

Senate Committee on Indian Affairs

Oversight Hearing

Access to Capital

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Written Testimony Submitted by:

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Thank you for the invitation to provide testimony to the Senate Committee on Indian Affairs (Committee). NAFOA thanks Chairman Barrasso and Ranking Member Tester for your leadership of this Committee and your interest in economic growth and development in Indian Country.

NAFOA, in its first few decades, was focused on building the foundation for economic development for tribal governments. This work focused on two necessary elements. The first was working to convince banks, capital markets, and any institution, public or private, to lend to tribal governments. The second was building strong accounting and operational policies that made sense for tribal governments and provided the necessary framework to attract private capital.

Both of these areas, access to capital and financial management, remain a core part of NAFOA's work. However, NAFOA's role in growing tribal economies has grown along with how tribal governments are pursuing economic development. Tribal governments have come to view the revenues derived from economic growth as a necessity to supplement or fully fund vital programs and services. This tribal government reliance on economic growth and development has made Congress and the Administration's role in promoting growth and development much more important as well.

The subject of today's hearing of access to capital comes at a time when tribal governments from all across the country can attest with experience that access to cost-effective capital that works for Indian Country is lacking. It is lacking in both access and in being effective in meeting its intended purpose.

This lack of effective access to capital is prevalent in tribal governments in early stages of economic growth that need flexible and initial seed capital and in tribal governments in advanced stages of growth that need significant amounts of cost effective capital to fund multifaceted projects. The lack of effective capital programs can potentially impact every tribal government at any stage of growth. This means financing for needed health care centers, tourism projects, and infrastructure are delayed, not built to their full capacity, funded in more costly ways, or never built at all.

NAFOA's testimony will identify some impediments and barriers facing tribal governments when accessing capital. While identifying impediments and barriers is helpful in understanding challenges, it does not always offer a pathway forward to creating policy solutions. Therefore, our testimony will also draw attention to existing capital programs that are working for Indian

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Country and offer recommendations that will allow capital to flow into Indian Country. Our recommendations will fall along five main themes:

- Creating parity between tribal governments and other governments when accessing the capital markets.
- Increasing funding and support for programs that are working, including the Indian Loan Guarantee Program at the Department of Interior and the Community Development Financial Institutions Program at the Department of Treasury.
- Demanding that existing federal programs that could work for tribes change their structure to include tribal governments and provide capital that is proportionate to the level of need.
- Clearing the way for tribes to effectively participate in the multi-billion dollar tax credit markets for housing and development.
- Creating incentives for banks to lend to emerging tribal communities either directly or through partnerships.

The conversation on access to capital has to start with analyzing challenges that are characteristic of tribal markets. Noting these characteristics helps inform the private and public capital markets on ways to effectively serve as good partners in capital formation for tribal growth.

Distinctive Sovereigns

The first characteristic to recognize is that tribal governments occupy a unique role among sovereigns. Tribal governments do not enjoy full independence as a nation and do not fit neatly into the existing categories of states, localities, authorities, or other sub-national entities. This is especially problematic when it comes to accessing the capital markets. This status or characteristic defines the capital needs of tribal governments as nations and sovereigns. It also defines the well-intended policies that often miss the mark in providing capital to Indian Country by treating tribal governments as individual lenders, commercial entities, or as a mixed governmental entity that requires additional caution. This lack of clarity in federal policy carries over to the private sector markets that view lack of clarity as risk.

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Government Revenue Generation Models

Tribal sovereigns are different from domestic sovereigns in regard to their source of revenue generation. States and local governments rely on sales, property, and other varied revenue schemes to fund programs and services. This model to date has proven largely ineffective for most tribal governments. A few tribes have customized this model to work by collecting sales taxes from businesses recruited to the reservation, however; this model has only worked for a very small number of tribes located near population centers with the ability to attract large retailers. In general, tribal governments have limited tax bases with the inability to create a property tax on trust lands or to tax populations with limited income.

As a result, tribes are forced to rely on revenues from insufficient and decreasing federal programs and revenues derived from economic development. Economic development for tribal governments disproportionately carries greater significance among the family of domestic governments, yet the focus on supporting and fostering capital programs for economic growth for tribal governments has been disproportionately underserved.

In general domestic sovereigns, such as states, municipalities, and authorities rely on public financing to fund their capital budgets, build infrastructure, and foster growth. The municipal or tax-exempt debt market is one of the largest publicly-traded markets in the world. The market size is a direct outcome from the demand investors have for this type of debt. The interest received by investors is generally tax-exempt making it highly attractive. The demand also keeps rates low making it cost effective for state and local governments. The rates are in effect subsidized by the federal and, at times, state governments.

In a glaring inequity, tribal governments do not have the same access to this tax-subsidized tax-exempt market. Tribes are prohibited from accessing the tax-exempt market for projects deemed to be outside of what is termed “essential government functions.” Ironically, this means that tribes are not able to use the public market for economic development purposes – the greatest area of governmental need and the main revenue generator for programs and service.

Recently, the Department of Treasury filed a [report](#) concluding this inequity should be eliminated and that Congress should provide tribes with broadly equal access to tax-free debt. A limited amount of authority for tribes to issue tax-free debt for economic growth was created in The American Recovery and Reinvestment Act; however, a series of external factors like

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shorter-term issuances for economic development purposes and additional requirements placed on the funds has left a portion of this funding pool idle to date.

The tax-exempt rules regarding tribal access to capital serves as an example of well-intended policy missing the mark. The assumption that tribal government capital access should carry additional cautions since the revenue model differed from other domestic sovereigns proved to be bad policy. Adding provisions that restrict capital use or make it more costly and time consuming don't work in the long run for tribes and for the capital markets. Additional restrictions and unclear definitions such as "essential government functions" create uncertainty. The capital markets tend to either steer clear of or charge a premium for uncertainty, making capital more costly or inaccessible.

- Congress should implement the recommendations submitted by the Department of Treasury to provide tribal governments the right to access the tax-exempt bond market on equal terms to states. The recommendations would open the market for tribal government use of tax-exempt debt for purposes of building public works and creating economic development for public use.

The Role of Federal Capital in Early Development

Tribal governments, as nations, do not have access to a development bank such as the World Bank or the International Monetary Fund as a means to form capital for long-term infrastructure development and economic growth. Instead, tribal governments rely on piecing together and navigating the diverse and sundry federal government development and capital programs in lieu of a development bank. Tribal governments in early stage development use federal capital programs to transition to the private markets.

The agencies that have a role in providing tribal governments with access to capital include the Department of Treasury, Department of Interior, the Small Business Administration, the U.S. Department of Agriculture, the Department of Housing and Urban Development and the Department of Commerce. Within these agencies there are a number bureaus, authorities, agencies, and programs having nuanced terms, conditions, and intended uses.

Navigating the capital programs that serve Indian Country to find the most suitable and cost effective solution is difficult. To be fair to the multiple agencies that serve Indian Country, there have been recent efforts to coordinate amongst agencies and refer tribal governments to appropriate sources [See [Federal Funding Guide - Indian Country](#)]. However, even with this

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coordination, there is a stark realization that the amount of funding dedicated for tribal government use is extremely limited. This is especially true when considering the important role this capital plays in developing tribal economies and fostering long term sustainable access to capital. An examination of a few successful programs dedicated to early stage economic growth may serve to illustrate this point.

- The Department of Interior, through its Indian Loan Guarantee Program, serves as an important bridge in building a relationship between private sector banks that are willing to lend to Indian Country and tribes that have difficulty securing capital. The program has long-term loans that are needed for any government, an enviable default rate at fewer than two percent, and an incentive in the form of a loan guarantee up to ninety percent to minimize the risk to community banks willing to lend to the tribal market. The guarantee also helps banks make larger loans internally or with the help of other lenders. This program serves an important role for initial and early tribal government growth; however the total amount of federal funds allocated for the program for lending is around \$8 million. Even with a leverage of 10:1, it only provides \$80 million in lending authority – for all of Indian Country.

- The Department of Treasury, through its Community Development Financial Institution Fund (CDFI), provides flexible capital targeted to serve the local needs of tribal communities through the Native American CDFI Assistance Program (NACA). An element of the NACA program success is that funding needs are determined locally by each community and the capital serves the overlooked needs of small initial development. The capital program is paired with technical assistance from the CDFI which builds business and economic capacity. There are currently around 70 Native CDFI's. This much-needed and highly-successful program shares a \$15 million allocation for all 70 CDFI's serving Indian Country averaging just over \$200,000 for each CDFI.

These two successful programs have a combined federal budget of \$21 million. This commitment from the federal government to early stage capital targeted to Indian Country is grossly underfunded. USDA programs have increased funding more recently; however, the amounts previously dedicated to tribal governments lagged the rest of the population in simple per capita spending measurements.

- Congress should increase funding for these two successful programs significantly. The early stage development programs are a lifeline for tribal economies mired in generational economic stagnation and depression-era unemployment rates.

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Public-Private Capital for Community Development

Tribes, as governments, often need greater amounts of funding for development projects that have the ability to impact economic growth on a larger scale. Federal support for this type of project becomes even scarcer than early stage development capital. Tribes rely on federal program support but do not have the ability to leverage federal program revenue in the same manner as state governments since tribal appropriations are considered discretionary federal spending. Thus, while a state can go to the private market and leverage future tax and program revenue, tribes cannot go to the same private markets and leverage future federal funding. This is the case even when the federal funding is in place of the same tax or revenue base that is used by states.

In addition, capital programs that are specifically designed for the purpose of leveraging and attracting capital to public projects have left tribes out. Three programs in particular within the Department of Treasury, representing billions in potential investment, need to be fixed immediately to include tribes.

- New Markets Tax Credits – The New Markets Tax Credit Program (NMTC) falls under the CDFI Fund within the Department of Treasury. The program is funded at \$5 billion with \$3.5 billion in tax credit funding available annually. Tax credits serve an important role for tribal governments since tribal governments can only issue debt and tax credits act similar to an equity investment for a portion of the project. This makes more projects feasible, cost effective and much easier for tribes to attract private investment. All of this sounds great for tribes, but there has been **no allocation** for tribal Community Development Enterprises (CDE) in the past two years. It is inexcusable for a federal agency to exclude tribal governments from billions in federal funding for community and economic development. Treasury is expected to announce the next round of funding imminently and tribes are concerned that it will be a third straight year of being shut out.
- Congressional oversight is needed to correct this omission. Treasury has refused to consider a tribal set aside despite bi-partisan letters from Congress specifically requesting a tribal set aside. The agency has considered per-capita funding allocations as a way of justifying their actions. However this has never been an adequate method for meeting tribal government or other government needs when it comes to community development. Tribal populations are relatively small (not by our own planning) and the needs of our governments tend to be far greater than our respective tribal populations. The same deference of need over

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population or per capita spending for capital programs has been afforded to other governments including rural states for its tax-exempt private activity bond allocations. Wyoming's population is around five-hundred thousand citizens. While other more populous states are granted \$95 per capita in allocation, Wyoming and other rural states are granted the authority to use private activity tax-exempt debt at allocation levels that are far greater than their population at a minimum of \$291,875,000. This example is a clear recognition that the infrastructure and development need of the state is often greater than its population – especially in less populated areas. Tribes should be considered in the same light. There has been no visible effort by the Department of Treasury to accommodate tribal governments or accommodate their substantial need.

- The CDFI Fund also has another program, the CDFI Bond Guarantee Program that has inadvertently left out tribal governments. This program allocates \$750 million in the form of direct lending or relending to banks and CDFIs. The loans tend to have lower rates and carry longer terms of up to almost thirty years, making it a viable program for tribal governments. Tribes were inadvertently left out of funding initially when the CDFI Fund chose land as the preferred form of collateral. This left little room for tribes unable to collateralize loans using trust lands. The CDFI Fund has been willing to include tribal comments and entertain alternatives for tribes in an effort to make the program more accessible, however; Congress should ensure that promise is kept and the Bond Guarantee Program includes tribes.
- Finally, the Department of Treasury, through the Internal Revenue Service (IRS), has not ensured tribal access to the Low-Income Tax Credit (LIHTC) Program. This federal program passes money through to the states who submit a Qualified Allocation Plan to the IRS for approval. There is no allocation for tribal governments even though it is a federal program and states often exclude tribal needs from their funding plans or provide funding at levels that barely impact the overall tribal need. This program holds great promise for meeting the dramatically underfunded housing needs of tribal governments who wrestle with the longest housing waiting lists and highest housing needs in the nation. Given the need and the fact that it is a federally-funded program, at a minimum, the IRS can simply require states to include tribal needs in their Qualified Allocation Plans or more to the point, the federal government is neglecting its trust responsibility by bypassing tribes altogether and should have a direct allocation for tribes.
- Congress, in its oversight role, should ensure tribes are included in these multi-billion dollar capital programs. This no-cost policy fix should ensure tribes receive funding according to

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their need and in a manner that accommodates tribal government characteristics. That means:

- Congress should mandate a set-aside for tribal governments in the New Markets Tax Credit Program of ten percent.
- Congress should strongly encourage, and if necessary, mandate that the CDFI Bond Guarantee Program accept the use of third party guarantors and the use of tribal government revenues to back loans given to tribes and tribal entities. For example, Congress can ensure the program authorizes a tribal government to back a loan to its housing authority using separate economic or other program revenue as collateral.
- Congress should change the Low-Income Housing Tax Credit program by authorizing the program to fund tribes directly or at the very least, grant bonus points for tribal housing applicants in any state review process.

It is worth noting the funding gap between the programs directed to Indian Country and two of the programs that leave Indian Country out. The chart below is by no means inclusive of all direct funding programs, but it is illustrative of the vast potential impact for tribes if a nominal portion of the untapped existing federal program funding where opened to tribal governments.

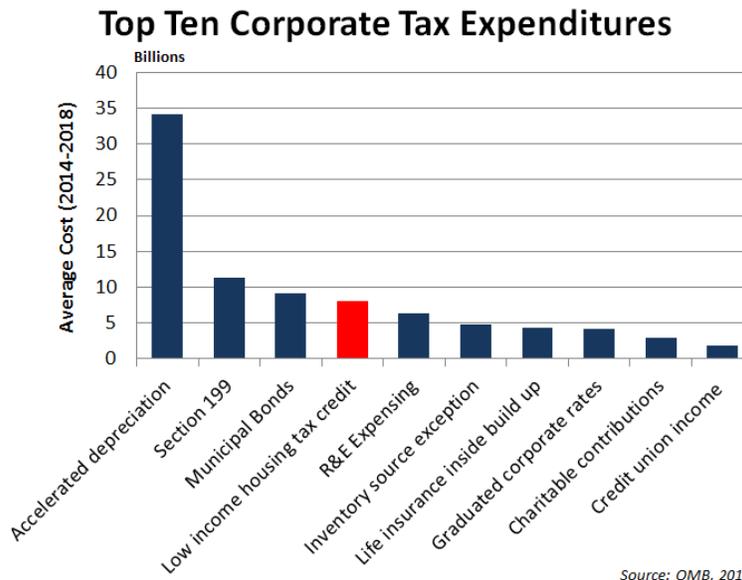
The chart represents the funding comparison of the Indian Loan Guarantee Program (ILGP), the Native American CDFI Assistance Program (NACA), the CDFI Bond Guarantee Program (BGP), the Low-Income Housing Tax Credit Program (LIHTC), and the New Markets Tax Credit Program (NMTC). The two tribal programs are included as the top most slivers in the pie chart.



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Ironically, the three large programs that make up the bulk of the chart are within the Department of Treasury with two in the CDFI Fund. The same CDFI Fund that houses the NACA program that has been so successful at serving tribes by providing a set aside and capacity building. Applying the same concepts of creating a separate tribal program that accommodates tribal characteristics to the NMTC Program and the Bond Guarantee Program seems like it should be an obvious fit for the agency. Simply opening these programs to Indian Country would be a significant accomplishment and one that should already exist.

Low-Income Tax Credits occupies the largest slice of the pie chart in light blue. The annual expense of credits in 2014 was \$6.7 billion almost doubling the outlay of the New Markets Tax Credit Program shown in purple on the chart. According to the Congressional Budget Office, this outlay makes the LIHTC program one of the ten largest corporate tax programs as indicated in the chart below.



The LIHTC are allocated across all 50 states based on population. In 2012, each state received about \$2.20 per person. This amount rises each year with inflation. However, the LIHTC program also recognizes that the housing needs of low-population states like Alaska and Wyoming are often greater than the funding allows. The LIHTC program has accommodated these governments by adding an allocation floor of slightly over \$2.5 million.

- Congress has already seen the wisdom and results of providing incentives in the form of tax credits to encourage private investment in public works. The problem to date is that tribal governments are sitting on the sidelines while neighboring governments are making full use of the programs worth billions in public community and infrastructure development. This

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type of community and infrastructure development is sorely needed by tribal governments to create sustained growth. The investment is already being made and accommodations are already being given to other governments – Congress needs to act now before another year goes by with tribes acting as spectators in federal capital programs.

Federal Investment

Capital programs for developing nations are viewed by the World Bank and the International Monetary Fund as long-term investments. Investments that build trade, build inter-national relations, and build long-term prosperity for both the nations receiving funds and nations contributing the funds. Congress should view federal capital and incentive programs with the same lens. The same investment validation that holds for the World Bank is also true for investments in tribal economies. Tribal economies are often the core economic driver not just for their tribal citizens, but for the surrounding communities and even for entire regions.

Funding early stage capital programs and public-private incentive programs has already proven to be successful in building businesses, public-private partnerships, and capacity. Additional investment and simple inclusion is needed.

We want to thank the Committee for all of its work on behalf of Indian Country.