



**The National Center**  
for American Indian Enterprise Development

**Testimony  
Of  
Chris James, President & CEO  
Of  
The National Center for American Indian Enterprise Development  
On  
S. 1116, Indian Community Economic Enhancement Act  
And  
S. 607, Native American Business Incubators Program Act  
at the  
Legislative Hearing  
of the  
Subcommittee on Indian, Insular and Alaska Native Affairs House  
Committee on Natural Resources**

July 24, 2018

Chairman LaMalfa, and members of the Subcommittee, I am Chris James, President & CEO of the National Center for American Indian Enterprise Development (NCAIED), and a descendent of the Eastern Band of Cherokee Indians. Thank you for inviting me to present the views of the National Center on two Senate-passed bills that are extremely important to Indian Country: S. 1116, the Indian Community Economic Enhancement Act; and S. 607, the Native American Business Incubators Program Act. As noted in previous testimony and joint letters of support, prompt enactment of this significant legislation is urged by the major tribal and other national organizations representing Indian Country, including the NCAIED, National Congress of American Indians (NCAI), Native American Contractors Association (NACA), Native American Finance Officers Association (NAFOA), National Indian Gaming Association (NIGA), United South and Eastern Tribes (USET) Sovereignty Protection Fund, Affiliated Tribes of Northwest Indians (ATNI) and ATNI's Economic Development Corporation.

As we pledged in January in supporting the House companion bill containing the provisions of these two Senate-passed bills (H.R. 4506, the Jobs for Tribes Act), we will work closely with you, your colleagues and staff to help move this legislation forward. We urge you to press for full Committee approval and placement on the House suspension calendar for approval without further delay.

The National Center has taken an active role in promoting business and economic development in Indian Country since the organization launched in Southern California in 1969. Now headquartered in Arizona, with offices across the country, the National Center has always worked to ensure that Native-owned businesses have the opportunity to acquire entrepreneurial skills, receive business assistance and training, meet potential business and financing partners, and receive procurement technical assistance to become capable of competing in private and public marketplaces, both nationally and internationally. Since our inception, we have worked with most of the Indian tribes in the United States and assisted hundreds of thousands of businesses owned by tribes, Alaska Native regional and village corporations, Native Hawaiian Organizations, or by individual members of these native communities. For this broad constituency, the National Center also has hosted Reservation Economic Summits that we call "RES" for over 30 years. Each RES offers several days of training workshops, a full day of procurement business match-making meetings, all day trade shows, and other opportunities for networking and business deal making.



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S. 1116 and S. 607 directly respond to recommendations made by the National Center and other tribal organizations across the country to spur business and economic development by enhancing programs and targeting assistance in ways tailored to Indian Country's unique sovereign and business characteristics, capabilities, and capital access challenges. As far back as Senate hearings in 1987 and 1990, National Center leaders have testified for expanding Buy Indian Act authority – as addressed in S. 1116. Since 2000, we have testified and advocated repeatedly for implementing and enhancing authorities enacted in the Native American Business Development, Trade Promotion and Tourism Act of 2000 (Public Law 106-464) – a major thrust of S. 1116. We also testified and helped draft proposals for entrepreneurial and business development assistance centers targeted to Indian communities, and are very pleased that this tailored approach is incorporated in S. 607, the Native American Business Incubators Program Act.

Given this background, the National Center is pleased to present the following comments on this legislation essential to Indian Country's business and economic development.

### **S. 1116 – Indian Community Economic Enhancement Act**

**Sec. 2. Findings** – In Senate testimony on September 7, 2016, the National Center made recommendations for several of the findings in the predecessor bill (S. 3234 of the 114<sup>th</sup> Congress) that are now contained in S. 1116. We have endorsed the Findings in Section 2 and draw your attention especially to those acknowledging that: 1) significant barriers must be overcome, such as lack of infrastructure or capacity, and lack of sufficient collateral and capital; and 2) the need for greater funding for the few federal loan guarantee programs that actually facilitate financing of business, energy, economic, housing, and community development projects in Indian communities.

The Indian Loan Guarantee Program has rarely received sufficient funding, despite increasing demand for the guarantees. The program guarantee's credit subsidy was exhausted well before the end of the last two fiscal years, resulting in backlogs of financings that delayed deal closings and project completions. The Department of Agriculture (USDA) loan guarantee program also has lost ground in recent budget requests, as has the Tribal Energy Loan Guarantee Program. The National Center applauds the recent House approval of the Interior Appropriations bill that includes an additional \$10 million for the Indian Loan Guarantee Program for FY19 to help facilitate up to \$329.3 million in private sector lending for business and economic development projects in Indian Country. The House must strive to retain this essential increase in conference.

**Please also heed the key Findings in Section 2 (6)(B) - (C) below. Congress must pass two other pending bills, H.R. 3138 and S. 2012, to answer Indian Country's persistent calls to address the tribal tax parity issues noted in these S. 1116 findings:**

- **(B) lack of parity in treatment of Indian tribes as governmental entities under Federal tax laws impedes Indian tribes' ability to raise capital through issuance of tax exempt debt and benefit from other investment incentives accorded to State and local governmental entities; and**
- **(C) as a result of tribal governments' disparate treatment, investors may avoid financing, or demand a premium to finance, projects in Indian communities, making the projects more costly or inaccessible.**



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Fairness, morality, economic equality and necessity fully justify enactment of tribal tax parity provisions this year.

### **Section 3 – Native American Business Development, Trade Promotion, and Tourism Act of 2000**

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 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”).

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 as a high level, stand-alone Office. Although Congress authorized the Office in 2000, it was not until 2005 that some attention was paid to its responsibilities. Yet, Commerce has never allocated the Office its own budget nor filled the Office Director’s position with a professional whose experience and sole job responsibilities were dedicated to Native American business/economic development, trade and tourism. To be effective, the Office must have a Director and staff with the requisite experience and qualifications, and an ample, dedicated budget, to focus solely on full implementation of the duties prescribed in the 2000 Act and the amendments to it proposed in Section 3.

We strongly support the provisions in Section 3(b) and (c) that define the “Director” of this Office, elevate the Office by placing the Director in the Office of the Secretary of Commerce, and provide the Office a budget. We also support enhancements to the Director’s authority to 1) coordinate the activities of Commerce and other key departments, 2) be actively involved in policy, and 3) ensure timely assistance and consultation with Indian tribes regarding policies, programs, assistance and activities. **This legislation, coupled with needed action in Commerce Appropriations for FY 2019 to make these 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 2000 Act to require the Director to work on initiatives with the Departments of the Interior and the Treasury, acting through the Administrator of the Community Development Financial Institutions (CDFI) Fund. These initiatives would 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 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.

Section 3(d) also prescribes initiatives for entrepreneur and other training relating to economic development through tribally controlled colleges and universities and other Indian organizations with experience in providing such training. The National Center knows, first-hand, the importance of this entrepreneurial training for Indian Country, and that is why we host our RES conferences and regional institutes to provide an array of entrepreneurial and other trainings relating to business and economic development. More Department of Commerce support for new initiatives for Native American entrepreneurial and other economic development training is urgently needed. The Office of Native American Business Development should oversee these initiatives, even those that may begin under grants with the Minority Business Development Agency.



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Several other long-desired provisions in Section 3(d) call for interagency coordination to address Indian tribes as investors and to identify barriers to increasing investment in business and economic development in Indian Country. The bill requires consultation with Indian tribes and the Security and Exchange Commission, and collaboration to establish regulatory changes necessary to qualify an Indian tribe as an accredited investor consistent with the goals of promoting capital formation and ensuring the tribe's ability to withstand investment loss. And, Section 3(d) reiterates the requirements (initially enacted 18 years ago in Public Law 106-447) that Commerce identify the regulatory, legal and other barriers to increasing investment, business and economic development, including qualifying or approving collateral structures, measurements of economic strength, and contributions of Indian communities' economies. Based on all this analysis, a report to Congress must outline improvements to Indian communities from the various initiatives prescribed in Section 3(d) and recommendations for promoting sustained growth of tribal economies.

The final provision of Section 3(d) calls for an Indian Economic Development Feasibility Study by the Government Accountability Office (GAO). As suggested by the National Center, NCAI and NAFOA, a study of this nature will help clarify whether programs that "could" assist Indian Country actually are deployed for that purpose, to what extent and which what results. Accordingly, the GAO must quantify and assess the past use and current allocation, and feasibility of expanding, incentive programs to facilitate and increase business, economic, energy, housing, community and infrastructure development in Indian communities – specifically the various loan guarantee and bond guarantee programs of Interior, USDA, Housing and Urban Development, Energy, Small Business Administration (SBA), and CDFI Fund. The study also must assess the allocation and use for Indian Country of: the New Market Tax Credit; the Low Income Housing Tax Credit; the Investment Tax Credit; Renewable Energy Tax incentives and Accelerated Depreciation. Finally, the GAO must assess various alternative incentives that could be provided to enable and encourage tribal governments to invest in an "Indian Community Development Investment Fund" or bank.

### **Section 4 – Buy Indian Act**

The National Center has long advocated for strengthening and expanding the Buy Indian Act's reach. In Senate testimony in 1987, 1990 and 2014, National Center leaders urged broader use of Buy Indian Act authority 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. Together with NCAI, NACA and other tribal organizations, we urged the Department of Interior to modernize its implementing regulations, finally promulgated in 2013 (after a 100-year delay). We have urged 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. The National Center and NACA have hosted numerous workshops on Buy Indian Act implementation, inviting both BIA and IHS officials to report their progress in increasing use of this important authority. We believe that Section 4 will spur IHS officials to adopt updated regulations along the lines of Interior's new rules, and hope IHS will greatly expand its use of this authority in many more of its procurements going forward.

Section 4(b) requires that Buy Indian Act authority will be used for procurements, unless the Secretary of the Interior or the Secretary of Health and Human Services (HHS) determines such use to be impractical and unreasonable. As it has long been a National Center goal to have Buy Indian Act expanded, we will continue to explore the possibility of extending this procurement authority to other agencies and departments, such as Energy, whether on a demonstration basis or otherwise, so as to expand contracting and purchases from Indian-





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owned economic enterprises (whether owned by Indian tribes, ANCs, or individuals who are members of these entities).

Section 4(c) should improve implementation by requiring: outreach and training to Indian industrial entities; BIA and IHS regional offices' aggregation of data on compliance with the new provisions; procurement management reviews that include assessment of implementation; and consultation with Indian tribes and other stakeholders on methods to facilitate compliance with the Act and other small business or procurement goals. Section 4(d) requires the Secretaries to submit reports to this Committee and its Senate 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 number of purchases and awards made within each agency region (as compared to the preceding fiscal year) from Indian and non-Indian economic enterprises, descriptions of methods used for market research to find Indian contractors, summaries of deviations from use of Buy Indian requirements, 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.

### **Section 5 – Native American Programs Act of 1974**

This section responds to urgings of many Indian tribes, national tribal and other native organizations that Congress reauthorize the Administration for Native Americans within HHS and augment its ability to facilitate business and economic development in Indian communities. For example, in June 2015, our National Center Board Chairman Derrick Watch testified at the Senate Indian Affairs Committee's oversight hearing on "Access to Capital in Indian Country" about the elements essential to facilitate access to capital in Indian Country. He named specifically broader adoption of tribal uniform commercial codes or similar ordinances, tribal court systems with commercial dispute resolution mechanisms, planning (including business plans, feasibility studies, master plans), and more sophisticated financial management. The National Center has always collaborated with traditional banking institutions, native-owned banks and Native CDFIs operating across Indian Country. Our latest partnership with Key Bank involves electronically linking native borrowers with these various private financing entities to secure needed capital for business startups, expansion and economic development.

We are delighted that Section 5 reauthorizes ANA's grant programs through FY 2022 and makes Native CDFIs eligible to apply for ANA's socio economic development program grants. This section also prioritizes those socio-economic development grants for certain types of applications, including 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. Also prioritized is any technical assistance provided for grantees and applications covered by Section 5. As the ANA also administers several other grant programs essential to Indian Country, including those to preserve native languages, its reauthorization must be enacted without further delay.

### **S. 607 – The Native American Business Incubators Program Act**

The National Center strongly supports S. 607 to establish Native American Business Incubators as the most effective way to deliver services responsive to Indian Country's unique sovereign and business characteristics, capabilities, and capital access challenges. While some federal programs have purported to provide entrepreneurial development assistance in Indian Country, none were designed for or really achieved that purpose. Two programs that once supported some native business development ceased their targeted funding.



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The MBDA ended funding for “Native American Business Enterprise Centers” in 2012, and the SBA funded a dozen Tribal Business Information Centers only from the 1990s until 2001. The SBA has awarded a few business accelerator “Prizes” (pursuant to the American Competes Act) to Native American-owned technology companies, but these one-time prizes neither provide sustained support nor require follow-on reporting on services rendered. There remains unmet need for sustained federal funding for Native American entrepreneurial and business assistance, incubation and mentoring of tribes and Native Americans striving to start and grow their businesses.

We welcome S. 607’s call for establishing the Native American Business Incubators Program as an innovative response to this urgent need. To be administered by Interior’s Office of Indian Energy and Economic Development, the program will support entities that incubate and mentor tribes and Native American entrepreneurs striving to start and grow their businesses. Eligible applicants must have multiple ties to tribal communities, educational institutions and business assistance entities to be able to expand Native American business assistance and incubation exponentially to many more Native-owned businesses in a broad range of business sectors. Applicants must develop detailed plans on how they will provide incubation assistance, to which Indian communities and types of enterprises, over the three-year period of the grant and renewals (if any). The legislation incorporates rigid requirements for eligibility, evaluation pre- and post-selection to ensure that eligible applicants can establish and operate business incubators that serve Native American communities. The incubator grantee must be able to: provide physical workspace and facilities resources to Native startups and established Native businesses; accelerate the growth and success of Native businesses through a variety of business support resources and services; and foster collaboration among institutions of higher education, tribal or private nonprofit providers, and Indian tribes, non-profit organizations, and institutions of higher education. S. 607 also prescribes detailed reporting requirements, including reports to this Committee and its Senate counterpart, to permit tracking of the incubators’ progress and success.

We urge prompt action on this essential, long-sought response to help deliver entrepreneurial and business development assistance tailored to Indian Country’s unique characteristics and needs. Native American business incubators with the experience and facilities resources necessary to provide business development, technical assistance and other support services to Native startups and established businesses will help grow reservation economies and foster self-determination and self-sufficiency.

### **Conclusion:**

I thank the Subcommittee for conducting this hearing on S. 1116 and S. 607. We urge their approval by the House without further delay. Their enactment will galvanize key Federal departments and agencies to work much more proactively and collaboratively with Indian communities, their economic enterprises, and other stakeholders. We will continue to press for this legislation to become law promptly to achieve these goals.



Chris James  
President and CEO

### Attachment:

Joint Letter of Support by NCAIED, NCAI, NACA, NAFOA, NIGA, USET and ATNI.

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