



# NATIONAL CONGRESS OF AMERICAN INDIANS

## SENATE COMMITTEE ON INDIAN AFFAIRS

### DEFICIT REDUCTION AND JOB CREATION: REGULATORY REFORM IN INDIAN COUNTRY

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December 1, 2011

#### ORAL TESTIMONY OF PRESIDENT JEFFERSON KEEL

Good afternoon, Chairman Akaka, Vice Chairman Barrasso, and members of the Committee. My name is Jefferson Keel and I serve as President of the National Congress of American Indians and the Lt. Governor of the Chickasaw Nation.

I want to address two primary themes in my testimony: (1) Honoring tribes as governments; and (2) Program flexibility to increase the return on the federal investment.

The members of this Committee know that uncertainty around Indian lands is a barrier to economic development that could be removed in an instant. Senator Akaka, you and Representative Cole got it right when you said in THIS Op-Ed piece that the *Carciere* fix is a no-cost way to build tribal economies. That certainty would have economic ripple effects that would be felt well beyond our reservations and it wouldn't cost a cent!

On the federal budget, we in Indian Country are in a challenging position after the collapse of the Super Committee. On the one hand, we have an Administration and Congress, especially Senators on this Committee, who have fought to bring Indian Country funding to a level that has allowed us to see real progress. And on the other hand, we have looming across-the-board budget cuts that threaten to undo all that good work.

While the focus of this hearing is on regulatory reform, I need to remind Congress that the federal government trust responsibility is not a discretionary choice, it is a solemn promise. We urge you to fight to hold Indian Country budgets harmless, and we truly need increases in key areas like law enforcement and education.

Also, it is critical that Congress and the Administration ensure equal access to tribes in all programs. An example where more work would bring major improvements is the American Jobs Act where including tribes alongside states and local governments to protect the jobs of teachers and first responders and build infrastructure would create significant economic opportunities.

Overall, NCAI is in favor of models like Self-Determination and the 477 program that permit tribes to design their own programs and services, build tribal capacity, and use federal funding more effectively. This could be expanded across the board to all federal agencies. This is exactly what we should be doing – spending more dollars and time on services and less on administrative burdens. Especially in areas like infrastructure and energy development.

In the area of workforce development, Indian Country has one of the youngest populations in the nation with 42 percent of Native people under the age of 25. Tribal colleges and universities are the key to workforce development training for thousands of Native people and other rural Americans. Including TCUs in federal workforce funding would create significant opportunities for new job creation.

Interpreting the Green Jobs Title of the Energy Independence and Security Act to include tribal governments, businesses, and veterans associations would allow direct access for programs and technical assistance that are a critical part of the national effort to create green jobs. The tribal set-aside should also be reinstated for the YouthBuild program to allow Native youth to develop critical job skills.

On access *to* capital, more than 10 years ago, the CDFI Fund reported a \$44 billion unmet need for capital in Indian Country. That number has only grown and there are specific, no-cost regulatory fixes.

- We urge the Committee to work with Treasury to ensure Tribal Economic Development Bond funding cap limits are adjusted to encompass larger-scale development projects.
- We also see significant potential in the expansion of the Bureau of Indian Affairs' guaranteed loan program to ensure access to surety bonding for eligible tribal and individual Indian-owned construction companies pursuing high-value projects.
- Match requirements for Native CDFIs applying for funds from the CDFI Fund should be eliminated or amended to allow Native CDFIs to use other federal government monies (such as HUD or USDA grants) as match funds.

The United Nations recently identified access to the internet as a basic human right. However, tribal communities continue to experience low access. Low cost solutions to facilitate the build out and deployment of broadband internet, telephone and radio access include:

- Reforming USDA lending policies to ensure tribal eligibility for loans.
- Establishing interagency collaboration between the Departments of Treasury, Agriculture, and Interior with tribes to identify financing options.
- Urge the FCC to provide tribal priority to available spectrum and offer it at discounted or reserved prices.

Expanded domestic energy production is a high priority and there are barriers that could be removed with a stroke of a pen. The BLM's discriminatory permit application fee to drill on tribal trust land could be rapidly addressed by issuing a ruling that exempts tribal trust land from the \$6,500 fee or lowers permit fees to a level comparable with state permits.

Tribes are eager to see passage of the HEARTH Act which would allow tribes to speed up lease approval on tribal lands.

We support the Tribal Energy Development and Self-Determination Act Amendments. This bill would reduce existing administrative burdens and tribes look forward to continuing our work with the Committee to enact the bill.

Thank you for your vision in focusing on the critical role tribes can play in creating jobs and getting America back to work. We look forward to seeing real change that will move Indian nations forward and contribute to a stronger America.





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## ATTACHMENTS TO ORAL TESTIMONY OF PRESIDENT JEFFERSON KEEL

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Macquelline Johnson Pata  
*Tlinait*

1. Program Flexibility Matrix – Summary of Attachment 2

2. Program Flexibility To Create Jobs And Grow Tribal Economies – Paper prepared for the 2011 White House Tribal Nations Conference

**PROGRAM FLEXIBILITY TO CREATE JOBS AND GROW TRIBAL ECONOMIES**  
**Summary of NCAI Program Flexibility Paper - Full Paper at [tinyurl.com/TNC2011](http://tinyurl.com/TNC2011)**

	Action	Implementation Partners
	<b>Protect the Indian Budget and fully implement relevant legislation</b>	
1	Advocate for full funding and implementation of TLOA, IHClA, and other key federal Indian programs	Administration and Congress
2	Protect the Indian budget from deficit reduction efforts	Administration and Congress
3	Ensure tribal participation in tax reform discussions and ensure equal access for tribes to existing and future incentives to promote access to capital	Department of Treasury
	<b>Recognizing Tribes as Nations in Policies and Regulations</b>	
4	Expand the Executive Order on Consultation to fully recognize in policy and practice that all federal agencies have a trust responsibility with tribal nations and they should demonstrate how that will be realized.	Executive Branch, President
5	Affirm tribal sovereignty and use executive powers to provide equal access to funding, adjust restrictive policies and regulations, and ensure tribes are involved in the rulemaking process	Executive Branch, President
6	Expand self-governance to encompass all relevant federal agencies	Executive Branch, President
7	Develop a list of all economic development programs that can be utilized by tribes and Native non-profits	Treasury, Bureau of Indian Affairs, SBA, Department of Agriculture
8	Utilize low-cost means to communicate opportunities to Indian Country	All federal agencies and departments
9	Develop a list of all economic development programs that currently exclude tribes and Native non-profits and make recommendations to include tribal governments alongside their state government peers and increase tribal access to all federal economic development programs	All federal agencies and departments

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<b>Expedite Administrative Processes that Affect Economic Development</b>		
10	Encourage the Secretary of the Interior to exercise his authority in a way that prioritizes and advances tribal economic development (e.g. giving priority to business development leases etc.)	Administration
11	Support Legislation, such as the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, which allow tribes great autonomy over processes which affect economic development in Indian Country, and S. 1684, the proposed Amendments to the Indian Tribal Energy Self-Determination Act, which addresses barriers to tribes' ability to develop Tribal Energy Resource Agreements.	Administration, DOI and all relevant federal agencies
12	Conduct a meeting between senior Commerce officials, tribal leaders, and tribal enterprises to discuss potential tribal participation in U.S. trade missions	Administration
<b>Improve the Method of Data Collection in Indian Country</b>		
13	Direct the Census Bureau to test the effectiveness of higher volume, less regular ACS data collection (e.g. on a biannual basis, rather than monthly) with an eye to improving data quality (particularly to narrowing error boundaries on key socioeconomic data estimates)	White House and Census Bureau
14	Direct DOI to share all existing land data with Indian tribes to help facilitate initiatives such as, but not limited to, land consolidation efforts, applications for leases, etc.	DOI
15	Identify existing federal studies and research dollars that could be applied to improving data quality in Indian Country	GAO, OMB, all other relevant federal agencies
16	Direct all federal agencies to review existing grant scoring criteria and offer tribes alternate assessment criteria to account for the diverse quality of data describing Native communities	All federal agencies
17	Ensure that tribal grant applications are reviewed by individuals with Indian Country knowledge and expertise	All federal agencies

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18	Consult with tribes to ensure that performance measures reflect indicators that are relevant, collectable, and important to the community itself	All federal agencies
<b>Eliminate Match Requirements for Tribal Nations</b>		
19	Eliminate match requirements for grants to tribal governments and tribal organizations	All federal agencies administering grants to tribal nations
<b>Recognize Tribes as Sovereign Nations in Federal Legislation</b>		
20	Support legislation which recognizes tribes as sovereign nations retaining exclusive jurisdiction to levy taxes within the exterior boundaries of their tribal lands	Department of Treasury
21	Explicitly include tribes in legislative proposals to stabilize state and local government budgets	Administration and Congress
22	Encourage Congress to include tribes in the definition of "state" in all relevant legislation	Administration and Congress
<b>Protecting Tribal Tax Jurisdiction</b>		
23	This Administration needs to recognize the inherent exclusive authority of Indian tribes to levy taxes within their own tribal lands, free from infringement by outside jurisdictions	Department of Treasury
<b>Tax-Exempt Financing</b>		
24	Eliminate the 'Essential Government Function' analysis currently used to qualify tribal projects for tax-exempt financing	Department of Treasury
25	Deem projects undertaken by Section 17 Corporations and other wholly owned tribal entities as qualifying projects for the purpose of tax-exempt financing	Department of Treasury
26	Institute federal guarantees to back tribal bonds on the market	Department of Treasury



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27	Exempt tribal governments from the registration and disclosure rules within the Security Act of 1933	Securities and Exchange Commission
28	Expand tribal tax-exempt private activity bond authority to include commercial projects with economic, environmental, or other social value	Department of Treasury
29	Expedite the completion of the Tribal Economic Development Bond study under ARRA	Department of Treasury
30	Expand the timeframe for current projects to issue a bond offering	Administration
31	Adjust the general time requirements for bond offering under the TED bond program	Department of Treasury
32	Reallocate unused funding for another bond offering and adjust cap limits, or eliminate cap limits, to encompass larger-scale development projects	Department of Treasury
<b>New Markets Tax Credit</b>		
33	Issue clarification that Section 17 Corporations, Alaska Native Corporation, and other wholly owned tribal entities, are QALICBs	Department of Treasury
34	Support education and outreach to ensure tribes have adequate information on how to use New Markets Tax Credits	Department of Treasury
35	Provide support to identify Community Development Entities willing to work with tribal governments	Department of Treasury
36	Provide a structure that would allow 3-5 small projects, \$10 million and under to jointly access NMTCs	Department of Treasury
37	Include Native trust lands and Alaskan communities under 50,000 in population as eligible investment areas for New Markets Tax Credits	Department of Treasury
<b>Section 1603 Grants</b>		
38	Allow tribal Section 17 Corporations, as well as other wholly owned tribal entities, to participate in the Section 1603 grant program	Department of Treasury
39	Support the expansion of the Bureau of Indian Affairs' guaranteed loan program to ensure access to surety bonding for eligible Indian-owned construction companies	DOI

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40	Provide authorized waivers for tribes and ANCSA corporations that would facilitate both entry and expansion into federal construction	HUD
41	Organize and coordinate a meeting between surety bonding companies and tribal economic development enterprises	Department of Treasury
42	Explore options that benefit contractors (rather than sureties), such as loan guarantees for operating capital	DOI, Treasury, USDA, DOE
<b>Promote Public-Private Partnerships to grow the Indian Country Economy</b>		
43	Convene a meeting with financial institutions, Native CDFIs, and tribal leaders to develop partnerships	Department of Treasury and
44	Convene a meeting with tribal enterprises and surety bonding companies	Department of Treasury
45	Convene a meeting with large foundations to encourage co-investment in Indian Country	Department of Treasury and
<b>Alleviating Barriers to Economic Development</b>		
46	Expedite agency decision-making processes which have a direct effect on tribal economic development opportunities, such as the approval of development projects, leases, timber sales, agricultural leases, leases for right of way (e.g., to develop telecommunications infrastructure), and land into trust applications	All agencies
47	Amend the Bureau of Indian Affairs' leasing procedures to allow tribes to select and use certified, licensed appraisers	DOI
48	Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way	DOI
49	Eliminate the BLM's discriminatory permit application fee to drill on tribal trust land	DOI
50	Amend or clarify regulations to enhance access to energy development opportunities	DOI
51	Support the permanent authorization of the Accelerated Depreciation & Indian Employment Tax Credits	Department of Treasury

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52	Allow Section 17 Corporations and other wholly owned tribal entities to make use of federal tax extenders through the establishment of tax credits which may be sold by the tribal entity on the secondary market	Department of Treasury
<b>Promoting Financial Stability and Entrepreneurship on Tribal Lands</b>		
53	Support inclusion of the Native initiatives in the authorizing statute for the CDFI Fund	Department of Treasury
54	Promote agency outreach to Native CDFIs to connect them to potential funding opportunities	Department of Treasury
55	Engage tribal leaders, Native CDFIs and other stakeholders to explore changes to allow tribes to own a CDFI	Department of Treasury
56	Allow federal funds to be used as qualified match for awards to Native CDFIs	Department of Treasury
57	Direct the Native Initiatives of the CDFI Fund to gather best practices and share with Native CDFIs and tribal governments	Department of Treasury
58	Conduct outreach to financial institutions to educate them about the potential of investments in Native CDFIs	White House and Department of Treasury
59	Encourage meetings between Native CDFIs and their elected officials to discuss successes of NCDFI programs	Department of Treasury
60	Direct the Consumer Financial Protection Bureau to specifically analyze new data available under Dodd-Frank to assess small business lending in Indian Country	White House and CFPB
61	Clarify that investments in alternative energy facilities and energy efficiency enhancements are eligible for CRA credits	FRB, FDIC, OCC, OTS
62	Add a specific community development test for large banks, and remove exemptions for small and intermediate small banks	FRB, FDIC, OCC, OTS
63	Impose meaningful consequences for non-compliance with CRA requirements	FRB, FDIC, OCC, OTS
64	Ensure bank Performance Evaluations include analysis of services provided to Native communities	FRB, FDIC, OCC, OTS

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<b>Encouraging Entrepreneurship on Tribal Lands</b>		
65	Support and enhance the Buy Indian Act by establishing and enforcing regulations	Administration and Congress
66	Explore ways to implement the Buy Indian Act for any federal program that receives funds for the benefit of Indians	Administration
67	Support the tribal small business 8(a) program	Administration and Congress
68	Expand the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries to apply to all industries	All agencies
69	Elevate the Assistant Administrator of Native American Affairs at the Small Business Administration to Associate Administrator, with grant authority and a budget	Small Business Administration
70	Encourage individual tribal entrepreneurs to seek finance opportunities outside the scope of Indian/tribal funding	Department of Commerce
71	Expand investments in Native entrepreneurship training, including using entrepreneurial development funds for Native business centers and collaborations with Small Business Development Centers	Small Business Administration
72	Require GSA procurement or preferences for goods and services that have been manufactured under supplier diversity mentor protégé or other agreements and have at least 51% diversity supplier content.	GSA
73	Seek GSA building leases from qualified minority interests.	GSA
<b>Include Tribal Natural Resources within the Framework of the White House Rural Council</b>		
74	Include tribes in the natural resource focused work of the White House Rural Council	President and Secretary Vilsack
75	Explore tribal natural resources as a focus to develop the Rural Council's work	President and Secretary Vilsack

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<b>Review Existing Agreements, Strategies &amp; Regulations which Affect Tribal Natural Resources</b>		
76	Conduct a comprehensive review of existing interagency agreements to establish measurable goals and objectives and identify areas where tribal natural resources can advance economic development and create jobs	Administration
77	Direct tribal liaisons to work with tribes to bring together the federal, regional, state, and local agency representatives to develop an integrated natural resources approach	All agencies
78	Develop a NRCS tribal advisory council at the national and regional level to develop and implement natural resource policy that promotes economic development	USDA
79	Have the Natural Resource Conservation Service provide basic conservation services to tribes and Indian landowners equitable to that of other landowners that includes outreach, education, training, and technical assistance	USDA
80	Direct NRCS to document and share with tribes, Native landowners, and NRCS staff what is working in tribal natural resources conservation	USDA
81	Inventory all NRCS training programs for youth and others and conduct outreach to tribes and Native landowners about these opportunities	USDA
<b>Ensure Tribes Receive Equitable Access to Federal Education and Youth Funding</b>		
82	Explicitly include tribal education departments in federal proposals to prevent teacher layoffs and create additional jobs in education systems	Department of Education, DOI
83	Explicitly include tribal education departments in federal proposals to modernize school facilities	Department of Education, DOI
84	The Administration should reinstitute the 10 percent set aside for tribal and rural communities under the YouthBuild Program	Administration
85	Interpret the Green Jobs Title of the Energy Independence and Security Act to include tribal governments, businesses, and veterans associations so that they can access programs such as Pathways Out of Poverty	DOL
<b>Streamline Federal Employment and Training Programs</b>		
86	Fully support Public Law 102-477 to allow tribes to maximize the impact of federal job and skill development funding	DOI, DOL, DHHS

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87	Rescind the March 2009 OMB A-133 Compliance Supplement	DOI, OMB
88	Work with tribal leaders and the Native American Employment and Training Council to develop a program accountability system that meets the needs of Native communities	DOL
89	Encourage appropriators to restore the rural and tribal set-aside, with a dedicated set-aside for tribal programs	All agencies
90	Work with DOL to utilize regulatory means to ensure access for tribal grantees	Administration
91	Establish partnerships between federal agencies, community colleges, tribal colleges and universities, and technical/vocational colleges to increase access to higher education and foster the creation of bridge programs	All agencies
92	Relax Department of Education regulations to allow YouthBuild to compete for innovation funds	Department of Education
93	Inventory existing workforce development programs across agencies and conduct coordinated interagency outreach to promote funding opportunities	All agencies
94	Encourage agencies to conduct tribal specific outreach where tribes and Native non-profits are eligible to access funding	All agencies
95	Work in conjunction with tribal charter schools, BIE, and non-Indian schools with technology-specific curriculums to develop youth exchange programs	DOI
<b>Support Tribal Colleges</b>		
96	Ensure tribal colleges are included in existing and proposed programs to develop America's workforce through community colleges	Administration and relevant federal
97	Reissue the tribal college specific Executive Order (EO 13270), either separately or as a part of an overall Executive Order on Indian education, to require all agencies to work with tribal colleges and provide an implementation plan for such cooperation	Administration
98	Advocate for increased funding for TCUs and assist TCUs to leverage other outside resources in the private sector	Administration and Congress
99	Support TCUs in obtaining more research grants that can assist the tribal nations that they serve	All federal agencies

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100	Include tribal colleges in efforts to develop jobs in America, looking to TCUs as training centers for workforce development in Indian Country and rural America	DOL and other federal agencies
101	Continue support for UTTC to develop as a regional training center for law enforcement correctional officers	DOI
102	Restore UTTC as a University Center for Economic Development to utilize the job creation capacity of TCUs	DOI
<b>General Infrastructure</b>		
103	Explicitly include tribal governments in federal infrastructure programs and legislative proposals	Administration and all agencies
<b>Telecommunications</b>		
104	Reform USDA lending policies to ensure tribal eligibility for loans even when they provide competition to rural telecommunications companies/cooperatives	USDA
105	Continue to redefine service areas to accommodate tribal ETC designations if a rural carrier holds spectrum over tribal lands	FCC
106	Create a tribal position, filled by an American Indian or Alaska Native, within the USDA RUS to encourage further collaborative efforts with tribes	USDA
107	Provide for SafetyNet E-911 service for tribal communities since many tribal lands reside in rural areas thereby increasing EMS and law enforcement response times	FCC
108	Establish inter-agency collaboration between the Department of Treasury, Department of Agriculture, and the Department of the Interior with tribes to develop additional financing options collectively, and educate tribes of available financing	Department of Treasury, USDA, DOI
109	Ensure funding mechanisms allow tribes access to technical assistance to assess infrastructure and appropriate technological and service solutions for deployment and maintenance of broadband services on tribal lands	DOI, USDA
110	Create a 'Native Nations Broadband Fund' within the USF to provide targeted funding for broadband deployment in Indian Country. This fund would combine Universal Service support and federal grant resourcing programs	FCC
111	Advocate on behalf of tribes for an accurate assessment of broadband capabilities on tribal lands to be included in the Spectrum Dashboard data	FCC and NTIA

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112	Grant tribes access to the Dashboard for planning purposes to develop their own telecommunications capabilities	FCC
113	Extend tribal radio construction permits nearing the expiration deadline	FCC
114	Review and consider reauthorization of the Public Telecommunications Facilities Program to advance tribal and rural communities access to public radio and television	Administration, Congress and OMB
115	Urge the FCC to change its stance on reverse auctions for tribal and rural communities and instead provide tribal priority to available spectrum and offer it at discounted or reserved prices	FCC







National  
Congress of  
American  
Indians

# **PROGRAM FLEXIBILITY TO CREATE JOBS AND GROW TRIBAL ECONOMIES**

**TRIBAL LEADER DISCUSSION DOCUMENT  
FOR THE 2011 WHITE HOUSE  
TRIBAL NATIONS CONFERENCE**

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*This document is an initial draft intended to support tribal leaders in their preparations for the 2011 White House Tribal Nations Conference. While the development of this document was led by the staff of NCAI, the recommendations do not necessarily reflect the official position of NCAI or our members.*

# **1. Our Nation-to-Nation Partnership: The Framework for Economic Recovery**

Both economic development and job creation in Indian Country hinge on the unique governmental relationship between tribes and the federal government. This relationship was affirmed by President Obama's November 5, 2009 memo to federal agencies that directed all federal agencies to comply with Executive Order 13175 (E.O. 13175). The Executive Order provides the framework for a trust responsibility that extends across all federal agencies and not only the Department of the Interior (DOI). In short, E.O. 13175, if fully implemented, opens the door towards achieving a government-wide nation-to-nation partnership between the United States and all federally recognized Indian tribes. This partnership will ensure that Native people—and the United States as a whole—fully benefit from the economic potential presented by our tribal nations.

## **Honoring Tribes as Governments in All Policy Areas**

Indian tribes are polities whose governments retain all privileges and immunities routinely reserved to each government contemplated within the framework of the U.S. Constitution. Nonetheless, tribal governments often are not given the same opportunities provided to state or local governments. For example, the large federal appropriations in the American Recovery and Reinvestment Act (ARRA) for energy programs provided \$12 billion to state governments and less than \$65 million to tribal governments even though tribal land mass (not to mention immense energy potential) justified more than \$600 million. This disproportional treatment denies tribes economic development opportunities and deprives the nation many benefits of the immense energy potential on tribal lands.

Rather than the appropriate treatment as governments, tribes are sometimes treated as corporations or businesses. Examples of this treatment include revenue rulings from the Internal Revenue Service (IRS) requiring 1099 reporting from tribes for education and cultural benefits provided to their members; the essential government function analysis used to determine which tribal development projects qualify for tax-exempt financing; and, general taxing inequities which fail to protect tribal taxing jurisdiction from encroachment by surrounding jurisdictions.

However, when tribes are treated as sovereign nations, and given the flexibility to build their own programs and develop their own economies, they have shown the ability to succeed. For instance, the Indian Self-Determination and Education Assistance Act (ISDEA), through the advent of 638 compacting, contributed immensely towards Indian tribes' ability to fund tribal public safety programs, develop their own educational and health standards and facilities, as well as establish tribal colleges, enabling tribes to provide higher learning institutions for tribal youth within their own communities. Through greater exercise of control, and within the spirit of self-governance, tribal programs have not only grown, but have improved in a manner which reflects tribal values and addresses specific community needs.

## **A. Overarching Approaches to Promoting Nation-to-Nation Partnership**

### ***Protect the Indian budget and fully implement relevant legislation***

This Administration has led unprecedented efforts to settle long-standing conflicts between tribes and the federal government and to implement legislation that provides tribes with the tools they need to effectively exercise their inherent governmental rights and responsibilities. Passage of the Tribal Law & Order Act (TLOA) and the permanent reauthorization of the Indian Health Care Improvement Act (IHCA) are two critical first steps in creating a new context for public safety and healthcare in Indian Country. The legacy of these laws will be established in the extent to which adequate support is provided for implementation.

The most recent cuts, which amount to over \$90 million from proposed funding for essential Department of Justice measures in Indian Country, severely hinder the intent of TLOA and ensure a significant setback to its implementation in the near future. Using this debt and deficit reduction as a compass towards the future of Indian policy, Indian Country's willingness to follow this current path has dissipated. Furthermore, its confidence that the federal government will strive to uphold the trust responsibility during this economic downturn is deteriorating. This uneasiness is magnified by the number of Indian programs that still require full implementation.

Leaders in Indian Country sincerely hope that – even as the debt ceiling law seeks to find both spending cuts and revenue increases in the coming months – the federal government will strive to stay true to the federal trust responsibility. We agree with President Obama that “We can't balance the budget on the backs of the very people who have borne the biggest brunt of this recession.”<sup>1</sup> The socioeconomic profile of Native nations and peoples demonstrate that our communities have borne the brunt of this recession (and previous recessions).

We encourage the Administration and Congress to honor the trust relationship as they consider spending cuts and revenue increases to address the debt and deficit. Furthermore, as Congressional leaders consider tax reform, we ask the Administration and Congress to ensure any tax reform deal provides tribes access to financing options available to other governments and preserves existing incentives that support the programs and services needed in tribal communities. Finally, any tax reform must be clear that tribes are separate distinct nations, and, as such, must retain the exclusive jurisdiction to levy taxes within the contiguous borders of their land base. Retaining exclusive taxing jurisdiction is one of the most crucial necessities of any governing nation. Tribes are no different.

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<sup>1</sup> President Barack Obama, (August 2, 2011), “Statement on the Debt Compromise.” Accessed at: <http://www.whitehouse.gov/blog/2011/08/02/putting-americans-back-work-president-obama-speaks-debt-compromise>

## **B. Promoting Nation-to-Nation Partnership through Administrative Policies**

### ***Access to Information and Consolidation of Resources and Programs***

Administrative programs, such as the Department of Justice's recently instituted Coordinated Tribal Assistance Solicitation and the Department of the Interior's 477 program, which recognize the unique reliance of tribal governments on discretionary spending sources to fund general tribal governance, allow tribes the resource flexibility to concentrate on program development rather than the administrative burdens inherent in the traditional grant application process. This is accomplished through streamlining tribal programs and also tribes' application process for critical funding streams, such as grants for law enforcement, workforce training programs, and economic development projects. But more importantly, this is accomplished through the federal agencies' willingness to acknowledge the unique sovereign status of Indian tribes, their needs as government bodies, and their responsibility to develop programs and services for their citizens. Perhaps a similar consolidation of potential resources might be developed in the sphere of economic development.

As the Administration demonstrated with the [Recovery.gov](http://Recovery.gov) clearinghouse, access to information is critical to efficient and effective utilization of federal resources. A similar, cross-department approach in the economic development sector would provide tribes and tribal members better access to the economic development opportunities available from the Department of the Treasury, the Small Business Association (SBA), the Bureau of Indian Affairs (BIA), the United States Department of Agriculture (USDA), as well as other federal agencies. This initiative could also map existing economic development programs that exclude tribes and make recommendations for regulatory or legislative fixes to ensure tribes are afforded equal opportunity to participate in those programs. A particular focus of these efforts would be to ensure that all federal government agencies review their legislative mandates and policies to include "and tribal governments" wherever state governments are eligible for services and funding. To ensure success, this approach begins and ends with acknowledging the unique governing status of tribal nations and their particular community needs.

### ***Streamlining Agency Policies and Procedures which Affect Economic Development and Governance on Tribal Lands***

The Department of the Interior (DOI) exercises substantial oversight in Indian affairs. For instance, the Secretary of the Interior must approve land into trust applications, land transfers, leases for business development, and the sale of natural resources. This oversight process hinders business development and acts as a disincentive to potential partnerships with outside entities. We recommend that the Secretary exercise his authority in a manner that advances tribal economic development. For instance, applications for the sale of resources or business development leases should be given priority treatment in the DOI's decision-making process. This approach encourages development in Indian Country and reduces the uncertainties that can discourage outside entities from partnering with Indian tribes. Also, Congress should act swiftly to enact legislation, such as the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, which would allow tribes, if they choose, to exercise their political autonomy over lease approval on tribal lands.

Furthermore, given the increased prevalence of cultural tourism and the sophistication of tribal enterprises, the Department of Commerce should include Indian Country representatives when assembling international trade delegations from government and the private sector.

### ***Improving Methods of Data Collection in Indian Country***

Tribes need control over their own data, as well as the ability to build data in areas where it is virtually nonexistent. While federal data collection itself does not stimulate business development, data is increasingly used to determine where and how scarce federal dollars are invested. Since 2000, no meaningful socioeconomic data about Indian Country as a whole has been produced by the U.S. government. The widely documented concerns of rural and remote communities about the Census Bureau's American Community Survey (ACS) are even more pronounced in Indian Country. The Bureau of Labor Statistics (BLS) essentially excludes data from Indian reservations in the monthly labor force reports, and there is a wide discrepancy between DOI labor force reports and those presented by BLS.

Also, the DOI retains vastly important land data but, as of yet, has chosen not to share this data with tribes. Land data is increasingly pivotal in areas such as, but not limited to, the land consolidation provisions within the *Cobell* Settlement. Broadband mapping on tribal lands is also an area where data might be improved through better cooperation with states and federal funding sources for such mapping. These data deficiencies impair the ability of tribal, federal, state, and local policymakers to identify and respond effectively to the needs of tribal nations. They place tribes and Native non-profits at a competitive disadvantage when applying for federal grant funding.

Cost neutral improvements could be made to data collection by ensuring more effective coordination among existing federal research studies. For example, the Native American Lending Study at the Community Development Financial Institutions (CDFI) Fund could be more closely coordinated with the Native American Housing Study being conducted at the Department of Housing and Urban Development (HUD). In other areas covered in this report, interagency collaboration can promote critical access to data in natural resource, energy, education, etc. We recommend interagency collaboration to ensure support of basic surveys and inventories so tribes have accurate and current data to support tribal decision-making. Savings gained from collaboration could be applied to the collection of additional primary data from Indian Country.

### ***Eliminating Match Requirements for Tribal Nations***

Finally, match requirements should be eliminated for tribal grant recipients. While many non-tribal grant recipients are organizations with an internal business component, tribal recipients are governments and must find matching funds from within their general revenue stream. Most tribes that are dependent on federal grants have extremely limited resources, and philanthropy in rural and tribal communities is anemic at best. Furthermore, because tribes lack the tax base available to other governments, imposing a match requirement on tribal governments frequently results in

tribes scrambling to find matching funds from limited resources and often leads to the underutilization of funds or precludes tribes from applying for them.

### **C. Promoting Nation-to-Nation Partnership through Legislative Policies**

#### ***Recognizing Tribes as Sovereign Nations in Federal Legislation***

The nation-to-nation approach has also seen success in legislative approaches towards economic development in Indian Country. The Indian Gaming Regulatory Act of 1988 (IGRA) was enacted, for the most part, to settle jurisdictional questions between federal, state, and tribal governments. In doing so, IGRA drew a line in the sand which mandated that states acknowledge the sovereign status of tribal governments, negotiate compacts with tribal governments in good faith, and recognize their autonomy to develop their own economies through Indian gaming. Currently, Indian gaming is a \$26.5 billion industry and has provided the foundation for many tribes to ensure quality programs and services are available to their citizens. This economic success story has also helped ease the burden of the federal government towards some tribal nations.

The jurisdictional questions which led to the enactment of IGRA pitted states against tribes and were rooted in the belief that tribal governments lacked the inherent authority to develop their own economies through gaming. Congress, through powers enumerated in the Indian Commerce Clause, affirmed tribes' authority to develop their economies through gaming, even where tribal gaming was contrary to state law. Similar battles have occurred for years in the area of tribal tax policy, where the lack of congressional involvement has allowed the judicial branch and interpretations from federal agencies to develop tribal tax law on a case by case basis. The result is inconsistent tax policy which fails to protect the taxing jurisdiction of Indian tribes and predominantly favors states' minimal interest in taxing transactions occurring on tribal lands.

Also, concerning current legislation, tribes need to be expressly included in legislative proposals to protect state and local government budgets. Provisions in the American Jobs Act to stabilize funding for teachers and first responders and invest in 21<sup>st</sup> century infrastructure inconsistently address (or are silent on) tribal eligibility for these programs. Given the critical role tribes play in many of America's regions, especially in rural areas, equal access to fiscal stabilization funding is critical for all Americans, including Native people.

Furthermore, it is worth noting that when tribes are successful, they contribute not just towards the overall well-being of their own communities, but often towards the well-being of the surrounding local communities as well. As an example, through tribal-state gaming compacts, Indian tribes routinely contribute significant dollars in gaming revenue to support local governments. Also, tribes have created hundreds of thousands of jobs for both Indians and non-Indians through construction contracting, hotel and resort management, law enforcement and emergency response providers, the operation of gaming facilities, as well as natural resource development. However, even with these successes, tribes are still in need of greater administrative flexibility – now more than ever. Because when it comes to economic development in Indian Country, one thing is clear: tribes know what tribes need to succeed. The difficulty lies in gaining administrative support for their needs.



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## **Specific Recommendations to Promote the Nation-to-Nation Partnership**

Throughout the various eras of the federal government's policy towards Indian tribes, the majority of tribal communities have largely been dependant on federal funding – in particular, discretionary funding. Looking at the current economic downturn and its projected effects on discretionary government spending, Indian tribes are in dire need of greater opportunities through little to no costs. The only solution is strengthening the nation-to-nation partnership between the United States and Indian Nations. Through this partnership, tribes are better equipped to continue strengthening their economies and stand poised to help their neighboring communities. In the context of developing a stronger nation-to-nation partnership, we have identified broad recommendations in areas such as budget appropriations, promoting partnerships with the private sector, improving access to capital, natural resources, education and workforce development, infrastructure development, healthcare, public safety, and agriculture.

### Protect the Indian budget and fully implement relevant legislation

1. Advocate for full funding and implementation of TLOA, IHCA, and other key federal Indian programs
2. Protect the Indian budget from deficit reduction efforts
3. Ensure tribal participation in tax reform discussions and ensure equal access for tribes to existing and future incentives to promote access to capital

### Recognizing Tribes as Nations in Policies and Regulations

4. Expand the Executive Order on Consultation to fully recognize in policy and practice that all federal agencies have a trust responsibility with tribal nations and they should demonstrate how that will be realized.
5. Affirm tribal sovereignty and use executive powers to provide equal access to funding, adjust restrictive policies and regulations, and ensure tribes are involved in the rulemaking process
6. Expand self-governance to encompass all relevant federal agencies
7. Develop a list of all economic development programs that can be utilized by tribes and Native non-profits
8. Utilize low-cost means to communicate opportunities to Indian Country
9. Develop a list of all economic development programs that currently exclude tribes and Native non-profits and make recommendations to include tribal governments alongside their state government peers and increase tribal access to all federal economic development programs

### Expedite Administrative Processes that Affect Economic Development

10. Encourage the Secretary of the Interior to exercise his authority in a way that prioritizes and advances tribal economic development (e.g. giving priority to business development leases etc.)
11. Support Legislation, such as the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, which allow tribes great autonomy over processes which affect economic development in Indian Country, and S. 1684, the proposed

Amendments to the Indian Tribal Energy Self-Determination Act, which addresses barriers to tribes' ability to develop Tribal Energy Resource Agreements.

12. Conduct a meeting between senior Commerce officials, tribal leaders, and tribal enterprises to discuss potential tribal participation in U.S. trade missions

#### Improve the Method of Data Collection in Indian Country

13. Direct the Census Bureau to test the effectiveness of higher volume, less regular ACS data collection (e.g. on a biannual basis, rather than monthly) with an eye to improving data quality (particularly to narrowing error boundaries on key socioeconomic data estimates)
14. Direct DOI to share all existing land data with Indian tribes to help facilitate initiatives such as, but not limited to, land consolidation efforts, applications for leases, etc.
15. Identify existing federal studies and research dollars that could be applied to improving data quality in Indian Country
16. Direct all federal agencies to review existing grant scoring criteria and offer tribes alternate assessment criteria to account for the diverse quality of data describing Native communities
17. Ensure that tribal grant applications are reviewed by individuals with Indian Country knowledge and expertise
18. Consult with tribes to ensure that performance measures reflect indicators that are relevant, collectable, and important to the community itself

#### Eliminate Match Requirements for Tribal Nations

19. Eliminate match requirements for grants to tribal governments and tribal organizations

#### Recognize Tribes as Sovereign Nations in Federal Legislation

20. Support legislation which recognizes tribes as sovereign nations retaining exclusive jurisdiction to levy taxes within the exterior boundaries of their tribal lands
21. Explicitly include tribes in legislative proposals to stabilize state and local government budgets
22. Encourage Congress to include tribes in the definition of "state" in all relevant legislation

## **2. Business and Finance: Expanding Access to Capital**

While many tribes have succeeded in the area of business development and job creation, other tribal governments and individual tribal citizens have struggled to access the necessary capital to build strong, healthy economies within their sovereign territories. Strategies towards expanding access to capital include: (1) facilitating greater access to traditional financing tools; (2) alleviating administrative barriers towards economic development; and, (3) promoting financial stability and individual entrepreneurship on tribal lands..

### **A. Facilitating Greater Access to Traditional Financing Tools**

Finance is the foundation of business development, as well as the primary factor in developing energy resources on tribal lands. While there are a host of financing opportunities available for business development in general, sometimes, due to regulatory barriers or basic lack of information, tribes experience difficulty making use of these opportunities.

#### ***Protecting Tribal Tax Jurisdiction***

Tribal tax policy is the result of Supreme Court precedent and agency interpretations issued by the Internal Revenue Service. Both of these ‘rulemaking’ processes are accomplished on a case-by-case basis, which results in inconsistent tax policy towards tribal nations. This Administration should prioritize the recognition of tribal nations’ exclusive jurisdiction to levy taxes on tribal lands. The ability to levy taxes is one of the primary functions of a government, yet Indian tribes are often asked to share critical tax revenue with outside jurisdictions, sometimes in the form of discriminatory dual taxation, with no assurance that any of that taxing revenue will be redistributed from the outside jurisdiction, in the form of services and programs, to the tribal nation. Tribal leaders agree that federal tax policy implicating Indian tribes needs to elevate the status of Indian nations beyond its current status, and recognize the inherent exclusive authority for tribes to levy taxes within their tribal lands. This recognition will enable tribes to build core governance funding, without interference from outside entities, which may be used to fund government programs, services, and secure government bonds on the market. During this economic downturn, this recognition of tribal taxing jurisdiction becomes of paramount concern.

#### ***Tax-Exempt Financing***

For instance, tax-exempt financing is largely unavailable to Indian tribes due to three issues: (1) the “essential government function” threshold (required by Section 7871 (c)(1) of the Internal Revenue Code (IRC)) that tribal projects must meet to qualify for tax-exempt financing; (2) tribes’ general lack of access to the investment market; and, (3) the lack of a strong tax base. Barriers to accessing tax-exempt finance pose a significant inequity for tribal governments and their citizens but also negatively impact surrounding rural and regional economies.

The “essential government function” analysis has restricted the use of tax-exempt financing for Indian tribes only to those development projects which lack any commercial component (e.g., schools, roads, sewer systems, hospitals). In contrast, states and local governments are able to

use tax-exempt financing to develop projects which may or may not contain a commercial component (e.g., marinas, convention centers, golf courses), so long as the majority of either the use of the facility, or the funds used to secure the bond, are governmental in nature. We recommend eliminating the essential government function test in favor of treating tribes like states and local governments.

In addressing the second and third concerns, lack of access to the investment market and lack of a strong tax base, we propose the Indian Finance Act and the IRC be amended to allow federal guarantees to back tribal bonds on the market. Traditionally, states and local governments secure their bonds through their tax base. This tax base consists of property tax, income tax, sales tax, and other taxing streams which generate enough revenue to use as collateral for bond security purposes. Most tribes exercise a modest sales tax, a hotel tax, and gas taxes, but are constantly competing with neighboring states over the right to tax transactions within their own jurisdiction. Ensuring federal guarantees are available to back tribal bond offerings will allow tribes to use their bonding authority more effectively and frequently, creating jobs and business development on the reservation.

Currently, the Indian Financing Act prohibits federal guarantees as a source of security for tax-exempt bonds.<sup>2</sup> Also, the IRC currently prevents tax-exempt treatment of any bond backed by federal guarantees.<sup>3</sup> We recommend bonds guaranteed by DOI for tribal tax-exempt bond issuances be added to the exceptions listed within that section. Taken together, these proposed amendments to the Indian Financing Act and the IRC would expand the tax-exempt financing realm beyond wealthy tribes to include tribes with moderate capital resources to leverage.

Currently, the IRS is accepting comments on the reallocation of remaining funds under the Tribal Economic Development (TED) Bond provision of ARRA. The purpose of the TED Bond component of ARRA was to boost economic development projects in Indian Country and to serve as a pilot project, whereby tribal governments would be able to issue tax-exempt bonds on a level of parity with state and local governments. One suggestion we offer is that the \$30 million cap on TED Bond allocations be raised, or eliminated altogether, to ensure tribes have access to better financing options. Tribes do not want to obtain two debt sources for one development project. As it stands, if a tribe wants to finance a \$50 million hotel using TED Bonds, they must seek the additional \$20 million from another source. Tribes would like the opportunity to develop these types of projects within a single finance obligation. The Treasury Department needs to reallocate the remaining funds for another bond offering with suggestions such as this in mind. The TED Bond component of ARRA presents a great development opportunity for tribes and should be maximized under existing resources.

### ***Facilitating Capital Investment for Tribal Development Projects***

Also, tribes need better access to capital investment tools to help facilitate economic development projects. The New Markets Tax Credit (NMTC) is an increasingly important tool to catalyze private sector investments that create jobs and enhance access to capital for small

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<sup>2</sup> See Indian Financing Act, 25 U.S.C. §§ 1451

<sup>3</sup> See Internal Revenue Code, 26 U.S.C. § 149 (b)

businesses and community development, especially in distressed communities like Indian reservations. While the NMTC has limitations concerning what activities qualify, as well as what types of communities are targeted as beneficiaries, the IRS has issued guidance that identifies an Indian tribe as a targeted population,<sup>4</sup> meaning that tribal corporations are qualifying businesses for project financing through the use of NMTCs. However, because of the complicated nature of utilizing NMTCs, tribes have generally steered clear of them as a potential financing option. Under the NMTC program, the actual credit is passed through a Community Development Entity (CDE) to potential investors. Tribes need assistance in locating CDEs that are willing to contribute towards economic development projects in Indian Country through the use of NMTCs. Furthermore, tribes should have the ability to monetize existing credits, such as accelerated depreciation and the Indian Employment Tax Credit, which currently only benefit non-Indian businesses operating on tribal lands.

The Treasury's 1603 grant program provides cash grant incentives for renewable energy projects. However, this funding is not available to governments, including tribal governments. We recommend policy changes that would allow tribal governments, through Section 17 Corporations, wholly owned tribal entities, or ANCSA corporations to use Section 1603 grants.

Allowing tribal governments to use Section 1603 grants to finance energy projects will help alleviate the taxation issues which often stagnates energy development in Indian Country which, in turn, denies the nation access to a critical renewable energy source and undermining tribal economic development potential. Policies that encourage tribes to partner with outside entities have also been used to penalize that same partnership through dual taxation (as established in case law). By allowing tribes to use Section 1603 grants for energy development projects, tribes would be encouraged to take an ownership interest in these projects, expediting tribal energy projects and supporting their success.

Next, expansion of the BIA's guaranteed loan program will reduce the perceived risk that insurance companies associate with tribal governments, due to the doctrine of sovereign immunity. 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. The Administration should use existing authorities to provide surety bond guarantees.

Additionally, we request that the Administration provide authorized waivers for tribes and ANCSA corporations that would facilitate both entry and expansion into federal construction. Surety bonding is one of the largest barriers to entry and growth in federal contracting construction in a highly competitive and capital intensive sector. Construction is also an area with a much higher probability of providing direct employment from tribal members and ANCSA tribal member shareholders. From a regulatory standpoint, this authorization could be made available, but limited by meeting certain goals such as tribal member employment opportunities or other metrics.

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<sup>4</sup> See IRS Publication: New Markets Tax Credit, Chapter 1: *Introduction to New Markets Tax Credit*, 1; Chapter 2: *Issues at the CDE Level*, 14, May 2010; Adopting the definition of "targeted population" within the American Job Creation Act of 2004, IRC §45D(e)(2).

### ***Promote public-private partnerships to grow the Indian Country economy***

In a time of constrained federal resources, the Administration can contribute significantly to economic growth in Indian Country by using its convening power to draw the attention of private sector and philanthropic investors to the opportunities presented by tribal nations. As an example, financial institution access could be enhanced by convening a strategy session with large financial institutions, small and medium banks, Native Community Development Financial Institutions (CDFIs), and tribal leaders to develop innovative partnerships. Also, to address surety bonding utilization, the Administration could convene tribal enterprises with surety bonding companies. Using the Rural Council as a framework, the Administration could draw particular attention to the underinvestment by philanthropy in tribal nations and convene large foundations to seek commitments to co-invest in Indian Country. There are many other opportunities with respect to labor programs and broadband deployment as listed below.

#### **B. Alleviating Administrative Barriers to Economic Development**

The DOI oversees a wide variety of procedures pertaining to development on tribal lands. Many of these areas of oversight have direct effects on economic development and job creation. We recommend the Secretary of the Interior draft an agency-wide initiative to expedite any processes that affect economic development in Indian Country.

#### ***Leases, Resource Sales & Land Into Trust Applications***

There is an extraordinary high backlog of leases and land into trust applications that have real implications for tribal economies. Research has demonstrated that some BIA regional offices have effectively prioritized land transactions with economic implications.<sup>5</sup> DOI must institutionalize these best practices at the national level. If expedited, the approval of development projects, leases, timber sales, agricultural leases, leases for right of way (e.g., to develop telecommunications infrastructure), and land into trust applications would quickly and effectively jumpstart tribal economies.

The GAO issued a report that “found no statutory or regulatory requirement that appraisals be used to establish lease values,”<sup>6</sup> yet the appraisal process remains an integral component to lease approval under current BIA procedures. Short of eliminating the appraisal procedure altogether, we recommend that tribes be given the liberty to select their own land appraisers, providing those appraisers maintain the proper certification and/or licensing requirements. This policy change allows the tribe to partner with DOI to expedite the leasing process.

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<sup>5</sup> NCAI Policy Research Center, (2009), *Exercising Sovereignty and Expanding Economic Opportunity Through Tribal Land Management*.

<sup>6</sup> GAO: Report to the Subcommittee on Interior and Related Agencies, Committee on Appropriations, U.S. Senate, *Indian Programs - BIA Should Streamline Its Process for Estimating Land Rental Values*, 2, June 1999.

### ***Amending Policies & Regulations***

DOI has indicated that it is currently amending the 162 leasing regulations to state that activities pursuant to leased trust land are not subject to regulatory jurisdiction by outside entities, including taxation by states or counties. We recommend this language be drafted to include leased rights of way, which, under current case law, fall within the regulatory jurisdiction of the outside entity. This is important because tribes sometimes lease rights of way to non-Indian entities to develop telecommunications infrastructure, not knowing that this action currently cedes jurisdiction. The result is that tribes expose themselves to outside taxation which does not benefit their communities.

In addition to the administrative issues outlined above, the \$6,500 fee—payable to the Bureau of Land Management for each application for a permit to drill on Indian lands—presents an inequitable disincentive to energy development on tribal lands. The scope of the disincentive is demonstrated by comparison with state fees. For example, in the state of Montana, the same fee ranges between \$25 and \$150. The fee was intended to target energy development on federal lands, not tribal trust lands, but unfortunately it has been interpreted in a manner which frustrates oil and gas development on Indian lands. The Administration should ask the BLM to retract BLM Instruction Memorandum No. 2008-043, which included Indian minerals within the scope of the \$6,500 fee. Also, BLM should be asked to issue a memorandum clarifying that Indian minerals are outside the scope of the energy development on federal lands targeted by the initial fee.

The Administration can also interpret the Energy Policy Act of 2005 to support and fund tribal capacity building; clarify criteria regarding fulfillment of renewable portfolio standards; and reduce the tribal cost share for energy projects under the 2005 Act back to levels in the Energy Policy Act of 1992. With respect to energy efficiency, revision of DOE Weatherization regulations and policies to include tribal programs would enable tribes to receive funding directly, without carrying the burden of proving that state programs do not serve their members.

Also, tribal governments are not exempted from the registration and disclosure rules set forth in the Securities Act of 1933, whereas state and local governments are (Securities Act of 1933, 15 U.S.C. 77c (a)(2), (b)). Thus, tribes must either bear the registration costs or issue bonds into the private placement market, which generally provides inferior terms.

### **C. Promoting Financial Stability and Entrepreneurship on Tribal Lands**

As tribal economies begin to grow, local financing needs for businesses, individuals, and tribes, increase and are exacerbated by the lack of financial institutions serving their communities. The Administration can help support the development of tribal financial institutions serving Indian Country and shape the services provided by outside financial institutions currently situated to help tribal members.

## ***Supporting the Development of Tribal Financing Institutions***

Currently, there are more than 60 certified Native CDFIs located in 18 states serving Indian country, Alaska, and Hawaii. The majority of these operate in low-income rural communities. CDFIs provide a wide range of financial products and services including microenterprise loans, small business loans, consumer loans, mortgage financing, financial education courses and credit repair. As such, Native CDFIs play a vital role in developing financial security within tribal communities, many of which have little to no access to local banking institutions.

In a recent nationwide survey of Native CDFIs, 90 percent of respondents indicated receiving federal funding in the last 10 years. However, when asked about their experiences and utilization of funding from six federal departments that commonly fund community development, 58 percent of the programs were used by less than 3 NCDFIs. 10 of the 31 listed federal programs were not used by any of the participating NCDFIs.<sup>7</sup> This demonstrates a clear need for better agency outreach and coordination to ensure the success of Native CDFIs.

Also, as with other economic success stories in Indian Country, effectively “telling the story” to ensure other tribes can benefit from lessons learned is invaluable. The Administration should direct the Native Initiative of the CDFI Fund to gather best practices in CDFIs serving Native and other rural and disadvantaged communities. Since Indian Country is severely underbanked, it is critical that these successes be shared with tribal governments in appropriate regional and national settings.

The few Native communities that do have bank branches on their reservations are afflicted by one of two challenges: (1) being served by small or intermediate small banks whose CRA exams are not sufficiently robust; or, (2) being served by branches of large banks that can offset underinvestment in Native communities with lending activities elsewhere. It is critical for the agencies to both remove exemptions from data reporting and other tests for small banks (as was done, for example, in the Dodd-Frank Financial Reform Bill), and add a community development component to the CRA exam for large banks. We need an exam methodology that incentivizes the investment in community infrastructure to serve remote, rural, and especially, reservation communities. The current structure of large bank exams allows a lack of community focused lending to be offset by home or business lending in other communities (often urban communities).

The agencies should also impose meaningful penalties on banks that fail to receive satisfactory grades on their CRA exams. One bank in South Dakota, located in the midst of the Lake Traverse Reservation of the Sisseton-Wahpeton Oyate, has received “needs to improve” as its grade on all five CRA exams since 1996 with no clear consequences for this ongoing non-compliance. It is also striking the degree to which Performance Evaluations (PEs) of banks that serve communities with large Native populations completely exclude analysis of bank service to tribal nations. Agencies must require that PEs that cover banks whose service areas include

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<sup>7</sup> Native CDFI Network, *The Utilization of Federal Funding Resources by Native CDFIs: Survey of Native CDFIs*, 4, January 2011.



substantial tribal lands and/or Native populations assess the degree to which those institutions serve the Native communities in question.

### ***Encouraging Entrepreneurship on Tribal Lands***

While tribal governments have made great strides in developing their economies with the financing tools available to them, individual tribal members still face the highest unemployment rate of any other minority group, and individual entrepreneurship remains largely underdeveloped among Indian peoples. Indian people interested in developing business ventures must be included within any policy promoting economic development in Indian Country.

### ***Buy Indian***

No single measure would do more to help resuscitate Indian Country employment, particularly in manufacturing, than an encompassing Buy Indian government procurement requirement. All infrastructure projects funded and guaranteed by the federal government and the proposed infrastructure bank should require purchases to be made in Indian Country rather than overseas, consistent with our international trade agreements. The Defense Authorization Bill passed in December that requires the Pentagon to buy solar panels from U.S. manufacturers is a good model. Further, to qualify as "Made in Indian Country," at least 75 percent of the content should have to be manufactured within tribal borders. To make that happen, the White House by Executive Order and Congress by legislation should require domestic content calculations to be effective and transparent.

In addition, Congress needs to enact an all-Indian successor to the 1933 Buy American Act. No regulations to implement the Buy Indian Act have been issued in 75 years. Through a combination of regulation and expanded legislation, the Administration should support long-overdue regulations and changes to the Buy Indian Act which ensure that preference is given to on-reservation Native individuals and enterprises, and ANCSA corporations, in awarding contracts, and subsequent subcontracts, with DOI, Indian Health Service (IHS) and other agencies serving American Indian and Alaska Native populations. The Buy Indian Act should also be amended to require the recipient of a contract to provide training and employment preferences to Native people. Furthermore, consultation was held, March 2010, on draft regulations for the Buy Indian Act. Yet, to date, DOI has failed to release its final regulations.

### ***Government Contracting***

Government contracting in Indian Country, through the tribal 8(a) program has been subject to more regulatory oversight from both the Small Business Administration and Department of Defense than most other contracting programs. The regulatory oversight combined with Congressional oversight has had a chilling effect on the very agencies that the Native communities rely on for contracting revenue. The tribal 8(a) program has already been altered in the Senate by placing a justification requirement on contracts exceeding \$20 million. This is a far lower threshold than that applied to other sole source awards. Tribes use the 8(a) program to support the economic health of entire communities, and it has proven effective regardless of a tribe's location or size, making it a viable tool for all tribal governments. To support this effective incentive for tribal governments, the Administration should demonstrate their clear and unambiguous support for the program and provide certainty in the contracting marketplace.

We further recommend that the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries be expanded to all industries. This adjustment would encourage greater participation in the program at a time when Section 811 has had a chilling effect on government contractors.

Also, the Administration should support legislative language that elevates the Office of Native American Affairs (Office) within the Small Business Administration (SBA). With limited authority and resources, the Office promotes Native-owned 8(a) business development, HUBZone empowerment and other government contracting, entrepreneurial education, and capital access. It is necessary that the Office be brought into line with other administrators at the SBA and have the capacity to provide funding for Indian-focused technical services through tribal colleges and existing service providers.

Other non-tribe specific SBA opportunities, such as the SBA 7(a) program, offer potential funding opportunities. The 7(a) program provides financial help for businesses that handle exports to foreign countries, businesses that operate in rural areas, and for other specific purposes. The loans offered to businesses operating in rural areas are smaller, yet have a more streamlined, simplified application process. Similarly, the SBA Section 504 loans operate in conjunction with community-based non-profit organizations. More information needs to be accessible to individual tribal members interesting in starting their own business ventures.

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## **Specific Recommendations to Expand Access to Capital**

### **Facilitating Greater Access to Traditional Financing Tools**

#### **Protecting Tribal Tax Jurisdiction**

23. This Administration needs to recognize the inherent exclusive authority of Indian tribes to levy taxes within their own tribal lands, free from infringement by outside jurisdictions,

#### **Tax-Exempt Financing**

24. Eliminate the 'Essential Government Function' analysis currently used to qualify tribal projects for tax-exempt financing
25. Deem projects undertaken by Section 17 Corporations and other wholly owned tribal entities as qualifying projects for the purpose of tax-exempt financing
26. Institute federal guarantees to back tribal bonds on the market
27. Exempt tribal governments from the registration and disclosure rules within the Security Act of 1933
28. Expand tribal tax-exempt private activity bond authority to include commercial projects with economic, environmental, or other social value
29. Expedite the completion of the Tribal Economic Development Bond study under ARRA
30. Expand the timeframe for current projects to issue a bond offering
31. Adjust the general time requirements for bond offering under the TED bond program
32. Reallocate unused funding for another bond offering and adjust cap limits, or eliminate cap limits, to encompass larger-scale development projects

### New Markets Tax Credit

33. Issue clarification that Section 17 Corporations, Alaska Native Corporation, and other wholly owned tribal entities, are QALICBs
34. Support education and outreach to ensure tribes have adequate information on how to use New Markets Tax Credits
35. Provide support to identify Community Development Entities willing to work with tribal governments
36. Provide a structure that would allow 3-5 small projects, \$10 million and under to jointly access NMTCs
37. Include Native trust lands and Alaskan communities under 50,000 in population as eligible investment areas for New Markets Tax Credits

### Section 1603 Grants

38. Allow tribal Section 17 Corporations, as well as other wholly owned tribal entities, to participate in the Section 1603 grant program
39. Support the expansion of the Bureau of Indian Affairs' guaranteed loan program to ensure access to surety bonding for eligible Indian-owned construction companies
40. Provide authorized waivers for tribes and ANCSA corporations that would facilitate both entry and expansion into federal construction
41. Organize and coordinate a meeting between surety bonding companies and tribal economic development enterprises
42. Explore options that benefit contractors (rather than sureties), such as loan guarantees for operating capital

### Promote Public Private Partnerships

43. Convene a meeting with financial institutions, Native CDFIs, and tribal leaders to develop partnerships
44. Convene a meeting with tribal enterprises and surety bonding companies
45. Convene a meeting with large foundations to encourage co-investment in Indian Country

### Alleviating Barriers to Economic Development

46. Expedite agency decision-making processes which have a direct effect on tribal economic development opportunities, such as the approval of development projects, leases, timber sales, agricultural leases, leases for right of way (*e.g.*, to develop telecommunications infrastructure), and land into trust applications
47. Amend the Bureau of Indian Affairs' leasing procedures to allow tribes to select and use certified, licensed appraisers
48. Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way
49. Eliminate the BLM's discriminatory permit application fee to drill on tribal trust land
50. Amend or clarify regulations to enhance access to energy development opportunities
51. Support the permanent authorization of the Accelerated Depreciation & Indian Employment Tax Credits

52. Allow Section 17 Corporations and other wholly owned tribal entities to make use of federal tax extenders through the establishment of tax credits which may be sold by the tribal entity on the secondary market

### Promoting Financial Stability and Entrepreneurship on Tribal Lands

#### *Supporting the Development of Tribal Financing Institutions*

53. Support inclusion of the Native initiatives in the authorizing statute for the CDFI Fund
54. Promote agency outreach to Native CDFIs to connect them to potential funding opportunities
55. Engage tribal leaders, Native CDFIs and other stakeholders to explore changes to allow tribes to own a CDFI
56. Allow federal funds to be used as qualified match for awards to Native CDFIs
57. Direct the Native Initiatives of the CDFI Fund to gather best practices and share with Native CDFIs and tribal governments
58. Conduct outreach to financial institutions to educate them about the potential of investments in Native CDFIs
59. Encourage meetings between Native CDFIs and their elected officials to discuss successes of NCDFI programs
60. Direct the Consumer Financial Protection Bureau to specifically analyze new data available under Dodd-Frank to assess small business lending in Indian Country
61. Clarify that investments in alternative energy facilities and energy efficiency enhancements are eligible for CRA credits
62. Add a specific community development test for large banks, and remove exemptions for small and intermediate small banks
63. Impose meaningful consequences for non-compliance with CRA requirements
64. Ensure bank Performance Evaluations include analysis of services provided to Native communities

### Encouraging Entrepreneurship on Tribal Lands

#### *'Buy Indian' Act*

65. Support and enhance the Buy Indian Act by establishing and enforcing regulations
66. Explore ways to implement the Buy Indian Act for any federal program that receives funds for the benefit of Indians

#### *Small Business Administration*

67. Support the tribal small business 8(a) program
68. Expand the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries to apply to all industries
69. Elevate the Assistant Administrator of Native American Affairs at the Small Business Administration to Associate Administrator, with grant authority and a budget
70. Encourage individual tribal entrepreneurs to seek finance opportunities outside the scope of Indian/tribal funding

71. Expand investments in Native entrepreneurship training, including using entrepreneurial development funds for Native business centers and collaborations with Small Business Development Centers
72. Require GSA procurement or preferences for goods and services that have been manufactured under supplier diversity mentor protégé or other agreements and have at least 51% diversity supplier content.
73. Seek GSA building leases from qualified minority interests.

### **3. Natural Resources: Building sustainable prosperity**

In a recent report, *Economic Impact of the Department of the Interior's Programs and Activities*, Secretary Salazar states that "The lands, waters, wildlife, and cultural and historic resources that the Department of Interior oversees are an engine of prosperity for our Nation." Tribal nations and individuals "own" vast natural resources, but these resources have not been "an engine of prosperity" for our peoples. By any account, the owners of almost 100 million acres of land and rights to even more land with forests, lakes, rivers, aquifers, wildlife, minerals, plants, agricultural products, energy reserves and potential, natural beauty, and cultural and historic significance should be the wealthiest people in the nation. Yet, American Indian and Alaska Native peoples are the poorest in the nation. This staggering mismatch between assets and success is explained by the fact that we have not been in control of our own resources and the federal management of our trust assets has been inadequate.

As tribal nations build capacity and take over the management of our vast natural resources tribes have the potential to power economic recovery in Indian Country and beyond. With the right policies and investments, tribes can create jobs for our own citizens and those of neighboring communities.

#### ***Include Tribal Natural Resources within the Framework of the White House Rural Council***

Rural natural resources are one of the four focuses of the newly formed White House Rural Council, chaired by Secretary of Agriculture Vilsack. Given the extensive tribal natural resources in rural areas, we recommend tribal natural resources play a robust role in the natural resources focus of the Council. We further encourage the adoption of tribal natural resources as a pilot effort for "working across executive departments, agencies, and offices to coordinate development of policy recommendations to promote economic prosperity and quality of life in rural America..."

#### ***Review Existing Agreements, Strategies & Regulations that Affect Tribal Natural Resources***

Existing interagency agreements that address tribal natural resource issues provide the opportunity to enhance economic outcomes. All existing agreements should be revisited, renewed, and/or revitalized with specific focus on the DOI, Agriculture, the Department of Energy, and the Environmental Protection Agency. This review should identify tangible and measurable goals and objectives, provide opportunities for stakeholder input, and provide reports on the overall success and specific achievements under these agreements.

In addition, several current federal agency advisory bodies that deal with natural resources lack tribal representation. All agencies with responsibilities for tribal natural resources should review current and future agency advisory bodies to ensure tribal representation and the support necessary for participation.

Also, the Department of Agriculture's Natural Resource Conservation Service (NRCS) offers several opportunities to document and implement low-cost efforts to expand access to natural

resources best practices. The agency can analyze existing programs to ensure equal access for tribal nations and Indian landowners to outreach, education, training, and technical assistance. NRCS can also utilize existing networks to document and share with tribes, Native landowners, and NRCS staff what is working in “best or promising practices” in tribal natural resources conservation. In the critical area of training programs, the agency should inventory all NRCS training programs for youth and others and conduct outreach to tribes and Native landowners about these opportunities.

### ***Specific Recommendations***

#### **Include Tribal Natural Resources within the Framework of the White House Rural Council**

74. Include tribes in the natural resource focused work of the White House Rural Council
75. Explore tribal natural resources as a focus to develop the Rural Council’s work

#### **Review Existing Agreements, Strategies & Regulations that Affect Tribal Natural Resources**

76. Conduct a comprehensive review of existing interagency agreements to establish measurable goals and objectives and identify areas where tribal natural resources can advance economic development and create jobs
77. Direct tribal liaisons to work with tribes to bring together the federal, regional, state, and local agency representatives to develop an integrated natural resources approach
78. Develop a NRCS tribal advisory council at the national and regional level to develop and implement natural resource policy that promotes economic development
79. Have the Natural Resource Conservation Service provide basic conservation services to tribes and Indian landowners equitable to that of other landowners that includes outreach, education, training, and technical assistance
80. Direct NRCS to document and share with tribes, Native landowners, and NRCS staff what is working in tribal natural resources conservation
81. Inventory all NRCS training programs for youth and others and conduct outreach to tribes and Native landowners about these opportunities

## **4. Education and Workforce Development: Preparing the next generation**

Any viable economic development initiative must include provisions for education and workforce development. This includes education strategies to build a robust workforce for future generations. The 2010 Census counted almost 1.7 million Native youth under the age of 18, comprising 31.6 percent of the entire Native population. More specifically, there is a large bubble in the 15-19 age group for the Native population, so even more Native young people will be headed to college or other advanced education within the next four years.

Further investments in workforce development include: job training and skill development resources, entrepreneurship training, resume building, internship programs, referral services, as well as worker reentry programs for juvenile and adult offenders. For the most part, these programs are reliant on grant funding made available through legislation such as the Workforce Investment Act of 1988. There are many industries likely to experience increased growth in the decades to come including green jobs, health care, and information technology. Tribal communities offer immense potential in all these sectors and should be given opportunities to provide innovations in these fields through education and workforce development initiatives.

### ***Ensure Tribes Receive Equitable Access to Federal Education and Youth Funding***

Exclusion of tribal governments from provisions of the American Jobs Act is a troubling development that fails to adequately invest in improving the education system for the growing population of Native youth. Efforts to prevent teacher layoffs and create additional jobs in public early childhood, elementary, and secondary education in the 2011-2012 and 2012-2013 school years, represent critical investments in America's school systems. In that context, exclusion of the over 200 tribal educational departments from eligibility for this proposed program is deeply troubling.

Additionally, while proposed school modernization provisions provide limited funds to tribal colleges and BIE schools, tribal education departments are excluded from accessing the funds that would support the modernization, renovation, and repair of elementary and secondary school buildings.

When inequities are enacted in federal law to exclude tribal government access to funding, it has a requisite impact on tribal citizens. The Administration should rectify this by also interpreting the Green Jobs Title of the Energy Independence and Security Act (P.L. 110-140) to include tribal governments, businesses, and veterans associations so that they can access programs such as Pathways Out of Poverty.

Also, the YouthBuild program, administered by the Employment and Training Administration, was transferred from the Department of Housing and Urban Development (HUD) to the Department of Labor (DOL) by President George W. Bush on September 22, 2006. This program assists disadvantaged, low-income youth ages 16-24 in obtaining education and work



skills to be competitive candidates in the job market. Youth participate in building affordable housing for homeless and low income individuals while attending classes to obtain their High School Diploma or GED. When the program was transferred to DOL, the 10 percent set-aside for rural and tribal programs was eliminated.

The YouthBuild program recruits youth that have been adjudicated, aging out of foster care, high school drop-outs, and other at risk populations. In 2010 4,252 youth participated in the program and had a completion rate of 78 percent, and of those that completed the program 60 percent were placed in jobs or further education. It was also reported in 2010 that of the 4,252 participants in the YouthBuild program 4 percent were Native American. Citing these statistics, the Administration should ensure a tribal set-aside is reinstated into future YouthBuild funding.

### ***Streamline Federal Employment and Training Programs***

Indian Country has deeply appreciated the Obama Administration's commitment to smarter government. In the current environment of constrained federal resources, streamlined federal programs are necessary. In this context, it is troubling that the Administration has thus far given tepid support – and in some cases presented obstacles to the success of – the Indian Employment, Training, and Related Services Demonstration Act of 1992, otherwise known as the 477 Program. The program allows for the voluntary participation of tribes to combine formula funded federal grants and funds, related to employment and training, into a single budget with a single reporting system. The lead agency in this demonstration is DOI, Office of Indian Energy and Economic Development. The formula funded programs include those offered through the BIA, Department of Labor (DOL), Department of Health and Human Services (HHS), and the Department of Education. There is no expiration date on this demonstration.

However, certain auditing provisions were changed under the March 2009 OMB A-133 Compliance Supplement issued by DOI, which requires tribes to deconsolidate their employment and training federal funds so that they could be audited individually. This went into effect for 2010 audits and cost several tribes large sums of money to recreate records for each individual program that was consolidated under the 477 program. Once programs and associated funds are consolidated under 477 they lose their separate identities and are spent in accordance with the 'single budget' plan. The Administration needs to support programs like 477 as successes and work to ensure their longevity, as well as more widespread participation throughout Indian Country.

Also, the Administration should provide outreach to tribal governments and urban Indian centers about the various federal programs that tribal members are eligible to participate in. Where tribes are eligible to access mainstream funding sources, federal agencies should be encouraged to conduct extensive and targeted outreach to tribes and Native non-profits. Workforce development opportunities currently available to Indians on and off the reservation include: the BIA's Division of Workforce Development program; the Department of Labor's Indian and Native American Program; the Department of Labor's Youth Services program; and the DOI's Youth in the Great Outdoors Program.

Finally, emerging jobs, such as e-commerce and telecommunications projects, are currently not viable options for tribal members in remote locations of the reservation due to infrastructure needs. We recommend youth exchange programs be developed with a focus on building skills for success in a technological world. The leaders of the future in Indian Country must be computer savvy, and possess the ability to communicate well in diverse locations. Instituting youth exchange programs which seek to develop these skills will improve the leadership of tomorrow's Indian tribes.

### ***Support Tribal Colleges***

Higher education is one of the main drivers of economic development in the United States, particularly for American Indian and Alaska Native communities. Higher levels of education correlate with higher earnings, lower unemployment rates, and lower poverty rates. It is estimated that by 2018 only 10 percent of jobs will be accessible to workers without a high school diploma. Furthermore it is estimated that by 2018 only 28 percent of jobs will be available to those with just a high school diploma. In 2005, a typical year-round worker in the United States with a bachelor's degree earned 62 percent more than someone with a high school diploma.<sup>8</sup> A college degree has a positive ripple effect on the well-being and economic strength of tribal communities and society as a whole.

Tribal Colleges and Universities (TCUs) provide a unique opportunity for workforce development and training within Indian country and are essential education and job training institutions in many rural communities. More than 37 TCUs provide training in two and four year accredited degree programs on more than 75 campuses in 15 states, including on the reservations of the 10 largest tribal nations in the United States, and a few are now providing advanced degrees in several disciplines. The TCUs serve more than 30,000 students from well more than 250 federally recognized Indian tribes. TCUs vary in enrollment (size), focus (sciences, workforce development/training, liberal arts, etc.), location (woodlands, desert, frozen tundra, rural reservation, urban), and student population (predominantly American Indian). However, tribal identity is the core of every TCU, and they all share the mission of tribal self-determination and service to their respective communities.

TCUs are on the forefront of job training efforts to capitalize on Indian Country's potential in policy areas including alternative energy and green jobs, and the health care industry. According to the American Indian Higher Education Consortium some of the most popular tribal college programs are in high demand fields including business and vocational/career programs.<sup>9</sup> The programs of the TCUs are often oriented to the economic needs of the specific tribal nations they serve, but they remain an underutilized and often underfunded resource for workforce training needs of the economies of the tribal nations. Economic specific programs range from things like veterinary science to construction technology and environmental sciences. Many of the TCUs also help protect and advance the tribal culture and language of the specific tribe they serve.

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<sup>8</sup> Baum, S. & Jennifer M. (2007). *Education Pays: The Benefits of Higher Education for Individuals and Society*. Washington, DC : College Board.

<sup>9</sup> American Indian Higher Education Consortium. (2009). *AIHEC-AIMS Fact Book 2007: Tribal Colleges and Universities Report*. Alexandria: American Indian Higher Education Consortium.

Because of the increasingly critical role TCUs are playing in Indian Country, it is paramount that TCUs are included in existing and proposed programs to develop America's workforce through community colleges.

### ***Specific Recommendations***

#### **Ensure Tribes Receive Equitable Access to Federal Education and Youth Funding**

82. Explicitly include tribal education departments in federal proposals to prevent teacher layoffs and create additional jobs in education systems
83. Explicitly include tribal education departments in federal proposals to modernize school facilities
84. The Administration should reinstitute the 10 percent set aside for tribal and rural communities under the YouthBuild Program
85. Interpret the Green Jobs Title of the Energy Independence and Security Act to include tribal governments, businesses, and veterans associations so that they can access programs such as Pathways Out of Poverty

#### **Streamline Federal Employment and Training Programs**

86. Fully support Public Law 102-477 to allow tribes to maximize the impact of federal job and skill development funding
87. Rescind the March 2009 OMB A-133 Compliance Supplement
88. Work with tribal leaders and the Native American Employment and Training Council to develop a program accountability system that meets the needs of Native communities
89. Encourage appropriators to restore the rural and tribal set-aside, with a dedicated set-aside for tribal programs
90. Work with DOL to utilize regulatory means to ensure access for tribal grantees
91. Establish partnerships between federal agencies, community colleges, tribal colleges and universities, and technical/vocational colleges to increase access to higher education and foster the creation of bridge programs
92. Relax Department of Education regulations to allow YouthBuild to compete for innovation funds
93. Inventory existing workforce development programs across agencies and conduct coordinated interagency outreach to promote funding opportunities
94. Encourage agencies to conduct tribal specific outreach where tribes and Native non-profits are eligible to access funding
95. Work in conjunction with tribal charter schools, BIE, and non-Indian schools with technology-specific curriculums to develop youth exchange programs

#### **Support Tribal Colleges**

96. Ensure tribal colleges are included in existing and proposed programs to develop America's workforce through community colleges
97. Reissue the tribal college specific Executive Order (EO 13270), either separately or as a part of an overall Executive Order on Indian education, to require all agencies to work with tribal colleges and provide an implementation plan for such cooperation
98. Advocate for increased funding for TCUs and assist TCUs to leverage other outside resources in the private sector

99. Support TCUs in obtaining more research grants that can assist the tribal nations that they serve
100. Include tribal colleges in efforts to develop jobs in America, looking to TCUs as training centers for workforce development in Indian Country and rural America
101. Continue support for UTTC to develop as a regional training center for law enforcement correctional officers
102. Restore UTTC as a University Center for Economic Development to utilize the job creation capacity of TCUs

## 5. Infrastructure: Framework for economic recovery

Modernizing America's infrastructure is a key priority for tribal nations and the nation as a whole, especially in light of the economic challenges facing our communities. With respect to tribal roads, the Indian Reservation Roads (IRR) comprise over 104,000 miles of public roads and are owned by the Bureau of Indian Affairs (BIA), Indian tribes, states and counties. More than 65 percent of the system is unimproved earth and gravel, and approximately 24 percent of IRR bridges are classified as deficient.

These inadequate road conditions make it very difficult for tribal community residents to travel to hospitals, stores, schools, and employment centers. The poor condition of these roads, bridges, and transit systems jeopardizes the health, safety, security, and economic well-being of tribal members and the traveling public. Tribal roads and bridges are often in such disrepair that children are prevented from attending school, sick and injured people cannot reach hospitals, and emergency responders cannot provide timely assistance to people in need.

This inadequate transportation infrastructure has a tangible impact on tribal communities. Community members suffer injury and death by driving and walking along reservation roadways at rates far above the national average.<sup>10</sup> Over the past 25 years, 5,962 fatal motor vehicle crashes occurred on Indian reservation roads, with 7,093 lives lost. While the number of fatal crashes in the nation declined 2.2 percent during this time period, the number of fatal motor vehicle crashes per year on Indian reservations increased 52.5 percent.<sup>11</sup> Adult motor vehicle-related death rates for American Indians/Alaska Natives are more than twice that of the general population.<sup>12</sup>

ARRA provided key funding for safety, maintenance, and construction transportation infrastructure. These investments helped a great deal but also demonstrate the need for significant changes and sustained investments in federal transportation safety programs serving Indian Country.

As is evident in the table below, the basic living characteristics of tribal nations demonstrate significant need for expanded infrastructure for individuals and nations.

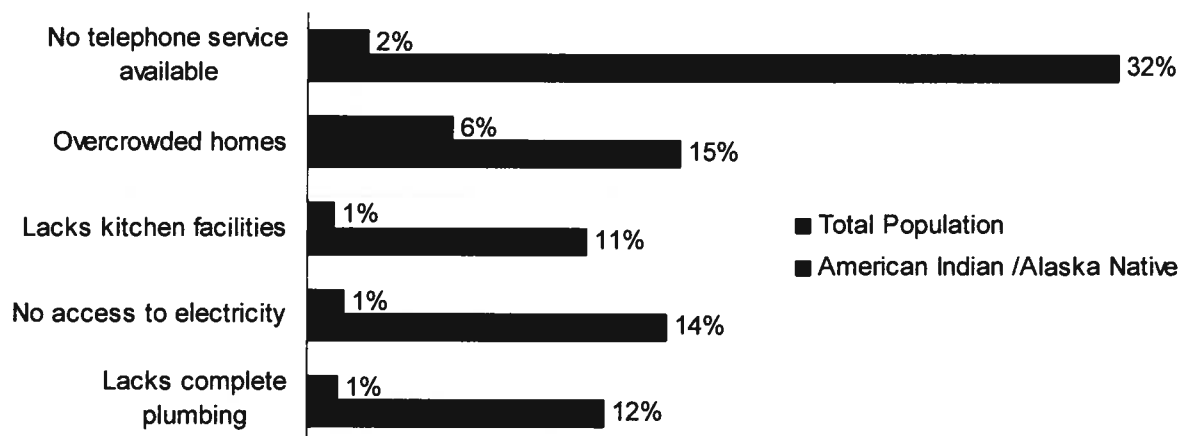
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<sup>10</sup> U.S. Department of Transportation. (2004). *Pedestrian safety in Native America*. Washington, DC: Author.

<sup>11</sup> U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA). *Fatal motor vehicle crashes on Indian Reservations, 1975-2002*. (2004, April). Washington, DC: Author.

<sup>12</sup> U.S. Department of Health and Human Services, Centers for Disease Control. (n.d.) *Injuries among American Indians/Alaska Natives (AI/AN): Fact Sheet*. Retrieved November 13, 2009, from [www.cdc.gov/MotorVehicleSafety/native/factsheet.html](http://www.cdc.gov/MotorVehicleSafety/native/factsheet.html).

### Basic Living Characteristics<sup>13</sup>



Beyond traditional physical infrastructure, access to the internet is a critical priority.

The United Nations recently announced that access to the internet is a basic human right because it facilitates civic engagement, assists economic development initiatives, promotes long distance learning and telemedicine, and is an invaluable source of information. However, tribal communities continue to experience low access and connectivity rates for basic broadband and analog telephone services. Where competitive forces have facilitated the build out and deployment of broadband internet, telephone and radio access, tribal communities have experienced numerous bureaucratic and financial barriers to access.

There are approximately 500 telecommunications companies that receive loans from USDA's Rural Development, Rural Utilities Service (RUS). Out of those 500, eight are tribally owned/operated telecommunications authorities operating on tribal lands. Analog telephone penetration rates on tribal lands are at 67.9 percent, while 98 percent of the nation has access to basic telephone service. The disparity on tribal lands pertaining to internet access is even higher, estimated at less than 10 percent penetration while 95 percent of Americans live in housing units with access to fixed broadband infrastructure. These figures create drastic inequities in access to critical needs such as E-911 services, which ensure that emergency services are available and adequately attainable. Not to mention, lack of basic communications infrastructure, if it persists, will only enhance the digital divide currently experienced by tribal nations.

The federal government through its trust responsibility, and congressional passage of the 1934 Communications Act and subsequent amendments through the 1996 Telecommunications Act, has a fiduciary responsibility to provide avenues of access for connectivity and universal service in tribal communities. The establishment of a reliable telecommunications infrastructure is essential to the operation of tribal government, health care, education, economic development,

<sup>13</sup> U.S. Census, 2000; Energy Information Administration, *Energy Use and Renewable Energy Development Potential on Indian Lands*, 2000; 2006 GAO 06-189 Report, *Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands*

and public safety. For these reasons, it is critical that the Administration continue to advocate for increased tribal provisions in the Universal Service Fund and Intercarrier Compensation reforms to elevate broadband deployment as a trust obligation.

In carrying out broadband deployment in Indian Country, identifying financing options will be critical. The Administration may find it necessary to establish interagency collaboration between the Department of Treasury, Department of Agriculture and the DOI to identify financing options for telecommunications and broadband infrastructure build-out, as well as to educate tribes about this full list of options in a low-cost way. Also, as noted earlier, tribal access to federal programs is critical to moving our communities forward. Proposals in the American Jobs Act, including the American Infrastructure Financing Authority (AIFA) and Project Rebuild, are either unclear (in the case of AIFA) or explicitly exclude tribal governments from accessing infrastructure investments (in the case of Project Rebuild). Equal access to federal infrastructure investments is critical to advancing tribal economies and rebuilding the economy of our nation as a whole.

### ***Specific Recommendations***

#### **General Infrastructure**

103. Explicitly include tribal governments in federal infrastructure programs and legislative proposals

#### **Telecommunications**

104. Reform USDA lending policies to ensure tribal eligibility for loans even when they provide competition to rural telecommunications companies/cooperatives
105. Continue to redefine service areas to accommodate tribal ETC designations if a rural carrier holds spectrum over tribal lands
106. Create a tribal position on local, national, administrative and federal-state boards addressing telecommunications
107. Provide for SafetyNet E-911 service for tribal communities since many tribal lands reside in rural areas thereby increasing EMS and law enforcement response times
108. Establish inter-agency collaboration between the Department of Treasury, Department of Agriculture, and the Department of the Interior with tribes to develop additional financing options collectively, and educate tribes of available financing
109. Ensure funding mechanisms allow tribes access to technical assistance to assess infrastructure and appropriate technological and service solutions for deployment and maintenance of broadband services on tribal lands
110. Create a 'Native Nations Broadband Fund' within the USF to provide targeted funding for broadband deployment in Indian Country. This fund would combine Universal Service support and federal grant resourcing programs
111. Advocate on behalf of tribes for an accurate assessment of broadband capabilities on tribal lands to be included in the Spectrum Dashboard data
112. Grant tribes access to the Dashboard for planning purposes to develop their own telecommunications capabilities
113. Extend tribal radio construction permits nearing the expiration deadline

114. Review and consider reauthorization of the Public Telecommunications Facilities Program to advance tribal and rural communities access to public radio and television
115. Urge the FCC to change its stance on reverse auctions for tribal and rural communities and instead provide tribal priority to available spectrum and offer it at discounted or reserved prices