



**UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS**

Oversight Field Hearing on

**“STRENGTHENING SELF-SUFFICIENCY: OVERCOMING BARRIERS TO
ECONOMIC DEVELOPMENT IN NATIVE COMMUNITIES”**

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Written Testimony of

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AND

TREASURER OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

On behalf of the Jamestown S'Klallam Tribe, I want to thank you Mr. Chairman and the Senators of this Committee for the opportunity to provide testimony on this very important topic of Overcoming Barriers to Economic Development in Native Communities.

General observations regarding Economic Development in Indian Country

Economic Development in Indian Country trails significantly behind the rest of the nation and the acute economic conditions experienced by our Tribal citizens are even more pronounced than those of the current economic crisis. Tribal citizens are more vulnerable to the impacts of the current economic conditions because Tribal governmental revenues depend entirely on effective economic development to support

nearly every aspect of reservation life and Tribal governance. However, chronic underfunding by the U.S. Government and the severe lack of private investment has left the economic potential of Indian Country unrealized. Tribes are forced to rely on our own economic ventures to generate revenue to support citizen programs and maintain government services for our people. Yet, Tribes are expected to meet these economic challenges with fewer resources and greater restrictions placed on vital economic financing tools and incentives. It stands to reason that Tribes should be given all of the tools and incentives available to other governments to raise and attract capital.

When given the right tools to exercise our inherent right of self-government, Tribes can effectively lift our communities out of poverty and fully participate in the American economy. It is not just our Tribal citizens who benefit from federal investment in our communities, surrounding communities, and at times, entire regions, are also beneficiaries of Tribal success. The severe critical barriers to development that exist in Indian Country are the result of many factors, including, past federal policies that were imposed on Tribes. Congress has an opportunity to reverse these trends that are impeding the success of Tribal economies by providing appropriate financing tools and tax incentives and dismantling existing barriers for Tribes to fully utilize programs and services. These efforts will ultimately benefit Tribal communities and stimulate economic growth that, in turn, builds a stronger America and creates jobs.

Tribal Self-Determination and Self-Governance works, but more investments would achieve even greater successes. Economic Development has been highly uneven, with many reservations remaining in great poverty. Regulations and legislation devised to address the needs of state and local government programs often neglect to include Tribes or promote ambiguous interpretation regarding Tribal participation. While this was not the intention of the legislation or regulations, resolving the uncertainty or unintended exclusion is an unfortunate means of promoting Tribal economies. Economic development is essential to our independence but we cannot achieve this without a strong revenue source.

The Jamestown S'Klallam Tribal accomplishments are a result of vision, a progressive attitude, hard work and a respectful relationship with the Federal government. Economic self-sufficiency will enable us to continue to diversify into alternative business opportunities, build stronger economic resources and diminish our dependence on the federal component of resources for the Tribe. We would like address and make recommendations of the following areas:

Small Business Association 8(a) Business Development Program

One of the most effective economic development programs for Tribes, especially rural Tribes, has been the Small Business Administration's (SBA) 8(a) program. Tribe's use the 8(a) program to sustain the economic well-being of entire communities. The program has demonstrated its effectiveness as a viable economic tool for all Tribal governments because it has proven successful regardless of a Tribe's location or size.

Despite the positive economic gains realized by Tribes and the demonstrated success of the program, the Native 8(a) program has been subject to more regulatory oversight than most other government contracting programs. Certain program provisions that were designed to promote Tribal participation are currently under scrutiny and are liable to be scaled back. For example, the newly imposed justification requirement for contracts exceeding \$20 million is arbitrary and perplexing at best, given the fact that this is a far lower threshold than that applied to other non-Tribal sole source awards. This program should be commended for job creation and improving the dire economic conditions of Native communities. It is unfathomable that there are efforts to debilitate the program when it is beginning to make a difference for so many economically distressed Tribal communities and is an affront to the federal-Tribal relationship.

The Native 8(a) program confirmed Congress' commitment to advance Tribal self-determination and self-sufficiency. Congress had the foresight to recognize that providing incentive tools for business development would be much more beneficial to Native communities than simply appropriating funds for economic development assistance.

Jamestown S'Klallam Tribe Native 8(a) Success

The SBA 8(a) program has opened up a whole new business sector for our Tribe creating new employment opportunities for our Tribal citizens and revenue sources for our Tribal programs including health care, education and community support services. The 8(a) program enables our Tribe to enter into federal markets previously precluded from Tribal operations. For example, the program has paved the way for JKT Construction (JKTC) to seek federal government construction projects and to form a Mentor Protégé relationship that has provided training and joint ventures, which has allowed our business to work on projects that we would not otherwise have had the funding resources to handle. The ability to contract over a term of years is critical to our Tribe's overall economic success and will greatly enhance our ability to provide critical government, social and cultural services to our citizens and build a solid infrastructure in

our community. This is economic development that will assist the Tribe in moving toward its goal of economic self-sufficiency.

We strongly urge the 8(a) program be left intact and subject to existing effective federal oversight mechanisms that are already in place. Participation of Native enterprises in the SBA's 8(a) Business Development Program has proven its importance to building strong Native economies and job opportunities, as well as employment for the surrounding communities.

Surety Bonding

There has been a long standing need for a Surety Bonding program for Indian Country. Bonding companies, uncomfortable and unfamiliar with sovereign Tribes, have been simply unwilling to provide bonding for Tribal construction projects. The perceived risk associated with sovereign immunity has precluded and even obstructed Tribally-owned construction companies from accessing surety bonds even when such immunity is waived for certain contracts. This industry impediment clearly suppresses our business opportunities because small business contractors are being required to show that they can obtain surety bonds to perform subcontract work.

There is an obvious need for a surety bonding program that would allow Tribal businesses to effectively compete without having to rely on an additional partner for the sole purpose of bonding. In order for Tribes to compete for and secure contracting opportunities, we need Congressional support of programs that ensure access to surety bonding for eligible Indian-owned construction companies.

Although, construction is an area with a much higher probability of providing direct employment for Tribal citizens, surety bonding is one of the largest barriers for Tribes seeking entry and growth in this highly competitive and capital intensive sector.

Tribes therefore, urge Congress to authorize waivers for Tribes to facilitate entry and expansion into federal construction and explore options that will benefit contractors as opposed to sureties, such as loan guarantees for operating capital. Expansion of the Bureau of Indian Affairs (BIA) guaranteed loan program to include Surety Bonding guarantees will reduce the perceived risk associated with Tribal sovereign immunity that is assumed by insurance companies. It will also increase access to infrastructure and other construction related projects, and generate job opportunities and business growth during difficult economic times at no, or very limited, cost to the federal government.

Tribal Government Tax Status Act

We strongly urge that the Tribal Government Tax Status Act be amended so that Tribes have better access to secure bonding for economic development.

Although the intent of the Tribal Government Tax Status Act was to implement measures that would afford Tribes equal parity with their state and local governmental counterparts for purposes of issuing tax exempt debt, the law, as interpreted by the Internal Revenue Service (IRS), substantially limits the ability of Tribes to raise revenue for economic development activities that would generate new revenue for community-service purposes. The IRS has unduly and narrowly defined how it can be used to access financing to address community, governmental and economic development goals.

As a result of this limited and narrow interpretation of "essential governmental functions", Tribes are precluded from utilizing the same revenue raising authority and tax advantages that other governmental entities enjoy. Under the Internal Revenue Code, income accruing to state and local governments is not taxable. Tribal tax free bonds, however, can only be used for essential governmental functions, a restriction not imposed upon states and local governmental entities. In essence, Tribes are treated as political entity anomalies, enjoying some of the tax benefits of states and localities and suffering many of the burdens of ordinary tax payers. Congress has a trust obligation to ensure that Tribal governments are afforded an equal federal tax status.

As the federal budget becomes more restrictive, Tribal governments, like state and local governments will have to find new revenue sources to support the delivery of essential government services. If Tribes are not granted a tax and bonding status similar to states and local governments, Indian governments will not be able to stimulate development nor sustain governmental services for our Tribal citizens. States and local governments are able to levy property and income taxes upon their constituents in order to raise revenue for financing economic development ventures. Tribes, however, have virtually no corresponding tax-advantaged financing tools to promote economic development. The goal of the Tribal Government Tax Status Act of 1984 was to provide a mechanism that would address this financial void and provide Tribes with the types of financial tools that further the development of an environment necessary for economic and social self-sufficiency.

In 2009, the American Recovery and Reinvestment Act ("ARRA") authorized Tribal governments for the first time, to issue tax exempt bonds for private development activities in the same manner as state and local governments. Prior to the passage of

ARRA, tax exempt bonds issued by Tribal governments could only be used (with limited exceptions) for essential government purposes. ARRA lifted this restriction on a temporary, limited basis allowing Tribal economic development bonds to be issued subject to a \$2 billion cap.

We strongly urge this Committee to advance measures that would permanently authorize Indian Tribal governments to use qualified tax-exempt private activity bonds for similar types of projects and activities as those allowed for State and local governments.

Urgent Need to Enhance Access to Capital

Indian Country has been ignored by investors as a result of many factors, including, geographic isolation, lack of resources, and perceived political risk. The trust status of Tribal land precludes its use as collateral for financing economic development incentives. Furthermore, businesses that prefer fee ownership of a business site for tax-incentive purposes are discouraged from seeking business development opportunities in Indian Country. As a result, Tribes encounter countless barriers to acquiring developmental capital and conventional sources of credit to finance economic initiatives. Federal policies that ignore these barriers, or underestimate their significance, hold little potential for success.

Sustaining growth beyond the federal investment means having access to capital and incentives to achieve such goals. Access to capital is fundamentally an issue of equal opportunity for Tribal citizens. Congress can help support the development of Tribal financial institutions serving Indian Country and shape the services provided by outside financial institutions currently situated to aid Tribal governments and their citizens. It is urgent for Congress to correct the unfair and unequal treatment of access to capital as the private sector has available to them, particularly the corporate sector.

Loan Guarantee Programs

Guaranteed financing is needed for Tribal economic development projects. For over a decade, one of the Bureau of Indian Affairs (BIA)'s most successful programs is the Guaranteed Loan Program for businesses. This program provides an attractive incentives and assurances for banks to expand and underwrite loans in Indian country, assisting Tribes and their members in accessing capital and encouraging lending to Indian-owned businesses. Loan guarantees are also an attractive financial measure because they result in the leveraging of federal dollars. Federal program funding and guarantees have been critically important in support of developing an economic foundation.

This program, however, was targeted for deep cuts despite its positive returns because not all of the funds were allocated in a timely manner to Tribal entities. Tribes should not be forced to bear the brunt of the agencies failure to properly manage the program and dispense financing in a timely manner. The BIA Loan Guarantee Program is a very important tool for raising the level of Tribal Self-Sufficiency. If not for the BIA Guarantee Loan Program, many tribes would not, in most cases, be able to get loans from the standard sources available to other entities and businesses.

The BIA Loan Guarantee Program has been very instrumental to the Jamestown S'Klallam Tribe.

The BIA loan guarantees allowed Jamestown Properties, Inc. to construct needed facilities and create economic opportunities and jobs. The first BIA loan was used to guarantee a loan to construct two buildings on the Tribal campus. These buildings consist of the Community Center/Dental Clinic and the Social and Communities Services Building. The Community Center is the focal point of our Tribal campus and is used for Tribal events, as well as available for use by Tribal citizens. It is a business facility that brings great pride to the Tribe.

The Dental clinic which is located in the lower level of this building has created economic opportunities not only for the Tribe, but for the Tribal citizens employed there. The dental clinic sees both Tribal citizens, as well as members of the larger regional community. It creates resources to help fund the Tribal citizen dental program. The clinic is also one of the few clinics in the area that provides services to Medicaid dental patients. The Social and Community Services building houses Tribal programs which have a great impact on the Tribal citizens. These programs include youth, education, elders, and Indian Child Welfare.

Jamestown Properties also received loan guarantees to build the Longhouse Market and Deli. This building, which is leased to JKT Gaming, Inc., houses a unique and culturally stunning gas station and market. The Longhouse Market has proven to be highly successful not only in operating profits for the Tribe, but also increases the Tribe's tax base. Proceeds from the cigarette tax compact with the State of Washington helps provide funds for government services, which are severely underfunded by the Federal government. Fuel tax compact funds are used for needed transportation infrastructure projects. The Market has helped the Tribe diversify its economic base by providing non-gaming revenues.

Our Tribe urges the need for an enhanced loan guarantees for Tribal governments that will, at the very least, open the door to credit, reasonable rates, and the ability to repay

tax-exempt debt. Part of the Congressional and Federal rationale to cut back this program is that the program could be duplicating other services, such as the SBA loan programs. This assumption is wrong and will undermine the Tribes economic development efforts. This important program has very positive benefits and successes for Indian country. The default rate is low and key in assisting Tribes with economic development and providing additional jobs to Indian country. We respectfully urge this Committee to preserve and even enhance this successful program.

Conclusion

Investing in our Jamestown Tribal community and business operations and Tribes across Indian Country is worthwhile. The Tribe’s progressive approach has proven that a small Tribe can be a major force for good in the community-not only for Tribal citizens, but for the entire region. This success has led to a decreased dependence on federal funding, and the return of the independent, self-reliant nature that has always characterized the S’Klallam people. We effectively and efficiently combine federal and Tribal resources to support economic development projects.

When Congress invests in Indian Country, we prove to be good investments to strengthen our local, state and national economies. We can put our labor force to work right away, build our infrastructure for future growth, benefit surrounding communities, and most important, improve the health and well-being of our citizens, the goal of every government.

In conclusion, the Jamestown S’Klallam Tribe endorses and promotes the positions and recommendations of our National Inter-Tribal organizations, including the National Congress of American Indians (NCAI), the Native American Finance Officers Association (NAFOA) and the Native American Contractors Association (NACA). In particular, we respectfully request to include in the Congressional Record the briefing materials prepared by NCAI titled, “White House Native American Business Leaders Roundtable” and ask the Committee to support this proposal and the recommendations contained therein.

Thank you again for the opportunity to present these views. We look forward to continuing our work with the Committee in advancing these goals.