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Testimony

of

Derrick Watchman
Chairman, Board of Directors

of

The National Center for American Indian
Enterprise Development

on

S. 3234, the Indian Community Economic
Enhancement Act of 2016

at the

Legislative Hearing

of the

Senate Committee on Indian Affairs

on

September 7, 2016



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Chairman Barrasso, Vice Chairman Tester, and members of this distinguished Committee, I am Derrick Watchman, Chairman of the Board of Directors of the National Center for American Indian Enterprise Development, and a citizen of Navajo Nation. Thank you for inviting me to testify at this important hearing to present the views of the National Center on S. 3234, the “Indian Community Economic Enhancement Act of 2016.” As stated in our letter of support for S. 3234, we commend you and the staff for the care and innovative thought that went into distilling years of testimony and recommendations presented by the National Center, other national tribal and native organizations and leaders of Indian communities across the country, and then producing this legislative proposal to spur business and economic development in Indian Country. The measure responds favorably to many of the National Center’s recommendations presented to this Committee in hearings and listening sessions over the years to enhance programs and better target them to address Indian Country’s unique sovereign and business characteristics, capabilities, and access to capital challenges.

As you know, the National Center has successfully provided business and procurement technical assistance for nearly 50 years to Indian tribes, Alaska Native regional and village corporations, Native Hawaiian Organizations, and enterprises owned by these entities or individual members of these communities. For this broad constituency, the National Center also hosted Reservation Economic Summits (RES) for 30 years and has advocated for policies to advance Indian business and economic development interests. We have appreciated working in partnership with the Committee and national tribal and other native organizations to support important initiatives of the Committee on energy, business and economic development especially. We applaud the Committee’s bipartisan, effective leadership in spearheading toward passage of S. 209, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2015, and for developing business and economic development legislation in the form of Chairman Barrasso’s bill, S. 3234, co-sponsored with Senator McCain, and Vice Chairman Tester’s bill, S. 3261. These bills contain innovative responses to the drumbeat of recommendations that have been presented in oversight hearings and some Committee listening sessions hosted at our RES



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conferences. As background for my testimony today, I have referred to the National Center's views presented at: the Oversight Hearing on "Economic Development: Encouraging Investment in Indian Country" on June 25, 2014; the Committee's "Listening Session on Economic Development" at RES Wisconsin on October 9, 2014; the Oversight Hearing on "Indian Country Priorities for the 114th Congress" on January 28, 2015; the Committee's Listening Session on "Buy Indian Act and Community Development Financial Institutions" on June 16, 2015; the Oversight Hearing on "Access to Capital in Indian Country" on June 17, 2015 (when I testified in my personal capacity as a former banker, and the hearing was streamed into RES DC for hundreds of our conference participants to see); and the Committee's Listening Session on the President's FY 2017 Budget Requests on February 17, 2016.

Comments on S. 3234:

In previous hearings and listening sessions, the National Center has repeatedly called for actions that S. 3234 proposes to advance, including elevating and enhancing the Office of Native American Business Development reporting directly to the Secretary of Commerce, augmenting support for the Indian Loan Guarantee Program, and for the Community Development Financial Institutions (CDFI) Fund bond guarantee program to help more Native CDFIs. The bill also addresses Buy Indian Act implementation issues we have raised, and moves toward achieving parity in the tax treatment of tribal governments' bond financings. Below are specific comments.

Section 2. Findings.

Overall, we agree with the thrust of the findings. Some important points, raised at numerous hearings, should be added. Paragraph (1)(A) lists several barriers that must be overcome, such as lack of infrastructure or capacity and lack of sufficient collateral. To that list, "lack of sufficient capital" should be added. Paragraph (5)(B) noted that access to private capital for projects in Indian communities may not be "realized" but the word "available" would be more appropriate. In paragraph (7), we recommend revising it to read: "(7) there are a number of federal loan guarantee programs available to facilitate financing of business, energy, economic, housing, and community development projects in Indian communities, but those programs may be oversubscribed or not yet fully used; and". As the National Center has testified repeatedly, the Indian Loan Guarantee Program has been woefully underfunded, resulting in backlogs of financings that could not be timely completed because the credit subsidy for the guarantees was exhausted well before the end of the last two fiscal years. Our views on the FY 2017 Budget Requests noted the omission of any funding request for the Indian Energy Loan Guarantee Program. We were delighted that Senator Franken was successful in adding credit subsidy funding in the Energy Appropriations bill for FY 2017 to implement the Indian Energy Loan Guarantee Program if that measure becomes law. The Department of Agriculture's loan guarantee program also lost ground in the FY 2017 requests.

Section 3. Native American Business Development, Trade Promotion, and Tourism Act of 2000.

As mentioned earlier, the National Center has long advocated for elevating and enhancing the Office of Native American Business Development headed by a Director reporting directly to the



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Secretary of Commerce, as contemplated in the enactment of the Native American Business Development, Trade Promotion, and Tourism Act of 2000 (Public Law 106-464, referenced herein as the “2000 Act”). We have made this request every time the National Center has testified before this Committee over the last 10 years at least.

The Department of Commerce operates so many agencies and programs that could benefit Indian communities, and link them with opportunities domestically and globally. It is essential that Commerce embrace that challenge by supporting the Office of Native American Business Development! Yet, from 2000 to 2005, Commerce disregarded the directives of the Act, and those of another passed in 2000, the Indian Tribal Regulatory Reform and Business Development Act. In mid-2005, Commerce’s Minority Business Development Agency (MBDA) paid some attention, as noted in our June 25, 2014 testimony, with the MBDA Director assuming the title of Director of the Office of Native American Business Development and allocating about \$200,000 for an experienced Native American to be hired, develop a business plan, and begin fulfilling the requirements of the two statutes enacted in 2000. Three Native Americans, successively, held that position, with the latter two also designated at the Senior Advisor to the Secretary on Native American Affairs. The last “Senior Advisor” was housed in the Inter-Governmental Affairs Office and had to split his time between Indian Country initiatives and many other, unrelated responsibilities. To be effective, the Director’s sole focus should be on the Office of Native American Business Development, with its own budget and some staff to assist with full implementation of the duties prescribed in the Act and the amendments to it proposed in S. 3234.

Mr. Chairman, the National Center commends you and your staff for responding to our recommendations. We strongly support Section 3 provisions that define the “Director” of this Office, elevate the Office by placing the Director in the Office of the Secretary of Commerce, and enhance the Director’s authority to coordinate the activities of Commerce and other key departments, to be actively involved in policy, and to ensure timely assistance and consultation with Indian tribes regarding the policies, programs, assistance and activities, as required by the Act. **This legislation, coupled with needed action in Commerce Appropriations bills to make funds available for the Office within the Departmental Management budget, have long had the support of at least a dozen national and regional native organizations.**

The National Center also supports the provisions of Section 3(d) that would add a new section 8 to the Act to require the Director to coordinate with the Departments of the Interior and the Treasury (acting through the Administrator of the CDFI Fund) on the development of certain “initiatives” that encourage, promote, and provide education regarding investments in Indian communities through 1) the Indian Loan Guarantee Program, 2) the CDFI Fund and Native CDFIs, and 3) other capital development programs. Additional important “initiatives” would include examining and developing alternatives that would qualify as collateral for financing in Indian communities, and identifying regulatory or legal barriers to increasing investment, including qualifying or approving collateral structures, in Indian communities.

There are two provisions of Section 3(d) that the National Center would like to see revised, however. First, in the new section 8(a)(1)(C) proposed to be added to the Act, we suggest some expansion of the directive to provide “entrepreneur and other training relating to economic



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development through tribally controlled colleges and universities” – no doubt valuable curricula for these educational institutions. The National Center knows the importance of this training for Indian Country, and therefore hosts our national and regional RES conferences and our Native Edge webportal to provide a vast array of entrepreneurial and other training relating to economic development. Other Indian organizations also provide such training. For many years, Commerce’s MBDA supported some of this training, as part of entrepreneurial and business assistance, under cooperative assistance agreements for operating Native American Business Enterprise Centers (NABECs). The National Center and other Indian organizations operated NABECs across the country, until MBDA withdrew that support in favor of funding “MBDA Business Centers” only. The point here is that, if S. 3234 becomes law and new initiatives involve funding of entrepreneurial and other training relating to economic development, other Indian organizations – in addition to tribally controlled colleges and universities – should be eligible for such funding opportunities.

Second, Section 3(d) proposes to add a new section 9 to the Act that would establish an “Indian Economic Development Fund” in the Treasury of the United States. The intended purpose of this Fund would be to augment the existing credit subsidies of the Indian Loan Guarantee Program (25 U.S.C. 1481) and to establish a credit subsidy solely for any eligible CDFI that applies for financing under the CDFI Fund bond guarantee program and whose investment area includes an Indian reservation or whose targeted population includes an Indian tribe. The National Center has long urged Congress to augment the credit subsidy supporting the Indian Loan Guarantee Program – to which Congress can and should respond by increasing the amount it appropriates for that line item in the annual Interior Appropriations Act. We have testified repeatedly that adding just \$7.5 million more for the program would double the value of the private loan financings that could be made for business and economic development projects in Indian Country! Such a relatively small increase could be deployed immediately to leverage about \$250 million in private sector loans. In 2006, Congress recognized the importance of the program by increasing the aggregate value of guaranteed loans from \$500 million to \$1.5 billion. **Funding the Indian Loan Guarantee Program is a federal obligation, and Congress can and must act now to increase this line item in the FY 2017 Interior Appropriations Act.**

While the National Center supports the proposed purpose of the Fund, we are concerned about the time it would take to establish the Fund, the mechanism proposed for deposits to the Fund, and the lack of any identified incentives that would attract such deposits to generate at least \$7.5 million to augment the Indian Loan Guarantee credit subsidy, and amounts specified for the CDFI Fund bond guarantee program. A more helpful interim step would be consideration of an Indian Economic Development Feasibility Study (perhaps by the Government Accountability Office) to quantify and assess the past use and allocation, and feasibility of expanding, incentive programs to facilitate and increase business, economic, energy, housing, community and infrastructure development in Indian communities – specifically the following: the New Market Tax Credits; the Low Income Housing Tax Credits; the Indian Employment Tax Credits and Accelerated Depreciation provisions; the Investment Tax Credit; and Renewable Energy Tax Credit and other energy-related tax credits. The study also could assess the feasibility of providing a tax credit, with a value equivalent to the New Market Tax Credit, to entities investing in an “Indian Economic Development Fund” for the purposes proposed in S. 3234.



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Our final comment on Section 3(d) relates to its provision defining “Tribal Government Functions” such that “the essential governmental functions of an Indian tribe shall be considered to include any function that may be performed or financed by a State or unit of local government with general taxing authority.” The National Center supports the underlying purpose of this provision as generally consistent with our repeated testimony advocating tax legislation to eliminate the restrictive “essential governmental function” test for tribal tax exempt bond issuances, and to provide fairer tax treatment of tribal governments in parity with state and local governments. Now pending in the House of Representatives is bipartisan, non-controversial legislation, H.R. 4943, the Tribal Tax and Investment Reform Act of 2016, that would amend the necessary provisions of the Internal Revenue Code to accomplish these and other objectives. We join the Indian tribes, national tribal and other organizations in urging the members of this Committee to consider introducing a Senate companion bill, and supporting enactment of this important tax legislation before the 114th Congress adjourns.

Section 4. Buy Indian Act.

As noted earlier, the National Center has advocated for strengthening and expanding the Buy Indian Act’s reach. Our June 25, 2014 testimony recounted how National Center leaders called on this Committee back in 1987 and 1990 hearings to broaden use of Buy Indian Act authority beyond the BIA and IHS to other federal agencies that expend funds for the benefit of American Indians and Alaska Natives. Together with other Indian organizations, we urged the Department of Interior to promulgate modern-day regulations (after a 100-year delay). We submitted public comments urging the Department to establish a 100% goal for utilization, monitor compliance, and report annually on the extent of utilization and amount and value of contracts awarded to Indian-owned economic enterprises. Subsequently, the National Center has hosted many RES conferences with workshops on Buy Indian Act implementation, inviting both BIA and IHS, but only BIA speakers have attended. We hope that Section 4 will spur IHS officials to dedicate far more attention to their Buy Indian Act obligations by adopting updated regulations along the lines of BIA’s new rules, using the authority in far more procurements, and showing up when they are asked to speak about the status of their implementation efforts.

We are gratified that Section 4(b) includes provisions to require greater use, with the presumption that Buy Indian Act authority will be used for procurements, unless the Secretary of the Interior and or the Secretary of Health and Human Services determines such use to be impractical and unreasonable. We also appreciate the provisions in Section 4(c) to improve implementation by requiring the Secretaries to conduct outreach to Indian industrial entities, provide training, require BIA and IHS regional offices to aggregate data regarding compliance with the new provisions, require procurement management reviews that include assessment of implementation, and consult with Indian tribes and other stakeholders regarding methods to facilitate compliance with the Act and other small business or procurement goals. And, we are delighted that Section 4(d) requires, as we had recommended, that the Secretaries submit reports to this Committee and its House counterpart containing information on the names of agencies making Buy Indian procurements, the types of purchases from and contracts with Indian economic enterprises, description of the percentage increase or decrease in total dollar value and



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number of purchases and awards made within each agency region (as compared to the preceding fiscal year) from Indian and non-Indian economic enterprises, and any administrative procedural, legal or other barriers to achieving the purposes of Section 4, together with recommendations for legislative or administrative actions to address those barriers. To this list should be added the requirement to determine an annual departmental goal for the percentage of awards that will be made in the coming year using Buy Indian Act authority.

Section 5. Indian Trader Act.

As the National Center has not been involved with any efforts to update, revise or otherwise deal with this 1876 Act, we respectfully defer to others who may wish to offer comments on this section based on their substantive knowledge of the subject matter.

Section 6. Native American Programs Act of 1974.

When I testified at this Committee's oversight hearing on "Access to Capital in Indian Country" on June 17, 2015, I was asked to discuss the elements that I believe are essential for facilitating access to capital in Indian Country and what some of the roles are that the federal government, tribal governments, and bankers can play to improve access to capital. I mentioned, for example, that tribal access to capital can be facilitated by tribal uniform commercial codes or similar ordinances, good tribal court systems with commercial dispute resolution mechanisms, planning (including business plans, feasibility studies, master plans), among other financial elements (sophisticated financial management, etc.). I also spoke about traditional banking institutions, native owned banks, and the increasing numbers of Native CDFIs operating across Indian Country. The National Center frequently has voiced support for increased funding for the Native CDFIs, and for the Administration for Native Americans (ANA) that administers the grant program amended by Section 6. The section proposes to reauthorize ANA's grant programs through FY 2021, make Native CDFIs eligible to apply for ANA's economic development program grants, prioritize economic development grants for certain types of applications, and prioritize any technical assistance for grantees and applications submitted under this session. Given the identified need, it makes sense to encourage the ANA to support grants to develop 1) tribal codes and court systems relating to economic development, 2) nonprofit subsidiaries and other tribal business structures, and 3) tribal master plans for community and economic development and infrastructure. However, Section 6 would reauthorize ANA's funding only at current levels, and many Indian tribes, other tribal entities and Indian organizations should be able to compete on a level playing field for grants in these priority areas. If funding were increased for ANA's grant programs, there would be more leeway to prioritize ANA's funding and technical assistance for Native CDFIs, or for development or maintenance of CDFIs, including training and administrative expenses, beyond that which already may be available from the CDFI Fund for such Native CDFI development-related activities.

Comments on S. 3261:

The National Center also supports enactment of S. 3261, the "Native American Business Incubators Program Act" that responds favorably to requests of the National Center and other



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native organizations over the years for Congress to create a business development program tailored specifically to Indian Country's unique sovereign and business characteristics and capabilities, and focused on incubation and access to capital challenges. During the 1990s, the Small Business Administration (SBA) provided about \$5 million per year to support Tribal Business Centers, but that funding ended in 2001. Subsequent efforts were persistent but unsuccessful in moving legislation to authorize creation of a Native American small business development center program within SBA. Then, in 2012, as I noted earlier, MBDA decided to end the cooperative assistance agreements it had funded NABECs' operations. So, since 2012, there has been no federal program support focused on Native American entrepreneurial and business assistance, incubation and mentoring of tribes and Native Americans striving to start and grow their business enterprises. S. 3261 presents an innovative response to this urgent need.

Conclusion:

Again, I thank the Committee and staff for working collaboratively with the National Center to encourage Indian Country stakeholders to think about, articulate and offer up policy recommendations and then develop the proposals discussed at this hearing to enhance Indian community economic development. Since our organization's launch in 1969, National Center leaders have worked to ensure that Indian-owned businesses, whether tribal member startups or major enterprises, have the opportunity to acquire entrepreneurial skills, receive business assistance and training, meet potential business partners, and receive procurement technical assistance to become capable of competing in private and public marketplaces, both nationally and internationally. The National Center supports S. 3234, with our suggested amendments, as important to galvanize key departments and agencies to work much more proactively with Indian communities and their economic enterprises. We look forward to working with the Committee, its staff and others to perfect the language and move toward enactment to advance business and economic development in Indian Country.