Testimony

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Gary Davis, President and CEO

of

The National Center for American Indian Enterprise

Development

on

“Economic Development:

Encouraging Investment in Indian Country”

before the

Senate Committee on Indian Affairs Hearing

on

June 25, 2014

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Gary Davis, President and CEO

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Good afternoon, Chairman Tester and members of this extraordinary Senate Committee dedicated to improving Indian Country. I am Gary Davis, President and CEO of the National Center for American Indian Enterprise Development. I thank the Committee for inviting the National Center to testify today on “Economic Development: Encouraging Investment in Indian Country.” The National Center embraces that challenge every day in serving nationwide with thousands of Indian tribes, tribal enterprises, and businesses owned by American Indians, Alaska Natives and Native Hawaiians.

The National Center, now in its 5th decade, is the Nation’s leading and longest serving advocate and provider of American Indian business development assistance. Every day, the National Center works in the private sector and collaborates with private and public sector players to encourage investment in Indian Country by assisting and promoting Native business interests in commercial and government marketplaces, both domestic and international. We also produce national and regional Reservation Economic Summits (RES) and Trade Shows. As we speak, this hearing is being streamed into the National Center’s first RES DC for hundreds of our conference participants to hear and see this important proceeding.

This week’s DC Summit, Trade Show and Buy Native Matchmaking Expo runs June 24-26 at the Omni Shoreham Hotel, with workshops and trainings on a broad range of topics, including:

• Buy Indian Act regulations and enforcement

• International export and trade investment initiatives

• Native Community Development Financial Institutions and CDFI bond guarantees

• The state of Native 8(a) contracting

• Energy and economic development initiatives and investment opportunities

• Telecommunication solutions facilitated by tribes, the FCC, USDA, and Congress

• Technology innovations to power E-commerce, encourage investment, and spur job creation and business growth in Indian Country.

**The National Center’s Role in Encouraging Investment in Indian Country**

Our non-profit organization launched in 1969 to assist individual American Indian-owned businesses in building their businesses by connecting them with larger, well-established companies as business partners and mentors. Many of these larger companies – in the energy, technology and defense sectors -- became National Center partners by serving on our National Resource Council.

As the federal government began to step up its entrepreneurial development, business and procurement technical assistance efforts, the National Center became one of the first American Indian organizations to advocate and partner with some of the federal agencies. One of our founders, David Lester, served on the advisory group that conceived of what President Nixon then launched in his 1971 Executive Order as the Minority Business Development Agency (MBDA). The National Center developed and operated the first of what became a group of Native American Business Development Centers. (In 2012, MBDA converted them all to Minority Business Centers.) The National Center also worked with Congress to expand the Defense Logistics Agency’s Procurement Technical Assistance Program to create American Indian Procurement Technical Assistance Centers (AIPTACs) in the 1980s. The National Center launched and still operates the longest serving and most successful AIPTAC. We collaborate with the Montana and other four AIPTACs whose clients benefit from our RES conferences that always include trade shows and extraordinary procurement matchmaking expos.

The National Center leaders also have long advocated for broader use of Buy Indian Act authority. In 1987 and 1990 testimony before the Senate Indian Affairs leadership, then President Steve Stallings urged strengthening Buy Indian Act provisions to apply beyond the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) to other federal agencies that expend funds for the benefit of American Indians and Alaska Natives. It took 20 more years, over 100 altogether, for BIA to propose implementing regulations in 2010. As the National Center wrote in its May, 2010 comments on BIA’s proposed rule, energizing and strengthening Indian enterprises through robust government contracting set asides is a tool that BIA, Interior and other departments should continue to develop to invigorate tribal and Indian enterprise growth. To be as expansive and inclusive as possible, the National Center urged that the final regulations: 1) be made applicable to every Bureau or Office that has delegated authority to complete acquisitions under the Buy Indian Act; 2) outline the overall goal of 100% utilization of Indian economic enterprises; 3) provide for an Accountability Officer responsible for monitoring compliance and reporting annually to the Secretary on the extent of use and amount of contracts awarded to Indian economic enterprises. The final regulations published in July, 2013 reflected many of the National Center’s comments, but unfortunately did not include the recommended goal of 100% utilization of Native enterprises.

**Today, many federal departments and agencies expend funds for the benefit of Indians but do not utilize procedures designed to ensure that such “benefit” is extended through contracting, purchasing and hiring policies or activities. That is a shame, because expanded Buy Indian Act authority could encourage investment in Indian Country, create jobs and strengthen tribal economies in its requirements for maximum employment of Indian labor and purchase of Indian goods and services.**

Two other recommendations made at the 1987 Senate hearing referenced above – which Congress took quick action to pass -- were amendments to the Indian Finance Act to encourage more business and economic development activity in Indian Country by tribes, tribal enterprises and companies owned by individual American Indians and Alaska Natives by:

1. allowing prime contractors 5% incentive payments for awarding some of their federal contract dollars to Indian-owned economic enterprises (incentive payments worth 5% of the value of the subcontract work performed by the Indian subcontractor); and
2. increasing to $500 million the total amount of loans eligible under the Indian Loan Guarantee Program. In 2006, Congress raised the level even higher to $1.5 billion.

Sadly, none of the federal agencies did anything to implement the 5% Indian Incentive Program (IIP) authority. So, tribal-owned contractors urged Congress to help intercede with the Department of Defense (DOD), by far the largest federal contracting agency. Congress did so by including provisions in the Defense Appropriations FY 1990 to fund IIP payments. As DOD took no implementing action in that year, the next fiscal year’s DOD appropriations measure directed promulgation of implementing regulations within 90 days. Finally after DOD streamlined its regulations and inserted specific IIP clauses in DOD contracts, the IIP became successful in helping to generate well over $300 million annually in subcontract dollars to Native-owned companies. In recent years, backlogs of DOD-approved IIP requests have always exceeded the annual appropriation of $15 million for the payments, evidencing the program’s success in enabling Native businesses to market their capabilities and land contract work. For many tribes, the IIP has been key to incentivizing DOD contractors to subcontract work to tribal enterprises which, in turn, have expanded their operations to help build their tribal economies.

As to the Indian Loan Guarantee Program, however, Congress has never appropriated the full amounts authorized, and has so short-changed the credit subsidy for this essential program that BIA has not been able to guarantee loans totaling more than about $300 million per year.

**Today, the National Center sees its mission as not only to encourage and advocate for American Indian Enterprise Development, but also to serve as a facilitator, a connector, and closer to ensure investment in Indian Country. We serve tribal communities and tribal enterprises, companies owned by tribal members and shareholders, and all the private and public entities interested in partnering with these Native businesses. We link investors, lenders, guarantors, co-producers, purchasers, suppliers, joint venture mentors and protégés – whether the relationships are intra-tribal, inter-tribal, national or international.**

As The National Center for American Indian Enterprise Development, we want to lead the charge in opening up trade and export opportunities for tribes, tribal enterprises and all Native-owned businesses. We are accomplishing this push with our **National and Regional Reservation Economic Summits** as economic development launch pads for these Indian Country enterprises and our corporate partners. We also will offer web-based business development through our **National Center Edge** portal, proactively utilizing technology and the internet to provide economic opportunities, trainings, business development services, and much more, to tribes and Native businesses nationwide. The National Center’s **Native American Global Trade Center** will expand to introduce and facilitate more global opportunities and relationships for tribes and tribal enterprises. As the world becomes smaller through technology and the internet, the National Center is strategically positioning to facilitate both domestic and international trade for Indian Country.

Just as other nonprofits and businesses must operate today, the National Center must be lean, mean, efficient and effective. Working out of small offices, strategically located, perhaps even in Washington, DC, we will continue to collaborate with corporate and tribal partners to maximize synergies and reduce operational costs. As a national organization, we will continue building key relationships in DC and working partnerships with federal agencies and Congress to improve business and economic program delivery to, and increase investment in, Indian Country.

**Lessons Learned**

The National Center first welcomed me as private sector entrepreneur running several successful businesses. After joining the National Center’s Board of Directors and now as President and CEO, I am grasping the challenge of running a nonprofit serving businesses and tribal communities with funds from a mix of federal cooperative assistance agreements with rigid operating constraints, and private sector funds to supplement, sustain, and enhance our operations. Creativity and inspiration in our RES conferences, trade shows and other trainings help generate the revenues we need to sustain and grow. Below are some of our lessons learned:

**First**, some federal programs have been more helpful than others for Indian Country. The “hand up” works better than the “hand out” approach to instill self-determination and self-sufficiency.

**Second**, based on the National Center’s direct experience, the more successful federal business development programs are those that are specifically designed to help startups and larger companies in Indian Country. What does not work well is the “square peg – round hole” approach of repackaging legacy federal programs and dictating how assistance must be delivered and to what size of business. Least successful are those programs that focus on getting the highest possible return on the federal investment by requiring business assistance centers to work only with American Indian businesses generating well over $1 million in annual revenues – not the Indian business startups that most need the entrepreneurial development assistance. The Small Business Administration (SBA) recently took the right approach in announcing a PRIME grant program that calls for proposals from tribes and other entities willing to serve micro enterprises.

**Third**, adequate federal funding has been key to the more successful Indian Country-focused programs that provide technical assistance to users of the federal programs. Whether through direct appropriations (e.g., National American Indian Housing Council) or contracts to provide the technical assistance (e.g., Oweesta Corporation), stronger federal support enables technical assistance organizations to scale up and attract better educated and experienced trainers and business counselors.

**Fourth**, another key has been establishment of a high level Office of Native American Affairs or Tribal Liaison within the major federal departments and agencies operating programs that can advance business and economic development in Indian Country. For years, the Department of the Interior’s BIA and IHS paid primary attention to Indian Country’s needs. Broader federal attention started to occur when the Department of Housing and Urban Development formed the Office of Native American Programs, and then Congress passed the Native American Housing and Self Determination Act. The SBA started to improve its assistance to American Indian- and tribal-owned businesses and contractors with establishment of its Office of Native American Affairs with increased funding. The Federal Communications Commission (FCC) became more responsive to Indian Country needs with establishment of its Office of Native American Affairs and Policy. The Department of Agriculture (USDA) expanded its outreach and improved program delivery to Indian Country with establishment of the Office of Tribal Liaison. Congress saw the wisdom of that approach and codified the Office with line item funding in the Farm Bill enactment. Likewise, the Congress embraced and funded the Department of Energy’s Office of Indian Energy Policy and Programs.

**Fifth**, a major push is needed to fulfill Congress’ intent for the Department of Commerce to pay far greater attention to its mandates to advance business and economic development, trade and tourism promotion in Indian Country. Back in the late 1990s, then Commerce Secretary William Daley took administrative action to establish an office for Native American Affairs reporting directly to the Secretary. Congress recognized the importance of Commerce’s portfolio to advancement of Indian Country’s interests and passed two important measures that became law in 2000:

* The Indian Tribal Regulatory Reform and Business Development Act (Public Law 106-447) directed the Secretary of Commerce, in consultation with the Secretary of the Interior and others, to establish a Regulatory Reform and Business Development on Indian Lands Authority to facilitate identification and subsequent removal of obstacles to investment, business development, and creation of wealth for the economies of Native American communities. The Authority was allotted one year to do its work and report back to Congress, and disband within 3 months thereafter.
* The Native American Business Development, Trade Promotion and Tourism Act (Public Law 106-464) codified an Office of Native American Business Development headed by a Director, appointed by and reporting to the Secretary, to fulfill enumerated duties of the Secretary, including to: 1) ensure intra- and inter-agency coordination of federal programs that provide financial and technical assistance for business and economic development, and expansion of trade; 2) carry out a Native American export and trade promotion program; 3) conduct a Native American tourism program; and 4) report annually to the Senate Committee on Indian Affairs and House Committee on Natural Resources on the operation of the Office and any recommendations for legislation that the Secretary, in consultation with the Office’s Director, deems necessary to carry out the Secretary’s duties under the Act.

Recently, Washington Congresswoman Del Bene introduced the “Indian Country Economic Revitalization Act of 2014” (H.R. 4699) to amend the second of these two Acts to require the Secretary to prepare and submit to the House Committee on Natural Resources and Senate Committee on Indian Affairs, a report and recommendations for promoting the sustained growth of the economies of Indian tribes and Indian lands. Such a report would be due within one year of the bill’s enactment and each year thereafter for 3 years.

Here’s the big problem. Unfortunately, no action was ever taken to establish the Authority mandated in Public Law 106-447, and only minimal steps have been taken since 2000 to implement Public Law 106-464. In 2005, the MBDA Director agreed to become Director of the Office of Native American Business Development and allocate about $200,000 to hire an experienced Native American to develop a business plan and begin fulfilling the requirements of the two Acts above. Three Native Americans, successively, have since held that position, with the latter two also designated at the Senior Advisor to the Secretary on Native American Affairs. The current Senior Advisor is now housed in the Inter-Governmental Affairs Office and doing his best to help implement President Obama’s new Indian Country initiatives. However, with its own budget for more than just one person, the Office of Native American Business Development could help implement the President’s new initiatives, and fulfill the Secretary’s duties under the two Acts (and possibly others).

The National Center wishes to thank Alaska Senator Mark Begich for offering to pursue a Senate floor amendment to the FY 2015 Commerce Appropriations measure to make available, within the existing Departmental Management budget, specific funds to provide the Office its own budget. Twelve national and regional Native organizations are on record supporting such a move, and we all will work to secure this funding at long last.

The National Center calls on this Committee and the entire Congress to step up and provide the targeted funding and impetus to improve the programs that enable tribes and Native businesses to succeed on their own terms. In recent years, the National Center has taken the lead to develop, in coordination with other national Native organizations, the key recommendations and specific funding requests for the federal programs that leverage non-federal dollars to catalyze economic growth in Indian Country. Just two months ago on April 30, the National Center presented these specific recommendations to the Senate leadership and they are listed at the end of my testimony.

**National Center Recommendations for Executive and Congressional Action**

**Review the Buy Indian Act for Enforcement and Impact:**

During his recent visit to the Standing Rock Sioux Community, President Obama announced a new Interior initiative to improve Buy Indian Act implementation and increase Interior procurement purchases by 10%. That is a step in the right direction. To hear how BIA and IHS are progressing in their use of Buy Indian Act procedures in their procurement awards and purchases, the National Center hosted a RES DC workshop yesterday to receive their progress reports. Within the coming months, we urge this Committee to conduct an oversight hearing to receive testimony and reports from these and other agencies with update on their use of Buy Indian Act authority. The Committee also should seek testimony on how to expand the Act’s application to additional federal departments and agencies.

**Ensure Expansion of Commerce’s Office Devoted to Native American Affairs:**

For years, the National Center and other national Native organizations have urged expansion of this Office reporting directly to the Secretary of Commerce and line item funding for this Office within Commerce’s Departmental Management budget. This key Office must fulfill the duties prescribed in Public Laws 106-447 and 464 to implement Indian policy initiatives and expand Native American business development, trade promotion and tourism initiatives both domestically and internationally in collaboration with other agencies within Commerce and other cabinet departments and agencies. The National Center is raising this issue in the RES DC panel discussion on international trade. President Obama’s recently announced initiatives to support growth of new markets and improve access to export opportunities can be accelerated if Commerce provides funding for a more robust Office of Native American Affairs. In addition, we urge this Committee to do its part by pressing for expansion and funding for this important Office.

**Erase Discrimination and Restore Parity Disrupted by the *“Carcieri”* Decision:**

For Indian Country to be able to attract investment, create jobs and build tribal economies, all federally recognized Indian tribes must be able to protect and enhance their tribal lands, and generate self-sustaining income from tribal lands. The Interior Department decisions and opinions have gone as far as they can to restore parity among tribes striving to reacquire some of their original land base. Congress must take long overdue action to pass legislation to clarify the authority of the Interior Secretary to acquire land in trust for any federally recognized tribe so as to remedy confusion and harmful impacts stemming from the U.S. Supreme Court’s decision in *Carcieri v. Salazar.* That decision has caused processing delays in trust land applications, additional bureaucratic red tape for potential investors, and confusion over legal jurisdiction. The National Center applauds this Committee for reporting the needed remedial legislation to the full Senate on June 12 for further action.

**Promote Tax Parity for Tribes:**

The National Center commends enactment of authority for Indian tribes to issue tax exempt Tribal Economic Development (TED) Bonds, and the Obama Administrative iterative implementation to encourage tribes to use TED bonds to finance economic development projects, such as laying new broadband fiber, improving access to clean water, building hotels for tourists and manufacturing plants. With the TED Bond provisions, Congress took an important step toward providing more parity in the tax treatment of tribal, state and municipal governments. Likewise, in action on tax reform or any other tax legislation, it must be ensured that tribal governments are treated as taxing authorities in any provisions for collecting remote sales taxes (in parity with state and local governments and other taxing authorities). As sovereigns, tribes must be able to exercise the right to collect tax revenues to provide for their members and promote business and job creation, and even offer tax advantages to attract outside investment necessary to build their tribal economies.

**Support More Measures to Encourage Energy Investment and Development:**

In numerous energy-related workshops hosted at our National RES and RES DC conferences, there has been great interest in development of renewable and conventional energy resources, and the related potential for workforce and economic development. President Obama fully recognizes this interest and recently announced new initiatives to remove regulatory barriers to energy and infrastructure development on Indian land by streamlining approval processes for rights-of-way, including transition lines and broadband access. Congress also must act by passing legislation that provides tribes options and funding mechanisms to develop their energy resources, respects tribes’ ability to regulate the development of their own resources, and removes unnecessary regulatory barriers to American Indian energy development.

**Enact FY2015 Funding that Spurs Business and Economic Development in Indian Country**

The most obvious action that Congress can take is appropriating adequate funding for programs that improve access to tools for tribes and their members to make freer and better use of their lands, grow businesses, create more jobs, access more income streams, improve their infrastructure (roads, utilities, housing, schools, community centers, health clinics, government operations, courts) and pursue larger scale business and resource development. Below are the National Center’s specific requests for FY 2015 funding actions:

Department of the Interior

**• $25 million for the Office of Indian Energy and Economic Development (OIEED)**

OIEED should receive more funding and latitude to: 1) speed the HEARTH Act’s implementation; 2) develop a model tribal environmental code that tribes could consider, adapt and implement along with new tribal ordinances for leasing tribal lands for energy and economic development projects; 3) provide funding to requesting tribes for business plans or feasibility studies for business and economic development projects; 4) expand the scope and usefulness of its Indian Loan Guarantee Program to finance more business operations and expansions, provide standby letters of credit that could encourage sureties to provide needed surety bonding, and finance start up energy and economic development projects; and 5) provide more technical assistance (including providing guidance on preparing business plans, repairing credit records, and completing loan applications).

**• $15 million for the Indian Loan Guarantee Program**

OIEED’s Division of Capital Investment oversees the Indian Loan Guarantee Program and loan subsidy program, and has authority to support surety bonding for American Indian contractors. The Loan Guarantee Program is the only federal guarantee program that facilitates the process for eligible tribal and individual American Indian borrowers to obtain conventional lender financing for businesses and economic development projects. BIA-certified lenders are willing and able to lend to Tribes and Indian businesses on reservations and submit to tribal court jurisdiction (whereas SBA-certified lenders must adjudicate loan defaults in federal court). OIEED also operates a revolving credit facility (SBA has no such support) that assists American Indian borrowers with lines of credit for working capital, payrolls for hiring new employees, and even assurances sufficient for sureties to provide performance bonds to tribal- and other Native-owned contractors. As noted earlier in this testimony, Congress authorized a substantial increase in the aggregate limit on Indian loan and surety bond guarantees from $500 million to $1.5 billion in 2006. Congress has so far failed to approve a parallel hike in the credit subsidy, but it can start by providing at least $15 million for FY 2015 to permit guarantee of total loan principal up to about $240 million.

Department of Commerce

**• At least $1 million for Commerce’s Office of Native American Affairs**

This line item funding is essential to expand the Office of Native American Affairs (ONAA) contemplated in the Native American Business Development, Trade Promotion and Tourism Act of 2000. Line item ONAA funding within Commerce’s Departmental Management budget will better enable the Office to implement Indian policy initiatives and expand Native American business development, trade promotion and tourism initiatives both domestically and internationally in collaboration with other agencies within Commerce and other cabinet departments and agencies. Line item funding for the ONAA is particularly important since Commerce’s Minority Business Development Agency has eliminated the Native American-focused business enterprise centers that provided valuable business assistance for many years to tribes, tribal enterprises and individual Native-owned businesses and Native entrepreneurs.

Small Business Administration

**• At least $1.25 million for SBA’s Office of Native American Affairs**

The SBA Office of Native American Affairs (ONAA) plays an integral role in helping tribes and Native businesses access SBA’s many business assistance and lending programs. Fortunately the line item for “Native American Outreach” funding has increased somewhat, but a specific budget for the ONAA would better enable the Office to expand its successful activities that: 1) spur business development with SBA loans, loan guarantees and surety bond guarantees; 2) provide tribal and business executive training; and 3) engage in multi-agency workshops and native supplier initiative events around the U.S., as recently announced by President Obama during his visit to Standing Rock. At that time, Standing Rock announced approval of its Tribal Uniform Commercial Code. This news was welcome, and a tribute to groundwork supported in part by SBA and the Federal Reserve Board of Minneapolis to assist Indian tribes in considering and adopting business ordinances modeled on the UCC. It is especially important to fund the ONAA adequately given the loss of funding for the Small Business Teaming Grant program that supported two centers focused on teaming among tribal and other Native-owned contractors.

Federal Communications Commission

**• $2 million for the FCC’s Office of Native Affairs and Policy**

The FCC-ONAP jump-started an expansive educational effort within the agency and in Indian Country on telecommunications issues and programs. ONAP promotes increased internet, broadband and telecommunications access for tribal communities that suffer from the lowest penetration rates for basic telephone service and broadband. Today’s economy relies heavily on E-commerce for business growth and job creation. The ONAP helps ensure that FCC and other federal decisions properly address Indian Country’s needs for better electronic communication.

Department of Agriculture

**• $1.5 million for USDA’s Office of Tribal Relations**

The OTR reports directly to the USA Secretary and serves a linchpin role in expanding all USDA program support throughout Indian Country. Congress should appropriate adequate funding for OTR and USDA-Rural Development programs that support economic development activities in Indian Country by providing loans, loan guarantees, grants and other assistance for business and economic development, telecommunications, water systems and other infrastructure deployment, international trade in agricultural products, and crop insurance.

Department of Defense

**• $4.5 million for AIPTACs within $36,262 million for Procurement Technical Assistance**

Since 1990, the Defense Logistics Agency (DLA) has supported Procurement Technical Assistance through cooperative agreements with regional, statewide and local centers (PTACs), and American Indian PTACs that serve at least two BIA Areas. Six such AIPTACs now exist across the U.S., and all PTACs must raise private funds to make the match that DLA requires and to sustain operations. AIPTACs offer valuable assistance to tribal and other Native-owned companies in navigating the large, complex federal procurement market, winning government contracts and complying with myriad government procurement and other regulatory requirements. Last year, Congress increased the authorization levels for statewide PTACs and AIPTACs. In turn, Congress should increase the amount reserved for AIPTACs ($4.5 million) within at least level funding of $36,262 million for the overall program.

**• $15 million for the 5% Indian Incentive Payment Program**

Section 504 of the Indian Finance Act authorized, and DOD regulations implemented, the 5% Indian Incentive Payment (IIP) Program that permits a DOD higher tier contractor to receive an IIP of 5% of the value of a subcontract it awards to a Native-owned subcontractor or supplier. DOD’s Office of Small Business Programs reviews such requests which, if approved, are paid from funds appropriated for the IIP. Since FY 1991, Congress annually has appropriated funds for DOD to make these 5% IIP payments. As noted earlier in this testimony, the IIP program has helped generate well over $300 million annually in subcontract dollars to Native-owned companies in recent years. The backlog of IIP requests always exceeds the amount appropriated for the payments, evidencing the program’s success in enabling Native businesses to market their capabilities and land contract work. For many tribes, the IIP has been key to incentivizing DOD contractors to subcontract work to tribal enterprises which, in turn, have expanded their operations to help build their tribal economies.

Department of Treasury

**• $15 million for Native Community Development Financial Institutions**

Indian Country has benefitted significantly from the Native Initiative of the Community Development Financial Institutions Fund (CDFI Fund) through expanded access to capital for individuals and small businesses. The initiative funds Native CDFIs to provide micro loans and facilitates financial literacy and entrepreneurial development training in Native communities across the country.

Once again, thank you, Mr. Chairman, and the Committee for the opportunity to present testimony on behalf of the National Center and our recommendations. We urge the Senate, and House, to consider and act on these matters promptly.