

# TRIBAL ECONOMIC DEVELOPMENT: INDIAN COUNTRY'S POLICY PRIORITIES FOR THE FEDERAL GOVERNMENT

## A POLICY BRIEF FOR MEMBERS OF THE 119<sup>TH</sup> CONGRESS

### ENDORISING NATIVE ORGANIZATIONS



# AN OPENING MESSAGE ABOUT THIS BRIEF

To Members of the 119<sup>th</sup> Congress and your staff:

Congratulations to those of you who are new members of the House and Senate, and all those returning. We look forward to working with all of you to grow economic progress by and for Native Americans, Alaska Natives, and Native Hawaiians.

Across the United States, Tribal Nations are forging impressive records of economic progress. From operating nation-owned enterprises to cultivating tribal citizen-owned businesses to preparing their people to access new job opportunities through workforce education and training, Tribal Nations are methodically building sustainable economies to support thriving Native communities. As they do, they are also helping to power the regional economies that surround them, generating jobs, income, and a vibrant quality of life for growing numbers of both Native and non-Native people.

Driving this remarkable yet uneven renaissance is tribal self-determination, specifically the responsibility each Tribal Nation exercises to create a robust economy for its citizens based on its cultural values, particular circumstances, and long-range priorities. To support Tribal Nations, the federal government must fulfill its binding trust and treaty obligations to take key actions to foster – and remove the barriers impeding – their economy-building efforts. Past Administrations and Congresses have done just that, often in a bipartisan fashion. Consider, for example:

- Enactment of the Indian Tribal Governmental Tax Status Act, which extended to tribal governments and their subdivisions the same tax treatment as states and their political subdivisions in limited circumstances
- Enactment of the Tribal Economic Development (TED) Bond provisions enabling tribal governments to issue bonds to finance large-scale infrastructure development projects like state and municipal governments do
- Passage of the Native American Business Development, Trade Promotion and Tourism Act of 2000 and Indian Community Economic Enhancement Act of 2020 – both Republican-sponsored – which established and strengthened the Office of Native American Business Development within the Department of Commerce and featured several policy and funding measures to spur economic growth in Native communities
- Passage of the Native American Business Incubators Program Act – signed into law by then-President Trump – which created a program providing grants to establish and operate sorely needed business incubators in Indian Country
- Passage of the Tribal General Welfare Exclusion Act, which increases Tribal Nations' flexibility to provide needed benefits to their citizens to lift them out of poverty
- Expansion of Public Law 102-477 – GOP-sponsored legislation signed into law by then-President Trump – and subsequent adoption of the revised 477 Interdepartmental MOA enhancing Tribal Nations' ability to merge federal program funding for workforce development, economic development, and related initiatives into streamlined, comprehensive tribal plans that enhance the economic impact of federal dollars in Native communities

Featured on the following pages are key legislative and funding steps the 119th Congress should take to enhance and grow the federal government's support of Tribal Nations as they build and sustain vibrant economies that benefit not just Native people, but all Americans. These consensus priorities are endorsed by the 15 contributing Native organizations featured on the front and back covers and listed below. For more information and additional resources regarding these priorities, please visit: <https://ncaied.org/what-we-do/policy-advocacy.html>.

We look forward to partnering with the 119th Congress to create a brighter economic future for Indian Country.

Sincerely,



Chris James

President and CEO

National Center for American Indian Enterprise Development

## ENDORISING NATIVE ORGANIZATIONS:

- |   |   |  |
|---|---|--|
| • <b>Affiliated Tribes of Northwest Indians</b>     | • <b>Intertribal Agriculture Council</b>                            | • <b>NAFOA</b>                                     |
| • <b>American Indigenous Business Leaders</b>       | • <b>National Center for American Indian Enterprise Development</b> | • <b>Native CDFI Network</b>                       |
| • <b>First Peoples Fund</b>                         | • <b>National Congress of American Indians</b>                      | • <b>Native Farm Bill Coalition</b>                |
| • <b>Great Plains Tribal Chairmen's Association</b> | • <b>Native American Contractors Association</b>                    | • <b>NDN Collective</b>                            |
| • <b>Indian Gaming Association</b>                  |   | • <b>United South and Eastern Tribes</b>           |
|   |   | • <b>United National Indian Tribal Youth, Inc.</b> |

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## FEDERAL AGENCY & OTHER ACRONYMS

|             |   |             |   |
|-------------|---|-------------|---|
| <b>BIA</b>  | Bureau of Indian Affairs                    | <b>IRC</b>  | Internal Revenue Code                     |
| <b>CBO</b>  | Congressional Budget Office                 | <b>IRS</b>  | Internal Revenue Service                  |
| <b>CDFI</b> | Community Development Financial Institution | <b>MOA</b>  | Memorandum of Agreement                   |
| <b>DOD</b>  | Department of Defense                       | <b>NA</b>   | Not Applicable                            |
| <b>DOE</b>  | Department of Energy                        | <b>NCAI</b> | National Congress of American Indians     |
| <b>DOI</b>  | Department of the Interior                  | <b>SBA</b>  | Small Business Administration             |
| <b>DOL</b>  | Department of Labor                         | <b>SNAP</b> | Supplemental Nutrition Assistance Program |
| <b>FCC</b>  | Federal Communications Commission           | <b>SSA</b>  | Social Security Administration            |
| <b>FY</b>   | Fiscal Year                                 | <b>USDA</b> | Department of Agriculture                 |
| <b>HHS</b>  | Dept. of Health and Human Services          | <b>VA</b>   | Department of Veterans Affairs            |

## RELATED RESOURCES & ACKNOWLEDGMENTS



### RELATED RESOURCES ABOUT THE POLICY PRIORITIES

Featured on the following pages are top-line legislative and funding steps Congress should take to enhance Tribal Nations’ ability to grow vibrant economies based on *their* distinct needs and goals. These consensus priorities are endorsed by the 15 contributing Native organizations listed on the previous page and front and back covers. To access related resources that provide additional details about these priorities and view the brief shared with the Trump Administration transition team, please visit <https://ncaied.org/what-we-do/policy-advocacy.html> or scan the QR code here.

### ACKNOWLEDGMENTS

We would like to thank the leadership and staff of this brief’s endorsing organizations for contributing their priorities, related input, and feedback on the brief at various stages of its development. To learn more about these organizations, please click on the organizational website addresses featured on the back cover of this brief.

## Enable Tribal Governments to Issue Tax-Exempt Bonds

Eliminate the “essential government function” test for tribal government tax-exempt bonds to provide Tribal Nations parity with state and local governments in accessing tax-exempt bond markets to enhance job creation and stimulate infrastructure and business development on tribal lands. According to [NCAI](#), many Tribal Nations desire to deploy tax-exempt bonds to fund critically needed economic development projects, yet the IRS refuses to recognize economic development by Tribal Nations “as a governmental function, even though state and local governments frequently use tax-exempt financing for development projects... This inequity significantly handicaps tribal authority to provide much needed government revenue for tribal programs and prevents economic growth on tribal lands.” Finally ending this discriminatory treatment of tribal governments by providing them full parity with state and local governments will enhance job creation, generate sorely needed governmental revenue for social services, stimulate infrastructure and business development on tribal lands, and accelerate the diversification and resiliency of tribal economies, particularly in their private sectors. In addition, restoring parity would create spillover benefits for non-tribal citizens in those areas. Finally, the cost to the federal government would be low. According to the CBO, increasing tax-exempt bond access for Tribal Nations would reduce federal tax revenue by about \$77 million over 10 years. In comparison, the estimated total cost of the federal tax exemption for municipal bonds was \$27 billion in FY 2022.



Relevant legislation from 118<sup>th</sup> Congress: [H.R. 8318](#) (see Section 3)

## Provide Equitable Access to New Markets Tax Credits (NMTCs) for Tribal Governments and Native Community Development Entities (CDEs)

According to the CDFI Fund, NMTCs have proven to “spur economic and community development in low-income urban, rural and tribal communities nationwide.” However, its recently announced NMTC allocations for Calendar Year (CY) 2023 featured just *one* Native CDE (out of several such applicants) receiving an allocation. This single award constituted less than 1% of the overall allocation amount of \$5 billion, continuing a historic trend of NMTC underinvestment in Native CDEs (for example, CY 2021 saw not a single Native CDE receive an NMTC award, and CY 2022 saw just two Native CDEs receive allocations out of a total of 102 allocatees). To right this wrong, Congress should: (1) establish a 10% set-aside of NMTC allocations to be awarded to Native CDEs to ensure Indian Country finally gets its fair share, (2) revise the NMTC program to be *fully* inclusive of Alaska Native Statistical Areas, and (3) provide Native CDEs with technical assistance funding to support their development of NMTC applications so they can enhance their ability to attract much-needed private investment in economic development projects on tribal lands.



Relevant legislation from 118<sup>th</sup> Congress: [H.R. 8318](#) (see Section 8)

## Enable Tribal Nations to Create Subchapter S Corporations

Amending IRC Section 1361 to authorize federally recognized Tribal Nations to establish Subchapter S Corporations has been identified by both parties in Congress as vital for economic development in Indian Country. The Subchapter S designation of these closely held corporations would allow tribal governments to forge public-private partnerships with businesses without exposing the entire tribal treasury to double taxation. Tribal Nations’ tax-exempt status would be shared with these enterprises, thus promoting increased investment in many rural and underdeveloped areas of the U.S. where tribal governments are often the only investors.



Relevant legislation from 118<sup>th</sup> Congress: NA (last relevant legislation – [H.R. 2626](#) in 114<sup>th</sup> Congress)

## Increase the Effectiveness of the Tribal Low-Income Housing Tax Credits (LIHTC) Program in Indian Country

LIHTC leverages federal tax credits to attract private capital investments in the building and rehabilitation of affordable housing for low-income communities across the country. Overseen by Treasury and the IRS, the program is administered through allocations by state governments, with tribal government departments, housing authorities, and tribal-owned enterprises among the entities eligible to leverage this important tool. Currently the “largest resource for creating affordable housing in the United States today,” LIHTC placed 3.65 million housing units into service between 1987 and 2022; however, just 0.9% of those units were located within Indian Country, primarily because many states use criteria that benefit only urban areas – thus ignoring the unmet low-income housing needs of Indian Country. Modifying the LIHTC Program to define *all* tribal lands as a “difficult development area,” would automatically qualify those areas for a 30% basis boost for the purpose of awarding LIHTC allocations – meaning more credits would be available to cover the costs of housing projects in Native communities financed with these tax credits. With the need for additional LIHTC units in Indian Country estimated to be upwards of 25,000, this change would enable a far greater number of Tribal Nations to leverage LIHTC.



Relevant legislation from 118<sup>th</sup> Congress: [HR 8318](#) (see Section 9)

## Repeal the Federal Wagering Excise Tax

Repealing this tax will eliminate the unfair increased operational cost burdens of the wagering excise tax on tribal gaming operations that now feature sports betting. Bi-partisan legislation to amend IRC Section 4402 to exempt sports betting permitted by tribal casinos through gaming compacts from the federal tax on authorized wagers was introduced in the 118th Congress (see S. 4872 below); Congress should continue efforts to pass this bill once further input is provided by Tribal Nations on the language that should be integrated to protect gaming operations.



Relevant legislation from 118<sup>th</sup> Congress: [S. 4872](#), [H.R. 1661](#)

## Eliminate Unfair Double Taxation of Commerce Involving Non-Indians on Tribal Lands

More than 30 years ago, the U.S. Supreme Court ruled – without Congressional authorization – that tribal *and* state governments can tax economic activity involving non-Indians doing business in Indian Country. This and other unwarranted court rulings have created a [toxic environment for economic development in Native communities](#), as tribal governments are forced to collect state taxes in addition to tribal taxes, a dual taxation dynamic that drives businesses to locate elsewhere to remain competitive and stifles new investment. In addition, each year Tribal Nations funnel millions of tax dollars into state and local government coffers with little if any return benefits to them or their citizens. To upend this dynamic, Congress should pass legislation that (1) [affirms the exclusive authority of tribal governments to tax such commercial activity](#), and (2) explicitly prohibits state and local governments from doing the same. This will dramatically [enhance Tribal Nations' ability](#) to fund infrastructure development and vital public services in their communities, grow local commerce, accelerate the development of tribal energy resources, cultivate new enterprises and Native-owned small businesses, and increase the number of locally available jobs.



Relevant legislation from 118<sup>th</sup> Congress: NA (last relevant legislation – [S. 5048](#) in 117<sup>th</sup> Congress)

## Extend/Update the Indian Employment Tax Credit (IETC)

The [IETC](#), which expired in December 2021, provided reservation-based employers a 20% tax credit on a portion of the qualified wages and employee health insurance costs paid to enrolled tribal citizens or their tribally enrolled spouses living on or near tribal lands. [Reactivating the IETC](#), increasing the wage amount an employer can offset from \$20,000 to \$30,000, and simplifying the credit formula will bolster the bottom line of reservation-based businesses, incentivizing them to hire more tribal citizens.



Relevant legislation from 118<sup>th</sup> Congress: [H.R. 8318](#) (see Section 11)

## Immunize Commerce and Investment between Tribal Nations from State Taxation

Historically, trade relations between Tribal Nations were not subject to taxation. Increasingly, however, states levy taxes and impose regulations on commerce taking place exclusively between two locations in Indian Country. This has served to stifle inter-tribal commerce and the economic growth it generates, as the associated cost of doing business is simply too high. Congress can stimulate job creation and development in Indian Country by explicitly [prohibiting state taxation and regulation of Tribal Nation-to-Tribal Nation commerce and investment](#) where the economic activity takes place on tribal lands.



Relevant legislation from 118<sup>th</sup> Congress: NA

## Amend Tribal General Welfare Exclusion Act to Affirm that Tribal General Welfare Benefits Are Not Taxable

The [Tribal General Welfare Exclusion Act \(TGWEA\)](#) concluded that Tribal General Welfare Benefits should *not* be subject to federal income taxation. However, over the past decade, absent statutory authority, federal agencies like USDA and SSA have improperly determined that the value of these benefits should be counted as income for purposes of benefits eligibility, which has [resulted in tribal citizens being denied federal benefits](#) such as Social Security and food stamps (SNAP) because Tribal Nations are also providing them Tribal General Welfare Benefits. Amending TGWEA to explicitly bar federal agencies from considering Tribal General Welfare Benefits as taxable income will enhance Tribal Nations' efforts to lift their citizens out of poverty.



Relevant legislation from 118<sup>th</sup> Congress: [H.R. 8318](#) (see Section 10)

## Make Tribal Trust Land Acquisitions Eligible for Federal Payments in Lieu of Taxes to Local Governments

Tribal Nations need stable land bases adequate to support robust economic development and growth. Making tribal land acquisitions orchestrated by DOI eligible for payments in lieu of taxes to local governments will [expedite the restoration of tribal homelands](#) by easing local governments' perceived burdens based on lost tax revenue. While payments in lieu of taxes have not been utilized in this context, since 1977 [DOI has issued billions in such payments](#) to local governments to help offset losses in property taxes due to the existence of non-taxable federal lands within their boundaries. This model should be used to expand tribal land acquisition across Indian Country.



Relevant legislation in 118<sup>th</sup> Congress: NA

## Mandate the IRS Provide Comprehensive Guidance and Technical Assistance to Tribal Nations to Use Tribal Energy Development Tax Credits

Tribal energy tax credits, such as those now available through the [Elective/Direct Pay provisions](#) through the Inflation Reduction Act, not only represent an opportunity for Tribal Nations to become more self-sufficient while growing their economies, but they also have the potential to strengthen the nation's power grid, which has been a national security priority for years. Although the IRS [has recently taken steps to clarify several long-standing questions](#) regarding the relationship between the tax code and tribal governments, there remains a great need for additional clarity, guidance, and comprehensive technical assistance that tribal governments can readily access to make use of existing tax credits and other tax provisions to spur economic development in Native communities.



Relevant legislation from 118<sup>th</sup> Congress: NA

## Extend the Buy Indian Act Across All Federal Agencies

Congress should expand the bipartisan [Indian Community Economic Enhancement Act](#) (ICEE) to extend its Buy Indian Act provisions to all federal agencies, which will equitably increase tribal- and individual Native-owned businesses' share of government contracts. Pursuant to ICEE, in FY 2023 and 2024 [DOI](#) and HHS collectively issued an [unprecedented total amount of government contracts](#) to tribal- and individual Native-owned businesses, appreciably closing the historical gap in government contracting with Indian Country. All federal agencies should be required to adopt and implement Buy Indian Act regulations to further the growth of these businesses, starting with USDA (see page 8 below).



Relevant legislation from 118<sup>th</sup> Congress: NA

## Extend Section 823 of the 2020 National Defense Authorization Act (NDAA) to All Federal Agencies

This extension would [raise](#) the justification and approval threshold for sole-source federal contracts to Native entity-owned [SBA 8\(a\)](#) contractors from \$25 million to \$100 million for agencies other than DOD based on the [proven positive benefits](#) for contractors and DOD customers. NDAA Section 823 has shown that reducing administrative burdens on contracting officers and agency leadership has led to increased efficiencies for DOD, affirming the need to modify the Federal Acquisition Regulations to make this increased justification and approval threshold uniform across the entire federal government so all agencies can generate these efficiencies.



Relevant legislation from 118<sup>th</sup> Congress: NA

## Increase Annual Funding for the [DOD Indian Incentive Program](#) (IIP)

The Indian Financing Act of 1974 created the IIP as an Indian Country economic development initiative. DOD implemented the IIP to provide a 5% rebate to prime contractors who subcontract to Native-owned businesses. The IIP, funded through the defense appropriations bill, is currently funded at \$25 million annually, which promotes \$500 million in Native-owned business performance. Over the IIP's history, Congressional appropriations for the program have not kept pace with significant increases in overall DOD spending. Congress should increase annual funding for this program to \$35 million to ensure adequate coverage of DOD-approved applications for 5% incentive payments earned by DOD prime contractors that subcontract DOD work performed by eligible Native-owned businesses.



Relevant legislation from 118<sup>th</sup> Congress: NA

## Permanently [Rescind SBA's "Bona Fide Place of Business" Requirement](#)

The "Bona Fide Place of Business" requirement renders 8(a) contractors ineligible for certain government construction contracts if they do not have a physical office headquarters in the state where the work is to take place, which unfairly harms emerging Native 8(a) contractors. This requirement forces businesses to invest valuable capital and resources into meeting this requirement that can be better used for investing into their own business operations, creating more efficiencies in the marketplace and better pricing for the government. Although a moratorium on this requirement is on the verge of being extended through 2028, legislation is needed to *permanently* rescind it to increase participation of Native 8(a) contractors in federal contracting opportunities.



Relevant legislation from 118<sup>th</sup> Congress: [S. 1407](#) and [H.R. 2970](#)

## Amend the [2017 Tax Cuts and Jobs Act](#) to Expand the Number of Indian Country [Opportunity Zones](#)

Removing the statutory limit on how many eligible areas can be designated will [foster](#) economic and job growth in low-income Native communities. Left unchanged, state governors are limited to nominating a maximum of 25 percent of the areas in their states that have been deemed eligible by the IRS to become Opportunity Zones. Allowing more designations in each state will enable additional Opportunity Zones to be created within Indian Country to encourage new investments and spur economic development and job creation where it is needed most.



Relevant legislation from 118<sup>th</sup> Congress: [H.R. 5761](#) and [H.R. 4055](#) (these bills generally address Opportunity Zones, but should be revised to include this priority).

## Include Tax Immunity for Native Artists in the [ARTIST Act of 2023](#)

Strictly interpret the Constitution, which recognizes the status of "Indians not taxed," to [immunize Native artists](#) who produce arts and crafts on tribal lands from income taxes. While the [Indian Arts and Crafts Act of 1990](#) and its truth-in-advertising provisions have been instrumental in protecting Native artists and their cultural heritage, improving the legislation by providing tax immunization to those same artists will further empower Native artists economically as well as promote tribal sovereignty.



Relevant legislation from 118<sup>th</sup> Congress: NA (Senate Committee on Indian Affairs working draft available [here](#))

## **Increase Annual [Native American CDFI Assistance \(NACA\) Program](#) Funding to at Least \$50 million**

With 64 certified Native CDFIs and two dozen more “emerging” ones in Treasury’s certification pipeline, the Native CDFI industry is expanding rapidly to meet the significant and growing capital access needs of Indian Country. But NACA program funding is struggling to keep pace. The unmet capital needs of Native CDFIs for homeownership, small business, and consumer lending is increasing: for example, a 2022 Native CDFI Network survey of 16 Native CDFIs (just one quarter of the country’s 64 certified Native CDFIs) found their projected three-year unmet loan capital needs alone collectively totaled \$166 million. For [FY 2024](#), only 70% (\$43.2 million) of the total NACA Base-Financial Assistance (FA) funding requested by applicant Native CDFIs (\$61.6 million) was awarded by the CDFI Fund. In addition, just 67% (\$3.7 million) of the total NACA Technical Assistance (TA) funding requested by applicant Native CDFIs (\$5.5 million) was awarded. Meanwhile, according to the Treasury Department, investments made in CDFIs produce an eight-fold return, with each \$1 creating \$8 in private sector investments. Congress should [increase annual NACA funding to at least \\$50 million](#) to adequately resource Native CDFIs and the critical economic development work they do in Native communities.



*Relevant legislation from 118<sup>th</sup> Congress: NA (last relevant legislation is [S. 5186](#) from 117<sup>th</sup> Congress)*

## **Provide \$5 Million in Annual Funding for the [Native American Direct Loan \(NADL\) Relending Program](#) to Foster Homeownership Among Native Veterans**

According to Fannie Mae, mortgage lending on most reservations is limited, as home-buying in Indian Country is a long, complex process that typically takes “years, not months” and is often pursued by prospective Native homebuyers – including Native veterans – with poor credit. To provide Native veterans with equitable access to mortgage lending, Congress should: (1) create a \$5 million NADL relending program that allows Native CDFIs – who intimately understand Native communities and the mortgage lending process on tribal trust lands – to obtain a loan through the NADL program at a 1% interest rate and relend those funds to qualified Native veteran borrowers (the CDFI would repay the loan to the VA Department); (2) allow veterans to use NADL to refinance non-VA mortgages so Native veterans have the same opportunity as non-Native veterans to use their VA loan benefit to refinance existing mortgage loans; and (3) expand VA’s NADL outreach program by partnering with Tribal Nations, tribally designated housing entities, Native CDFIs, and local nonprofits to conduct outreach, homebuyer education, housing counseling, post-purchase education, and other technical assistance.



*Relevant legislation from 118<sup>th</sup> Congress: [S. 185](#)*

## **Establish Indian Country Set-aside for CDFI Fund’s [Capital Magnet Fund \(CMF\)](#)**

The CMF offers competitively awarded grants to CDFIs and non-profit affordable housing organizations to finance affordable housing solutions and community revitalization efforts benefiting individuals and families with low-incomes and low-income communities nationwide. At least 70% of CMF dollars must be used to finance affordable housing, and up to 30% may be used to finance economic development activities linked to affordable housing. According to the CDFI Fund, the CMF has created more than 63,000 affordable homes, including more than 55,600 rental housing units and 7,400 homeowner-occupied units, and has generated \$20 of additional investment for every \$1 of funding awarded. However, CMF funding to date has failed to equitably invest (either directly or indirectly through sub-awarding) in low-income Native communities, thus Congress should establish a 10% CMF funding set-aside for Native CDFIs and housing entities.



*Relevant legislation from 118<sup>th</sup> Congress: NA*

## **Increase DOI [Indian Loan Guarantee and Insurance Program \(ILGP\)](#) Annual Funding to at Least \$25 Million**

ILGP helps Tribal Nations and individuals overcome barriers to conventional financing and secure reasonable interest rates, while also reducing the risk to lenders by providing financial backing from the federal government. The program has produced [success stories across Indian Country](#) in utilities and housing development, community services, tourism and commercial infrastructure development, among others – generating a substantial return on this federal investment. Congress should expand this program by increasing its annual funding to at least \$25 million to facilitate greater lending by private sector banks to tribal- and Native-owned businesses; in addition, it should raise the ceiling on the annual aggregate value of loans subject to this federal guarantee.



*Relevant legislation from 118<sup>th</sup> Congress: NA*

## **Reclassify Contract Support Costs (CSCs) and Indian Self-Determination and Education Assistance Act (ISDEAA) [Section 105\(l\) Leases](#) as Mandatory Spending**

Classifying these costs as mandatory – as opposed to discretionary – spending [will provide greater funding resource certainty](#) for Tribal Nations. Because the Supreme Court has held on more than one occasion that paying CSCs is mandatory – based on ISDEAA, failure to classify those costs as mandatory means such expenses are consequently paid out of discretionary funding that otherwise would support other Indian Country services and programs. Given CSCs will grow over time as Tribal Nations exercise greater self-determination, if no change is made, the effective discretionary budget for tribal economic development (as well as in other areas) will conversely shrink year after year, negatively impacting tribal, state, and regional economic growth.



*Relevant legislation from 118<sup>th</sup> Congress: NA*

## Make the [USDA Section 502 Relending Demonstration Program](#) Permanent and Extend It to All of Indian Country

Implemented in 2018, the USDA Section 502 demonstration project made two Native CDFIs eligible borrowers under the 502 Program and enabled them to relend to qualified families for the construction, acquisition, and rehabilitation of affordable housing on tribal trust land. It resulted in those CDFIs doubling *in one year* the number of home loans that USDA had provided on two Indian reservations in South Dakota during *the previous decade*. The project demonstrated Native CDFIs are uniquely equipped to deploy mortgage capital efficiently and effectively in Native communities, in part because of the supportive services they provide their clients, including homebuyer education, post-purchase and foreclosure prevention counseling, and other technical assistance. Congress should pass legislation to: (1) make the demonstration program permanent, (2) extend it across Indian Country, and (3) authorize \$50 million in annual funding to finance Native homeowners (alternatively, a 5% set-aside for Indian Country should be established for the Section 502 program).



Relevant legislation from 118<sup>th</sup> Congress: [S. 1941](#) and [S. 1389](#) (see Title III)

## Increase Native CDFIs' Access to Long-term Capital by Creating a Tax Credit for Private Investment and a Liquidity Facility at the CDFI Fund

As mentioned in the NACA Program funding entry above, the quantifiable capital needs – particularly long-term, low-interest capital – of Native CDFIs [far surpass the capital they have available](#). For example, as one study illustrated, Native CDFI housing lenders had to deny over \$40 million in mortgage loan applications in a recent calendar year due to a lack of lending capital, and those lenders estimated needing at least an additional \$94 million per year to satisfy the growing loan demand of the Native communities they serve. To rectify this situation, Congress should [reactivate and fund](#) the long-dormant [Section 113 of the Riegle Act](#) – the CDFI liquidity enhancement program – which would allow the CDFI Fund to create pilot projects through a competitive application process that can be used to attract new capital to the industry and increase the velocity of CDFI lending nationwide. Congress also should extend the tax credit to private investors who make equity investments in certified *and* emerging CDFIs.



Relevant legislation from 118<sup>th</sup> Congress: [S. 1442](#) and [S. 2963](#)

## Create an Indian Country Set-Aside for Key USDA Programs Serving Rural Native Communities

Congress should [establish a set-aside of 5%](#) for Tribal Nations, tribal-owned entities, Native CDFIs, and other eligible Native-led community development organizations of the aggregate amount of lending authority, budget authority, or guarantee authority made available each year by several key USDA rural housing programs and activities, including the [Section 504 Home Repair Program](#), [Section 515 Rural Rental Housing Loan Program](#), [Section 525 Technical and Supervisory Assistance Grant Program](#), [Section 533 Housing Preservation Grant Program](#), and [Section 538 Multifamily Housing Loan Guarantee Program](#). Creation of these set-asides is greatly needed and long overdue given the [disproportionately grave housing and homeownership challenges faced by Native people](#) (particularly those residing in rural areas), coupled with the federal government's long-standing underfunding of programs designed to address those challenges.



Relevant legislation from 118<sup>th</sup> Congress: [S. 3906](#)

## Amend the 2016 [Native American Tourism and Improving Visitor Experience \(NATIVE\) Act](#)

The NATIVE Act requires Commerce, DOI, and other federal agencies with recreational travel or tourism functions to update their management plans and tourism initiatives to include “Indian tribes, tribal organizations, and Native Hawaiian organizations.” While the act is a budding success, Congress should strengthen and accelerate its implementation by refining the legislation based on the consensus priorities of Tribal Nations and leading national Native organizations, notably by authorizing: (1) the BIA to make NATIVE Act grants to and enter into agreements with Tribal Nations and organizations; (2) the Office of Native Hawaiian Relations to make these grants to and enter into agreements with Native Hawaiian organizations; and (3) other federal agencies to make these grants to and enter into agreements with “Indian tribes, tribal organizations, and Native Hawaiian organizations.”



Relevant legislation from 118<sup>th</sup> Congress: [S. 385](#)

## Increase Native Producers' Access to Agricultural Credit

Congress should pass legislation implementing the Farm Service Agency's proposed statutory changes found in its FY 2023 [Section 5413 Report](#). These include: (1) allowing [Farm Ownership Loans](#) to refinance existing debt to enable producers to secure better terms and improve their ability to pay, (2) reducing the experience requirement for loan eligibility from three years to one, and (3) providing an experience requirement waiver to those with a mentor or relationship to an established producer – which will enable more Native producers to access the capital needed to sustain and grow their operations. In addition, raising the lending cap on [FSA Microloans](#) from \$50,000 to \$100,000 will have the same positive effect for a growing number of Native producers.



Relevant legislation from 118<sup>th</sup> Congress: NA



## Pass Clean [Carcieri](#) Fix to Enable All Federally Recognized Tribal Nations to Take Newly Acquired Land into Trust

This [long-overdue legislation](#) – boasting broad bipartisan support – would enable Tribal Nations recognized after 1934 to take land into trust for economic development and other purposes. The Supreme Court’s [Carcieri](#) decision [created two classes of Tribal Nations](#) – those federally recognized *as of* 1934 (for whom land may be taken into trust) and those federally recognized *after* 1934 (who are unable to have land taken into trust). Given the governance, cultural, and economic importance trust lands possess for Tribal Nations, Congress must act now to end a 15-year policy that arbitrarily harms Tribal Nations because of a historical quirk about when the U.S. recognized their sovereignty.



Relevant legislation from 118<sup>th</sup> Congress: [S. 563](#) and [H.R. 1208](#)

## Mandate DOE Deploy [Tribal Energy Loan Guarantee Program \(TELGP\)](#) Funding

Congress created TELGP to support tribal investment in energy-related projects by providing loan guarantees, which is sorely needed given more than 17,000 homes across Indian Country lack electricity. However, while Congress has been funding the program since FY 2017, as of March 2024, DOE had yet to deploy *any* TELGP funding to fund energy projects on reservations – despite \$75 million being added to the program from the recent Congressional climate, health care, and tax package, and the increasing of available loan guarantees to \$20 billion. Congress should [mandate that DOE immediately deploy substantial TELGP funding to Indian Country](#); the legislation also should explicitly [clarify that using TELGP funding does not constitute illegal federal “double dipping”](#) based on recent budget reconciliation laws.



Relevant legislation from 118<sup>th</sup> Congress: NA

## Authorize All Federally Recognized Tribal Nations to Issue 99-Year Leases and Affirm Tribal Rights-of-Way Authority

Economic development on tribal lands has been hampered due in part to the reluctance of interested parties to agree to the shorter terms of tribal land leases compared to longer terms they can secure elsewhere. To rectify this, Congress should amend the [Indian Self-Determination and Education Assistance Act](#) and [Indian Long-Term Leasing Act](#) to enable all Tribal Nations to offer land leases up to 99 years in duration (prior Congressional acts already enable 60 Tribal Nations to exercise such authority). In addition, Congress should establish a process for Tribal Nations to issue their own right-of-way approvals similar to the [HEARTH Act](#). This would clear up the BIA’s immense backlog of right-of-way approval requests (due to the fact it manages many tribal lands held in trust by the federal government). These changes would [catalyze tribal infrastructure and economic development projects](#).



Relevant legislation from 118<sup>th</sup> Congress: [H.R. 1246](#) and [S. 1322](#) (respective bills have passed House and Senate)

## Authorize DOE to Issue Direct Loans via Federal Financing Bank to Tribal Nations/Entities for Energy Development

Currently, Tribal Nations and other tribal entities often are [unable to obtain energy project funding](#) because DOE cannot issue direct loans and DOE’s TELGP (see left) can only guarantee up to 90% of any loan made to Tribal Nations or tribal entities, which deters potential investors from partnering on Indian Country energy development projects. Authorizing DOE to provide direct loans through the [Federal Financing Bank](#) to Tribal Nations and tribal entities for energy development will not only spur energy-based economic development and job growth in Native communities, it will strengthen the nation’s energy independence (the [legislation](#) referenced below makes this important change).



Relevant legislation from 118<sup>th</sup> Congress: NA (last relevant legislation is [H.R. 8068](#) from 117<sup>th</sup> Congress)

# TRIBAL INFRASTRUCTURE & WORKFORCE DEVELOPMENT

## Enhance Tribal Spectrum Deployment on Tribal Lands

Expanding broadband and digital services in Indian Country not only generates economic opportunities for Tribal Nations, but also increases Native communities’ access to critical public safety, healthcare, education, employment, and voting services. Congress should reintroduce and pass the DIGITAL Reservations Act (see below), which directs the FCC to [allocate to Tribal Nations and Native Hawaiian organizations autonomy of spectrum licenses](#) over tribal lands to deploy wireless broadband and digital services. To further strengthen their authority in this area, the FCC should also be required to elevate the Office of Native Affairs and its Policy Chief to report directly to the FCC Chair.



Relevant legislation from 118<sup>th</sup> Congress: NA (last relevant legislation – [S. 5321](#) from 117<sup>th</sup> Congress)

## Integrate [Indian Country’s Priorities](#) in the Reauthorization of the [Workforce Innovation and Opportunity Act \(WIOA\)](#)

Congress has been working in the 118th Congress to reauthorize WIOA, which is long overdue given it expired in 2020. It is critical that the [Section 166](#) program – which supports employment and training activities for American Indians, Alaska Natives, and Native Hawaiians – is not only preserved through WIOA reauthorization but strengthened through: increased funding for the Section 166 program to keep pace with the rapidly growing Native population, streamlined reporting by Section 166 grantees, and DOL’s formal recognition of their data. Legislation negotiated between the Senate Health, Education, Labor & Pensions (HELP) Committee and the House Education and Workforce Committee contains several Indian Country priorities and should be promptly passed.



Relevant legislation from 118<sup>th</sup> Congress: [Senate HELP Committee substitute amendment for H.R. 6655](#)

## Make the [SBA Office of Native American Affairs \(ONAA\)](#) Permanent and Provide It Adequate Funding

ONAA functions as an essential advisor within SBA on Native entrepreneurial development, contracting, and capital access issues. Congress should pass legislation: (1) [making ONAA permanent, complete with an Associate Administrator](#) who reports directly to the SBA Administrator; (2) ensuring ONAA coordinates with other SBA programs to improve outreach services and assistance to Indian Country's small businesses; and (3) providing ONAA with at least \$5 million in annual funding. The Associate Administrator should conduct the agency's Indian Country outreach program, convene tribal consultations on SBA proposals impacting Native communities, and assist tribal- and individual Native-owned companies with engaging and accessing support from SBA programs that provide entrepreneurial development, contracting, and access to capital services.



Relevant legislation from 118<sup>th</sup> Congress: [S. 1156](#), [H.R. 7102](#)

## Require SBA to License Additional Small Business Lending Companies (SBLCs)

[SBLCs](#) are non-depository lending institutions authorized to make [SBA 7\(a\) small business program loans](#) nationwide for up to \$5 million per small business. In 1982, SBA [established a moratorium](#) on licensing new SBLCs, claiming it didn't have sufficient resources to exercise regulatory oversight of additional license holders. It only recently lifted that moratorium to license three new SBLCs, bringing the total to 17 including one Native CDFI. Meanwhile, several other Native CDFIs participate as [Community Advantage \(CA\) SBLCs](#), but that SBA program caps loans at \$350,000, and a growing number of Native CDFIs and other Native-led entities boast extensive loan portfolios and proven lending track records that argue strongly for their inclusion in the larger SBLC program. Congress should require that SBA grant additional SBLC licenses, with at least one issued to a Native-led entity.



Relevant legislation from 118<sup>th</sup> Congress: NA

## GROWING NATIVE FOOD ECONOMIES

### Extend the [Buy Indian Act](#) and [Indian Employment Preference Hiring Provisions](#) to all USDA Programs

The Buy Indian Act allows certain federal agencies to set aside procurement contracts for tribal- and Native-owned businesses. Despite USDA being the third-largest federal purchaser of goods and services from Indian Country (behind DOI and HHS), the Buy Indian Act does not include USDA. Extending the Buy Indian Act to include USDA as a covered agency will [significantly expand the breadth of contracts available](#) to tribal- and Native-owned businesses, generating increased economic activity and creating more employment opportunities in Native communities.



Relevant legislation from 118<sup>th</sup> Congress: [H.R. 8484](#) and [S. 2354](#) (see Section 802)

### Create Program to Increase Access to Land and Capital for Native Farmers and Ranchers

Access to land and credit are key challenges for Native farmers, ranchers, and forest owners, inhibiting their ability to establish, sustain, and expand commercially viable operations. Bipartisan legislation introduced in the current Congress (see below) addresses this issue by establishing a new program that [provides grants to and forges cooperative agreements with tribal governments, Native CDFIs, and other entities](#) to strengthen land, capital, and market access for historically underserved farmers, ranchers, and forest owners in high-poverty areas.



Relevant legislation from 118<sup>th</sup> Congress: [H.R. 3955](#) and [S. 2340](#)

### Strengthen the [Food Distribution Program on Indian Reservations \(FDPIR\)](#)

According to the USDA, [nearly 50,000 Native people](#) rely on FDPIR each month for food packages. Legislation – such as the [Tribal Nutrition Flexibility Act](#) – allowing FDPIR-qualified tribal and Native producers to distribute traditional and culturally relevant foods on both a regional basis and national basis will not only better meet the needs of Native communities, but will also help grow the operations of tribal and Native producers. Additionally, Congress should pass legislation [requiring](#) USDA to expand its deployment of self-determination contracting (“638”) authority, which will [strengthen tribal economies and increase Native people's access to nutritional food](#) by allowing Tribal Nations to exercise local-level control to meet the needs of their citizens.



Relevant legislation from 118<sup>th</sup> Congress: [S. 2450](#) and [S. 2489](#)

### Authorize the Continuation of the [Local Food Purchase Assistance Program \(LFPA\)](#)

During the COVID-19 pandemic, the USDA established the LFPA, which provided grants to state and tribal governments to purchase and distribute locally sourced foods from primarily small and historically underserved producers. The EAT Local Foods Act (see below) would statutorily authorize the continuation of the LFPA, which would encourage increased Tribal Nation development of and investment in local food systems, which will improve food security, strengthen local food production businesses, and build resiliency in food-based supply chains.



Relevant legislation from 118<sup>th</sup> Congress: [S. 3982](#)



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