Testimony

***Board of Directors***

Derrick Watchman (Navajo)

Chairman

Sue Masten (Yurok)

Vice-Chairman

Raymond C. Brown (Washoe)

Treasurer

Joan Timeche (Hopi)

Secretary

Gary Davis

(Cherokee Nation of Oklahoma)

President/CEO

Clyde Gooden (Eskimo)

Margo Gray (Osage)

Ernest Stevens, Jr. (Oneida)

Joel Frank, Sr. (Seminole)

John Echohawk (Pawnee)

Karlene Hunter (Oglala Sioux)

Kip R. Ritchie (Forest County Potawatomi)

Larry G. Kinley (Lummi)

Mel Twist (Cherokee)

Michelle L. Holiday (Iowa of OK)

Patricia Parker (Choctaw)

Richard Tall Bear (Wahpeton Oyate)

Ronald J. Solimon (Laguna Pueblo)

Urban L. Giff (Pima)

of

Gary Davis, President and CEO

The National Center for American Indian Enterprise

Development

on

“Indian Country Priorities for the 114th Congress”

Oversight Hearing

of the

Senate Committee on Indian Affairs

on

January 28, 2015

Testimony of

Gary Davis, President and CEO

The National Center for American Indian Enterprise Development

For the Oversight Hearing on

“Indian Country Priorities for the 114th Congress”

of the

Senate Committee on Indian Affairs

January 28, 2015

Good afternoon, Chairman Barrasso, Ranking Member Tester and members of the Committee. I am Gary Davis, President and CEO of the National Center for American Indian Enterprise Development, and I thank you for inviting the National Center’s views on Indian Country priorities for the 114th Congress, focusing on economic and business development recommendations and specifically some that this Committee can take the lead in advancing.

The National Center, now in its 5th decade, is the Nation’s leading and longest serving national organization founded to dedicate its efforts solely to developing American Indian self-sufficiency through business ownership. While maintaining that dedication, the National Center has expanded its services to range from business and supply management to procurement technical assistance for hundreds of Indian tribes and thousands of businesses nationwide, whether owned by Indian tribes or American Indians, Alaska Natives or Native Hawaiians. We encourage investment in Indian Country by assisting and promoting these 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 that attract thousands of leaders of tribal governments and their enterprises, businesses owned by indigenous groups in American and those from Canada and other countries, as well as Native entrepreneurs. All these folks attend our RES events because we feature training sessions, business matchmaking and extensive networking opportunities, as you can see from the agenda posted online for our National RES on March 9-12, 2015: www.res.ncaied.org/national-res-las-vegas-agenda/.

We have extended RES to regional conferences, last October in Wisconsin and last June in DC. In fact, this Committee’s June 25, 2014 hearing on “Economic Development: Encouraging Investment in Indian Country,” was streamed into the National Center’s RES DC conference for hundreds of our participants to see and hear that important proceeding.

At our National RES this March, we will launch new web-based business development assistance 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 Recommendations on Economic and Business Development Priorities**

My testimony at the Committee’s June 25, 2014 hearing, and at the Committee-sponsored “Listening Session on Economic Development” at RES Wisconsin on October 9, 2014, detailed proposals that the National Center has long advanced for economic and business development in Indian Country. Therefore, I will limit my remarks to three categories of actions this Committee should take during the 114th Congress to address key economic and business development priorities: 1) Oversight Actions; 2) Committee Recommendations on the FY 2016 Budget for Indian Country; and 3) Legislation, primarily on parity treatment for tribal governments.

I. Committee Oversight Actions

The National Center applauds the Committee for jumpstarting its work in the 114th Congress with this hearing. Oversight can be such a powerful tool to inquire, probe and persuade to achieve desired results – without having to draft, negotiate and pass legislation. Whether through hearings or letters requesting reports, the Committee can elicit essential data that might not ever come to light, or even be developed or collected in the first place.

Subjects for helpful Oversight Hearings, or letters to federal departments and agencies, include:

A. Buy Indian Act Implementation and Enforcement: After 100 years of quasi-dormancy at the Department of the Interior, this Act’s authority finally came to life with promulgation of final rules in 2013 to implement this critically important catalyst for economic, business and workforce development in Indian Country. In 2014, Interior pledged to improve implementation and increase by 10% Buy Indian procurement awards and purchases from Indian economic enterprises. The National Center hosted workshops at our RES DC and Wisconsin conferences in 2014 to receive progress reports, and we will do so again at our upcoming National RES on March 11, 2015. Through our own “oversight” efforts, we have found the Bureau of Indian Affairs (BIA) to be working hard and deserving kudos for their efforts. As for the Indian Health Service (IHS), while its implementing procedures were promulgated many years earlier, they seem to be applied sparingly, at best. No IHS representative has attended our RES workshops to report on Buy Indian contracting. We urge this Committee to hold an oversight hearing and invite witnesses from Interior, BIA and IHS, including contracting officers, to report on historical and current use of Buy Indian Act procedures and on increases, if any, in the number and value of procurement awards to tribal and other Indian-owned economic enterprises. The Committee also should seek testimony on how Congress can expand the Act’s application to other federal departments and agencies that expend funds for the benefit of Indians, so as to maximize that “benefit” through contracting, purchasing and hiring that spur economic and business development in Indian Country.

The Committee’s hearings on the FY 2016 Interior/BIA and IHS budget request are other venues for asking the agencies for status reports on Buy Indian Act implementation.

B. Elevation of Two Key Native American Affairs Offices

The National Center and a dozen other national and regional organizations representing Indian Country interests have long urged the elevation and enhancement of the Office of Native American Affairs within the Department of Commerce and the Small Business Administration (SBA). This Committee should hold an oversight hearing on the respective efforts of Commerce and SBA to address Indian Country’s economic and business priorities.

Several federal departments now operate a high level Office of Native American Affairs or Tribal Relations, with its own budget, to promote and support economic and business development in Indian Country. It is past time for such Offices at Commerce and SBA to be elevated and provided their own budgets. In 2000, Congress passed two laws to deploy Commerce’s robust economic, business, trade and tourism promotion programs to advance Indian Country’s interests:

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

Commerce Secretaries have ignored the first Act above, and only intermittently implemented the second Act, despite repeated requests by the National Center and many other Native American organizations for elevation and specific funding of the Office of Native American Business Development to address these Acts’ requirements. Last year, legislation (H.R. 4699) proposed to amend the second Act to require the Secretary to report to this Committee (and its House counterpart) on recommendations for promoting the sustained growth of the economies of Indian tribes and Indian lands. Instead, your Committee should hold a hearing or listening session to hear what the Commerce Department has done since 2000 to honor the intent of these two Acts and how and when it plans to expand and fund the Office of Native American Business Development to fulfill the duties prescribed by these Acts.

As for the SBA, it deserves credit for establishing an Assistant Administrator for Native American Affairs and increasing funding for “Native American Outreach.” Several bills in past Congresses have proposed to elevate the position to Associate Administrator with grant-making authority. At a minimum, the Office should have its own budget, with line item funding, in place of the current “Native American Outreach” line item.

II. Committee Recommendations on Indian Program Funding

In past years, this Committee has held hearings on the President’s Budget Requests and has submitted letters to the Senate Budget and Appropriations Committees making recommendations on funding levels for programs that advance Indian Country’s priorities. This Committee involvement on budget priorities has always been important to Indian Country and to the other Committees’ members and staff responsible for drafting budget resolutions, appropriations bills and other legislation. My June, 2014 testimony outlined a number of funding requests to address Indian Country’s economic and business priorities. Below are some key programs where minimal increases in federal funding would have maximum leveraging effect in expanding access to capital and generating more economic, business and community development in Indian Country. The National Center urges the Committee to raise the following key programs in relevant budget hearings and letters on the FY 2016 budget requests:

A. Department of the Interior

1. Up to $25 Million for Interior’s Office of Indian Energy and Economic Development

At this funding level, this Office (OIEED) could: 1) speed the HEARTH Act’s implementation; 2) assist tribes in developing environmental codes and other tribal ordinances for leasing tribal lands for energy and economic development projects; 3) provide grant funding for business plans or feasibility studies for tribal business and economic development projects; and 4) provide more technical assistance (including guidance on preparing business plans, repairing credit records, and completing loan applications) and expand the scope of the Indian Loan Guarantee Program (discussed below) to finance more business operations/expansions, provide standby letters of credit to attract needed surety bonding, and finance start up energy and economic development projects.

2. $15 Million for the Indian Loan Guarantee Program

Overseen by OIEED, the Indian Loan Guarantee Program and loan subsidy program have incredible potential to leverage a small federal investment to facilitate substantial conventional lending for businesses and economic development projects. BIA-certified lenders lend to Tribes and Indian businesses on reservations and submit to tribal court jurisdiction (whereas SBA-certified lenders must adjudicate any loan defaults in federal court). OIEED also operates a revolving credit facility (SBA has no such support) that assists Indian borrowers with lines of credit for working capital, payrolls for hiring new employees, and assurances sufficient for sureties to provide performance bonds to tribal- and other Native-owned contractors. This kind of support facilitates Buy Indian Act contracting. In 2006, recognizing this program’s potential, Congress authorized a huge increase in the aggregate limit on Indian guaranteed loans from $500 million to $1.5 billion. However, FY 2015 funding for the program’s credit subsidy is less than $7 million, limiting the total loan principal to only about $100 million. By increasing the credit subsidy to a modest $15 million, upwards of $250 million in total loan principal could be guaranteed.

B. Department of the Treasury, Community Development Financial Institutions Fund

1. $15 Million for Native Community Development Financial Institutions (CDFIs)

Indian Country has greatly benefitted from the Native Initiative of the 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. This program is another great example of how a modest federal investment catalyzes greater capital access in Indian communities.

2. Report Language on New Market Tax Credit Allocations For Indian Country

The CDFI Fund also oversees the New Market Tax Credits (NMTC) Program that makes NMTC allocations to Community Development Entities (CDEs) to help finance projects in low-income urban neighborhoods and rural communities lacking access to capital needed to support and grow businesses, create jobs and sustain healthy local economies. In the past, NMTC allocations have helped finance projects in Indian Country, but none of the last two rounds of allocations went to the CDEs that primarily or exclusively serve Indian Country. Since the CDFI Fund is open to making some adjustments, we urge the Committee to signal a desire to see a greater percentage of the NMTCs allocated to CDEs that focus on community, housing, economic and business developments in Indian Country. (See further discussion in Legislative recommendations below.)

C. Funding Federal Offices of Native American Affairs and Tribal Relations

As I explained in my testimony last June, broader federal attention to Indian Country occurred after more Cabinet departments and key federal agencies established Offices with that focus (e.g., HUD’s Office of Native American Programs, USDA’s Office of Tribal Relations, DOE’s Office of Indian Energy Policy and Programs, the FCC’s Office of Native American Affairs and Policy, and SBA’s Office of Native American Affairs). Each of these key Offices deserve increases or at least level funding for FY 2016. We ask the Committee to endorse these specific recommendations:

1. Rename the SBA’s line item for “Native American Outreach” to read “Office of Native American Affairs” and provide up to $2 Million for that important Office; and

2. Provide line item funding of $1 Million for an Office of Native American Affairs within Commerce’s Departmental Management budget.

III. Legislation to Achieve Parity

The needs in Indian Country remain so great that provisions to achieve parity could be included in just about any federal program for grant or cooperative agreement assistance, formula funding, and other federal expenditures, including tax expenditures. Rather than advocate that approach, the National Center recommends more targeted focus on parity-forging legislation that has been previously proposed and vetted, perhaps reported out of committee, or has gained consensus support in Indian Country. Below are high priorities that the Committee can examine by holding its own hearings or joint hearings with other committees, and otherwise promote consideration of proposals in these areas:

1. Restore Parity in Trust Land Acquisition: As noted in my previous testimony, all federally recognized Indian tribes must be able to protect and enhance their tribal lands to attract investment, create jobs and build self-sustaining tribal economies. This Committee should lead the charge to enact legislation (like last year’s S. 2188) to clarify the Interior Secretary’s authority 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.* The Committee also should consider holding a hearing or listening session on proposals designed to facilitate investment in projects on Indian lands, such as last year’s H.R. 2718, cosponsored by Congressmen Don Young and Tom Cole, to empower tribes to accept restricted fee tribal lands to spur economic development and generate self-sustaining income.

2. Infuse Parity in New Market Tax Credit Allocations for CDEs Serving Indian Country: In the last two distributions of NMTC allocations, the CDFI Fund did not allocate any NMTCs to a Community Development Entity (CDE) with a primary mission of serving Native Communities. Lack of NMTCs has reduced urgently needed financing for business and community development projects in Native communities across the country. Capital can be better deployed in Indian Country projects if NMTCs are allocated to qualified CDEs whose primary mission is to invest in Native communities and who possess the required cultural competency and understanding of relevant legal and financial complexities involved. Proposals should be considered to make NMTC authority permanent and to set aside 10% of any future NMTC allocations for qualified CDEs whose primary mission is to serve Indian Country.

3. Reach Parity in Incentives for Energy Investment/Development on Indian Lands: In numerous energy-related workshops hosted at our National RES and regional RES conferences, there has been great interest in development of renewable and conventional energy resources, and the related potential for workforce and economic development. Congress should act on vetted legislation (like last year’s S. 2132) to remove regulatory barriers to energy and infrastructure development on Indian lands and streamline approval processes for rights-of-way. Congress also should extend existing tax credits that support economic development in Indian Country, and consider legislation to provide more funding mechanisms to develop energy resources on Indian lands, such as allowing transfer of tax credits for production from renewable resources.

4. Ensure Parity in Tax Treatment:Just as Congress moved toward treating tribes more like state and municipal governments by enacting the Tribal Economic Development Bond authority, any future action on tax reform or any other tax legislation must include language: a) eliminating the “essential governmental function” test for issuance of tribal tax exempt debt; and b) treating tribal governments as taxing authorities in any provisions for collection of remote sales taxes (i.e., in parity with state and local governments). As sovereigns, tribes must be able to exercise the right to collect tax revenues to provide for their members, promote business and job creation, and offer tax advantages to attract outside investment necessary to build their tribal economies.

\* \* \* \* \*

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