Indian Country over the past decade. With the right combination of grassroots leadership and appropriate outside assistance, I see many more opportunities for tribal citizens and their leaders to further develop sound legal and civic institutions to support a vibrant small business sector in Indian Country.

[10] For further information on these conferences, *see, www.frbsf.org/community/resources/2011/0601-Growing-Economies-in-Indian-Country/index.html.*

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

STATEMENT SUBMITTED BY THE NATIONAL CENTER FOR AMERICAN INDIAN ENTERPRISE DEVELOPMENT

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the National Center
for American Indian Enterprise Development

TESTIMONY

FOR THE

SENATE COMMITTEE ON BANKING,

HOUSING AND URBAN AFFAIRS

HEARING

ON

"OPPORTUNITIES AND CHALLENGES

FOR

ECONOMIC DEVELOPMENT IN INDIAN COUNTRY"

NOVEMBER 10, 2011

The National Center for American Indian Enterprise Development
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the National Center
for American Indian Enterprise Development

"We Mean Business for American Indians"

TESTIMONY

ON

"OPPORTUNITIES AND CHALLENGES FOR ECONOMIC DEVELOPMENT IN INDIAN COUNTRY"

NOVEMBER 10, 2011

I. Introduction

Chairman Johnson and Ranking Member Shelby, the National Center for American Indian Enterprise Development (the "National Center" or "NCAIED") commends the Senate Committee on Banking, Housing and Urban Affairs for holding this important hearing on "Opportunities and Challenges for Economic Development in Indian Country." The National Center works to seize and maximize opportunities for Indian tribes, tribal enterprises and Native-owned businesses every day, as well as address the challenges they face in accessing credit and commercial and government market opportunities. We are delighted to share our experiences and recommendations on these critical subjects.

II. Background on the National Center

The National Center, organized over 42 years ago, is the longest serving Native American business development assistance provider in the United States. It is a national organization, governed by a Native Board of Directors who are leaders in their fields. The National Center's mission to promote and advocate commerce for tribal and private Native businesses, and its vision is American Indian self-sufficiency by leading economic development and promoting commerce in Indian Country. In the past year alone, the National Center served 5,567 clients, helped retain or create over 1,300 jobs, win $120 million in contracts, and produce another $120 million in economic activity. Over the last decade, the National Center's bid matching at RES

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and other business assistance activities have helped companies generate at least $6.3 billion in contract awards and financings.

The National Center operates a national network of non-profit centers in Arizona, California, Washington (covering Idaho and Oregon), Virginia, Georgia, Mississippi, New Mexico, and soon will open offices in Alaska and Wisconsin. These centers assist clients ranging from first generation Native entrepreneurs to sophisticated tribal enterprises in developing business feasibility studies, business plans, banking relationships and lines of credit, marketing, growth strategies, procurement technical assistance, and assistance in lining up financing and bonding. Our federal partners include the Department of Commerce's Minority Business Development Agency (MBDA) and the Defense Logistics Agency, and we help them fulfill their missions by: providing business development assistance; coaching contractors on completing applications for certifications and registrations; finding capable Native companies to fulfill federal requirements; and providing contractors guidance on programs administered by various federal, state or tribal agencies, including financing, contracting, bonding, certifications and teaming programs. The National Center's primary private sector partners serve on its National Resource Council, composed of many Fortune 500 corporations, other major companies, Native-owned enterprises and Alaska Native corporations from many different industry sectors. The Resource Council members help support our operations and often do business with companies we assist.

Earlier this year, the National Center completed a strategic restructuring process in order to reach additional opportunities for Native business, commerce and economic development. We are launching a membership program with its own registered trademark, **Native-to-Native (N2N®)**, to strengthen our national network of partners and increase contracting and retail opportunities for Native businesses nationwide and globally. Soon, the National Center will establish a new **Native American Global Trade Center** in the Midwest that will become a hub involved in building a new national database of Native businesses and products, developing a Tribal International Trade Manual, identifying international trade opportunities for clients to export their products, and coordinating international trade missions for member businesses. Recent award of a major Small Business Teaming grant from the Small Business Administration (SBA) will enable the National Center to increase its Midwest presence with two National Center Teaming Alliance offices and another elsewhere, for a total of 12 offices nationwide.

The National Center also produces various national and regional events that train, promote and market Native enterprises to the public and private sectors. Its premier annual national event is the phenomenally successful Reservation Economic Summit & American Indian Business Trade Fair ("RES"), the largest and longest running American Indian Business Conference and Trade Show in the country. A noteworthy feature of the conference is the "Procurement Pavilion," the Nation's largest business matchmaking event for Native owned businesses. At RES 2011, nearly 3,000 individuals and 400 exhibiters attended, including tribes, ANCs, Native enterprises, Fortune 500 and other major corporate representatives as well as federal, state, local and tribal political and procurement officials. Trade delegations from Canada, Turkey and China also attended. The RES 2011 Procurement Pavilion featured 111 buyer tables, with 142 buyers

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representing 97 buying organizations, including federal, state, and tribal governments, large prime contractors. Leading the charge in promoting N2N business relationships, the National Center has encouraged purchasing decision-makers of tribal governments, tribally owned businesses, ANCs, and large individually-owned Native companies to utilize Native American, minority, and other small businesses for their purchasing requirements. Every year, more Native-owned companies and entrepreneurs are participating as "Buyers" in the RES Procurement Pavilion to find Native- and minority-owned businesses as subcontractors.

Over the years, the National Center estimates that its operations have assisted over 480 Indian tribes and more than 25,000 Native enterprises, and have trained over 10,000 tribal members in various aspects of business development. Its success rate -- helping to generate over $6.3 billion in contract awards and financings in recent years – jumped significantly with high speed internet.

III. "Access" Challenges to Native Business and Economic Development

Estimates place the total American Indian/Alaska Native (AI/AN) population at 4.12 million (1.5% of the total U.S. population), with the highest proportion of all AI/AN residents in Alaska (19%), Oklahoma (11%), followed by California, Arizona, Texas and New Mexico. Lack of access to jobs and tools for business and economic growth is a monumental challenge.

Disproportionately High Unemployment:

Always higher than for non-Natives, unemployment rates for AI/AN are disproportionately greater in certain regions. A 2010 Economic Policy Institute study reported that, between 2007 and 2010, the AI unemployment rate doubled (7.7% to 15.2%, 1.6 times more than the non-Native increase) and the AN unemployment rate more than tripled (6.3% to 21.3%). Regional AI/AN unemployment rates were highest in Alaska, the Midwest and Northern Plains regions.

Regional Disparities in Business Growth:

The above regions also posted the fewest Native-owned businesses. The U.S. Census Bureau's latest Survey of Business Owners (2002-2007) showed growth in the number of Native-owned non-farm businesses up to 236,967 (up17.7% over the previous 5 years), employing 184,416 people and generating $34.4 billion in receipts. This Census Survey, taken before the 2008 recession, did not include any tribal-owned businesses. Regions with the largest number of Native businesses were California (13%), Oklahoma (8.9%) and Texas (8%), areas with benefits conducive to business growth, including much greater internet access, transportation options, infrastructure support, and ample domestic and international business opportunities.

Significant Access Problems Persist:

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Lack of access to internet service, transportation, infrastructure and financing of all sorts (lending, equity investments, surety bonding, bond financing, etc.) remains the major obstacle to growth, job creation and prosperity in Indian Country. Not surprising, the regions with the fewest Native-owned businesses, and highest AI/AN unemployment, are those with the largest expanse of rural or remote areas and least access to internet/telecommunications service, adequate transportation, and infrastructure. According to the National Congress of American Indians (NCAI), while 98% of Americans have access to telephone service, an estimated 32% of AI/AN have none. Internet penetration on tribal lands is less than 10%, compared to 95% of Americans living in housing units with access to fixed broadband infrastructure. As to transportation, Indian reservation roads comprise over 104,000 miles of public roads needing improvements (over 65% are unimproved earth and gravel) and 24% of the bridges are deficient. Poor access to transportation and financing hampers tribes' ability to develop their energy and other natural resources that their Indian lands may bear. And, access to capital never seems to improve; in 2001, the Department of Treasury estimated $44 billion in unmet capital needs in Indian Country and that figure surely has spiked with the economic downturn since 2008.

Both the Obama Administration and the Congress recognize that developing new small businesses is vital to both Indian Country and the national economy. The SBA website shows that small firms represent 99.7% of all employer firms, employ over half of all private sector employees, and have combined payrolls making up 44% of the total U.S. private payroll. An estimated 3.5% of the adult population starts a business each year, according to the *Kauffman Index of Entrepreneurial Activity: National Report 1996-2005*. AI/AN businesses make up the smallest group of small businesses, however. These businesses can generate impressive economic output in the U.S. economy, an estimated $34.4 billion from 2002-2007, according to the *U.S. Census Bureau, 2007 Survey of Business Owners.* **The MBDA projects that if AI/AN businesses were proportionately represented in the U.S. economy, their gross receipts would exceed $160 billion! That level of business activity could be achieved if all Native entrepreneurs and businesses had adequate access to high speed internet service.**

The above figures reiterate the importance of public and private sector initiatives that promote Native and other small businesses' success. For example, both the SBA and the MBDA websites provide access to substantial amounts of information valuable to small businesses, and SBA's website hosts some great tools and online trainings on how to start and operate a business. All the federal contracting agencies, and Fed.Biz.Opps, provide countless opportunities for small business. Internet makes this information readily accessible, but many Native entrepreneurs cannot go online to SBA's Entrepreneurial Tool Box to learn how to start a business, or sell products or services in more than their local marketplace.

National Center Experiences:

The National Center's Board of Directors and clients recognize the challenges of Native business and economic development, based on personal experiences. For example, Board member,

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Karlene Hunter, founded Lakota Express on the Pine Ridge Reservation where the poverty and unemployment rates exceed most in the United States. In the mid 1990s, Lakota Express wanted to open a call center and direct mail operations, but its commercial business purpose could not qualify for access to the reservation's communication lines dedicated to the tribal government and the tribal college. With the help of then Senator Tom Daschle, the company was able to bring in its own T-1 lines for voice and data transmission to make calls and send and receive printed documents. Soon 26 new full-time and 30 part-time jobs were created for tribal and non-tribal members.

Karlene Hunter is a living example of how training in business management (which she used to teach) and other business assistance is key to helping Native entrepreneurs and businesses become conversant and then proficient in using technology tools and navigating web portals, electronic application procedures, and E-Commerce sites. As a special web-based tool, the National Center is embarking on a major upgrade of NativeEdge, a webportal dedicated to Native American Indian business development. NativeEdge was designed to facilitate the attainment of sustainable economic development within Native communities. The website houses a comprehensive inventory of resources, information and guidance for Native entrepreneurs, tribes and tribal entities to promote economic growth in Indian Country. The National Center is enhancing the NativeEdge web portal to be fully interactive, with access to a user-friendly search engine, so that users can define their interests and the type of assistance they seek by registering through an online form. NativeEdge will include the following database management system components:

- Native American Jobs - Career-minded Native Americans can search the job database for employment opportunities on a nationwide basis. Tribes, Native businesses, corporations, and government entities seeking a diverse employee base can post their open positions here.
- Bid Opportunities - Native American suppliers, and buyers looking for them, can post bids, RFPs and contracting opportunities here at no cost. New customers, vendors and suppliers can be found, and registered users can search the on-line database for available bid opportunities on a nationwide basis.
- National Center Teaming Alliance - The site will be augmented with additional services made possible through the Small Business Teaming Pilot Program so that small businesses will be able to create partnerships with other small and larger businesses to pursue larger contracts, bid opportunities and procurements.

IV. Specific Recommendations for Improvements

The National Center's recently released Native Business and Economic Development Policy Agenda lists all of our top public policy priorities (see Attachment 1). The National Congress of American Indians (NCAI) recently embraces this policy agenda at its Annual Meeting by

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approving NCAI Resolution #PDX-11-048 titled: "Support for the National Center for American Indian Enterprise Development Native Business and Economic Development Policy Agenda and Collaboration to Advance Tribal Sovereignty, Capacity Building, Business Growth and Job Creation in Indian Country" (see Attachment 2). Outlined below are some specific recommendations for this Committee and others on ways to facilitate business and economic development in Indian Country.

A. Clarify and Streamline Acquisition and Leasing of Trust Lands:

1. Clarify Trust Acquisition Authority: Since Senator Akaka raised this issue during the hearing, in part in his capacity as Chairman of the Senate Committee on Indian Affairs, the National Center takes this opportunity to thank him, as well as Chairman Johnson, for voting to report to the full Senate legislation to eliminate confusion from the Supreme Court decision in *Carcieri v. Salazar* by clarifying 1934 Indian Reorganization Act provisions to ensure that all federally recognized tribes are eligible for the benefits of Section 5 of the Act, regardless of whether they were "under federal jurisdiction" in 1934. We also applaud the Chairmen's continuing efforts to educate other Senate colleagues of the need to clarify trust land status so as not to create barriers to energy, broadband, manufacturing and other business and economic development projects, and law enforcement activities on Indian lands.

2. Allow Greater Tribal Self-Determination in Leasing Tribal Lands: Similarly, we urge the Senate to approve legislation to permit any tribe to develop its own leasing regulations, seek BIA approval of such regulations, and then be able to lease tribal lands for infrastructure, housing or other community development purposes without BIA prior-approval.

B. Approve Native American Business Development Provisions

After careful deliberations, last year the Senate Committee on Indian Affairs developed several very signification proposals to enhance business and economic development in Indian Country. Below are the provisions that the National Center urges the Senate to take up again and promptly move forward:

1. Native American Business Development Program: Always championed by Chairman Johnson, the consensus proposal of last year (S. 3534) should be reintroduced to authorize the SBA's Office of Native American Affairs (ONAA), headed by an Associate Administrator, and grants for Native American Business Centers so that more business management, financial and procurement technical assistance can be made available in more locations throughout Indian Country. SBA's ONAA must have more authority to claim a fair share of the funds already appropriated for SBA's entrepreneurial development program overall. Without specific authorization to access those entrepreneurial development program funds, the ONAA will continue to be substantially disadvantaged in trying to provide adequate outreach and assistance across the country with its grossly inadequate budget of only $1,250,000 (down

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from $5,000,000 annually during the Clinton Administration). **At a minimum, the FY 2012 Financial Services Appropriations measure should increase SBA's line item for Native American Outreach from its meager level of $1.25 million to at least $2 million.**

2. Surety Bonding: The Indian Finance Act should be amended to expand existing authority for the Secretary of the Interior to issue surety bond guarantees either independently or supplemental to a surety bond guarantee issued by SBA, up to 100% of amounts covered by a surety bond issued for construction, renovation, demolition, and even broadband deployment work performed or to be performed by an Indian individual or Indian economic enterprise. Often tribal and individual Indian-owned construction companies engaging in construction contracting (whether under federal, state, local or tribal government contracts, or commercial contracts) face significant barriers to securing any surety bonding at all. Many insurance/surety companies choose not to work with tribal contractors, because they do not understand tribal sovereignty and do not want to work with tribal courts. Technical assistance and training for contractors seeking surety bonding also would help them mitigate risk, build capacity, improve performance, grow and create more jobs. The National Center's business assistance centers provide this type of guidance now, but more targeted assistance related to surety bonding is needed.

3. Indian Loan Guarantee Program Enhancement: The Indian Finance Act authorized the Secretary of the Interior to provide guaranteed loans to businesses that are majority-owned by tribes or Indians. Implementing regulations require tribal businesses to provide collateral worth at least 20 percent of the loan principal. Too frequently, this equity requirement inhibits the launch of on-reservation enterprises or development projects that employ reservation residents. Last year's Indian Jobs proposal recommended amending the loan guarantee provisions to establish a tiered system, based on the number of on-reservation jobs created, that would provide more favorable equity terms and authorize an increase in the amount guaranteed up to 100% for energy and manufacturing businesses. These changes would make the Indian loan guarantee program far more helpful to the establishment of tribally-owned energy or manufacturing businesses, and potential employment of more local reservation residents. **This guarantee program also should be fully funded, as urged in a recent joint letter to the Senate Interior Appropriations Subcommittee, endorsed by 10 of the leading national and regional Native organizations (see Attachment 3).**

C. Expand Access to Capital

In addition to the improvements discussed in items 2 and 3 immediately above, the National Center urges the following actions:

1. Expand Use of BIA Loan and Bond Guarantees: The BIA's program for loan and surety bond guarantees should be fortified so that it can better deploy funds provided for guarantee issuance, as follows –

a. Indian Loan Guarantees: This Committee should consider urging, by letter or otherwise, that the BIA's Office of Indian Energy and Economic Development (OIEED) develop more flexible equity terms and higher (up to 100%) guarantee limits for Native-owned businesses, manufacturing activities, and Tribal energy projects, and ensure that more loans can be made and guaranteed promptly, perhaps with priority given to startup or expansion of on-reservation enterprises or development projects that employ reservation residents. Many improvements can be made administratively, and some many require a regulatory change. Legislative proposals, such as in Section 3 of S. 3471 (2010) also should be pursued.

b. Surety Bond Guarantees: Implement existing authority for BIA to issue surety bond guarantees supplemental to a surety bond guarantee issued by SBA, up to 100% of amounts covered by a surety bond so that tribal and individual Indian-owned companies can obtain bid and performance bonds and qualify for award of construction and other federal, state, local or tribal contracts, and commercial contracts. Giving BIA independent authority to guarantee a surety bond will require legislation, as proposed in Section 4 of S. 3471 in 2010, is also worth pursuing.

c. Tribal Economic Development Bonds: As the Native American Finance Officers Association testified at the Committee's hearing, much more clarity and certainty in Tribes' authority to issue governmental and private activity bonds would greatly enhance economic development in Indian Country. The Congress should explore amending the Indian Finance Act and Internal Revenue Code to authorize the BIA federal guarantee credit subsidy to be used to back tribal economic development bond offerings and possibly other tribal tax exempt bonds, and increasing the guarantee program's credit subsidy accordingly.

2. Codify and Enhance the Native CDFI Assistance Program: Include specific Native CDFI provisions in the CDFI Fund authorization legislation and sustain Native CDFI set-aside funding at or above $12 million per year.

3. Support More Training of Federal and Private Loan Processing Personnel: As several witnesses during the Committee's hearing mentioned, confusion continues to reign when it comes to lending to Tribes and Native businesses on tribal lands. Loan processing personnel -- whether in SBA's Loan Processing Center, BIA's loan guarantee office, or USDA's offices, or in private commercial or community banks – need far more education and training on lending to Tribes and Native borrowers. While inter-agency collaboration in this area has improved during the Obama Administration, still more could be done to ensure that the CDFI Fund, SBA, MBDA, USDA and BIA work as closely as possible to mesh their respective programs to facilitate access to capital sought by Native borrows at every level. The Department of Treasury should be encouraged to host or co-host dialogue sessions that involve all of these federal agencies, as well as the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation and the

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Federal Reserve, and Tribal leaders, Tribal enterprise leaders, Native businesses, and Native banks to discuss the current challenges in securing project financing, working capital loans, guarantees, surety bonds, insurance, bond financing, etc.

4. Urge Enforcement of Community Reinvestment Act Requirements: As other witnesses mentioned at the Committee's hearing, federal banking regulators should be urged to review banks' performance to see whether and how they are serving Indian Country. It has been suggested that a Native community development component should be added to the CRA exam for large banks and even some intermediate or small banks. Banks' performance should improve, and their performance evaluations should include analysis of their bank services to tribes and tribal- and other Native-owned businesses. Federal agencies also should clarify that CRA credits can be applied to investments in alternative energy facilities and energy efficiency enhancements.

V. Conclusion

The National Center thanks the Committee in advance for considering our comments and recommendations. Any questions regarding the issues raised or recommendations made should be directed to Eric S. Trevan, President and CEO, National Center for American Indian Enterprise Development, 480-545-1298 or eric.trevan@ncaied.org.

Attachments:

1. Full Native Business and Economic Development Policy Agenda Approved by the National Center's Board of Directors (9/7/11)

2. NCAI Resolution #PDX-11-048

3. Joint Letter on the Indian Loan Guarantee Program

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Attachment I

the National Center
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5195150

PUBLIC POLICY AGENDA

TO ACCELERATE

NATIVE BUSINESS AND ECONOMIC DEVELOPMENT

On September 7, 2011, the Board of Directors of the National Center for American Indian Enterprise Development approved a broad business and economic development policy agenda. As the National Center embarks on its 5th decade as the leading advocate and longest-serving provider of Native business development assistance, it will advance its policy agenda with the goal of promoting job creation, business capacity building, greater access to the internet, capital and contracting, infrastructure improvement, and increased commerce -- in Indian Country, nationally and globally.

The National Center will promote this Native Business and Economic Development Policy Agenda through its national advocacy activities, its growing number (soon 12) business and procurement technical assistance offices across the United States, its national and regional events, and in partnership with other national Native organizations. In the pages that follow, the National Center outlines its top policy priorities for Native business and economic development, tribal sovereignty, capacity building and job creation.

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The National Center's Top Native Economic Development and Jobs Priorities

The National Center urges prompt action on the public policy initiatives within the four categories of issues listed below: Tribal Sovereignty and Capacity Building, and Job Creation; Native Business Development and Best Practices; Access to Capital; and Tax Issues.

I. Tribal Sovereignty, Capacity Building, and Job Creation

A. Full Broadband and Telecommunication Access in Indian Country:

Collaborate with the federal agencies promoting broadband access and telecommunications improvements and expansion into Indian Country (e.g., USDA Rural Development and Utility Services, Commerce's National Telecommunication Information Service, and Federal Communications Commission) and other national Native organizations developing initiatives to facilitate communications services and related infrastructure deployment and spur tribal and other Native business, economic, and community development (Administration action needed).

B. Expedite Land Acquisition and Leasing of Tribal Lands:

1. Clarify Trust Acquisition Authority: Eliminate confusion from the *Carcieri* decision by enacting legislation to clarify 1934 Indian Reorganization Act provisions to ensure that all federally recognized tribes are eligible for the benefits of Section 5 of the Act, regardless of whether they were "under federal jurisdiction" in 1934 (e.g., S. 676, H.R. 1234 and 1291).

2. Approve Greater Flexibility and Streamlined Procedures for Land Acquisitions and Leasing of Indian Lands: Prioritize timely completion of BIA procedures for acquisition and leasing of Indian lands so as to enhance economic development. Revise BIA leasing procedures to allow tribes to select and use certified, licensed appraisers.

3. Expedite BIA Actions on Land Acquisitions and Leases: BIA must expedite approval of pending trust acquisition and leasing applications.

4. Allow Greater Tribal Self-Determination in Leasing Tribal Lands: Permit any tribe to develop its own leasing regulations and seek BIA approval of such regulations so that the tribe will be able to lease tribal lands for housing or other community development purposes without BIA prior-approval (e.g., H.R. 1599).

C. Streamline Federal Employment, Training and Other Support Programs:

1. Make Permanent the "477" Jobs Program Integration Concept: The Indian Employment, Training, and Related Services Demonstration Act (Public Law 102-477) should be made permanent to allow tribes to combine formula funded federal grants for employment and training into a single budget and reporting system (as in Section 5 of S. 3471 of 2010). Refine the accountability system, working through tribal consultation with affected agencies

(Departments of Interior, Labor, Health and Human Services, and Education). (OMB could approve the reforms.)

2. Collaborate on Integration of Other Training and Education Programs: Support initiatives to enhance tribal colleges and their development of business-related curricula and job skills training programs. Permit tribes or tribal organizations to submit proposals for coordinated federal program assistance to support a community, economic or business development project that is consistent with the goals of those programs (e.g., H.R. 1599).

II. Native Business Development and Best Practices

A. Expand Native American Business Development Services:

1. Small Business Administration: The SBA should allocate more funding (at least $2 million up from $1.25 million) to its Assistant Administrator of the Office of Native American Affairs ("ONAA") to provide greater support for Native entrepreneurial development, and require Small Business Development Centers to team with existing Native business centers to expand services to more tribal-owned and individually owned Native businesses. The ONAA should be formally authorized, headed by an Associate Administrator, have its own budget of at least $2 million, and have grant authority to target existing entrepreneurial development funds to support more Native American business centers (e.g., S. 3534 in 2010).

2. Department of Commerce: The Minority Business Development Agency (MBDA) should receive at least $31 million and allocate more support to its 8 Native American Business Enterprise Centers and to the Office of Native American Business Development; and the Department should allocate more funding to the Office of the Secretary's Senior Advisor for Native American Affairs (as proposed in the pending House appropriations bill). These programs should focus more attention on Native business expansion both nationally and internationally, including intra- and inter-tribal commerce, export assistance, trade mission involvement, and tourism.

3. Department of Defense: The Defense Logistics Agency's Procurement Technical Assistance Program should receive $34.3 million for FY 2012, with $3.6 million set aside for 6 American Indian Procurement Technical Assistance Centers (as in pending appropriations).

B. Enhance Native Contracting Preferences

1. Strengthen and Enforce Buy Indian Act Requirements: Update, implement and enforce Department of the Interior Buy Indian Act regulations (finalize pending BIA regulations). Apply Buy Indian requirements to other agencies to encourage greater use of Indian contractors for requirements to be fulfilled using federal funds appropriated for the benefit of Indians (as in Section 7 of S. 3471 in 2010).

2. Preserve the Native 8(a) Program: Protect SBA's 8(a) Business Development Program provisions that benefit contracting companies owned by tribes, Alaska Native regional and village corporations (ANCs), Native Hawaiian Organizations (NHOs), and individuals who are American Indian, Alaska Native or Native Hawaiian. Prevent any further erosion of the 8(a) preferences for tribes, ANCs and NHOs beyond the Section 811 requirements for justification and approval of sole source awards over $20 million.

3. Maintain the 5% Indian Incentive Program: Provide at least $15 million for the DOD 5% Indian Incentive Program to enable federal contractors to receive an incentive of 5% of the value of work subcontracted to Native contractors (as in pending appropriations).

C. Open Trade and Export Promotion Opportunities:

Collaborate with the Department of Commerce's International Trade Administration, MBDA and Senior Advisor for Native American Affairs, and the SBA's Office of International Trade and Native American Affairs, to increase efforts to ensure that tribal political and business leaders, and more Native-owned business leaders, are included in U.S. trade delegations and missions involving government and private participants. SBA, and Commerce, and their respective officials charged with Native American Affairs and International Trade duties should meet with national Native business organizations to determine how to ensure that the U.S. Export Assistance Centers around the country can receive more training and assistance on Indian business issues and provide more outreach and support regarding export of Native goods and other trade-related activities.

D. Increase Support for Data Collection on Business Development, Job Creation, and Best Management and Other Best Business Practices:

All federal agencies with finance-related responsibilities to Indian Country (e.g., BIA, SBA, MBDA, USDA, HUD, and the new Consumer Financial Protection Bureau (CFPB)) should make available data on the number of Native-owned business credit applications submitted, and loans and loan and surety bond guarantees approved and declined, so that a more reliable database on tribal and Native business and economic development activities can be developed. The new CFPB already is statutorily required to collect information concerning credit applications of women- and minority-owned businesses. SBA, MBDA, USDA, and HUD funds should be made available to support collection of more data on Native businesses by industry sector, their growth and their job creation, and best management practices and other best practices in business.

III. Access to Capital

A. Expand Use of BIA Loan and Bond Guarantees: The BIA's program for loan and surety bond guarantees should be fortified with highly skilled finance staff that can better deploy funds provided for guarantee issuance, as follows –

1. Indian Loan Guarantees: BIA's Office of Indian Energy and Economic Development (OIEED) should develop more flexible equity terms and higher (up to 100%)

guarantee limits, especially for energy projects and manufacturing businesses, and ensure that more loans can be made and guaranteed promptly, perhaps with priority given to startup or expansion of on-reservation enterprises or development projects that employ reservation residents. (Many improvements can be made administratively, but changes in equity requirements many need a regulation change, or legislation as in Section 3 of S. 3471 in 2010.)

2. Surety Bond Guarantees: Implement existing authority for BIA to issue surety bond guarantees supplemental to a surety bond guarantee issued by SBA, up to 100% of amounts covered by a surety bond so that tribal and individual Indian-owned companies can obtain bid and performance bonds and qualify for award of construction and other federal, state, local or tribal contracts, and commercial contracts. (Only administrative action is needed to implement existing authority; legislation, as in Section 4 of S. 3471 in 2010, would be needed to allow BIA to issue surety bond guarantees on its own.)

3. Tribal Economic Development Bonds: Explore amending the Indian Finance Act and Internal Revenue Code to authorize the BIA federal guarantee credit subsidy to be used to back tribal economic development bond offerings and possibly other tribal tax exempt bonds. (Legislative action needed to authorize this expanded authority and appropriate funds for a larger credit subsidy to support such bond guarantees.)

B. Improve and Tailor Capital Access Programs to Native Borrowers:

1. Codify and Enhance the Native CDFI Assistance Program: Include specific Native CDFI provisions in the CDFI Fund authorization and sustain Native CDFI funding. (Both authorization and appropriations actions are needed.)

2. Advocate for More Training of Staff Working Federal Loan Processing: Urge SBA (especially SBA Loan Processing Center staff), BIA, USDA, OCC, FDIC and Federal Reserve to provide more training for their personnel on Indian business and lending issues, and conduct some of interagency training sessions to foster greater agency collaboration in efforts to improve access to capital for Native borrowers. (Administrative action is needed.)

3. Co-Host More Access to Capital Special Sessions and Workshops: Collaborate with on-going federal workshops on capital access. For RES 2012, plan and co-host Plenary Sessions on Native Lending Issues, Learning Sessions on special issues, and a new Pavilion event where Native businesses can meet one-on-one with bankers and other lenders.

4. Encourage Further Tailoring of Federal Loan and Guarantee Programs: Assess at RES and other sessions what further changes should be made to federal loan and guarantee programs, and collaborate in developing proposals for such refinements.

5. Join Calls for Use of Community Reinvestment Act and Other Requirements: As the Center for American Progress recommended, federal agencies should clarify that CRA credits can be applied to investments in alternative energy facilities, energy efficiency enhancements. A Native community development component should be added to the CRA exam for large banks and even some intermediate or small banks. These banks'

performance should be reviewed and improved, and their performance evaluations should include analysis of their bank services to tribes and tribal- and other Native-owned businesses. (Administrative actions are needed.)

IV. Tax Issues

A. Enhance Tribal Tax Exempt Bonding Authorities:

Eliminate the "essential government function" test now used to qualify tribal projects for tax exempt financing, and expand tribal tax exempt private activity bond authority to include commercial projects with economic, environmental or other social value. Exempt tribal governments' bond issuances from Securities and Exchange Commission registration requirements. Deem projects of Section 17 corporations and other wholly owned tribal entities as qualifying projects for tax exempt financing. (All require legislative action; H.R. 1599 contains the first two proposals.)

B. Clarify Tax Exempt Status of Tribes and Tribal Enterprises:

While the tax exempt status of tribes and tribal enterprises chartered under Section 17 is fairly well settled, clarification is needed that a tribal enterprise chartered under a tribal corporation code or a limited liability code is similarly exempt from federal corporate taxation and state taxation. A tribe's percentage ownership of a project also should be exempt from such forms of taxation. (Administrative clarification in BIA leasing regulations is needed, if not legislation.)

C. Extend or Make Permanent Employment and Investment Tax Provisions:

The Indian employment tax credit and accelerated depreciation of investments on reservation lands should be extended for longer periods or made permanent to ensure that these provisions result, as intended, in incentivizing business investments in Indian Country. Such investments should be made in conjunction with tribal development plans. So that Section 17 corporations and other wholly tribal owned entities also can benefit, provisions should be included to allow these tribal enterprises to sell these tax credits on the secondary market. (Legislative action would be required.)

Attachment II

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

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Chickasaw Nation

FIRST VICE-PRESIDENT
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Pauma Band of Mission Indians

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The National Congress of American Indians
Resolution #PDX-11-048

TITLE: Support of the National Center for American Indian Enterprise Development Native Business and Economic Development Policy Agenda and Collaboration to Advance Tribal Sovereignty, Capacity Building, Business Growth and Job Creation in Indian Country

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

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

WHEREAS, the National Center for American Indian Enterprise Development was established in 1969 and is the oldest and largest national business organization governed by a Board of Directors of American Indian and Alaska Native business leaders that promotes and advocates commerce for tribal and private native business; and

WHEREAS, the National Center Board of Directors approved the Native Business and Economic Development Policy Agenda as a national platform to promote in partnership with NCAI and other national Native organizations; and

WHEREAS, the Native Business and Economic Development Policy Agenda promotes public policy initiatives that reinforce NCAI's Policy Statement and many subsequent NCAI-approved resolutions within categories of: Tribal Sovereignty, Capacity Building, and Job Creation; Native Business Development and Best Practices; Access to Capital; and Tax Issues; and

WHEREAS, Tribal Sovereignty, Capacity Building, and Job Creation will be enhanced through prompt federal action to: 1) clarify trust acquisition authority to eliminate confusion and enable all federally recognized tribes to acquire land in trust; 2) approve greater flexibility and streamline procedures for acquisition and leasing of trust lands; and 3) support full broadband and telecommunications access to make high speed internet available to increase tribal government effectiveness and efficiency, expand business activity nationally and globally, and enhance economic and community development in Indian Country; and

WHEREAS, Native Business Development and Best Practices can be achieved through enactment of legislation that prescribes provisions, supported by previous NCAI-approved resolutions, to: 1) authorize the Small Business Administration (SBA) Office of Native American Affairs, headed by an Associate Administrator, with grant authority to support more Native American business centers; 2) provide more funding for the Department of Commerce's Native American Business Enterprise Centers, Office of Native American Business Development, and Secretary's Senior Advisor for Native American Affairs to promote Native business expansion nationally and internationally, including intra- and inter-tribal commerce, export assistance, trade mission involvement, travel and tourism; and 3) set-aside full funding for the American Indian Procurement Technical Assistance Centers; and

WHEREAS, Native Business Development and Best Practices also can be achieved by enhancing Native contracting preferences by: 1) strengthening and enforcing Buy Indian Act requirements; 2) preserving SBA's Section 8(a) Business Development Program provisions that benefit contracting companies owned by Indian tribes, Alaska Native regional and village corporations, Native Hawaiian organizations, and individuals who are American Indian, Alaska Native or Native Hawaiian; and 3) maintaining and enhancing the 5% Indian Incentive Program; and

WHEREAS, access to Capital continues to be a high priority for the National Center, NCAI, the Native American Finance Officers Association and other national Native organizations that jointly have called on Congress to expand use of Indian Loan Guarantees to help finance business growth, manufacturing and energy development, and Bond Guarantees to help tribal- and individual Indian-owned companies obtain surety bonding to qualify for award of and perform a variety of contracts, and to facilitate issuance of Tribal Economic Development Bonds and other types of tribal governmental and private activity bonds; and

WHEREAS, tax Issues identified by the National Center and by NCAI in previously approved resolutions must be addressed collaboratively, including policies to enhance tribal tax exempt bonding authorities, clarify the tax exempt status of tribal governments and tribal enterprises, and expand employment and investment tax credits and other tax provisions applicable to business development in Indian Country.

NOW THEREFORE BE IT RESOLVED, that the NCAI shall support the Native Business and Economic Development Policy Agenda of the National Center for American Indian Enterprise Development (full agenda attached to this resolution) and collaborate in public policy activities to advance and evolve this agenda and its goals of increasing employment, business growth, economic development, self-determination and self-sufficiency in Indian Country; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Annual Session of the National Congress of American Indians, held at the Oregon Convention Center in Portland, Oregon on October 30 – November 4, 2011, with a quorum present.

Jefferson Keel
President

ATTEST:

Edward K. Thomas
Recording Secretary

Attachment III

September 2, 2011

Honorable Jack Reed, Chairman
Subcommittee on Interior, Environment
And Related Agencies
Senate Committee on Appropriations
SD-131 Dirksen Senate Office Building
Washington, DC 20510

Honorable Lisa Murkowski, Ranking
Subcommittee on Interior, Environment
And Related Agencies
Senate Committee on Appropriations
SH-125 Hart Senate Office Building
Washington, DC 20510

Re: Indian Guaranteed Loan Program

Dear Chairman Reed and Ranking Member Murkowski:

As you know, the House Committee on Appropriations recently reported the Department of the Interior, Environment, and Related Agencies Appropriation bill for FY 2012, recommending $8,114,000 for the Indian Guaranteed Loan Program Account. This amount represents nearly level funding, in lieu of the budget request of only $3,000,000. On behalf of the thousands of Indian tribes and Native-owned businesses served by the undersigned national and regional Native American organizations, we urge your Subcommittee to take similar action and add bill language to ensure that the Department of the Interior and Bureau of Indian Affairs (BIA) fully implement existing authorities to assist tribes, their enterprises, and other Native-owned businesses with better access to capital.

The Indian loan guarantee program has long served an important role in furthering the business and economic development activities of Indian tribes, Alaska Native regional and village corporations, their enterprises, and other Native-owned businesses. The Department and BIA can do even more to spur economic development by fully implementing existing authorities to address more of the capital needs of tribes and Indian businesses utilizing the guarantee program's credit subsidy. As a first step, we are pleased that the House Interior Appropriations bill recommends level funding for the loan guarantee program to continue to assist borrowers seeking loans despite tightened credit markets. As the next step, we ask you to consider including some additional language in the Senate version to provide level funding of $8,199,000 and encourage more innovative use of the credit subsidy.

Tribes and other Native businesses have faced three major hurdles that can be addressed through fuller use of the credit subsidy. The first obstacle, tightened credit, can be tackled better if BIA has more funds to use for guarantees. The second hurdle is the BIA regulation's eligibility requirement that a loan guarantee applicant "must be projected to have at least 20 percent equity in the business being financed, immediately after the loan is funded." Complaints about this steep equity requirement have been voiced most recently in the ongoing Indian Country workshops sponsored by the Community Development Financial Institutions Fund, Interior's Office of Indian Energy and Economic Development, Agriculture' Office of Rural Development, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Department of Commerce, Federal Reserve System and the Small Business Administration (SBA). With some encouragement, the BIA can address this requirement in more flexible ways.

The third hurdle, especially for tribal-owned and other Indian-owned contractors, has been securing surety bonding necessary to qualify to perform government construction and other contracts. The language that we proposed, below, would support efforts to begin implementing existing, but long dormant, supplemental surety bond guarantee authority in 25 U.S.C. 1497(a). With a supplemental guarantee, allowable only if an SBA surety bond guarantee will be issued, the aggregate of the two guarantees would help convince surety companies to provide the bonding that tribal-owned and other Indian contractors need to succeed in winning and performing construction and other types of contracts.

In sum, we urge that the Senate Interior Appropriations Subcommittee to adopt the bill and report language proposed, with underscored insertions and bracketed deletions, as follows:

Proposed Bill Language:

> "For the cost of guaranteed loans, [and] insured loans and surety bonds, $8,199,000, of which $1,000,000 is for administrative and technical assistance expenses, as authorized by the Indian Financing Act of 1974, as amended; . . ."

Proposed Report Language:

> "The Committee recommends $8,199,000 for the Indian Loan Guarantee Program and directs the Secretary to utilize all existing authorities to address the substantial needs of Indian tribes and Indian economic enterprises for capital that can be met by the program's credit subsidy, including loan guarantees and supplemental surety bond guarantees authorized by the Indian Finance Act (25 U.S.C. 1497a)."

We appreciate your support for the above proposed enhancements so this guarantee program can meet its full potential to spur needed business and economic development in our Native communities.

Respectfully submitted on behalf of:

The National Center for American Indian Enterprise Development

The National Congress of American Indians

The Native American Finance Officers Association

The Native American Contractors Association

The American Indian and Alaska Native Tourism Association

The Alaska Federation of Natives

The Native American Rights Fund

The Council of Energy Resource Tribes

The United South and Eastern Tribes

The National Indian Gaming Association

STATEMENT SUBMITTED BY KENT PAUL, CHIEF EXECUTIVE OFFICER, AMERIND RISK MANAGEMENT CORPORATION

STATEMENT OF KENT PAUL, CEO
AMERIND RISK MANAGEMENT CORPORATION
FOR THE
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
HEARING
ON
"OPPORTUNTIES AND CHALLENGES FOR ECONOMIC DEVELOPMENT IN INDIAN COUNTRY"

NOVEMBER 10, 2011

Chairman Johnson and Committee members, thank you for providing AMERIND Risk Management Corporation ("AMERIND") the opportunity to present testimony on the opportunities and challenges for economic development in Indian Country.

I. Introduction

AMERIND has long been the leading Tribal organization that both advocates for and provides insurance protection of over 400 Tribes and their Tribal members of our wholly tribal-owned self-insurance entity. We see the lack of adequate insurance protection and the high percentage of uninsured property in Indian Country both as major risks to the health and safety of Tribal communities and as significant impediments to successful business and economic development. For 25 years, AMERIND has been proactive in tackling risk problems by providing technical assistance to Tribes and their members on various methods to protect life, property and sovereignty within their communities. We have created and administer various self-insurance plans for Tribes that partially fill the void left by the departure of all but about 5 private insurance companies providing any meaningful protection in our Native communities across the United States.

AMERIND is unique in several ways. It is the only wholly Tribal-owned insurer serving Indian Country, and one of only two Federal corporations with multiple Tribes as owners that are chartered under Section 17 of the Indian Reorganization Act of 1934. The nineteen Pueblos in New Mexico created the first multi-Tribal-owned Section 17 corporation to promote

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economic development and marketing of Pueblo products. AMERIND operates under its Federal charter, sponsored by three Tribes (in New Mexico, Montana and Minnesota), with more than 400 Tribes as owners and beneficiaries of as many as four of its self-insurance risk pools. The Tribes launched this self-insurance initiative in 1986 as an alternative to fill a void left by the private insurance industry when it withdrew its support of housing subsidized by the Department of Housing and Urban Development ("HUD").

Through AMERIND's efforts over the past 25 years in protecting more than $10 billion worth of Federally subsidized property in Indian Country, we have an intimate knowledge of the issues and concerns regarding credit and insurance within the communities we serve. This testimony describes what we see as some of the major impediments to solving the problem of economic development in Indian Country.

II. Twin Problems of Lack of Credit and Insurance

For more than 30 years, the Federal government, Tribes and the private sector have debated many issues "surrounding" economic development in Indian Country, but successful solutions to overcome the major impediments have proven elusive. As the Committee members attending this hearing well understand, commerce and industry will not develop or survive in any community without access to "credit" and "insurance" (in this testimony, the term "insurance" means property and casualty insurance and surety bonding). For Tribal communities, especially those in remote areas, lack of credit and insurance poses tremendous challenges to business and economic development. Almost worse is the lack of understanding of how integral both credit and insurance are to such development. Government agencies and private financial institutions will not loan money without some sort of insurance that their investments will be protected, and borrowers cannot build or grow businesses without the added protection of insurance.

Over the last 40-50 years, the Federal Executive and Legislative Branches have taken some major steps forward to facilitate business and economic development in minority communities, including Tribal communities. The Small Business Administration ("SBA") programs to expand access to capital and to government contracting have been enhanced. The Department of Commerce created the Minority Business Development Agency ("MBDA") pursuant to President Richard Nixon's Executive Order ("EO") 14358 in 1969,

and EO 11625 in 1971 to provide additional managerial and technical assistance to disadvantaged businesses through what have become MBDA's Minority and Native American Business Enterprise Centers.

President Clinton issued EO 13170 building on EO 11625 and instructed Commerce, SBA and other departments and agencies with procurement authority to increase access for minority businesses to federal contracting opportunities by setting and achieving goals, encouraging mentor-protégé programs, and offering technical assistance programs to help minority businesses develop their products, skills, business planning practices, and market techniques, among other activities. His action was based on his Administration's substantial compilation of academic research and state and local government disparity studies, and records of 30 Congressional hearings between 1980 and 1996 identifying discriminatory and other practices adversely affecting racial minorities trying to access capital and federal contracts. 61 Fed. Reg. 26050 (May 23, 1996). An update of this useful compilation was presented at a September 2010 House Subcommittee hearing in which several government and private sector witnesses reported continuing problems of access to capital and surety bonding as a significant problem requiring a solution.[1]

A. Native CDFI Fund Initiatives

In another major step taken in the 1990s, the Clinton Administration worked with Congress to create the Community Development Financial Institutions Fund ("CDFI Fund"). This program has spawned and grown hundreds of community development financial institutions ("CDFIs") in underserved communities across the country. With careful structuring by the CDFI Fund, and continuing support from the leadership of this Committee, the Native American CDFI Assistance Program developed and has been instrumental in sprouting Native CDFIs throughout Indian Country, and launching much needed financial literacy and small business entrepreneurial development training. This successful initiative has lowered some of the barriers to

[1] *See,* Minority Contracting: Opportunities and Challenges for Current and Future Minority-Owned Businesses, Hearing Before the H. Com. On Oversight and Government Reform, Subcom. on Government Management, Organization and Procurement, 111th Cong. (Sept. 22, 2010)(Report entitled "Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: An Update to the May 23, 1996 Review of Barriers for Minority- and Women-Owned Businesses").

accessing credit in Indian Country. Access to surety bonding is a totally different story, however.

B. Surety Bonding Initiative

Much attention focused on the Nation's banking sector since 2008, and credit tightening that has nearly eliminated lending to small businesses. Passing somewhat under the radar screen has been the impact on small business contractors of the substantially tightened underwriting standards of the surety industry, and company consolidations in that industry. The results have been restored profitability for sureties and reduced bonding for Native and other minority-owned contractors. Traditional lenders and sureties have tended to avoid these contractors, or offered them services only at high rates or with unreasonably high cash collateral requirements. With financial and bonding costs so high, contractors have found it nearly impossible to price their bids competitively for construction or other contracting work and be seriously considered when contracts are awarded. Even with contracts set aside for minority and small businesses, and more contracting spurred by enactment of the American Reinvestment and Recovery Act, many minority contractors lost out on substantial contracting opportunities.[2]

President Barack Obama issued a Presidential Memorandum of April 2010 to establish the Interagency Task Force on Federal Contracting Opportunities for Small Businesses. He charged the Task Force to develop proposals and recommendations on: using innovative strategies to increase opportunities for small business contractors; removing barriers to participation by small businesses in the federal marketplace by utilizing new technologies to enhance the effectiveness and efficiency of federal program managers, acquisition officials, federal small business program offices, and procurement center representatives in providing access to these opportunities; and

[2] *See, e.g.,* Jesse Washington, Associated Press, "**Stimulus Watch – Less Stimulus for Minority Firms**" (March 7, 2010), "Hispanic and black businesses are receiving a disproportionately small number of federal stimulus contracts, creating a rising chorus of demands for the Obama administration to be more inclusive and more closely track who receives government financed work. Latinos and blacks have faced obstacles to winning government contracts long before the stimulus. They own 6.8 and 5.2 percent of all businesses, respectively, according to census figures. Yet Latino-owned businesses have received only 1.7 percent of $46 billion in federal stimulus contracts recorded in U.S. government data, and black-owned businesses have received just 1.1 percent."

establishing policies, including revisions of existing policies whether necessary or appropriate to effectuate the objectives of the Memorandum. 75 Fed. Reg. 22499 (April 26, 2010).

In July 2010, the Inter-Agency Task Force responded with proposals and recommendations, including one that focused on Surety Bonding. It called for a full review of the SBA's Surety Bond Program, the financial products it offers, and its current funding to determine if it is meeting the current needs of small businesses. The report cited the Miller Act, applicable to at all federal construction contracts valued at more than $100,000 for the construction, alteration, or repair of any federal building or public work.[3] Most state, county and local governments' contracts, as well as many commercial contracts, now contain similar bonding requirements. The report noted that SBA's Surety Bond Program has experienced a significant decrease in the number of surety bonding guarantees issued over the last 7 years, an indication that the surety industry is not interested in using the guarantees to support bonding of small businesses that do not meet the industry's rigorous underwriting requirements. The report recommended that SBA reevaluate its Surety Bond Program to reflect changes in the construction industry and to foster growth and support of small businesses.

So far, the outcome of the Task Force recommendations seem to be efforts to streamline somewhat the process of applying for an SBA surety bond guarantee and to calls for increasing to the current limit of $2 million up to at least $5 million for the total value that the SBA may guarantee if an SBA approved surety company agrees to bond a small business contractor. These steps tend to benefit the surety companies more than they help small, especially small disadvantaged businesses gain more access to affordable surety bonding. A government guarantee would help minority- and Native-owned contractors much more directly if the guarantee backed up loans for working capital. This approach would beef up a contractor's balance sheet so as to present less of a risk to a surety company considering whether to bond the contractor's performance. As for Tribally owned contractors that

[3]The Miller Act, 40 U.S.C. §§ 3131-3134, requires a contractor on a federal project to post two bonds: 1) a performance bond in an amount the contracting officer regards as adequate to protect the federal government; and 2) a separate payment bond for the protection of suppliers of labor and materials in an amount that is (a) not less than the performance bond, and (b) equal to the total amount payable by the terms of the contract, unless the contracting officer makes a written determination that a payment bond in that amount is impractical. A corporate surety company issuing these bonds must be listed as a qualified surety on the **Treasury List** issued by the U.S. Department of the Treasury each year.

sureties tend to avoid because of fear or misunderstanding of sovereign immunity constraints, the BIA could consider the option of using the Indian Loan Guarantee Program to guarantee the Tribal enterprise's working capital, or a new type of insurance product could be developed to provide insurance coverage in the event of a default or assertion of sovereign immunity. That kind of protection could be sufficient incentive for surety companies to agree to guarantee a Tribal contractor's contract performance.

These kinds of initiatives can help minority- and Native-owned businesses and Tribally-owned enterprises in their quests to obtain financing and bonding. Another key to their potential success can be effective and accessible technical assistance services. Many purveyors of these services exist already, housed within MBDA's Minority and Native American Enterprise Centers and SBA's Small Business Development Centers, Veterans Business Centers, Women's Business Centers, SCORE centers. For more defense and other contracting guidance, the Defense Logistics Agency supports a network of Procurement Technical Assistance Centers ("PTACs"), including six American Indian PTACs. Yet, many underserved companies lack the capacity, both in financial and human resources, to get to these centers or otherwise navigate effectively through the myriad of federal and state programs, insurance and surety company programs, and private technical assistance programs. Ideal would be a 24/7 call center operation, staffed with technical assistance providers who could be available to provide guidance whenever a Native entrepreneur has questions about accounting, potential sources of financing or bonding, credit and bonding requirements, federal procurement rules, and myriad other quagmires.

III. Serious Gaps in Insurance Coverage

A. General Misunderstanding of Insurance

Just as Tribes and Tribal members need more financial literacy education and training, they would benefit greatly from more training in planning, risk management and insurance protection. AMERIND provides such training for its member Tribes, but much more attention should be give to the importance of insurance to business and economic development. It seems that very little Congressional attention has focused on how much or even whether insurance is accessible in Indian Country, until just recently. When this Committee considered legislation eventually enacted as the Dodd-Frank

Wall Street Reform and Consumer Protection Act, AMERIND urged that language be included to ensure that the Federal Insurance Office ("FIO") consults with Indian Tribes and their wholly-owned Tribal insurance entities on insurance regulatory issues. We were gratified that the Senate Committee Report included language to this effect. As a consequence, AMERIND will have an opportunity to meet with the new FIO, provide comments in response to the FIO's October 17, 2011 Notice and request for comments due December 16, 2011, and monitor the FIO's deliberations for its study and report due early next year to Congress.

B. Flood Insurance

More recently, the Senate Committee on Indian Affairs held an important Oversight Hearing on July 21, 2011 entitled: "Facing Floods and Fires – Emergency Preparedness for Natural Disasters in Native Communities." During the hearing, the Federal Emergency Management Agency ("FEMA") witness explained some of the outreach efforts made in recent years to educate Tribes and encourage more emergency preparedness planning, risk mitigation and insurance coverage. The question raised often was why so few Tribes are participating in the National Flood Insurance Program ("NFIP"). Less attention focused on why so few Tribal communities are even eligible for NFIP participation. If a Tribal or any other community (homes and private businesses) is **not** located within a FEMA mapped and designated flood zone, it is not eligible to participate in the NFIP. Without access to national flood insurance, Tribal communities may be eligible for a "Preferred" policy, but only if the community has taken mitigation steps. If no insurance coverage is in place when flooding damages or destroys properties in a Tribal community, about the only relief that may be available to decimated Tribal enterprises or Native-owned businesses is an SBA disaster loan. FEMA has not yet completed the task of mapping all watershed areas susceptible to flooding. Given the size of the United States, FEMA recognizes that it is not feasible to map every acre and thus has determined that it will focus on high density (population) watershed areas in its mapping efforts. This approach could leave about 20% of the country unmapped for flood determination, including most Tribal communities that are located in very rural, unpopulated areas.

Another coverage gap exists where Federal agencies have funded projects in Indian Country and require the Tribal recipients to protect themselves and the government's investments from flood risks. For example, HUD requires Tribal housing entities to carry flood insurance, in addition to regular property insurance, for their HUD-assisted housing. Since many of these Tribal housing entities serve Tribal communities that are not located in FEMA flood mapped areas, they are not eligible to purchase national flood insurance. In other words, these Tribal housing entities are violating a regulatory requirement with which compliance is impossible.

Fortunately, this Committee has recognized that serious gaps exist in NFIP coverage and Tribal community coverage access, as is clear from provisions approved by the Committee in its "Flood Insurance Reform and Modernization Act of 2011" finding that only 45 of 565 Tribes participate in the NFIP. The bill calls for a Government Accountability Office ("GAO") study and report on the factors contributing to the current rates of Tribes' participation, methods of encouraging participation in the NFIP, steps FEMA should take to increase awareness and encourage participation, and any legislative changes that would encourage Tribes' participation. AMERIND commends the Committee for requiring the GAO to carry out the study in coordination and consultation with Tribes. AMERIND strongly recommends that, during further Senate deliberations, the Committee includes additional language (underlined) so that the provision reads "consultation with Indian tribes, the administrators of their self-insurance plans" to ensure that GAO gains the knowledge of Tribal self-insurance plan administrators who cope daily with insurance coverage gaps in Tribal communities and have the ability to develop coverage solutions that better meet Tribal needs and therefore could encourage better participation.

IV. Tribal Self-Insurance Approach

Based on the federal-tribal government relationship, generally the States do not have authority to regulate Tribes unless authority is granted by a specific federal law or approved by a Tribe. Regulation of Tribes and tribal business activities, including self-insurance, falls within the purview of tribal or federal statutes and regulations. In the business of insurance, State insurance

regulations do not apply to a Tribe unless the Tribe consents to such state regulation. As sovereigns, Tribes possess the authority to create their own insurance codes and operate Tribally-owned insurance entities under them. Although a Tribe may choose to license an insurance company under State law and adhere to State rules and regulations, very few Tribes opt to be subservient to State regulation. When Tribes develop their own insurance rules, and license Tribal-owned insurance entities under them, those Tribal rules apply to Tribal instrumentalities, insurance entities, companies, and Tribal members -- within the Tribe's sovereign jurisdiction.

Very few of the 565 Tribes individually have developed their own insurance codes and companies. Until the 1980s, what limited private insurance coverage was purchased by HUD under one master policy to protect their housing built in Tribal communities with HUD funds. As the rates and terms for private property insurance became unreasonable, however, HUDB began discussions with Tribal housing leaders about the Tribes collectively forming a self-insurance risk pool. HUD worked out arrangements whereby 145 Tribal housing authorities agreed to pool their HUD funds allocable to cover premiums for the insurance coverage required by HUD. That Tribal self-insurance risk pool later became formalized as AMERIND, a wholly tribally owned non-profit entity sponsored by the Confederated Tribes of Salish and Kootenai, Red Lake Band of Chippewa Indians, and Pueblo of Santa Ana, and organized under a federal charter approved by the Bureau of Indian Affairs ("BIA"), pursuant to Section 17 of the Indian Reorganization Act. AMERIND's Section 17 federal charter authorizes it to provide property, liability and worker's compensation protection exclusively to Tribes and their Tribal housing entities, not only for their HUD-assisted housing but also for other properties supported by other federal agencies, such as the BIA, Indian Health Service, and the U.S. Department of Agriculture "(USDA") within Indian Country as defined in 18 U.S.C. § 1151 (Indian reservations, restricted allotments or dependent Indian communities).

Over the years, AMERIND has grown its original self-governance risk pool focused on HUD-assisted housing, and created three more risk pools to provide other types of coverage. As a risk management company, AMERIND advocates and provides technical assistance for protection of life, property and sovereignty. Unlike the private insurance industry that is bound by

sometimes inflexible and often conflicting rules and regulations of different States, AMERIND operates under the sovereign powers of the Tribes we serve and with the flexibility and responsiveness to meet their needs and those of their members and shareholders of their Native communities. We create cost-effective, sustainable programs that address the different traditions, customs and coverage needs of our member Tribes, and we work hard to keep rates affordable because so many Tribal communities have no alternative sources of protection. AMERIND's tailors its policies and works out rates that often fall 25% below those of traditional insurers. We have faced significant catastrophic events and survived each and every one of them with fast and efficient responses to rebuild and replace property that we insured. AMERIND now protects more than $8 billion in replacement value for property located within Tribal communities. We have repaired or replaced more than $300 million in property and paid more than $10 million to defend and protect customers for their legal liabilities.

To ensure that AMERIND's operations are fully accountable to our member Tribes, an independent regulatory commission was established in 2008 to provide an independent compliance review of AMERIND business activities in relation to the self-imposed regulations. The commission meets in July each year with the AMERIND Board of Directors to participate in strategic planning and to provide input to the Board regarding compliance. The Commission meets as needed for the balance of the year whenever a new program or a change in program is considered by the Board. In addition, AMERIND applied for the opt-in federal regulatory arrangement that HUD established in regulations promulgated after enactment of the Native American Housing and Self-Determination Act ("NAHASDA"). In keeping with the Tribal Self-Determination intent and purposes of that Act, HUD recognized that a federal-tribal regulatory relationship should govern if a tribal plan of self-insurance seeks to provide insurance coverage for projects involving HUD funding. Therefore, HUD published proposed rules, reviewed extensive comments, and promulgated regulations allowing a tribal self-insurance plan to apply for approval to provide insurance coverage for NAHASDA-assisted Indian housing under rigorous requirements in 24 C.F.R. § 1000.139. The preamble to HUD's final rule noted that preemption ensures a HUD-approved tribal self-insurance plan "will not be subject to conflicting state laws and widely varying and costly requirements." 72 Fed. Reg. 29738 (May 29,

2007). AMERIND opted to apply for HUD approval of its self-insurance plan, received approval, and operates as the only federally regulated insurance entity of the 22 insurance entities protecting HUD-assisted low income housing (the other 21 are state-regulated). In sum, AMERIND's operations must comply with its tribal self-governance codes, its independent insurance commission oversight requirements, BIA's requirements for Section 17 corporations, and HUD's federal regulatory requirements.

HUD's opt-in regulatory approach is an ideal model for delivery of insurance coverage in Indian Country because it gives Tribes, as sovereigns, both options and certainty. A Tribe now may opt to subject itself to State insurance regulation if it purchases insurance from a State regulated insurer. If a Tribe, or Tribes collectively, choose not to be governed by State regulations, Federal-tribal regulatory governance is appropriate for any Tribal self-insurance plan seeking to offer property and other types of insurance to protect Tribal property, Tribal members, and Federally-funded projects in Indian Country as defined in 25 U.S.C. § 1151. HUD's regulatory model also provides certainty by setting out detailed criteria (including annual reporting, audits and actuarial reviews) that a Tribal self-insurance plan must meet if it opts to apply for and become a Federally approved plan of Tribal-self insurance. Such a plan could then offer and service insurance products on an individual Tribe's reservation or on other reservations of Tribes in other States and elsewhere in Indian Country without State regulatory intervention. The rules for financial integrity, consumer protection, and coverage documentation would be consistent for all Tribal insurance entities that opt for and receive Federal approval. This approach preserves Tribal sovereignty and promotes certainty, uniformity, and affordability through shared costs for shared risks.

Working with HUD, AMERIND has fashioned a partial solution to address the serious gap in flood insurance in Indian Country. Since 2002, AMERIND has provided an alternative flood program that offers up to $15,000 in flood coverage per structure insured. We determined the average flood loss over time was $7,500 and chose to double the average as our limit of coverage. Though not as comprehensive as the NFIP, AMERIND's policy offers extraordinary coverage for a mere $10 per year borne by each policyholder in the risk pool of NAHASDA-assisted housing. When Hurricane Katrina

struck the Gulf Coast, AMERIND responded rapidly with resources for affected Tribal communities. Unlike State Farm and other insurance companies that chose to go to court to determine if Katrina was a "windstorm or flood" – before responding to claims – AMERIND remediated the damage to its insured members, regardless of the peril involved. Such consumer protection and affordability are both desirable and necessary, and impossible to achieve under the NFIP's current framework. A snapshot of AMERIND's performance record is attached (see Attachment 1).

AMERIND has the capability and desire to provide broader protection for the Tribal communities it serves, especially protection from flooding. Since the NFIP is a Federal insurance program, AMERIND believes that a solution can be developed to strengthen the response when flood disaster strikes in Indian Country. For example, FEMA could recognize AMERIND as a "Write Your Own" organization to serve those Tribal communities eligible for the NIFP. AMERIND could help provide the additional technical assistance that will be needed to educate Tribal communities about the wisdom and need to plan for and mitigate their flood risks and what steps to take to mitigate and protect against flooding and other risks. This outreach must occur, not only in NFIP-eligible Tribal communities, but also in Tribal communities that are mapped but not yet in compliance with flood mitigation protocols, and those communities not yet mapped but vulnerable to flood loss.

AMERIND also believes a risk retention pool of some type should be created for the peril of flood in Tribal communities that are not currently mapped or may never be mapped due to their remote, low density locations. This risk pool could offer direct response to flood damage in Indian Country or could offer reinsurance protection to Tribal self-insurance plans or Tribal risk sharing plans. Flood loss in Indian Country is a real threat, as evidenced by the substantial losses in 2011 and must be mitigated and protected against. Whether included in the pending NFIP legislation, or developed as a specific flood program, steps should be taken to reduce the impact of flooding to homes and infrastructure in Indian Country that is not currently addressed by the NFIP. AMERIND is prepared to participate in and support every opportunity to encourage Tribal communities to protect themselves from flood peril, as is the National Congress of American Indians ("NCAI") whose 2011 Annual Meeting just approved NCAI Resolution #PDX-11-052 titled:

"Support for Tribal Models for Disaster Planning and Protection Provided by Approved Plans of Tribal Self-Insurance" (see Attachment 2).

V. General Observations

There is no doubt that the Federal government, since the 1800s, has recognized a fundamental difference in its relationship with and responsibility to Tribes. In exchange for Tribes relocating to some of the most desolate parts of the United States, the Federal government agreed in Treaties and in subsequent Congressional Acts to provide for the welfare of Tribes and Tribal members. Other than the right of sovereign status, there is nothing more important to Tribes than this government-to-government relationship and promise to provide. Unfortunately, Indian people make up only 1% of the U.S. population and Congress routinely forgets its responsibilities to Tribes by failing to include language in federal legislation of every type that might affect life and opportunity in Indian Country.

In Indian Country there are a number of impediments, not insurmountable, that preclude or restrict access to credit and insurance.

1. The federal government has a "trust responsibility" for Tribes that we do not see in any other segment of commerce and industry. Potential financial and other business partners looking to invest in Indian Country want to own or at least protect their investments. Having to deal with Federal approvals attendant to Federal trust responsibilities, and Tribal sovereign immunity, tend to make investments unattractive.

2. Lack of Tribal tax revenue is a huge impediment. Congressional appropriations provide some infrastructure funding for Tribes, but Tribes lack equivalent powers that State and local governments have to impose a variety of taxes on residents and visitors or to issue bonds to finance roads, schools, water, sewer, sanitation and other similar community needs. Without the ability to raise tax revenue or issue tax exempt bonds readily, Tribes are deemed a poor credit risk by the financial sector. Having to "wait for a congressional appropriation" -- especially under the current partisan political process -- to pay the bills is commensurate with "starvation" for most Tribes.

3. Lack of standard or any "uniform commercial codes" among the 565 federally recognized Indian Tribes stymies economic development within Indian Country, as several of the witnesses at this hearing have noted. If commerce and industry are to prosper in Indian Country, the rules of engagement need to be better known and more uniform.

4. Lack of uniformity in Federal agency requirements, as well as their interpretation and enforcement at the local level, further confounds business and economic development in Indian Country. A Tribe could talk with the same agency but different district offices and get two different opinions on how a federal rule is to be applied. The shear cost to administer and navigate just the federal procurement policies of the various federal agencies is far beyond the human and financial capabilities of most Tribes.

5. More than 1600 insurance companies operate within the United States. Only two of those companies are active in Indian Country. In 1986, Tribes formed a self-insurance pool to help improve availability and cost of insurance. Lack of competition does not promote competitive pricing or access to needed protection. Federal grants and appropriations often incorporated insurance requirements without adequate, or any, understanding by Congress and Federal bureaucrats that insurance is not readily available to Tribes. As noted above, flood insurance is one example of a coverage that is not available to most Tribes. Banks will not lend and federal appropriations not supposed to be used in areas subject to flooding unless federal flood insurance is purchased. Since most Tribal communities have not yet been mapped for flood determination by FEMA, the NFIP is not made available to these communities. As just one example, HUD provides more than $500 million annually for Indian housing and requires that housing to be protected from floods and other perils. HUD and Tribal funding recipients are out of compliance with this flood insurance requirement.

6. Under the McCarran-Ferguson Act, Congress gave the prevue of insurance to the States. Tribes and States are equal sovereigns but the Federal government has granted a "government-to-government" relationship to Tribes. For the most part, unless agreed to in a compact, Tribal governments and State governments do not interact.

Federal and State case law continue to support that State insurance regulations do not apply within the lands of a federally recognized Indian nation. As a result, there is a regulatory void regarding insurance in Indian Country. Additionally, there is a void in consumer protection as well.

7. Tribal courts' jurisdiction and administration operate differently than State courts. Indian people are subject to an Indian Civil Rights Act rather than the civil rights granted to all other citizens of the United States. Employment rights and concerns differ in Tribal communities. There are significant misunderstandings by non-Indian employees working on an Indian reservation. Tribes, for the most part, do not do a good job of communicating the differences and employees assume wrongly that the rights they enjoyed under State law follow them into Indian Country.

The seven impediments we have identified in this testimony play a significant role in restricting access to credit and insurance. Without one, access to the other is significantly impeded, if not impossible, as is the ability to develop commerce and industry in Indian Country.

VI. Recommendations

Recommended solutions for eliminating the identified impediments to credit and insurance are:

1. Create a federal bank for Indian Country or an Indian Country division of the proposed National Infrastructure Bank. A Federal Indian Country Bank could centralize all appropriations and lending through this one national bank. Branch banks could be geographically located to serve the banking and credit needs of the Tribal communities the branches serve. These branches could be the repository for individual deposits and checking accounts as well as provide for the credit needs of the community. Federal funding for Indian Country programs could be funneled through the national Indian bank rather that through the various Federal agencies to streamline funds distribution and build banking relationships between the Tribes and the bank.

2. Create an alternative surety bonding program for Tribes and minorities that allows them to compete on a more level playing field. All Federal guarantee programs currently reward a bank or surety company and do nothing to increase access for the businesses that need bonding to compete effectively for Federal and other government and commercial contracts that require contractors to secure bid and performance bonds. Banks do not lend if working capital is insufficient and surety companies will not bond a company that does not have adequate working capital. For the government to guarantee a loan or a bond does not make the risk any better – thus the bank and surety do not change their underwriting standards because a risk is guaranteed by the government. The Federal guarantees should be redirected to working capital guarantees to enable small businesses to increase their access to credit and surety bonding. The current guarantee programs are "backwards thinking" and need to be changed to be more effective.

3. Establish an optional federal regulatory authority for insurance in Indian Country. Tribes could opt-in to comply with federal rules for developing plans of self-insurance, captives or operating an insurance entity serving Tribes beyond their own reservation but still in Indian Country. An opt-in Federal regulatory approach would go a long way in providing consumer protection and standardizing the insurance rules and regulations for Indian Country. With more certainty and affordability, Tribes and their investment partners could forge stronger, more reliable working relationships and enjoy greater success in launching and completing economic development projects.

4. Ensure that any legislation that could affect insurance coverage in Indian country, or regulatory implementation of enactments in this realm, require consultation with Tribes and with administrators or their Tribal self-insurance plans.

5. Create a better screening process by which all proposed legislation must be reviewed for its impact on Indian Country before it is debated and becomes law.

The urgency for action is now to develop and implement a plan that will bring credit and insurance to Tribal communities. Tribal self-determination can lead to solutions that best address the problems, especially when the private sector lacks motivation or incentive to bring affordable credit and

insurance to Indian Country. The Federal government has a moral and legal responsibility to uphold its commitment to Indian Country and must take the necessary actions to foster banks, insurance alternatives and rules that will enable Tribes to compete in the 21st century.

AMERIND appreciates the opportunity to present its comments and looks forward to working with the Committee members and staff on ideas and proposals as deliberations progress on these critically important issues.

Attachments (2)

1. AMERIND Performance Charts
2. NCAI Resolution #PDX-11-052

Attachment I

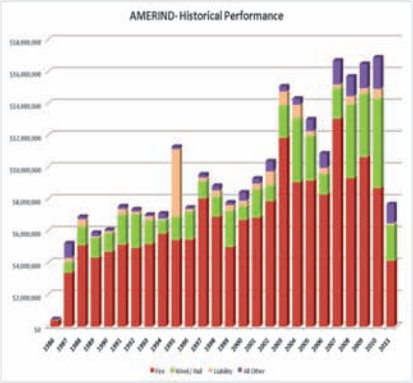
AMERIND
Risk Management Corporation

AMERIND: Wholly Tribal-Owned Risk Sharing

AMERIND was organized in 1986 as a collaborative program between the Department of Housing and Urban Development ("HUD") and 145 Indian housing authorities to provide protection for low income housing located within Indian communities. Since 1986, AMERIND has re-organized as a federal corporation chartered under Section 17 of the Indian Reorganization Act, sponsored by the Confederated Tribes of Salish and Kootenai, the Red Lake Band of Chippewa Indians and the Pueblo of Santa Ana. Owned by over 400 Tribes, AMERIND operates on tribal lands, is not-for-profit, and administers 4 distinct risk sharing pools that protect $9 billion in property replacement value, more than 55,000 Native American family homes, and more than 25,000 employees from work related injuries.

As a risk management company, AMERIND emphasizes advocacy and technical assistance to protect life, property and sovereignty. AMERIND operates under the sovereign powers of the Tribes we serve and with the flexibility and responsiveness to meet their needs and those of their members and shareholders of their Native communities. We create cost-effective and sustainable programs that address the different traditions and customs of our member Tribes. One size does not fit all. It is important that we maintain affordability and sustainability because so many Native communities do not have alternative sources of protection.

AMERIND's Problem Solving Approach



For 25 years, AMERIND has been a shining example of what Tribes can do when they work together. With limited resources, we have provided greater technical assistance and much needed insurance protection for Tribal governments, businesses, and individuals in most of the federally recognized Indian reservations. We have faced major catastrophic events and tackled each one with fast and efficient responses to rebuild and replace property that we insured. Since 1986, AMERIND has repaired or replaced more than $300 million in reservation property (Graph 1).

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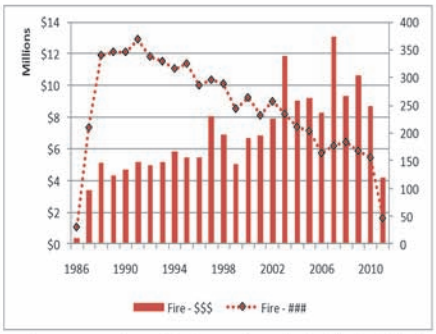
Fax: (505) 404-5001
(800) 388-7475

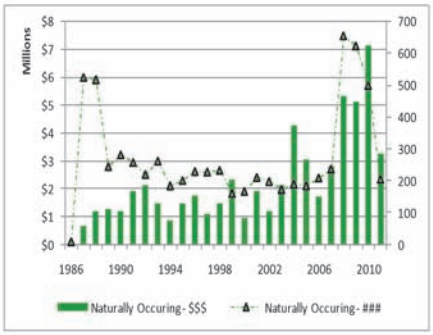
AMERIND Provides Outreach, Training, and Collaboration

AMERIND is the only Native American organization providing outreach, training, and collaboration regarding financial protection in Indian Country. Despite 25 years of continuous operation, we are still a "best kept secret" among Tribes and the federal government. With existing relationships with more than 400 Tribes, AMERIND has so much to offer in bridging the communication and technical assistance gaps between the federal government and Tribes.



AMERIND created its Face-to-Face Opportunities Creating Unique Safety Services (FOCUS) program to assist Tribes that have experienced above normal fire incidents. We have helped these Tribes work on grassroots steps to educate and improve protection for their communities. Graph 2 shows the success of the FOCUS program. AMERIND invests in safety, education, training and prevention as a primary way to mitigate and control risk in Tribal communities – investments that result in cost savings and benefit to the communities.

AMERIND Addresses Increasing Naturally Occurring Events



Given increasing natural disasters (Graph 3), AMERIND has helped launch another coordination initiative within Indian Country to address disaster recovery. With tribal leaders in Southern California, AMERIND created the Tribal Risk and Emergency Management Association ("TREMA") to provide a forum for tribal risk managers and emergency responders to discuss specific challenges and strategies to respond to the increasing trend of naturally occurring disasters in Tribal communities. For flooding, AMERIND has responded to our Tribes needs by providing gap flood and earthquake coverage of $15,000 per structure in the Indian Housing Block Grant program because commercial coverage options are unavailable or excessively priced. AMERIND's flexibility, cultural sensitivity and diverse experience have produced a model of success.

Attachment II

ATTACHMENT 2

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Juana Majel Dixon
Pauma Band of Mission Indians

RECORDING SECRETARY
Edward Thomas
Central Council of Tlingit & Haida Indian Tribes of Alaska

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Bill Martin
Central Council of Tlingit & Haida Indian Tribes of Alaska

EASTERN OKLAHOMA
S. Joe Crittenden
Cherokee Nation

GREAT PLAINS
Robert Shepherd
Sisseton Wahpeton

MIDWEST
Matthew Wesaw
Pokagon Band of Potawatomi

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Fawn Sharp
Quinault Indian Nation

PACIFIC
Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN
Scott Russell
Crow Tribe

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Robert Tippeconnie
Comanche Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh

WESTERN
Ned Norris, Jr
Tohono O'odham Nation

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

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The National Congress of American Indians
Resolution #PDX-11-052

TITLE: Support for Tribal Models for Disaster Planning and Protection Provided by Approved Plans of Tribal Self-Insurance

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

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

WHEREAS, HUD recognized that tribal governments should be able to exercise their sovereign rights to determine how their wholly-owned self-insurance entities should be developed, governed and regulated; and

WHEREAS, HUD promulgated regulations for tribal self-insurance entities to opt to apply for and become federally approved plans of tribal self-insurance with annual reporting and audit requirements, actuarial reviews, and subject only to federal and tribal regulation, by preempting state insurance regulations; and

WHEREAS, HUD's opt-in arrangement for federal oversight of tribally-owned self-insurance entities can serve as a model for other federal agencies that must improve their protection of their federally assisted properties and other federal investments in Indian Country, and for the Department of Homeland Security (DHS) and its Federal Emergency Management Agency (FEMA) that must improve implementation of the National Flood Insurance Plan (NFIP) and other disaster assistance programs in Indian Country; and

WHEREAS, floods, earthquakes, fires and other disasters produce catastrophic damages that are unanticipated or exceed mitigation efforts or insurance protection throughout Indian Country and nationwide, and Congress enacted laws requiring the federal government to provide disaster responses when states, communities (defined to include tribal governments) and the private sector cannot, for example the National Flood Insurance Act with the NFIP mechanism for states, communities and the private sector to secure flood insurance protection from FEMA directly or through a "Write Your Own" insurance entity that sells NFIP policies to homeowners and businesses to help mitigate risk; and

WHEREAS, the NFIP's treatment of a tribal government as a "community" serves as a basis for FEMA to consider allowing a federally approved plan of tribal self-insurance to institute a "Write Your Own" (WYO) initiative to provide insurance protection for tribal communities eligible to participate in the NFIP, and HUD's opt-in regulatory framework can serve as a model for FEMA to consider and approve a "Write Your Own" designation for a tribal plan of self-insurance to offer national flood insurance policies; and

WHEREAS, of the tribal communities now eligible for NFIP participation, fewer than 50 are participating, and many others could be open to a tribal self-insurance approach, such as a WYO initiative, that could provide technical assistance on risk mitigation planning and movement toward full NFIP participation; and

WHEREAS, hundreds of other tribal communities are ineligible for national flood insurance because they are not located within a FEMA mapped and designated flood zone, and FEMA may not map these areas in the foreseeable future; and

WHEREAS, mounting NFIP debt and U.S. budget deficits will constrain funding for mapping, and emergency spending "after" disasters strike, making pre-planning and risk mitigation vital to minimizing damage and post-disaster costs; and

WHEREAS, the hundreds of tribal communities that are not currently mapped, or may never be mapped due to remote low density locations, need the protection that a pilot program could provide through use of the NFIP reinsurance plan to leverage a tribal self-insurance pool to provide insurance coverage to underserved tribal communities that have committed to complete emergency management and risk mitigation planning.

NOW THEREFORE BE IT RESOLVED, that Congress, DHS and FEMA be called upon to work with NCAI and others involved in tribal self-insurance to develop and approve statutory, regulatory or administrative provisions to allow approved plans of tribal self-insurance to offer national flood insurance and other insurance protection in Indian Country under federal-tribal governance arrangements that protect and promote tribal sovereignty and advance self-determination by assisting tribal communities to develop their own emergency management and risk mitigation plans and insurance coverage options; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Annual Session of the National Congress of American Indians, held at the Oregon Convention Center in Portland, Oregon on October 30 – November 4, 2011, with a quorum present.

President

ATTEST:

Recording Secretary

STATEMENT SUBMITTED BY BUFORD ROLIN, CHAIRMAN, POARCH BAND OF CREEK INDIANS

Statement of Buford Rolin, Chairman, Poarch Band of Creek Indians
Before the Senate Committee on Banking, Housing, and Urban Affairs
November 10, 2011

Chairman Johnson, Ranking Member Shelby and members of the Committee, I write on behalf of the Poarch Band of Creek Indians to thank you for holding this hearing to examine opportunities and challenges to economic development in Indian country. I want to personally thank Senator Shelby and his staff for bringing this hearing to our attention and for all the work that he has done for the great State of Alabama.

Today, I'd like to provide the Committee with information on the Poarch Band of Creek Indians' ("Poarch Creek") economy, and discuss some proposals that we believe would help our Tribe and other tribes nationwide.

The history of the Poarch Creek and our economy is a long and tortured road. The United States entered into a series of 13 treaties with the Creek Nation from 1790 to 1832, when many of our ancestors were forcibly removed from our homelands. Families making up the Poarch Creek stayed in the Alabama region after Removal, and "have existed as a distinct political unit since before the Creek War of 1813-14." *49 Federal Register at 24,083.* On August 11, 1984, the United States formally restored the Poarch Creek to federal recognition, restoring some of our aboriginal homelands to tribal control.

In January of 1988, the Poarch Creek Tribal Council chartered Creek Indian Enterprises (CIE). The primary goal of CIE is to be the economic development and management arm of the Tribe. CIE has a five-member board that acts on behalf of the tribe in regard to its existing business dealings and future economic development endeavors. The CIE Board of Directors and President are accountable for the administration and operation of all Tribal lease properties and its subsidiary enterprises. The primary obligation of CIE is to manage and operate the subject property in a manner, which best promotes the interests of the Tribe.

I'm proud to say that through good government, sound fiscal policies, and aggressive economic development, the state of the Poarch Creek economy is strong. Our economic base is built in part on gaming, but we have diversified beyond gaming to other business and governmental interests. Because of our work, our more than 3,000 tribal members have a much greater opportunity for higher education, improved health care, and hope for a better future.

In addition, Poarch Creek's economic endeavors have helped the State of Alabama and our nearby local communities. In 2012, Poarch Creek will fund 1,600 direct jobs and generate close to 8,000 total jobs for Alabama, 90% of which go to non-Indians. While Poarch Creek is a sovereign government, not subject to direct taxation, from 2008-2011, the Tribe will have paid more than $280 million in indirect employment, payroll, sales, and other taxes to the State of Alabama. We have also made significant charitable contributions to the State and local governments to help improve our schools, medical care, community development, police and fire services, and roads and other essential infrastructure.

While the Poarch economy is doing well thanks to our stable government and effective development, many barriers remain to our community and much of Indian country. Indian country nationwide faces an average unemployment rate of 50%, the highest poverty levels in the Nation, a lack of access to capital and to financial institutions, and a desperate need for a strong tribal private sector. Many of these barriers are due to flawed federal laws and policies that acknowledge Indian tribes as governments (the U.S. Constitution specifically recognizes tribes as sovereigns in the Commerce Clause), while at the same time refusing to provide tribes with the same economic development tools that are available to other governments.

To address these barriers, first and foremost, the United States must reform its laws and policies on Indian lands. For nearly 150 years, the federal policies of Removal and Allotment stole hundreds of millions of acres of tribal homelands, devastating many tribal economies. In 1934, the U.S. sought to restore the tribal land base through enactment of the Indian Reorganization Act (IRA). Under the IRA, from 1934 to 2009, the U.S. restored a small fraction of tribal landholdings through implementation of a rigorous but fair tribal land into trust process administered by the Department of the Interior.

However, in February of 2009, the U.S. Supreme Court, in *Carcieri v. Salazar*, upended 75 years of Republican and Democratic Administrative policy by questioning the Secretary's authority to place land into trust for all federally recognized Indian tribes. The results of the *Carcieri* decision across Indian country are widespread. The decision has placed an informal Administrative freeze on the land into trust process. It is deterring investment and economic development in Indian country. And it has the potential to open up past criminal convictions that were based on the fact that the crimes occurred on Indian lands.

For Poach, the decision has stalled our efforts to increase our land base to expand our health facility, which currently offers a very limited amount of services to our people. We urge the Committee to work with your Senate colleagues to address this decision and help improve tribal economies by passing S. 676.

In addition, Indian country has long needed a strong private sector. While many small businesses are suffering from the credit shortage caused by the recent Great Recession, small businesses in Indian country have faced a similar credit freeze for decades. This lack of access to capital has stunted the growth of a reservation private sector, which holds the key to bringing thousands of jobs to Indian country and bringing many reservations out of generational poverty.

In addition, outdated federal policies and cumbersome regulations have prevented small businesses from thriving, and have kept investment out of Indian country. While I believe that no government program can substitute for a good job that pays well, government does have an obligation and a role to play in creating conditions in Indian country that help businesses grow and hire new workers. We urge Congress and the Administration to foster a strong private sector in Indian country. In many cases, this means cutting the bureaucracy by streamlining and removing federal regulations that do not apply outside of Indian country such as the National Environmental Policy Act, to name just one. But it also means funding and improving some of the programs that are working so that they better meet the unique needs of Indian country.

To this end, the Poarch Band of Creek Indians endorses and urges this Committee to examine the proposals offered by Congressman Tom Cole in his bill H.R. 1599, the Indian Country Economic Development Act. This bill includes a number of provisions that would place tribal governments on par with state and local governments, giving us the tools needed to truly attain self-determination and economic self-sufficiency.

I thank you for this opportunity to briefly provide the views of the Poarch Band of Creek Indians, and I look forward to working with the Committee to help break down the barriers to economic development in Indian country.