S. HRG. 108–75

NATIVE AMERICAN CAPITAL FORMATION AND ECONOMIC DEVELOPMENT ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

S. 519

TO ESTABLISH A NATIVE AMERICAN-OWNED FINANCIAL ENTITY TO PROVIDE FINANCIAL SERVICES TO INDIAN TRIBES, NATIVE AMERICAN ORGANIZATIONS, AND NATIVE AMERICANS

APRIL 30, 2003
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NATIVE AMERICAN CAPITAL FORMATION AND ECONOMIC DEVELOPMENT ACT

WEDNESDAY, APRIL 30, 2003

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:05 p.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell and Murkowski.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The Committee on Indian Affairs will come to order.

Indians have an average jobless rate of 50 percent, and lack the kind of job opportunities that most Americans take for granted. Every year Congress appropriates billions of dollars for the benefit of Indian people. In fiscal year 2002 alone, $12 billion was appropriated for the benefit of Indian people, and of this, hundreds of millions for economic development purposes. It seems to me that more Federal funds simply will not solve the core problems that we face in Indian country.

Little, if any, attention is paid to the systemic problems with Indian economics, like investment inhibitors, lack of infrastructure, poor governance, identifying development opportunities, and other factors.

I believe that the best way to bring jobs and hope to Indian people is to act collectively. Therefore, the bill before us is based on certain fundamental principles.

First, there ought to be a full-time Indian-owned development organization that focuses only on Indian economic development. The organization should have sufficient resources. The organization should include all Indian tribes as shareholders, not just those who happen to be wealthy tribes. The organization needs to be much more than just a bank that hands out money. It needs to focus on things like political risk, building stronger tribal governments, and looking at Indian development comprehensively.

I read some of the testimony that has been turned in already and I think there is a fundamental misunderstanding on the part of some of the people who are going to testify. I hope we do not get hung up on all the dotting of "i's" and crossing of "t's" and the lan-

guage today. Any bill, in fact, when it is first turned in, becomes a vehicle for change. It just seems to me that change is long overdue in trying to help Indian economies, and S. 519 is going to be that vehicle. Hopefully we will be able to get some testimony today that will make the bill better.

[Text of S. 519 follows:]

II

108TH CONGRESS
1ST SESSION

S. 519

To establish a Native American-owned financial entity to provide financial services to Indian tribes, Native American organizations, and Native Americans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2003

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

To establish a Native American-owned financial entity to provide financial services to Indian tribes, Native American organizations, and Native Americans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Native American Capital Formation and Economic Development Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purposes.
Sec. 4. Definitions.

TITLE I—NATIVE AMERICAN CAPITAL DEVELOPMENT CORPORATION

Sec. 101. Establishment of the Corporation.
Sec. 102. Authorized assistance and service functions.
Sec. 103. Native American lending services grant.
Sec. 104. Audits.
Sec. 105. Annual housing and economic development reports.
Sec. 106. Advisory Council.

TITLE II—CAPITALIZATION OF CORPORATION

Sec. 201. Capitalization of the Corporation.

TITLE III—REGULATION, EXAMINATION, AND REPORTS

Sec. 301. Regulation, examination, and reports.
Sec. 302. Authority of the Secretary of Housing and Urban Development.

TITLE IV—FORMATION OF NEW CORPORATION

Sec. 401. Formation of new corporation.
Sec. 402. Adoption and approval of merger plan.
Sec. 403. Consummation of merger.
Sec. 404. Transition.
Sec. 405. Effect of merger.

TITLE V—OTHER NATIVE AMERICAN FUNDS

Sec. 501. Native American Economies Diagnostic Studies Fund.
Sec. 502. Native American Economic Incubation Center Fund.

TITLE VI—AUTHORIZATIONS OF APPROPRIATIONS

Sec. 601. Native American financial institutions.
Sec. 602. Corporation.
Sec. 603. Other Native American funds.

SEC. 2. FINDINGS.

Congress finds that—

(1) there is a special legal and political relationship between the United States and the Indian tribes, as grounded in treaties, the Constitution, Federal statutes and court decisions, executive orders, and course of dealing;

(2) despite the availability of abundant natural resources on Indian land and a rich cultural legacy that accords great value to self-determination, self-reliance, and independence, Native Americans suffer rates of unemployment, poverty, poor health, substandard housing, and associated social ills to a greater degree than any other group in the United States;

(3) the economic success and material well-being of Native Americans depends on the combined efforts and resources of the United States, Indian tribal governments, the private sector, and individuals;

(4) the poor performance of moribund Indian economies is due in part to the near-complete absence of private capital and private capital institutions; and

(5) the goals of economic self-sufficiency and political self-determination for Native Americans can best be achieved by making available the resources and discipline of the private market, adequate capital, and technical expertise.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to establish an entity dedicated to capital development and economic growth policies in Native American communities;

(2) to provide the necessary resources of the United States, Native Americans, and the private sector on endemic problems such as fractionated and unproductive Indian land;

(3) to provide a center for economic development policy and analysis with particular emphasis on diagnosing the systemic weaknesses with, and inhibitors to greater levels of investment in, Native American economies;

(4) to establish a Native-owned financial entity to provide financial services to Indian tribes, Native American organizations, and Native Americans; and

(5) to improve the material standard of living of Native Americans.

SEC. 4. DEFINITIONS.

In this Act:

(1) ALASKA NATIVE.—The term ''Alaska Native'' has the meaning given the term ''Native'' in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(2) BOARD.—The term ''Board'' means the Board of Directors of the Corporation.

(3) CAPITAL DISTRIBUTION.—The term ''capital distribution'' has the meaning given the term in section 1303 of the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

(4) CHAIRPERSON.—The term ''Chairperson'' means the chairperson of the Board.

(5) CORPORATION.—The term ''Corporation'' means the Native American Capital Development Corporation established by section 101(a)(1)(A).

(6) COUNCIL.—The term ''Council'' means the Advisory Council established under section 106(a).

(7) DESIGNATED MERGER DATE.—The term ''designated merger date'' means the specific calendar date and time of day designated by the Board under this Act.

(8) DEPARTMENT OF HAWAIIAN HOME LANDS.—The term ''Department of Hawaiian Home Lands'' means the agency that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

(9) FUND.—The term ''Fund'' means the Community Development Financial Institutions Fund established under section 104 of the Riegle Commu-

nity Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4703).

(10) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(11) MERGER PLAN.—The term ''merger plan'' means the plan of merger adopted by the Board under this Act.

(12) NATIVE AMERICAN.—The term ''Native American'' means—

(A) a member of an Indian tribe; or

(B) a Native Hawaiian.

(13) NATIVE AMERICAN FINANCIAL INSTITUTION.—The term ''Native American financial institution'' means a person (other than an individual) that—

(A) qualifies as a community development financial institution under section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702);

(B) satisfies—

(i) requirements established by subtitle A of title I of the Riegle Community

Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.); and

(ii) requirements applicable to persons seeking assistance from the Fund;

(C) demonstrates a special interest and expertise in serving the primary economic development and mortgage lending needs of the Native American community; and

(D) demonstrates that the person has the endorsement of the Native American community that the person intends to serve.

(14) NATIVE AMERICAN LENDER.—The term ''Native American lender'' means a Native American governing body, Native American housing authority, or other Native American financial institution that acts as a primary mortgage or economic development lender in a Native American community.

(15) NATIVE HAWAIIAN.—The term ''Native Hawaiian'' has the meaning given the term in section 201 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

(16) NEW CORPORATION.—The term ''new corporation'' means the corporation formed in accordance with title IV.

(17) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

(18) TOTAL CAPITAL.—The term ''total capital'' has the meaning given the term in section 1303 of the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

(19) TRANSITION PERIOD.—The term ''transition period'' means the period beginning on the date on which the merger plan is approved by the Secretary and ending on the designated merger date.

TITLE I—NATIVE AMERICAN CAPITAL DEVELOPMENT CORPORATION

SEC. 101. ESTABLISHMENT OF THE CORPORATION.

(a) ESTABLISHMENT; BOARD OF DIRECTORS; POLICIES; PRINCIPAL OFFICE; MEMBERSHIP; VACANCIES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established and chartered a corporation, to be known as the ''Native American Capital Development Corporation''.

(B) PERIOD OF TIME.—The Corporation shall be a congressionally chartered body corporate until the earlier of—

(i) the designated merger date; or

(ii) the date on which the charter is surrendered by the Corporation.

(C) CHANGES TO CHARTER.—The right to revise, amend, or modify the Corporation charter is specifically and exclusively reserved to Congress.

(2) BOARD OF DIRECTORS; PRINCIPAL OFFICE.—

(A) BOARD.—The powers of the Corporation shall be vested in a Board of Directors, which Board shall determine the policies that govern the operations and management of the Corporation.

(B) PRINCIPAL OFFICE; RESIDENCY.—

(i) PRINCIPAL OFFICE.—The principal office of the Corporation shall be in the District of Columbia.

(ii) VENUE.—For purposes of venue, the Corporation shall be considered to be a resident of the District of Columbia.

(3) MEMBERSHIP.—

(A) IN GENERAL.—

(i) NINE MEMBERS.—Except as provided in clause (ii), the Board shall consist of 9 members, of which—

(I) 3 members shall be appointed by the President; and

(II) 6 members shall be elected by the class A stockholders, in accordance with the bylaws of the Corporation.

(ii) THIRTEEN MEMBERS.—If class B stock is issued under section 201(b), the Board shall consist of 13 members, of which—

(I) 9 members shall be appointed and elected in accordance with clause (i); and

(II) 4 members shall be elected by the class B stockholders, in accordance with the bylaws of the Corporation.

(B) TERMS.—Each member of the Board shall be elected or appointed for a 4-year term, except that the members of the initial Board shall be elected or appointed for the following terms:

(i) Of the 3 members appointed by the President—

(I) 1 member shall be appointed for a 2-year term;

(II) 1 member shall be appointed for a 3-year term; and

(III) 1 member shall be appointed for a 4-year term;

as designated by the President at the time of the appointments.

(ii) Of the 6 members elected by the class A stockholders—

(I) 2 members shall each be elected for a 2-year term;

(II) 2 members shall each be elected for a 3-year term; and

(III) 2 members shall each be elected for a 4-year term.

(iii) If class B stock is issued and 4 additional members are elected by the class B stockholders—

(I) 1 member shall be elected for a 2-year term;

(II) 1 member shall be elected for a 3-year term; and

(III) 2 members shall each be elected for a 4-year term.

(C) QUALIFICATIONS.—Each member appointed by the President shall have expertise in 1 or more of the following areas:

(i) Native American housing and economic development matters.

(ii) Financing in Native American communities.

(iii) Native American governing bodies, legal infrastructure, and judicial systems.

(iv) Restricted and trust land issues, economic development, and small consumer loans.

(D) MEMBERS OF INDIAN TRIBES.—Not less than 2 of the members appointed by the President shall be members of different, federally-recognized Indian tribes enrolled in accordance with the applicable requirements of the Indian tribes.

(E) CHAIRPERSON.—The Board shall select a Chairperson from among the members of the Board, except that the initial Chairperson shall be selected from among the members of

the initial Board who have been appointed or elected to serve for a 4-year term.

(F) VACANCIES.—

(i) APPOINTED MEMBERS.—Any vacancy in the appointed membership of the Board shall be filled by appointment by the President, but only for the unexpired portion of the term.

(ii) ELECTED MEMBERS.—Any vacancy in the elected membership of the Board shall be filled by appointment by the Board, but only for the unexpired portion of the term.

(G) TRANSITIONS.—Any member of the Board may continue to serve after the expiration of the term for which the member was appointed or elected until a qualified successor has been appointed or elected.

(b) POWERS OF THE CORPORATION.—The Corporation—

(1) shall adopt bylaws, consistent with this Act, regulating, among other things, the manner in which—

(A) the business of the Corporation shall be conducted;

(B) the elected members of the Board shall be elected;

(C) the stock of the Corporation shall be issued, held, and disposed of;

(D) the property of the Corporation shall be disposed of; and

(E) the powers and privileges granted to the Corporation by this Act and other law shall be exercised;

(2) may make and execute contracts, agreements, and commitments, including entering into a cooperative agreement with the Secretary;

(3) may prescribe and impose fees and charges for services provided by the Corporation;

(4) may, if a settlement, adjustment, compromise, release, or waiver of a claim, demand, or right of, by, or against the Corporation, is not adverse to the interests of the United States—

(A) settle, adjust, and compromise on the claim, demand, or right; and

(B) with or without consideration or benefit to the Corporation, release or waive, in whole or in part, in advance or otherwise, the claim, demand, or right;

(5) may sue and be sued, complain and defend, in any Federal, State, tribal, or other court;

(6) may acquire, take, hold, and own, manage, and dispose of any property;

(7) may—

(A) determine the necessary expenditures of the Corporation and the manner in which those expenditures shall be incurred, allowed, and paid; and

(B) appoint, employ, and fix and provide for the compensation and benefits of such officers, employees, attorneys, and agents as the Board determines reasonable and not inconsistent with this section;

(8) may incorporate a new corporation under State, District of Columbia, or tribal law, as provided in this Act;

(9) may adopt a plan of merger, as provided in this Act;

(10) may consummate the merger of the Corporation into the new corporation, as provided in this Act; and

(11) may have succession until the designated merger date or any earlier date on which the Cor-

poration surrenders the Federal charter of the Corporation.

(c) INVESTMENT OF FUNDS; DESIGNATION AS DEPOSITARY, CUSTODIAN, OR AGENT.—

(1) INVESTMENT OF FUNDS.—Funds of the Corporation that are not required to meet current operating expenses shall be invested in—

(A) obligations of, or obligations guaranteed by, the United States (or any agency of the United States); or

(B) in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

(2) DESIGNATION AS DEPOSITARY, CUSTODIAN, OR AGENT.—Any Federal Reserve bank or Federal home loan bank, or any bank as to which at the time of its designation by the Corporation there is outstanding a designation by the Secretary of the Treasury as a general or other depositary of public money, may—

(A) be designated by the Corporation as a depositary or custodian or as a fiscal or other agent of the Corporation; and

(B) act as such a depositary, custodian, or agent.

(d) ACTIONS BY AND AGAINST THE CORPORATION.—Notwithstanding section 1349 of title 28, United States Code, or any other provision of law—

(1) the Corporation shall be deemed to be an agency covered under sections 1345 and 1442 of title 28, United States Code;

(2) any civil action to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the appropriate district court of the United States shall have original jurisdiction over any such action, without regard to amount or value; and

(3) in any case in which all remedies have been exhausted in accordance with the applicable ordinances of an Indian tribe, in any civil or other action, case, or controversy in a tribal court, State court, or in any court other than a district court of the United States, to which the Corporation is a party, may at any time before the commencement of the civil action be removed by the Corporation, without the giving of any bond or security and by following any procedure for removal of causes in effect at the time of the removal—

(A) to the district court of the United States for the district and division in which the action is pending; or

(B) if there is no such district court, to the United States District Court for the District of Columbia.

SEC. 102. AUTHORIZED ASSISTANCE AND SERVICE FUNCTIONS.

The Corporation may—

(1) assist in the planning, establishment, and organization of Native American financial institutions;

(2) develop and provide financial expertise and technical assistance to Native American financial institutions, including methods of underwriting, securing, servicing, packaging, and selling mortgage and small commercial and consumer loans;

(3) develop and provide specialized technical assistance on overcoming barriers to primary mortgage lending on Native American land, including issues relating to—

(A) trust land;

(B) discrimination;

(C) high operating costs; and

(D) inapplicability of standard underwriting criteria;

(4) provide mortgage underwriting assistance (but not in originating loans) under contract to Native American financial institutions;

(5) work with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other participants in the secondary market for home mortgage instruments in identifying and eliminating barriers to the purchase of Native American mortgage loans originated by Native American financial institutions and other lenders in Native American communities;

(6) obtain capital investments in the Corporation from Indian tribes, Native American organizations, and other entities;

(7) act as an information clearinghouse by providing information on financial practices to Native American financial institutions;

(8) monitor and report to Congress on the performance of Native American financial institutions in meeting the economic development and housing credit needs of Native Americans; and

(9) provide any of the services described in this section—

(A) directly; or

(B) under a contract authorizing another national or regional Native American financial services provider to assist the Corporation in carrying out the purposes of this Act.

SEC. 103. NATIVE AMERICAN LENDING SERVICES GRANT.

(a) INITIAL GRANT PAYMENT.—If the Secretary and the Corporation enter into a cooperative agreement for the Corporation to provide technical assistance and other services to Native American financial institutions, the agreement shall, to the extent that funds are available as provided in this Act, provide that the initial grant payment, anticipated to be $5,000,000, shall be made at the time at which all members of the initial Board have been appointed under this Act.

(b) PAYMENT OF GRANT BALANCE.—The payment of the remainder of the grant shall be made to the Corporation not later than 1 year after the date on which the initial grant payment is made under subsection (a).

SEC. 104. AUDITS.

(a) INDEPENDENT AUDITS.—

(1) IN GENERAL.—The Corporation shall have an annual independent audit made of the financial statements of the Corporation by an independent

public accountant in accordance with generally accepted auditing standards.

(2) DETERMINATIONS.—In conducting an audit under this subsection, the independent public accountant shall determine and submit to the Secretary a report on whether the financial statements of the Corporation—

(A) are presented fairly in accordance with generally accepted accounting principles; and

(B) to the extent determined necessary by the Secretary, comply with any disclosure requirements imposed under section 301.

(b) GAO AUDITS.—

(1) IN GENERAL.—Beginning on the date that is 2 years after the date of commencement of operation of the Corporation, unless an earlier date is required by any other law, grant, or agreement, the programs, activities, receipts, expenditures, and financial transactions of the Corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General.

(2) ACCESS.—To carry out this subsection, the representatives of the General Accounting Office shall—

(A) have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation that are necessary to facilitate the audit;

(B) be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians; and

(C) have access, on request to the Corporation or any auditor for an audit of the Corporation under subsection (a), to any books, accounts, financial records, reports, files, or other papers, or property belonging to or in use by the Corporation and used in any such audit and to any papers, records, files, and reports of the auditor used in such an audit.

(3) REPORTS.—The Comptroller General of the United States shall submit to Congress a report on each audit conducted under this subsection.

(4) REIMBURSEMENT.—The Corporation shall reimburse the General Accounting Office for the full cost of any audit conducted under this subsection.

SEC. 105. ANNUAL HOUSING AND ECONOMIC DEVELOPMENT REPORTS.

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Corporation shall collect, maintain, and provide to the Secretary, in a form determined by the Secretary, such data as the Secretary determines to be appropriate with respect to the activities of the Corporation relating to economic development.

SEC. 106. ADVISORY COUNCIL.

(a) ESTABLISHMENT.—The Board shall establish an Advisory Council in accordance with this section.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of 13 members, who shall be appointed by the Board, including—

(A) 1 representative from each of the 12 districts established by the Bureau of Indian Affairs; and

(B) 1 representative from the State of Hawaii.

(2) QUALIFICATIONS.—Of the members of the Council—

(A) not less than 6 members shall have expertise in financial matters; and

(B) not less than 9 members shall be Native Americans.

(3) TERMS.—Each member of the Council shall be appointed for a 4-year term, except that the initial Council shall be appointed, as designated by the Board at the time of appointment, as follows:

(A) Each of 4 members shall be appointed for a 2-year term.

(B) Each of 4 members shall be appointed for a 3-year term.

(C) Each of 5 members shall be appointed for a 4-year term.

(c) DUTIES.—The Council shall—

(1) advise the Board on all policy matters of the Corporation; and

(2) through the regional representation of members of the Council, provide information to the Board from all sectors of the Native American community.

TITLE II—CAPITALIZATION OF CORPORATION

SEC. 201. CAPITALIZATION OF THE CORPORATION.

(a) CLASS A STOCK.—The class A stock of the Corporation shall—

(1) be issued only to Indian tribes and the Department of Hawaiian Home Lands;

(2) be allocated—

(A) with respect to Indian tribes, on the basis of Indian tribe population, as determined by the Secretary in consultation with the Secretary of the Interior, in such manner as to issue 1 share for each member of an Indian tribe; and

(B) with respect to the Department of Hawaiian Home Lands, on the basis of the number of current leases at the time of allocation;

(3) have such par value and other characteristics as the Corporation shall provide;

(4) be issued in such a manner as to ensure that voting rights may be vested only on purchase of those rights from the Corporation by an Indian tribe or the Department of Hawaiian Home Lands, with each share being entitled to 1 vote; and

(5) be nontransferable.

(b) CLASS B STOCK.—

(1) IN GENERAL.—The Corporation may issue class B stock evidencing capital contributions in the manner and amount, and subject to any limitations on concentration of ownership, as may be established by the Corporation.

(2) CHARACTERISTICS.—Any class B stock issued under paragraph (1) shall—

(A) be available for purchase by investors;

(B) be entitled to such dividends as may be declared by the Board in accordance with subsection (c);

(C) have such par value and other characteristics as the Corporation shall provide;

(D) be vested with voting rights, with each share being entitled to 1 vote; and

(E) be transferable only on the books of the Corporation.

(c) CHARGES AND FEES; EARNINGS.—

(1) CHARGES AND FEES.—The Corporation may impose charges or fees, which may be regarded as elements of pricing, with the objectives that—

(A) all costs and expenses of the operations of the Corporation should be within the income of the Corporation derived from such operations; and

(B) those operations would be fully self-supporting.

(2) EARNINGS.—

(A) IN GENERAL.—All earnings from the operations of the Corporation shall be annually transferred to the general surplus account of the Corporation.

(B) TRANSFER OF GENERAL SURPLUS FUNDS.—At any time, funds in the general surplus account may, in the discretion of the Board, be transferred to the reserves of the Corporation.

(d) CAPITAL DISTRIBUTIONS.—

(1) DISTRIBUTIONS.—

(A) IN GENERAL.—Except as provided in paragraph (2), the Corporation may make such capital distributions as may be declared by the Board.

(B) CHARGING OF DISTRIBUTIONS.—All capital distributions under subparagraph (A) shall be charged against the general surplus account of the Corporation.

(2) RESTRICTION.—The Corporation may not make any capital distribution that would decrease the total capital of the Corporation to an amount less than the capital level for the Corporation established under section 301, without prior written approval of the distribution by the Secretary.

TITLE III—REGULATION, EXAMINATION, AND REPORTS

SEC. 301. REGULATION, EXAMINATION, AND REPORTS.

(a) IN GENERAL.—The Corporation shall be subject to the regulatory authority of the Department of Housing and Urban Development with respect to all matters relating to the financial safety and soundness of the Corporation.

(b) DUTY OF SECRETARY.—The Secretary shall ensure that the Corporation is adequately capitalized and operating safely as a congressionally chartered body corporate.

(c) REPORTS TO SECRETARY.—

(1) ANNUAL REPORTS.—On such date as the Secretary shall require, but not later than 1 year after the date of enactment of this Act, and annually thereafter, the Corporation shall submit to the Secretary a report in such form and containing such information with respect to the financial condition and operations of the Corporation as the Secretary shall require.

(2) CONTENTS OF REPORTS.—Each report submitted under this subsection shall contain a declaration by the president, vice president, treasurer, or any other officer of the Corporation designated by

the Board to make the declaration, that the report is true and correct to the best of the knowledge and belief of that officer.

SEC. 302. AUTHORITY OF THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

The Secretary shall—

(1) have general regulatory power over the Corporation; and

(2) promulgate such rules and regulations applicable to the Corporation as the Secretary determines to be appropriate to ensure that the purposes specified in section 3 are accomplished.

TITLE IV—FORMATION OF NEW CORPORATION

SEC. 401. FORMATION OF NEW CORPORATION.

(a) IN GENERAL.—In order to continue the accomplishment of the purposes specified in section 3 beyond the terms of the charter of the Corporation, the Board shall, not later than 10 years after the date of enactment of this Act, cause the formation of a new corporation under the laws of any tribe, any State, or the District of Columbia.

(b) POWERS OF NEW CORPORATION NOT PRESCRIBED.—Except as provided in this section, the new corporation may have such corporate powers and at-

tributes permitted under the laws of the jurisdiction of in which the new corporation is incorporated as the Board determines to be appropriate.

(c) USE OF NAME PROHIBITED.—The new corporation may not use in any manner the names ''Native American Capital Development Corporation'' or ''NACDCO'', or any variation of those names.

SEC. 402. ADOPTION AND APPROVAL OF MERGER PLAN.

(a) IN GENERAL.—Not later than 10 years after the date of enactment of this Act, after consultation with the Indian tribes that are stockholders of class A stock referred to in section 201(a), the Board shall prepare, adopt, and submit to the Secretary for approval, a plan for merging the Corporation into the new corporation.

(b) DESIGNATED MERGER DATE.—

(1) IN GENERAL.—The Board shall establish the designated merger date in the merger plan as a specific calendar date on which, and time of day at which, the merger of the Corporation into the new corporation shall take effect.

(2) CHANGES.—The Board may change the designated merger date in the merger plan by adopting an amended plan of merger.

(3) RESTRICTION.—Except as provided in paragraph (4), the designated merger date in the merger

plan or any amended merger plan shall not be later than 11 years after the date of enactment of this Act.

(4) EXCEPTION.—Subject to the restriction contained in paragraph (5), the Board may adopt an amended plan of merger that designates a date under paragraph (3) that is later than 11 years after the date of enactment of this Act if the Board submits to the Secretary a report—

(A) stating that an orderly merger of the Corporation into the new corporation is not feasible before the latest date designated by the Board;

(B) explaining why an orderly merger of the Corporation into the new corporation is not feasible before the latest date designated by the Board;

(C) describing the steps that have been taken to consummate an orderly merger of the Corporation into the new corporation not later than 11 years after the date of enactment of this Act; and

(D) describing the steps that will be taken to consummate an orderly and timely merger of the Corporation into the new corporation.

(5) LIMITATION.—The date designated by the Board in an amended merger plan shall not be later than 12 years after the date of enactment of this Act.

(6) CONSUMMATION OF MERGER.—The consummation of an orderly and timely merger of the Corporation into the new corporation shall not occur later than 13 years after the date of enactment of this Act.

(c) GOVERNMENTAL APPROVALS OF MERGER PLAN REQUIRED.—The merger plan or any amended merger plan shall take effect on the date on which the plan is approved by the Secretary.

(d) REVISION OF DISAPPROVED MERGER PLAN REQUIRED.—If the Secretary disapproves the merger plan or any amended merger plan—

(1) the Secretary shall—

(A) notify the Corporation of the disapproval; and

(B) indicate the reasons for the disapproval; and

(2) not later than 30 days after the date of notification of disapproval under paragraph (1), the Corporation shall submit to the Secretary for approval, an amended merger plan that responds to

the reasons for the disapproval indicated in that notification.

(e) NO STOCKHOLDER APPROVAL OF MERGER PLAN REQUIRED.—The approval or consent of the stockholders of the Corporation shall not be required to accomplish the merger of the Corporation into the new corporation.

SEC. 403. CONSUMMATION OF MERGER.

The Board shall ensure that the merger of the Corporation into the new corporation is accomplished in accordance with—

(1) a merger plan approved by the Secretary under section 402; and

(2) all applicable laws of the jurisdiction in which the new corporation is incorporated.

SEC. 404. TRANSITION.

Except as provided in this section, the Corporation shall, during the transition period, continue to have all of the rights, privileges, duties, and obligations, and shall be subject to all of the limitations and restrictions, set forth in this Act.

SEC. 405. EFFECT OF MERGER.

(a) TRANSFER OF ASSETS AND LIABILITIES.—On the designated merger date—

(1) all real, personal, and mixed property, all debts due on any account, and any other interest, of

or belonging to or due to the Corporation, shall be transferred to and vested in the new corporation without further act or deed; and

(2) no title to any real, personal, or mixed property shall be impaired in any way by reason of the merger.

(b) TERMINATION OF THE CORPORATION AND FEDERAL CHARTER.—On the designated merger date—

(1) the surviving corporation of the merger shall be the new corporation;

(2) the Federal charter of the Corporation shall terminate; and

(3) the separate existence of the Corporation shall terminate.

(c) REFERENCES TO THE CORPORATION IN LAW.—After the designated merger date, any reference to the Corporation in any law or regulation shall be deemed to refer to the new corporation.

(d) SAVINGS CLAUSE.—

(1) PROCEEDINGS.—The merger of the Corporation into the new corporation shall not abate any proceeding commenced by or against the Corporation before the designated merger date, except that the new corporation shall be substituted for the

Corporation as a party to any such proceeding as of the designated merger date.

(2) CONTRACTS AND AGREEMENTS.—All contracts and agreements to which the Corporation is a party and which are in effect on the day before the designated merger date shall continue in effect according to their terms, except that the new corporation shall be substituted for the Corporation as a party to those contracts and agreements as of the designated merger date.

TITLE V—OTHER NATIVE AMERICAN FUNDS

SEC. 501. NATIVE AMERICAN ECONOMIES DIAGNOSTIC STUDIES FUND.

(a) ESTABLISHMENT.—There is established within the Corporation a fund to be known as the ''Native American Economies Diagnostic Studies Fund'' (referred to in this section as the ''Diagnostic Fund''), to be used to strengthen Indian tribal economies by supporting investment policy reforms and technical assistance to eligible Indian tribes, consisting of—

(1) any interest earned on investment of amounts in the Fund under subsection (d); and

(2) such amounts as are appropriated to the Diagnostic Fund under subsection (f).

(b) USE OF AMOUNTS FROM DIAGNOSTIC FUND.—

(1) IN GENERAL.—The Corporation shall use amounts in the Diagnostic Fund to establish an interdisciplinary mechanism by which the Corporation and interested Indian tribes may jointly—

(A) conduct diagnostic studies of Native economic conditions; and

(B) provide recommendations for reforms in the policy, legal, regulatory, and investment areas and general economic environment of the interested Indian tribes.

(2) CONDITIONS FOR STUDIES.—A diagnostic study conducted jointly by the Corporation and an Indian tribe under paragraph (1)—

(A) shall be conducted in accordance with an agreement between the Corporation and the Indian tribe; and

(B) at a minimum, shall identify inhibitors to greater levels of private sector investment and job creation with respect to the Indian tribe.

(c) EXPENDITURES FROM DIAGNOSTIC FUND.—

(1) IN GENERAL.—Subject to paragraph (2), on request by the Corporation, the Secretary of the Treasury shall transfer from the Diagnostic Fund to

the Corporation such amounts as the Corporation determines are necessary to carry out this section.

(2) ADMINISTRATIVE EXPENSES.—An amount not exceeding 12 percent of the amounts in the Diagnostic Fund shall be available in each fiscal year to pay the administrative expenses necessary to carry out this section.

(d) INVESTMENT OF AMOUNTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Diagnostic Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

(2) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(3) SALE OF OBLIGATIONS.—Any obligation acquired by the Diagnostic Fund may be sold by the Secretary of the Treasury at the market price.

(4) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any ob-

ligations held in the Diagnostic Fund shall be credited to and form a part of the Diagnostic Fund.

(e) TRANSFERS OF AMOUNTS.—

(1) IN GENERAL.—The amounts required to be transferred to the Diagnostic Fund under this section shall be transferred at least monthly from the general fund of the Treasury to the Diagnostic Fund on the basis of estimates made by the Secretary of the Treasury.

(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(f) TRANSFERS TO DIAGNOSTIC FUND.—There are appropriated to the Diagnostic Fund, out of funds made available under section 603, such sums as are necessary to carry out this section.

SEC. 502. NATIVE AMERICAN ECONOMIC INCUBATION CENTER FUND.

(a) ESTABLISHMENT.—There is established within the Corporation a fund to be known as the ''Native American Economic Incubation Center Fund'' (referred to in this section as the ''Economic Fund''), consisting of—

(1) any interest earned on investment of amounts in the Economic Fund under subsection (d); and

(2) such amounts as are appropriated to the Economic Fund under subsection (f).

(b) USE OF AMOUNTS FROM ECONOMIC FUND.—

(1) IN GENERAL.—The Corporation shall use amounts in the Economic Fund to ensure that Federal development assistance and other resources dedicated to Native American economic development are provided only to Native American communities with demonstrated commitments to—

(A) sound economic and political policies;

(B) good governance; and

(C) practices that promote increased levels of economic growth and job creation.

(c) EXPENDITURES FROM ECONOMIC FUND.—

(1) IN GENERAL.—Subject to paragraph (2), on request by the Corporation, the Secretary of the Treasury shall transfer from the Economic Fund to the Corporation such amounts as the Corporation determines are necessary to carry out this section.

(2) ADMINISTRATIVE EXPENSES.—An amount not exceeding 12 percent of the amounts in the Economic Fund shall be available in each fiscal year to

pay the administrative expenses necessary to carry out this section.

(d) INVESTMENT OF AMOUNTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Economic Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

(2) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(3) SALE OF OBLIGATIONS.—Any obligation acquired by the Economic Fund may be sold by the Secretary of the Treasury at the market price.

(4) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Economic Fund shall be credited to and form a part of the Economic Fund.

(e) TRANSFERS OF AMOUNTS.—

(1) IN GENERAL.—The amounts required to be transferred to the Economic Fund under this section

shall be transferred at least monthly from the general fund of the Treasury to the Economic Fund on the basis of estimates made by the Secretary of the Treasury.

(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(f) TRANSFERS TO ECONOMIC FUND.—There are appropriated to the Economic Fund, out of funds made available under section 603, such sums as are necessary to carry out this section.

TITLE VI—AUTHORIZATIONS OF APPROPRIATIONS

SEC. 601. NATIVE AMERICAN FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Fund, without fiscal year limitation, such sums as are necessary to provide financial assistance to Native American financial institutions.

(b) NO CONSIDERATION AS MATCHING FUNDS.—To the extent that a Native American financial institution receives funds under subsection (a), the funds shall not be considered to be matching funds required under section 108(e) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4707(e)).

SEC. 602. CORPORATION.

There are authorized to be appropriated to the Secretary, for transfer to the Corporation, such sums as are necessary to carry out activities of the Corporation.

SEC. 603. OTHER NATIVE AMERICAN FUNDS.

There are authorized to be appropriated such sums as are necessary to carry out sections 501 and 502.

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The CHAIRMAN. Our first witness today will be William Russell, deputy assistant secretary, Public and Indian Housing, Department of Housing and Urban Development.

Your complete testimony will be included in the record. If you would like to abbreviate and keep it down to 5 or 6 minutes, that would be just fine with me. Thank you.

STATEMENT OF WILLIAM O. RUSSELL, DEPUTY ASSISTANT SECRETARY, PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, DC

Mr. RUSSELL. Thank you, Mr. Chairman. My name is William Russell and I am deputy assistant secretary for Public and Indian Housing. Thank you for inviting me to testify today before the Committee on Indian Affairs. I am glad to be with you today and welcome the opportunity to share with you the Department of Housing and Urban Development's perspective on many of the concepts included in your bill, S. 519, the Native American Capital Formation and Economic Development Act of 2003, which has been introduced by you.

Let me just state that Assistant Secretary Liu could not be here for this hearing. He is in your home State of Colorado participating in an important negotiated rule making with the tribes on the NAHASDA formula.

The PIH is responsible for the management, operations, and oversight of HUD's Native American programs. These programs are available to over 550 federally-recognized and a limited number of State-recognized tribes. We serve these tribes directly, or through tribally-designated housing entitled by providing grants and loan guarantees designed to support afford housing, and community and economic development activities.

I would like to express my appreciation for your continued efforts to improve the housing conditions of those who need it most. As you have heard from previous testimony, much progress is being made and tribes are taking advantage of new opportunities to improve the housing conditions of the Native American families residing on Indian reservations, on trust or restricted Indian land, and in Alaska Native villages. This momentum needs to be sustained as we continue to work together toward creating a better living environment throughout Indian country.

At the outset, let me reaffirm the Department of Housing and Urban Development's support for the principle of government-to-government relations with Indian tribes. HUD is committed to honoring this fundamental precept in our work with American Indians and Alaska Natives.

The Administration is currently actively reviewing your bill and hopes to soon be able to provide you with specific comments. In general, we agree that the goals of economic self-sufficiency and political self-determination can best be achieved through access to private capital and equity investments.

HUD is committed to exploring new opportunities to surmount barriers to lending on tribal lands and to facilitating access to alternative sources of capital, financial services, and technical expertise. HUD's Office of Native American Programs is currently working with tribal governments and lenders to increase private hous-

ing investments through the Section 184 Indian Housing Loan Guarantee Fund Program, and the Title VI Tribal Housing Activities Loan Guarantee Fund.

We know that there are numerous barriers to accessing capital. Many of these were recently identified in the "Native American Lending Study" completed by the Department of the Treasury's Community Development Financial Institute Fund, as well as through other research.

Capital in Native America tends to come from four primary sources: Tribal financial resources, Federal guaranteed loans, grants and tax credits, debt capital, and equity investors. The latter is woefully inadequate for many reasons. Issues raised by investors and private lenders include the legal status of tribal lands; inadequate or nonexistent legal and business codes; insufficient understanding of issues related to tribal sovereignty and sovereign immunity; a lack of technical assistance resources; uncertainty related to leadership changes in tribal governments; and a lack of financial institutions and services or in close proximity to Native American communities.

Many tribes and TDHEs, as well as other tribally affiliated community and economic development organizations, use a project-by-project approach to housing and economic development. There is a great need to create a more comprehensive approach to the creation of sustainable economies. There are clear roles that tribal governments, Federal agencies, and lending institutions can play in creating these economies.

The Administration would like to give careful consideration to whether the creation of this corporation can resolve impediments to lending on tribal lands and contribute to the establishment of sound policies that promote increased levels of economic growth and job creation.

Finally, let me state for the record that we concur with many of the findings in your bill. We agree that much of the poor performance of Native American economies correlate to the absence of private capital and private financial institutions. We will continue to work in partnership with tribal governments, Native American organizations, the private sector, and other government agencies to support private investment and leveraging in Indian country.

Mr. Chairman, HUD is prepared to work with you to help overcome these barriers to accessing capital in Indian country.

This concludes my prepared remarks. I would ask that my prepared statement be inserted in the record in its entirety.

The CHAIRMAN. Without objection.

[Prepared statement of William Russell appears in appendix.]

The CHAIRMAN Thank you. As I understand your testimony, you are in support of the concept of what we are doing, but the Administration has not totally reviewed it. Do you have any idea when the committee could expect that to be finished so you could give us an idea about what parts they support, or if they support it at all?

Mr. RUSSELL. I believe within the next several weeks you should have that; yes, sir.

The CHAIRMAN. Okay. I would appreciate that. Thank you for your testimony.

You spoke a little bit about the dollars that go out in the Federal Government through different groups. It would seem to me that somewhere along the line it would make sense to administer a lot of these Federal funds such as the Economic Development Administration funding, DOT funding, HUD funding, BIA's loan guarantee, and so on under some kind of a systematic development program that the tribes could understand and could focus on.

I do not know if you are qualified and are an authority to say or not whether or not that makes sense. But let me ask you if it does, in your view.

Mr. RUSSELL. I am probably not qualified to comment on that. But I think one of the things that we are looking at is some of the expertise or programs that Departments like Treasury and even Agriculture obviously may have even more expertise than HUD in managing some of these economic development funds and programs. That is one of the things we are looking into.

The CHAIRMAN. Okay. One way to create capital is to recycle home loans through a secondary market. Are you in favor of creating such a market for Indian home loan programs?

Mr. RUSSELL. We definitely think there is a need for a more vibrant secondary market. We would definitely support efforts to improve access to such a secondary market.

The CHAIRMAN. How about a U.S. guarantee? One way to facilitate the corporation's ability to raise funds in the capital markets is to provide a U.S. guarantee on a corporation's commercial paper. Are you in favor of that?

Mr. RUSSELL. I probably cannot comment on that position at this point.

The CHAIRMAN. Okay. All right. If you could get back to the committee as soon as the review is done and let you know what you think about it, I would certainly appreciate it.

Mr. RUSSELL. Certainly.

The CHAIRMAN. Thank you for appearing, Mr. Russell.

Mr. RUSSELL. Thank you.

We will now go to the second panel. Tex Hall is president of the National Congress of American Indians and Chris Paisano, acting executive director of the Navajo Nation, Washington Office.

Welcome, Tex. I have not see you for a while. We will go ahead and start with you, Tex. As with the first panel, if you would like to submit most of your testimony, you can abbreviate your remarks.

STATEMENT OF TEX G. HALL, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

Mr. HALL. [Remarks in Native tongue.]

Chairman Campbell and members of the committee, I would like to thank you for inviting me to testify on behalf of the National Congress of American Indians regarding the Native American Capital Formation and Economic Development Act. On behalf of the member tribes and individual staff and leadership of NCAI, I would like to express appreciation for the dedication of this committee. It shows Indian people your honorable fulfillment of Federal trust and treaty responsibilities.

We also want to express our appreciation for the effort this committee is making to assist with economic development in Indian country. We all know that one of the greatest problems facing much of Indian country, despite the relative success of gaming for some tribes, is getting capital to make economic development efforts happen. The need for economic development in Indian country remains acute and impacts nearly every aspect of life in reservation communities.

This bill represents one approach and a starting point for discussion, we believe, that has been ongoing for many years about how the Federal Government and the private sector can be brought together to assist in capital formation in Indian country. As you know, I am already very familiar with the efforts in Indian ountry to develop a means for private capital formation. I am not only the president of NCAI but I am also the chairman of the board of the holding company that owns the Native American Bank that was recently developed. It is an enterprise that in general owes its creation to the efforts of some members of the Indian Affairs Committee.

The Native American Bank represents one inter-tribal approach to capital formation in Indian country, one of which I am very proud to be a part of. The Native American Bank also has a Community Development Corporation component that is undertaking some of the same tasks we believe would be assigned to the corporate entity established in S. 519.

But we all know that one financial institution cannot provide for all the needs of Indian country with regard to the kind of intensive capital development that is necessary to sustain economic development for the long term. This makes the discussion started by S. 519 very important.

This bill represents an effort by the Federal Government to assist in development of Native American financial institutions. This is a different approach to capital formation than something like the Native American Bank. But nevertheless, we believe the approach stated in S. 519 is very worthy of discussion and further development.

With this background in mind, it is my hope that S. 519 will be developed, amended, and commented on by tribal leaders, tribal members, financial experts, and the Congress consistent with the following goals:

No. 1, any entity created federally should provide assistance in capital formation for institutions like the Native American Bank and other similar tribally-owned banking institutions so that they can continue to grow and assist economic development in Indian country as private institutions;

No. 2, the institution created should be able to provide technical expertise to tribes and individual tribal members and other financial institutions such as banks and other investment companies that are working to make capital available for economic development in Indian country; and,

No. 3, any institution created federally should be complementary to, not competitive with, existing tribal financial institutions when it comes to providing service such as lending, venture capital, and advice on business formation.

How does S. 519 measure up in relation to these goals? At present I am not yet convinced that the structure of the Native American Capital Development Corporation outlined in S. 519 will do everything we want it to do. But I do know that NCAI and I are willing to continue to work to find a structure that will. We want to continue to work with you on that effort, Chairman Campbell.

We believe that the Native American Capital Formation and Economic Development Act can be a starting point for a discussion of how Congress and Federal Government can best assist tribes to solve the economic development puzzle.

I would like to talk about the functions of the Native American Capital Development Corporation. It is important to look at what S. 519 does and does not include with regard to the functions of the Native American Capital Development Corporation created by the act.

The act calls for the creation of an Indian Development Corporation to be capitalized by Indian tribes and with instructions, as stated in section 102, to provide technical assistance to help establish tribal financial institutions. It would provide technical assistance to existing tribal financial institutions as they develop a loan portfolio, and to help provide technical assistance to overcome barriers on mortgage lending on Indian land. It would assist tribes and individuals to work with Federal home mortgage institutions, and to act as an information clearinghouse on financial practices in Indian country. Finally, it would obtain capital investments from tribes.

Because of this last function of the Corporation, to obtain capital investment from tribes as mentioned in the act, it is not clear to us whether the Corporation is intended to be a source of capital for tribal economic enterprises by itself, or if it is simply to become a technical advisor to tribal financial institutions who themselves are already doing a lot of the lending.

As structured, we believe the Corporation could be most useful as a technical advisory institution and one that can contract with existing or newly formed tribal financial institutions to provide technical assistance. However, we would also note that some of the suggested functions of the Corporation may already be provided in the private sector. It is our hope that the Corporation will not be duplicative of existing private institutions.

As you know, Chairman Campbell, there is already a lot of good work going on in Indian country from a variety of directions. Some Government programs have proven to be very successful. Other partnerships with educational institutions and non-Indian committee organizations have been doing very useful and important work on reservations.

Most meaningful, however, has been the hard work and dedication shown by Indian people themselves. Indian institutions like the Native American Bank, the Lakota Fund, the First Nations Development Institution, the Northwest Area Foundation, and dozens of other smaller but no less vital organizations have done far and away the most work in the development of tribal economies.

It is our hope that this committee strongly considers the suggestions that these organizations may have to improve the bill. We be-

lieve that the institutions created by S. 519 should be structured so as not to take away anything from these efforts thus far. We ultimately want the Corporation to be complementary of and supplemental to what is already going on in many of our communities.

The structure of the Corporation is of great importance to NCAI. The Corporation should be tribally owned. It should also be a corporate entity operated by Indian tribes and their members. This will give the Corporation some additional credibility. That will be important if it is to be successful.

We have some suggested improvements in this regard. The Board of Directors of the Corporation is only required to have two members from Indian tribes. We believe that de facto control of the organization must reside with Indian people as they know the needs of their people best.

We propose that the majority of corporate board members be required to be tribal members. Thus, in addition to the two of three Presidential appointed members being tribal members, we would like to see three of six of those elected by class A shareholders and two of four of those elected by class B shareholders be members of Indian tribes.

On policy analysis and Incubation Centers, S. 519 sets up some two corollary funds proposed in this bill. These are helpful additions to the work of the proposed organization. The Native American Economies Diagnostic Studies Fund is well positioned to analyze the stake of Indian economies, the viability of policies both applied and removed from tribal business, legal, and regulatory schema and their effects, as well as the general economic trends on our reservations.

Hopefully the Diagnostic Fund will be able to deal directly both with the state of Indian country economies and as an arm of the Corporation, the implementation of policies that will eliminate the identified barriers and problems.

The other fund, the Native American Incubation Center Fund could also be helpful. However, as mentioned above regarding the question of the purpose of the Corporation, it is unclear exactly what the purpose of the Incubation Center Fund would be. Is this Fund intended to provide financial assistance to tribal communities directly? Or is it simply to be a clearinghouse for other Federal funds that are available for economic development efforts on behalf of tribes?

In summary, we believe that S. 519 acts to start the discussion of how the Federal Government can help the tribal nations and help tribal financial institutions grow and prosper. With a few amendments, it contains some of the most important elements of that assistance: control and ownership by tribal members and a commitment to technical assistance among others.

Conceptually, the Corporation has the potential to be a force for financial reform for Indian country economies. But the success of this effort will depend largely on the acceptance of the concepts in S. 519 throughout Indian country. Indian tribes will have to be convinced that investment in a federally charted institution will be a good and wise investment. That could be a hard sell.

Further, whether the Corporation can create and maintain the availability of broad-based financial services and technical assist-

ance for businesses in Indian country will be critical to its success. It will need to show that its particular expertise in the area of tribal housing funding is useful and needed in Indian country.

It would also need to complement existing private efforts that have been initiated by tribes, both individually and intra-tribally as has already been mentioned before in my testimony. Perhaps in time the Corporation can also work to reduce the confusion and misconception surrounding political differences that arise from tribal sovereignty. Like the Overseas Political Insurance Corporation, perhaps the Corporation will be able to provide some sort of insurance for international risk.

NCAI has identified this as one of the keys to comprehensive development in Indian country, and we feel that the Corporation may have the potential to assist in fulfilling this role further down the road. Again, we would hope that the Corporation would do this in cooperation with existing and to be created tribally-owned institutions.

Again, Senator Campbell, we thank you for the opportunity to testify on this important bill. We believe this bill can provide a good starting point for discussion on these issues. We encourage further dialog and work on this concept so that it can truly help existing tribally-owned economic development institutions, and can help start new ones.

We also thank you for introducing legislation to try to help develop financial institutions that will enhance the lives of our citizens and serve and strengthen our tribal governments. We look forward to working with you and the committee to make this bill as effective and helpful to Indian country as possible.

I would ask that my prepared statement be inserted in the record in its entirety.

The CHAIRMAN. Without objection.

[Prepared statement of Mr. Hall appears in appendix.]

Mr. HALL. [Remarks in Native tongue.] Thank you, Senator.

The CHAIRMAN. Thank you, Tex.

Mr. PAISANO.

STATEMENT OF CHRIS PAISANO, ACTING EXECUTIVE DIRECTOR OF THE NAVAJO NATION WASHINGTON OFFICE, WASHINGTON, DC

Mr. PAISANO. [Remarks in Native tongue.]

My name is Christopher James Paisano, acting executive director for the Navajo Nation Washington Office. I serve as President Joe Shirley's official Representative in Washington, DC. Vice President Frank J. Dayish, Jr. is not able to present his testimony before the committee. He sends his regrets. He requested that I deliver his remarks and testimony which are laid before you.

I would ask that his prepared statement be inserted in the record in its entirety.

The CHAIRMAN. Without objection.

[Prepared statement of Mr. Dayish appears in appendix.]

Mr. PAISANO. In his absence and discussion, we will bring new ideas to the challenges of economic development that will initiate additional choices for Indian country. The Navajo people must have the opportunity to be more than what fate and circumstance allows

us to be. The president and vice president seek to empower our people to have additional opportunities to allow them to imagine a life different than one that is imposed upon them by the current and outdated economic policies.

S. 519 initiates the discussion of attracting Indian and non-Indian investors to Indian country. The president and vice president understand very well that finding solutions to economic challenges, or rather, nation building is a responsibility that is enjoined by all of us.

We hope the committee will work with the Navajo Nation on S. 519 which we understand is a concept that is in the process of being finalized. Together we will finalize the bill that might assist tribes in taking the initial steps toward financial independence. With that in mind, we submit our legislative concerns and recommendations for S. 519.

The Navajo Nation is familiar with capital drought and its effects on the rest of Indian country. You have seen it with your own eyes. As I understand it, a delegation from your committee recently traveled to the Navajo Nation to investigate Indian housing issues. We hope that the conditions of capital drought was well illustrated.

Economic development will not be simply solved by writing a check. The larger issues are why are not more private businesses investing on the Navajo Nation? Private investors, Navajo or non-Navajo, primarily lack confidence in the current system of business or leasing approval. The Shirley-Dayish Administration seeks to change this.

Tribal governments in the past have not been very supportive of businesses. This will change as we strengthen tribal courts, review off-reservation investment opportunities, and explore a new view of Indian trust lands. The Shirley-Dayish Administration supports existing private businesses that have ventured and pledged to remain in business on the Navajo Nation.

One such example of such private business is MechTronics of Arizona. MechTronics continues to employ 90 Navajos on the Navajo Nation by building complex wiring for computer defense hardware that is fitted into F-16s, satellites, and automatic ship firing defenses on U.S. battleships. Unfortunately, they have difficulty obtaining additional defense contracts since they do not qualify being listed on the Small Business Administration's Pro-Net system because they do not qualify as a small business although they are entitled to give off-reservation contractors tax credits for doing business on Indian reservations.

President Shirley is looking for options that will allow MechTronics to be listed on Pro-Net, thereby enjoying the same level playing field as other Pro–Net businesses. President Shirley also supports New Mexico representative Tom Udall's bill, H.R. 1166, the Small Business Development Center Assistance to Indian tribe members, Native Alaskans, and Native Hawaiians, and hopes that a version of this bill will pass in the Senate.

Mr. Udall's bill has passed in the House and has been referred to the Senate Committee on Small Business and Entrepreneurship which seeks to establish the SBA's Small Business Development Centers on or near Indian reservations. These centers would provide the much-needed information and training to support local po-

tential and existing Indian small businesses to increase their chances of success.

President Shirley will work with the Small Business and Entrepreneurship Committee on this bill which would proactively provide training and support to develop Indian small businesses.

The Navajo Nation understands that honesty and comfort is a must when negotiating with investors. Everyone must feel that they can be honestly and fairly heard in tribal court when disputes arise. Our tribal courts must be unbiased and able to fairly litigate these disputes.

One successful tribal nation that has many non-Indian investors on their land made a suggestion to the Navajo Nation to have a clause in business contracts for an investor or a tribe that gives the option to have their dispute heard in Federal court at any time. The tribe claimed that to date, not one non-Indian investor has ever used this option. The simple fact that this clause exists gives the investors a very strong sense of comfort. It also shows that the tribe is confident about its own tribal courts. This is one way tribes can proactively help bring investors to their lands. The Navajo Nation will continue to explore this unique option.

Another incentive is for the tribe to buy real estate off the reservation that would not be put into trust status, but used as collateral to secure additional loans. These examples are part of tribal responsibility that makes the market economy work, as well as putting private investors at ease regarding their investments.

As part of this responsibility, the Shirley-Dayish Administration proposes a different way of viewing trust lands, not as an impediment to economic development, but a valuable resource that ensures our commitment to protect these lands that the Navajo people will have the land in perpetuity.

We now wish to explore a not so new concept about the relationship to trust lands and trust responsibilities from the very government that the United States based its laws upon: England. Tribes do not fully appreciate how trust lands gives Indian people a unique status to establish a healthy Indian country now and for the future. As you know, property law in the United States is based upon concepts from English common law. While it may seem contra-intuitive, we must travel across the big pond to the United Kingdom to refine our views about Indian trust land status.

The United Kingdom has trust land. Queen Elizabeth II's crown estates are essentially trust lands for the Queen. The Crown Estate Commissioners never let her trust land become an obstacle to economic development. If they can work on this mechanism, why cannot we? The Queen has, by right, ownership of a vast array of lands throughout the United Kingdom. Yet she cannot sell these lands for they are not her own personal property, but are tied to her title and position as Queen. They are part of the heritage and history of the United Kingdom and, therefore, held in trust. It is her responsibility, managed by the Crown Estate Commissioners, to ensure that these lands are controlled and administered responsibly.

Yet the Crown Estates do not experience the same difficulties finding investors to invest in properties that they will never own. In fact, the Crown Estates own a major portion of Regent Street

in London where that location alone conveys quality and high priced shops. Where did we go wrong?

Trust land status should not set us to be impoverished, but should set the guidelines on how we manage our lands and our resources in a responsible manner for the benefit of all people. The Navajo Nation stance for not selling its land, and should not be seen as old fashioned, but seen as proactive and as thoughtful lands management policy that embodies true Navajo Nation sovereignty for a future that will benefit the Navajo people.

Utilizing this concept, the Navajo Nation was successful in getting the Bureau of Indian Affairs out of the business of leasing approvals through the passage of the Navajo Nation Trust Leasing Act of 2000. The Navajo Nation Council must approve them before sending them to the Secretary of the Interior for her approval.

President Shirley directed the Navajo Nation Division of Economic Development to step up this process and to have them before the Navajo Nation Council for approval by this summer.

These examples of non-monetary support are what the Navajo Nation can do on behalf of private businesses that continue to invest on the Navajo Nation. We also encourage Navajos and non-Navajos to take that important and brave step toward economic self-sufficiency that will build a nation.

On a final note, we urge the committee to begin writing legislation that is not broad or generalized. The Navajo Nation learned from the U.S. Supreme Court's decision on *United States* v. *Navajo* that Congress must be very clear on the U.S. Government's role and responsibility regarding Indian trust.

What specifically is the trust responsibility in S. 519? What happens if either the tribe or the Federal Government does not live up to its agreements? What are the penalties? We hope that the recommendations we give will clarify what we expect from future Congressional bills.

S. 519 represents a start not only in how to bring much needed capital to Indian tribes, but to begin crafting and writing responsible legislation for the full participation of tribal sovereign governments that have direct implications on your trust responsibilities towards tribes.

Thank you.

The CHAIRMAN. Thank you. I thank both of you.

I think I will start with Tex. You mentioned that one bank cannot do it all. I think you are probably absolutely right. Maybe one bill cannot do it all, either. Certainly we have tinkered around the edge with economic development for a lot of years and have not taken any action. I think S. 519 is bold enough to really get some serious capital to tribes.

We have known each other for a long time. For the last 10 years since I have been either chairman or vice chairman, you know that my view has always been that we do not move forward with a bill until the tribes have had a chance to digest it, participate in it, and are okay with it. So when you mentioned that it might be a hard sell, I just want to give you my word that we are just trying to plant a seed here. We are not going to move forward with anything until the tribes are very comfortable with it.

Let me just ask you a couple of questions. Do you think that it is time for an organization that includes all Indian tribes to be envisioned, as S. 519 does?

Mr. HALL. I think it could be, Chairman Campbell. I think the big thing is to make sure that obviously, as you mentioned, that it is working with tribes on the finer points of the bill, especially those existing institutions that tribes are all working through. It should be in cooperative and enhancing those, not viewed as competition.

The CHAIRMAN. Do you think that it would be viewed as competition by some of those institutions that tribes are working with now, that somehow they would get an unfair advantage?

Mr. HALL. Yes; I think it does. There is a section of the bill that does not include banks. That obviously excludes those tribal banks that are already in existence. Obviously those institutions would be very concerned about that. Second, when you are looking at capital raising through tribal banks, that could be viewed as competition as well.

I think everybody wants to raise capital. Everybody wants to develop the finer points of the bill. I think it can get there. Some tribes are looking at it as competition because of the certain section that does not include banks.

The CHAIRMAN. Maybe I am wrong, but as I understand it, most tribal banks are not capitalized high enough to give the kinds of loans that sometimes tribes need for major industry development. Would that be a fair assessment or not?

Mr. HALL. For the individually tribally-owned banks, I would say, yes, definitely. But for inter-tribally owned banks or financial institutions, they are looking at a broader scale. There are numerous tribes involved which are looking at getting larger than that, and are moving quite rapidly. So those would feel that they are in competition.

The CHAIRMAN. I understand that competition is the American way, but sometimes when it threatens your bottom line, it becomes a different concept. I understand that.

Mr. Paisano, I am going to ask you to go over one thing again. You talked about MechTronics, and you have 90 employees of MechTronics. Where is the on-reservation location they are working?

Mr. PAISANO. Fort Defiance, AZ.

The CHAIRMAN. You said they did qualify for one thing and did not qualify for another. Please go over that again for me.

Mr. PAISANO. They are qualified to give Indian tax credits because they are located on a reservation. They are able to give other subcontractors tax credits. But they are not able to be listed on SBA's Pro-Net system. That is a computer system listing major defense contractors.

The CHAIRMAN. So the SBA does not have a way of defining what is on the reservation and what is not?

Mr. PAISANO. I think it for them it is more a large business versus a small business.

The CHAIRMAN. When you have the time, sit down and spend some time with staff and see if we cannot frame up some kind of an amendment, or maybe a separate bill. You have me interested.

It seems to me that even if they are very large firms, if they are on reservations or helping tribal economies, there ought to be some benefits at least for that part of it that are working with tribal economies.

Mr. PAISANO. Exactly.

The CHAIRMAN. Maybe you could give us some ideas on something we could frame up as a separate amendment or as an amendment. I would appreciate that.

Mr. PAISANO. I look forward to doing so.

The CHAIRMAN. I do not live too far from Navajo country. I used to go down to Gallup quite a bit. The tribe, as I remember, bought a trailer manufacturing company. Is that before your tenure, maybe 15 or 20 years ago?

Mr. PAISANO. I do not recall. It has been a while.

The CHAIRMAN. Well, for whatever reason, it went out of business. Everybody I know out in that Western country has a trailer or two. I thought it was a terrific opportunity for the Navajos. I forget what they actually called it. It seems to me it was called "Navajo Trailer Manufacturers." It was right outside Gallup toward Red Rocks. A couple of years later I went by and it was all but abandoned.

Thank you for your testimony.

We are joined by Senator Murkowski of Alaska. I know you have missed a lot of the testimony. Do you have an opening statement or comments before Tex and Mr. Paisano leave?

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. I do have some opening comments. It probably would be best if they were just inserted in the record.

The CHAIRMAN. Your complete comments and opening statement will be included in the record.

[Prepared statement of Senator Murkowski appears in appendix.]

Senator MURKOWSKI. I will state that I am pleased that you have introduced and are taking up S. 519, the Native American Capital Formation and Economic Development Act.

In my State of Alaska, as we look to economic activities, not only within the State, but for our Native Alaskans, we recognize that there is a need for assistance with capital formation. So I am pleased to listen to the testimony here this afternoon.

The CHAIRMAN. We will now go to the third panel. We have Derrick Watchman, board member, Native American Bank Corporation, Denver, CO; Cris Stainbrook, executive director, Indian Land Tenure Foundation, Little Canada, MN; Eric Henson, Harvard Project on American Indian Economic Development, Cambridge, MA; and Mike Irwin, senior vice president, Alaska Federation of Natives, Anchorage, AK.

We will go ahead and start in that order. All of your written testimony will be included in the record. You can abbreviate your testimony.

We will start with Mr. Watchman.

STATEMENT OF DERRICK WATCHMAN, BOARD MEMBER, NATIVE AMERICAN BANK CORPORATION, DENVER, CO

Mr. WATCHMAN. Thank you, Chairman Campbell and Senator Murkowski.

On behalf of the Native American Bancorporation, I am pleased to provide testimony on S. 519, and to generally cover issues involving capital formation in Indian country.

My name is Derrick Watchman. I am a member of the Navajo Reservation, the Navajo Tribe. I am from Wonder Rock, AZ. I am a member of the Native American Bancorporation.

In our testimony today, I want to provide an overview of the Native American Bancorporation, to give some general observations on S. 519, and to give some observations on Indian economic development.

In general, obviously we are a for-profit entity. Our bias is toward private sector initiatives which would let the markets do the work but also provide for minimal government support.

The Native American Bancorporation is a holding company, certified and chartered by the Federal Reserve. It is owned by 21 tribes and Alaska Native corporations. The board of directors of the Native American Bank is composed of representatives from these investors.

We have 10 founding tribes. They include the Arctic Slope Regional Corporation; the Blackfeet Indian Nation; the Eastern Shoshone Tribe; the Grand Traverse Band Economic Development Corporation; the Mandan, Hidatsa, and Arikara Nation, the Mashantucket Pequot Tribe; the Mille Lacs Reservation Business Committee; the Navajo Nation; the Oneida Tribe of Indians of Wisconsin; and the Ute Mountain Ute Tribes.

The Native American Bank has two subsidiaries. The first is the Native American Bank National Association which is chartered by the Office of the Comptroller. It is also considered a community development focus bank.

NABNA offers a full range of banking services primarily to the Blackfeet Indian Tribe in Browning, MT. We are also pursuing opportunities around the reservation. Our executive office is located in Denver, CO, and through our offices in Denver, CO, we offer a full range of banking services to all customers. But our primary focus is those customers that are tribal governments, Alaska Native corporations, Indian-owned businesses, and Indian non-profit organizations.

On September 29, 2001 the bank was approved and chartered by the OCC. Since operation, we have been primarily focusing on Indian customers; 80 percent of our business right now are with new loans in Indian country.

We also recently opened a trust department. Our long-term plan calls for the opening of branches on reservations throughout Indian country. We are hoping to promote a teaming relationship with other Indian-owned and tribally-owned financial institutions.

As I said earlier, our bank is chartered and certified as community development focus institution by the Treasury Department. In addition to NABNA, we also have the Native American Community Development Corporation. That is a 501(c)(3) organization. That is sponsored by NAB.

NACDC has three missions. First, is to serve as a national source of loan funds for loans that will promote reservation development, but will make NABNA and other banks assist those institutions that will provide capital to tribes and areas that do not have bankable credit.

The second mission is to break down barriers to credit faced by Indians, particularly those living on Indian communities where there is not a whole lot of expertise. We need to focus on that area. The third mission is to provide financial literacy and other banking programs to reservations.

NACDC's first priority at this point is to focus on mortgage financing for reservation housing. We have a long-term approach where we are trying to provide a low-cost, low- interest fund source to provide housing programs on reservations.

We are working with several tribes. NACDC is helping to break down the barriers of mortgage financing. This is a very critical and complicated area that the institution is working on. We are working with Fannie Mae, the Federal Home Loan Bank, and also other institutions in the area.

NACDC's second priority is to focus on providing capital to deal with issues of fractionated heirship interests and to look at the re-acquisition of reservation lands. We are working with the Indian Land Tenure Foundation, whose representatives are here today. We are hoping to make a more positive relationship so we can look at the re-acquisition of lands and to look at the fractionated interests.

Finally, NACDC is looking at a national re-lending program where we work with small businesses and reservation communities to focus on small businesses. We have a project called the Mini-Banks in the Schools program which is working with the Blackfeet Indian Reservation.

I would like to spend just 1 moment on our views on S. 519. First of all, it is very important that we look at resources available to provide tribes with more options of creating sustainable economic development in our tribal communities. Tribal members need good jobs. We need to look at the prospect of a brighter future so that we can break the cycle of poverty and we can break the cycle of unemployment.

We believe that the best way to facilitate is to work with tribally-owned and Indian-owned financial institutions such as the Native American Bank, and the Native American Community Development Corporation.

With respect to S. 519, I want to point out a few items. First of all, we need to look at non-appropriation measures. We believe that we do not need new appropriations for a couple of reasons. One, we should look at certain grant programs that could be administered by Indian-owned financial institutions.

We ask that Congress review various Federal funding programs to determine if it would be more productive to give those funds to Indian-owned financial institutions. The BIA recently awarded $7 million for Indian land acquisitions. We believe that we can partner with this and actually leverage the use of these dollars from $7 million to almost $70 million.

We also think that we need to look at reducing the BIA redtape. One of the biggest problems that we have and one of the biggest problems for the affected flow of capital to Indian reservations is the redtape imposed by BIA. For example, with the Native American Bank, it takes us almost 6 to 9 months to do a loan for a mortgage. That is because of the title processing and the time involved to get the BIA to prove that it is a legitimate deal and that we can actually have a piece of paper that we can lend on.

We also would like to look at trust funds. One of the biggest issues that is out there is there is no capital. For example, if we were to use a part of the $3 billion that is invested right now by BIA and the trust fund, if that were directed to Indian-owned institutions, such as the Native American Bank, that would provide more than sufficient capital to banks, including the Native American Bank, to have the assets to loan out to small businesses and big businesses.

Meeting the Federal Government's trust responsibilities and allowing for those funds to contribute to economic development is what we think we really need to look at.

The fourth area that we are looking at is requiring Federal capital formation programs to recognize the unique status in Indian country. Congress has established several programs including the CDFI and the New Markets Tax Credit Program.

However, recently the New Markets Tax Credit Program only provided a grant to one financial Indian-owned institution. The reason for that is that they said that most of the other Indian-owned financial institutions just do not have the experience or the track record to be able to handle such a program as this. We ask Congress to look at this New Markets Program and to consider a set-aside in Indian country.

They would like to look at Point Five as promoting business opportunities. One, the big areas out there is 8(a) contracting and using the Indian set-aside program. We would like to look at forming relationships with those companies that are 8(a) certified or that have Indian set-aside preferences so that we can provide a full comprehensive banking program to them.

I want to address a couple of areas very briefly. One is new appropriations. We need to look at increasing the size of the BIA Loan Guarantee Program. Right now it is very clear that banks take a risk for a BIA loan of 10 percent. Right now at this point for fiscal year 2008, I believe that $68 million is being program to be funded to the BIA Loan Guarantee Program. This program works.

We believe that we need to increase this program by two to three times—$200 to $300 million. That will provide an excellent source for institutions such as the Native American Bank to really get out there and provide the needed capital for loans and small business in Indian country.

Another area which was brought up earlier is an equity fund. One of the most glaring deficiencies in Indian country is the lack of access to equity and venture capital. Financial institutions such as the Native American Bank are not venture capitalists. We are basic commercial lenders.

We are asking that the SBA look at the program called the Small Business Investment Company and provide for additional investments, and provide for non-recourse loans into Indian country.

The third area that I want to talk about briefly is a feasibility fund. Another form of capital that is critically needed is non-recourse loans to provide for feasibility and development funds. NAB has firsthand knowledge of this. Ten years ago as a part of a CRA agreement with the banking regulators, a large bank agreed to create a $15 million non- recourse loan feasibility fund. NAB was fortunate to get a loan for this. That is how we were able to put our operations together and become fully operational.

There is a need to continue this kind of program. There is a need to look at these kinds of funds for Indian-owned financial institutions in this country.

Mr. Chairman, and Senator Murkowski, in conclusion, Indian country has or is planning to create many of the entities and programs needed to address capital formation and the gaps on reservations and in Alaska Native villages.

While they can facilitate the kind of local decision making that is most effective in steering capital to the highest and best use, what is needed, we believe, is access to significant amounts of capital at appropriate terms, long terms, and low cost interest rates.

It would also be helpful if we were to be involved in decision making at the SBA level and how the SBIC works. We would also like to look at expanding more on the non-appropriation activities.

On behalf of the Native American Bank, I appreciate your comments. I hope to answer your questions. I would ask that my prepared statement be inserted in the record in its entirety. Thank you.

The CHAIRMAN. Without objection.

[Prepared statement of Mr. Watchman appears in appendix.]

The CHAIRMAN. I will have some questions.

I have to tell you right off the bat when you talk about increasing the loan guarantee program, I agree. Unfortunately when you are facing over a $300-billion deficit for fiscal years 2003 and 2004 combined, finding $200 to $300 million more for anybody in any project is not so easy.

We will ask some questions, but I would like to move through the whole panel first. I would like to go to Mike Irwin now since Senator Murkowski is here and may have to leave. I would at least have her hear your testimony.

STATEMENT OF MIKE IRWIN, SENIOR VICE PRESIDENT, ALASKA FEDERATION OF NATIVES, ANCHORAGE, AK

Mr. IRWIN. Thank you, Mr. Chairman.

Mr. Chairman and Senator Murkowski, I appreciate the opportunity to testify before the committee today regarding S. 519. As noted and for the record, my name is Mike Irwin and I am senior vice president of the Alaska Federation of Natives, headquartered in Anchorage, AK. I am pleased to appear here today to support this important legislation.

The Alaska Federation of Natives commends Senator Campbell for his wisdom and foresight in developing and introducing S. 519. As noted in the findings of the bill, there is a special legal and po-

litical relationship between the United States and Indian and Alaska Native tribes. Although the legal status of Alaska Native corporations is different than that of tribes, it has long been recognized that a special legal and political relationship exists between the United States and Alaska Natives generally.

Also, as noted in the findings, Alaska Natives, like all other Native Americans, suffer high rates of unemployment, poverty, poor health, substandard housing, and social ills to a greater degree than any other group in the United States. We have many successes in Alaska, all of which we are quite proud.

However, in many areas of the State our people suffer as they do elsewhere around the country from serious unemployment and underemployment, and economic development efforts that have not proven successful in the past. We believe that the purposes behind this important piece of legislation are sound and the bill would fulfill a need in Native American and Alaska Native communities.

Despite owning and operating a number of successful corporations as Native-owned entities, promoting economic growth and reduction of poverty remains huge challenge which requires, in our opinion, a paradigm shift movement to the next level of the historically successful Federal self-determination policies.

I would like to note that I am trying to abbreviate my remarks here today. But we have submitted much more lengthy testimony with all kinds of information backing up some of the things I will cover here today.

The CHAIRMAN. Without objection.

[Prepared Statement of Mr. Irwin, for Ms. Kitka, appears in appendix.]

Mr. IRWIN. I would like to comment specifically on title V of the bill entitled, "Other Native American Funds" which establishes two different financial funds—the Native American Economies Diagnostics Studies Fund and the Native American Incubation Center Fund.

The first one is designed to provide comprehensive economic analysis of Indian economies and, in turn, offer recommendations to remove or ameliorate inhibitors to greater investment and job creation.

The second development fund is designed to encourage the design and implementation of pro-growth economic policies to help stimulate Indian economies.

AFN strongly supports the underlying rationale behind the establishment of funds designated to these purposes and believe they would assist economic development throughout Alaska if they were enacted into law. However, AFN would like to request inclusion of a new Alaska specific provision that would authorize a 10-year demonstration project for Alaska.

We believe there is an urgent need in our communities for a native tribal development bank. I know that a lot of times we, as Alaska Natives, come forward and say, "We think our circumstances are perhaps unique and different for many, many reasons." I will cite those here. But I think that we also would like to propose that there be a generally different tack taken with this legislation that perhaps might also be able to extend throughout Indian country and to Native Hawaiian communities.

We, of course, have geographic differences in Alaska that make us much more isolated as native communities. In Alaska the downturns in the fishing and timber economies, two of the only economies that we have that touch rural Alaska where most of our native people live, are further stressing already distressed economies.

The slow down in the Alaska economy generally, our State's fiscal crisis, which has been ongoing now for about 6 or 7 years, and the continued retrenchment of the State of Alaska from rural and predominately native community areas, lead us to believe that it is imperative that Federal development assistance be shifted to high impact assistance.

What would a native tribal development bank do? This is the special demonstration project that we are asking for you to consider as inclusion in S. 519. The focus of the effort is a coordinated and targeted approach to social, educational, economic, and political development acting as catalysts for systemic reform. The model is similar to, but not exactly the same, as development banks overseas, such as the Inter-American Development Bank, Asian Development Bank, the African Development Bank, or even the Islamic Development Bank.

The purpose would be to promote growth, improve well being, and fight poverty and inequality with the objective to help native communities accelerate social progress for its own sake, and for poverty reduction and for growth promotion. Central to the idea is a focus on a people-centered development, strengthening and expanding existing capacities, and getting to the root causes of our vulnerabilities as people and as communities.

Within the United States there is no valid public policy reason, in our opinion, that we should have areas which remain well below the poverty level for decades with no hope for the communities to see improved life opportunities, nor for remote rural communities to experience all the major decisions which affect their lives to be made from Washington, DC, Juneau, or Anchorage.

There are proven ways that systemic change can happen, and we want to build on successes from around the world. Often people reference our small remote areas as intractable or just economically infeasible seeing all the standard obstacles to development in the conventional sense.

But, for example, if you look at the experience of Korea and their efforts to transition to a knowledge-driven economy, you can see that there are other ways to address development. If you look at the best of the best examples of the World Bank's development efforts, you can see areas we are missing in our efforts. We hope to learn from these successes.

The first steps that the Native Tribal Development Bank would be to implement the Congressional authorization by setting up an Alaska Native Development Assistance Committee.

Mr. Chairman, there is a real need in many parts of remote and rural Alaska for something such as a Native Tribal Development Bank dedicated to the social, educational, economic, and political development. We have seen through our own lives and any number of studies that social well being is intertwined with political stability and economic prosperity.

We simply cannot separate the health and well being of native people from strong economies and strong political institutions. We believe that a properly constructed institution dedicated to social, education, economic, and political development could and would leverage State, local, and private funds and be of greater assistance to communities throughout Alaska and which Alaska Natives live, work, and raise their families.

With this in mind, we support S. 519 and believe the enactment of this legislation with provisions that apply specifically to Alaska would be highly beneficial to our people. Thus, our recommendation is that we are urging the Congress to authorize and fund an Alaska Native Tribal Development Assistance Committee that would function as the principal strategy setting, policy and performance review entity for educational, social, economic, and political development within Alaska's native communities.

The committee would focus on the development objectives, promote coordination, and review effectiveness of Federal development assistance. The committee would work with Alaska Native tribes and institutions to select appropriate social and economic development indicators, and set measurable goals for increasing the economic growth and reduction of poverty.

The broad categories of indicators would include size, growth, and structure of population, demographics, determination of population growth, including fertility, infant mortality, and life expectancy, labor and employment, poverty, and income distribution, education, and health.

In addition, a set of indicators would be developed to measure the relationship between economic growth and poverty reduction.

Thank you for allowing AFN the opportunity to put this idea on the table before you as a demonstration project proposal. We would be pleased to prepare a full demonstration project abstract for this 10-year demonstration project and legislative language for further review by members of the committee.

At this point we do not know what amendments may be considered for this bill. We would be pleased to work with you and the members of the committee on amendments, particularly as they apply to Alaska and Alaska Natives.

Once again, we commend you for developing such important legislation. We stand ready to work with you on its throughout the legislative process.

The CHAIRMAN. Thank you, Mr. Irwin. We will look forward to any suggestions you have to make it a better bill.

As we move along, I know Alaska is facing some of the same economic problems all the States are. Every State is in some trouble, as you know, from the downturn of the economy, after 9/11, and from so many other things happening. But I would venture to say that the big States like California, New York, Florida, or Texas, would be delighted if they had your delegation here representing them. You cannot get any tougher voices than Senator Stevens and Senator Murkowski. I just wanted to pass that on to you. If you think you have it bad, somebody else has it tough, too, because they do not have the strength of voices that your delegation does.

Mr. IRWIN. We live in that appreciation every day, Mr. Chairman.

The CHAIRMAN. I am sure of it.

We will now go to Mr. Stainbrook.

STATEMENT OF CRIS STAINBROOK, EXECUTIVE DIRECTOR, INDIAN LAND TENURE FOUNDATION, LITTLE CANADA, MN

Mr. STAINBROOK. Thank you, Chairman Campbell, for the opportunity to come and provide some thoughts on S. 519 Let me take you up on your offer to be brief. I will annotate my comments that you have already received in writing. I would ask that my prepared statement be inserted in the record in its entirety.

The CHAIRMAN. Without objection.

[Prepared statement of Mr. Stainbrook appears in appendix.]

Mr. STAINBROOK. The Indian Land Tenure Foundation, of which I am president, is a new foundation. It was created approximately 1 year ago, but it comes out of a history of community development. That community development started nearly 4 years ago with a planning process throughout Indian country which involved hundreds of Indian people developing a series of strategic plans of how to address Indian land issues throughout the country.

Those plans came together and ultimately resulted in a single plan that is somewhat daunting, but is simply breathtaking. That mission is to have all Indian land within the exterior boundaries of the reservations back in Indian ownership and management, as well as those lands outside the reservation boundaries where indigenous interests are still strong and culturally appropriate.

The strategic plan includes four primary strategies including one of educating every land owner, individual Indian and tribal. Knowledge becomes power in making decisions about their land assets. There is the need to increase the economic value and leverage of Indian lands; using Indian lands to discover culture of the various tribes; reforming legal and regulatory mechanisms related to Indian lands; and also the strengthening of sovereignty throughout the country for all of the tribes.

At the conclusion of the planning process, the Indian Land Tenure Foundation was formed and was the recipient of a $20 million grant from the Northwest Area Foundation. It covers our operating costs for approximately 10 years. It allows us to recruit and distribute other resources throughout Indian country to deal with Indian land, and to carry on program development, where that is appropriate and where those programs do not currently exist in Indian country.

I believe that the findings of the committee are appropriate and, in fact, identified some of the most significant issues concerning economic development in Indian country: The lack of investment capital, the need for understanding and overcoming some impediments, and also the fundamental connection between resolving land issues and the ability to develop reservation economies.

I think those three pieces are very fundamental to successful economic development on reservations. In essence, it is those three pieces that brought the Indian Land Tenure Foundation to begin working on what we call the Indian Land Capital Fund some months ago to address both the lack of private capital being applied to Indian land, purchases, and reacquisition, and the resolu-

tion of the fractionated ownership in Indian country and Indian lands.

We are within just a few months of implementing that fund. In essence, the design of that fund is not dissimilar from the Bureau of Indian Affairs Consolidation Pilot Projects which have been ongoing for some time. We do have different twists to that.

The largest and most significant piece of it is that we would bring private capital, philanthropic capital, and tribal capital to bear leveraging Federal dollars in that fund. What it would essentially do is begin taking the Pilot Project concept to a scale that would actually have an impact. At this point, that scale is not there. The ability of the Bureau of Indian Affairs to buy small undivided interests of Indian land and make a dent in the fractionated ownership pattern is negligible.

As part of our work on the Fund, as Derrick mentioned earlier, we have begun working with the Native American Bank Community Development Corporation. In that view, we have attempted to bring value to Indian land that is recovered and also Indian lands that are consolidated.

This is not to say that along the way we would not need an injection of Federal dollars. Obviously when we begin talking about consolidating these fractionated ownerships, this situation was brought about by the various allotment acts that were passed. Clearly, the Federal Government should have a role in helping resolve some of those.

But we do believe that those dollars could be leveraged substantially. Those dollars may come in the form of resources and may come in the form of initial seed capital to capitalize the fund. It may be tax credits. I was encouraged to hear the gentleman from HUD relate a number of options that could be available. That could be from borrowing from other sectors such as the energy savings performance contracts. That would provide a similar mechanism for us to work on land consolidation in that fashion.

Indian Land Tenure Foundation believes in self- determination. It was our very basic beginning. True self-determination comes through the identification of the problems that tribes and individual Indian people have before them, and the ability to come to resolution around that.

I offered the suggestion of the Indian Land Capital Fund not so much as putting that program before you for funding or even consideration, but more as an example of the types of activities that are going on in Indian country and being created by Indian people.

One of the pieces that I would suggest in that vein is that as the committee goes through their decisions and their manipulation of S. 519, that they look to Chairman Hall's suggestion that there are a number of entities out there doing substantial work around private capital. Those entities should somehow be folded into the process.

On a final note, I would also suggest that the diagnostic and analytic component perhaps be elevated or accelerated to lead the financial capital piece, as well as the incubation fund piece of the bill. It is through the diagnostic piece that I believe that could inform how the other two pieces are structured.

Finally, I would also recommend that under the diagnostic and analytic piece that it rather quickly move from the general to the very specific. In our work and in years of experience in working in Indian country, the situations that the 500-plus tribes are in, are very different. To generalize about what the impediments may be will not get to a point where many tribes will be able to take that first action step and implement something.

If we can do diagnostic pieces at the tribal level, I believe you would see economic development begin to take effect with each tribe having a very clear picture of what steps they need to undertake.

I thank you again, Chairman Campbell, for inviting us. I would be happy to answer any questions.

The CHAIRMAN. Thank you. I will have a couple of questions for you in a few minutes.

We will finish up with Mr. Henson. By the way, you work with Professor Kalt; is that right?

Mr. HENSON. Yes, sir.

He submitted some testimony. He has been down here in person a number of times to testify. He is always insightful and always well thought out. I would appreciate it if you would thank him personally from me and from the committee for his testimony, I would certainly appreciate it.

Mr. HENSON. I will do that.

The CHAIRMAN. Please go ahead. You may also abbreviate your testimony, if you would like.

Mr. HENSON. I will be brief.

STATEMENT OF ERIC HENSON, HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT, CAMBRIDGE, MA

Mr. HENSON. Good afternoon, Mr. Chairman. My name is Eric Henson. I would like to thank you for the opportunity to appear today. I am employed as a senior consultant by Lexecon, Incorporated. I serve as a Research Fellow at the Harvard Project on American Indian Economic Development, both in Cambridge, MA. I am a member of the Chickasaw Nation.

I want to very briefly talk about two things today. First, I will touch on the research findings of the Harvard Project, and second, I will talk about the conceptual component of this bill that Mr. Stainbrook ended with, the diagnostic analyses contemplated.

In the course of my comments I would like to convey that although there are some unanswered questions you have heard from the other witnesses testifying, this bill is a commendable attempt to overcome one of the most vexing problems facing Indian country—the perpetual lack of capital formation.

As some of you may know, the Harvard Project has found that no single event, such as increasing capital flows into Indian country or securing one big grant, will be sufficient. The fundamental challenge is to create political and institutional environments that will attract capital and, thus, ensure sustained economic development.

The first of the core components for the sustained development is capable institutions. This includes governmental bodies as well as informal social and cultural institutions. As in any society, In-

dian or non-Indian, capable institutions are the mechanisms that get things done.

Second is a cultural match. The underlying norms of a society must match the governing system for these institutions to function effectively. In other words, tribes need to make sure the institutions have legitimacy among the people they serve.

Third is sovereignty and self-determination. Vigorous exercises of sovereignty are critical to this long-term development, including such actions as contracting and compacting which have both proven successful in promoting economic development and enhancing self-governance. This is important because it places tribes in the driver's seat for decisionmaking.

Some of the activities contemplated under the funds as spelled out in the bill echo the lessons of the Harvard Project Research and present an opportunity to target efforts of the Native American Capital Development Corporation, or the NACDC, toward capacity building for Indian nations.

Through the diagnostic research envisioned, the capabilities of participating nations may increase and the NACDC will be attempting to help establish, tribe-by-tribe, settings into which capital will more freely flow. This tribe-by-tribe approach does two closely related and important things.

One, it avoids the mistake of attempting to approach every Indian problem with a one size fits all remedy. It recognizes that each tribal circumstance is different, that each nation faces different obstacles hindering capital formation, and that the solutions needed will vary from situation-to-situation.

Two, it avoids the mistake of attempting to impose Federal solutions onto tribal challenges by involving tribes on a participatory basis. The past attempts to impose Federal solutions have consistently failed by presenting supposed solutions that nations are not prepared to implement and not prepared to enact because they were not involved in the formulation of the legislation in question. This legislation was mandated in Washington, DC and imposed upon the tribes.

What does this capacity building approach entail for a given diagnosis carried out under the funds? It is impossible to provide a completely generalized answer. The need to tailor each analysis precludes formulation of an adequate check list for every such study.

However, our research at the Harvard Project directly coincides with the diagnostic projects envisioned here and can inform NACDC's initial efforts to understand a given tribe's developmental infrastructure. This includes assessing the presence and effective implementation of at least five things and fostering their development where they are missing. These five things are:

No. 1, financial and budgetary controls, such as third-party audits. Every commercial venture needs to know where it stands financially.

No. 2, principles of corporate governance, including the separation of tribal politics from tribal businesses. We found that tribally-owned businesses have greatly increased success rates when separated from tribal politics.

No. 3, regulatory codes, including land-use ordinances, commercial codes, and taxing provisions. These are rules under which businesses and commercial ventures will operate when under tribal jurisdiction.

No. 4, planning and development policies, such as strategic visions or planning documents. These chart the future as developmental opportunities arise.

No. 5, a separation of powers between the branches of tribal government. This includes independent tribal courts to ensure fair and non-arbitrary adjudication of commercial disputes which are bound to arise in any commercial setting.

These components of developmental infrastructure represent the nexus of our research and the diagnostic activities contemplated in this bill.

Mr. Chairman, I believe this is important because these components of developmental infrastructure help an economy develop by instilling confidence on the part of outside commercial interests; depoliticizing dispute resolution proceedings; standardizing and streamlining commercial practices; and enhancing tribal sovereignty by allowing tribes to exert regulatory authority over business activities.

In short, they help create the environment for increased commercial and business enterprises and, thus, create increased capital flows and long-term capital formation.

I would like to close by noting that this bill, if thoughtfully implemented, and as you discussed with Mr. Hall with the backing of the Indian nations, can help overcome the obstacles of capital formation, and can help establish the settings in which economic development will take hold.

To the extent that this legislation can do these things, it should fully receive the support of this committee. Thank you. I would ask that my prepared statement be inserted in the record in its entirety.

The CHAIRMAN. Without objection.

[Prepared statement of Mr. Henson appears in appendix.]

The CHAIRMAN. Thank you.

Since you are last up, let me just tell you that I think your testimony is really right on when you talk about the key to economic help is to combine structural reforms and stable government, with other assistance. I know for a fact that in some cases tribes have signed contracts with outside interests to build factories and because of some turmoil within the tribes, the outside investors after a few years pull up their roots and leave.

In a case of the Navajos, the electronics factory down by Shroud was a good example 20 years ago, Mr. Watchman. I have also seen that happen with the Crows with a carpet factory. I am also convinced that there has been increased stable government as well as structural changes and reforms with an independent court system, coupled with economic help.

Let me ask you one question, Mr. Henson. Do you see any impediments in this bill of having all Indian tribes as shareholders in the Corporation? There are 562 tribes.

Mr. HENSON. I discussed this briefly with Mr. Moorehead on your staff. He believes that the split class A and class B stock could be

appropriately situated so that tribal voting is sorted out sothat perhaps smaller tribes with fewer shares would be in the class A category with perhaps more money to contribute to the capitalization of the Corporation would not be outvoted by a tribe that simply has a higher population, and I think that with the thoughtful implementation of that kind of system you can overcome the problems of potentially misaligning the capital injection from the tribe and their relative voice in the administration of the corporation..

The CHAIRMAN. Thank you.

Thank you also for making a very strong statement on self-determination and the feeling that we should not move any faster than the tribes are able to move with us. As Tex Hall knows, this is something I believe in.

Let me go to Mr. Irwin. You mentioned a demonstration project. Since almost half of the Federally recognized tribes are in Alaska, I assume that you might suggest that if we did a demonstration project, it ought to be in Alaska; is that correct?

Mr. IRWIN. Yes, sir; what we are proposing, it is very specific to what we in Alaska have identified as being the underpinnings for true economic sustainable economies in rural Alaska which have to do with the social, educational, and political development that is needed in order for that to take place.

We have many obstacles to development such as transportation, infrastructure, and the cost of doing business. But even if those are solved, the educational attainment levels, the social ills that we experience in our communities, and the need for stable political development, really even in the best of worlds from an economic development point of view, would still not allow us to have all that we could have in the way of our strong economies.

The CHAIRMAN. You spoke about the size of Alaska and it being rural and largely undeveloped. Just now some of the things that I assume you might call the American Federation of Natives' vision of what they would like to do. Is most of that consistent with what we are trying to do in S. 519?

Mr. IRWIN. I think it is. I think it is a much broader approach to the problem than is being proposed here, and a much more long term developmentally oriented as far as the people development side of it goes.

It is a somewhat radial departure from S. 519. But as far back as 1994, the Alaska Natives submitted the Alaska Natives Commission report, which really contained many of these same recommendations for what would really work for getting sustainable economies in rural Alaska.

We are using this as an opportunity to remind Congress that they have had that for nine years and things really have not changed in Alaska.

The CHAIRMAN. You use the word "radical" and I use the word "bold." I am just convinced that what we have been doing is not inclusive enough and not moving fast enough to help native communities. That was the interest in introducing it.

Let me now ask Mr. Stainbrook a question or two. Do you think S. 519's Corporation would be a good financing mechanism for the purpose of Indian land resocialization financing?

Mr. STAINBROOK. Yes; I believe it could be. I think there are certain advantages to having this overarching piece of principle there.

The CHAIRMAN. Your testimony indicates that it would take more than $1 billion to buy out all the fractional interests of Indian country, and that the fiscal year 2004 request proposes only $21 million. You are probably right on both assumptions.

Does that not make the point that we are probably never going to be ahead of the curve if we just keep waiting for the Federal Government to put up the money?

Mr. STAINBROOK. That is exactly our position. In fact, if this is not taken to scale soon, some form of the pilot project, or, in fact, the capital fund that we are suggesting be put together to buy those fractionated interests, that exponential growth of fractionated interests will not allow for any reduction in the near future, no matter how much money is spent on it.

The CHAIRMAN. Is your tribe a member of the Native Bank?

Mr. STAINBROOK. No, sir; I am not here representing a tribe.

The CHAIRMAN. Okay.

Let me go to Mr. Watchman. How many tribes are shareholders of your bank? Did I hear you say 21?

Mr. WATCHMAN. We have 21 tribes participating. We have 10 founding tribes that I outlined.

The CHAIRMAN. So, 10 are shareholders.

Mr. WATCHMAN. They contributed $1 million apiece.

The CHAIRMAN. Can any tribe be a member of your bank?

Mr. WATCHMAN. Yes; any tribe can be a member of the bank, but initially when we were looking at becoming a founding tribe, we were looking at $1 million apiece. That is for the class A shareholders. Class B shareholders is any amount less than $1 million. But any tribe can be a member.

The CHAIRMAN. What advantage does a class A shareholder have that a class B shareholder would not have?

Mr. WATCHMAN. The advantages between A and B shareholders is that the class A shareholders can actually vote and participate in bank activities and bank affairs.

The CHAIRMAN. But they can both borrow money?

Mr. WATCHMAN. Yes.

The CHAIRMAN. What is the paid-in capital for your bank?

Mr. WATCHMAN. The paid-in capital initially was $12 million. After 1½ years of operations, we have an asset base of about $35 million.

The CHAIRMAN. You talked a little bit in your testimony about the long-range plans of expanding branch offices; is that correct?

Mr. WATCHMAN. That is correct.

The CHAIRMAN. Do you see any benefit of having all Indian tribes some day being a part of your bank?

Mr. WATCHMAN. I do. There is a certain amount of economic scale and expertise that is acquired by operating on separate reservations. Each tribe is different with rules and regulations and land acquisition. In my area, the tribes in the Southwest because of working with the BIA, they do business differently than the tribes in the other districts.

With the economies of scale, you can learn the process. The biggest issue is how do you work with BIA to have the title and approvals. It can be used as a financing mechanism to do loans.

The CHAIRMAN. I am a supporter of the BIA, but believe me, there are a few people around here that are not sure how they operate, either. [Laughter.]

Let me ask you a couple of more questions about your bank and if it is proprietary or something, you do not need to answer. But I am interested in how many loans has the bank made since it was chartered? It is now in the second year of charter?

Mr. WATCHMAN. We are in our second year of charter; that is correct.

We have a loan portfolio of about $20 million.

The CHAIRMAN. Have you had any of those to go into default yet? These are loans to tribes?

Mr. WATCHMAN. These are loans to tribes, tribal entities, tribal organizations.

The CHAIRMAN. Tribal member-owned businesses and things of that nature?

Mr. WATCHMAN. Yes; we have some loans with tribally owned enterprises and Indian owned companies.

The CHAIRMAN. What was that total dollar amount that you have loaned so far?

Mr. WATCHMAN. We are in the range of $20 million.

The CHAIRMAN. What about your default rate? Have you had many defaults?

Mr. WATCHMAN. One of the big things is that we are actually governed by the Office of Comptroller Currencies so we do have to meet the criteria. We do have to watch our loan loss reserves.

So far we have been operating within the guidelines that the OCC wants us to operate. We are actually in norm with other banks in the country.

The CHAIRMAN. You are capitalized at about $20 million. You heard Mr. Stainbrook's testimony that it might take $1 billion or more to buy up fractionated interests in Indian country. Could you even begin to handle something like that if it came through a bank that is capitalized for $20 million?

Mr. WATCHMAN. Well, the other issue I should point out, Mr. Chairman, is that in addition to the paid-in capital, if we could get business from Federal agencies, or tap into the trust funds, that would give us additional assets. For every dollar of deposit that we get in, we can actually leverage that out almost 10-to-1.

That is really what we are trying to do. That is the whole purpose of a bank is that we turn that money around and we do invest in Indian country or in loans. That is the big issue that we are trying to look at.

If you look at most minority-owned banks in this country, the average is about $5 million in capital. But they have been able to secure business. They have been able to secure loans. They, in turn, leverage it. That is the big concept behind banks.

That is what we are looking at all. If we get more business, we certainly can get into the business of land consolidation and land re-acquisition. It is just a matter of trying to get people interested

in the Native American Bank which, as we said earlier, is Indian owned.

We are trying to provide some expertise behind it. There is a lot of subtleties and nuances in Indian credit. You have to understand the BIA process. You have to learn how you would like with the tribal councils and so forth.

The CHAIRMAN. I understand. Sometimes that is not too easy.

I have no further questions. Other Senators may have questions that they might submit in writing.

I want to thank all the witnesses for being here today. Very frankly, I feel better about the bill now than when we started out. I think there are some real seeds that we can germinate and with your help and with your suggestions, we can do something that is long overdue in helping to provide some economic help for Indian communities.

We will keep the record open for 2 weeks if you have any additional statements you would like to submit, or if anyone in the audience have any statements they would like to submit, I would appreciate your doing that before 2 weeks are over.

The CHAIRMAN. Thank you for appearing today.

The committee is adjourned.

[Whereupon, at 3:35 p.m., the committee was adjourned, to reconvene at the call of the chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Good afternoon, Mr. Chairman. I would like to extend a special welcome my constituent, Mike Irwin, Senior Vice President of the Alaska Federation of Natives. Mr. Irwin wears many hats, one of which is Chairman of the Board of Doyon, Limited, which is based in Fairbanks, Alaska. Doyon is one of the most successful of the Alaska Native Corporations when it comes to generating employment opportunities for Native shareholders. It is also one of the most consistently profitable Native corporations. I will come back to this in a moment.

We have come together today to explore an exciting new idea to promote economic development in our Native communities. The Native American Capital Development Corporation, created under this legislation, will be charged with identifying obstacles to economic development and proposing strategies to overcome them. Sometimes it is the lack of capital that inhibits economic development, but often it is also the lack of viable, sustainable business opportunities that stymies development. The lack of infrastructure, be it the lack of roads or the lack of power capacity, is a particular obstacle in Alaska. The corporation could help address all of these obstacles.

Since the enactment of the Alaska Native Claims Settlement Act some 30 years ago, our villages have been grappling with these very issues. Today, our Alaska Native Corporations are recognized as engines of economic development in the State. However, much of their investment and job creation has taken place in the cities, in communities on the road system that are accessible to tourists, and on the North Slope.

This is not for lack of desire. Our Native corporations must invest in profitable ventures in order to return dividends to their shareholders. They are constantly seeking viable business concepts in the villages where their people live.

The villages too yearn for year-round, good wage employment. Until then, Native people in Alaska must leave their families behind and travel long distances, to other parts of our vast state, often working 2 weeks on—2 weeks off, if they are to enjoy year round employment.

Mike Irwin's company, Doyon, Limited, generates jobs for its shareholders through two businesses which are wholly dependent on the health of Alaska's oil and gas industry. Doyon Drilling, which is one of only two major oilfield drillers in the State, trains rural shareholders for entry level positions on the drilling rigs, transports them to work on the North Slope and promotes from within.

And Doyon Universal Services provides catering, security and other remote site services in support for the North Slope oil producers and the Trans Alaska pipeline. It uses a similar shareholder hiring and promotion model.

Mr. Chairman, if you will indulge me briefly, I need to point out that the continued opposition to oil and gas development in the Arctic National Wildlife Refuge has a direct, adverse effect on economic opportunities for Alaska Natives. The continued success of Doyon's business ventures, and similar ventures owned by other Alaska Native Corporations, depends on a robust Alaska oil and gas industry. When there

are no wells to drill, rigs go down. . . camps go down. . . and Native shareholders are laid off. We don't want to see that.

Just as there is much work to be done in creating opportunities in Indian country in the Lower 48, we have much work to do to grow enterprises in our rural villages. Our Native people tell us that the jobs they value most are the jobs in their. villages. I think S. 519 could provide the spark to expand employment opportunities in the villages as well as in Lower 48 Indian country.

Mr. Chairman, I am very pleased that you have introduced S. 519 and organized this hearing today. By inviting investment from Alaska Native Corporations to a fund which could potentially loan money to ventures on Lower 48 reservations, your bill helps strengthen the ties between Alaska Natives and the broader community of Native Americans. That is a very welcome idea and one that I hope can be enacted into law.

I thank the witnesses and look forward to their testimony.

PREPARED STATEMENT OF WILLIAM O. RUSSELL, DEPUTY ASSISTANT SECRETARY, PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Chairman Campbell, Vice Chairman Inouye, and Members of the Committee, thank you for inviting me to testify before the Committee on Indian Affairs. I am glad to be with you today and welcome the opportunity to share with you the Department of Housing and Urban Development's perspective on many of the concepts included in S. 519, the Native American Capital Formation and Economic Development Act of 2003, which has been introduced by Chairman Campbell.

My name is Bill Russell, and I am the Deputy Assistant Secretary for Public and Indian Housing. PIH is responsible for the management, operation and oversight of HUD's Native American programs. These programs are available to over 550 federally recognized and a limited number of State-recognized Indian tribes. We serve these tribes directly, or through tribally designated housing entities (TDHEs), by providing grants and loan guarantees designed to support affordable housing, and community and economic development activities.

In addition to those duties, our jurisdiction encompasses the public housing program, which aids the nation's 3,000-plus public housing agencies in providing housing and housing-related assistance to low-income families.

It is a pleasure to again appear before you, and I would like to express my appreciation for your continuing efforts to improve the housing conditions of those who need it most. As you have heard from previous testimony, much progress is being made and tribes are taking advantage of new opportunities to improve the housing conditions of the Native American families residing on Indian reservations, on trust or restricted Indian land, and in Alaska Native Villages. This momentum needs to be sustained as we continue to work together toward creating a better living environment throughout Indian country.

At the outset, let me reaffirm the Department of Housing and Urban Development's support for the principle of government-to-government relations with Indian tribes. HUD is committed to honoring this fundamental precept in our work with American Indians and Alaska Natives.

As you know, the Administration is actively reviewing S. 519 and hopes to soon be able to provide you with specific comments. In general, however, it is a little hard to understand exactly what the Native American Capital Development Corporation created by S. 519 is and whether it duplicates capabilities that already exist within HUD and the Department of Treasury.

HUD is committed to exploring new opportunities to surmount barriers to lending on tribal lands and facilitate access to alternative sources of capital, financial services and technical expertise. HUD's Office of Native American Programs (ONAP) is currently working with tribal governments, TDHEs, and lenders to increase private housing investments through the Section 184 Indian Housing Loan Guarantee Fund Program, and the Title VI Tribal Housing Activities Loan Guarantee Fund.

We know that there are numerous barriers to accessing capital. Many of these were recently identified in the "Native American Lending Study," completed by the Department of the Treasury's Community Development Financial Institute Fund, as well as through other recent research.

Capital in Native America tends to come from four primary sources: Tribal financial resources, Federal guaranteed loans, grants and tax credits, debt capital, and equity investors. The latter is woefully inadequate for many reasons. Issues raised by investors and private lenders include: The legal status of tribal lands, inadequate or nonexistent legal and business codes; insufficient understanding of issues related to tribal sovereignty and sovereign immunity; a lack of technical assistance re-

sources; uncertainty related to leadership changes in tribal governments, and a lack of financial institutions and services on or in close proximity to Native American communities.

Many tribes and TDHEs, as well as other tribally affiliated community and economic development organizations, use a project-by-project approach to housing and economic development. There is a great need to create a more comprehensive approach to the creation of sustainable economies. There are clear roles that tribal governments, Federal agencies and lending institutions can play in creating these economies. The Administration would like to give careful consideration to whether the creation of a Corporation could resolve impediments to lending on tribal lands and contribute to the establishment of sound economic and political policies that promote increased levels of economic growth and job creation on tribal lands.

Finally, let me state for the record that we concur with many of the findings as outlined in S. 519. We agree that much of the poor performance of Native American economies correlates to the absence of private capital and private financial institutions. We will continue to work in partnership with tribal governments, Native American organizations, the private sector, and other government agencies to support private investment and leveraging in Indian Country. And, Mr. Chairman, HUD is prepared to work with you to help overcome these barriers to accessing capital in Indian County.

This concludes my prepared remarks. Thank you again for this opportunity to testify, and I would be happy to answer any questions you may have.

PREPARED STATEMENT OF MICHAEL LIU, ASSISTANT SECRETARY, PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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My name is Michael Liu, and I am the Assistant Secretary for Public and Indian Housing. I am responsible for the management, operation and oversight of HUD's Native American programs. These programs are available to over 550 federally recognized and a limited number of state-recognized Indian tribes. We serve these tribes directly, or through tribally designated housing entities (TDHEs), by providing grants and loan guarantees designed to support affordable housing, and community and economic development activities.

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This concludes my prepared remarks. Thank you again for this opportunity to testify, and I would be happy to answer any questions you may have.

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The National Congress of American Indians

Testimony on
Senate Bill 519

The Native American Capital Formation and Economic Development Act of 2003

Presented By:
Tex G. Hall

President, National Congress of American Indians

Introduction

Chairman Campbell, Vice-Chairman Inouye, and members of the committee, I would like to thank you for inviting me to testify on behalf of the National Congress of American Indians regarding the Native American Capital Formation and Economic Development Act.

On behalf of the member tribes and individuals, staff, and leadership of NCAI, I would like to express appreciation for the dedication this committee shows to Indian people and to the honorable fulfillment of federal trust and treaty responsibilities.

We also want to express our appreciation for the effort this committee is making to the assist with economic development in Indian Country. We all know that one of the greatest problems facing much Indian country, despite the relative success of gaming for some tribes, is getting capital to make economic development efforts happen. The need for economic development in Indian Country remains acute, and impacts nearly every aspect of life in reservation communities. The unemployment rate hovers around 50 percent for Indians who live on reservation, nearly ten times that for the nation as a whole. Nearly a third of Indians live in poverty.

These crushing obstacles disproportionately impact our youth and elders, who are the cornerstones of our societies. Diseases such as diabetes, AIDS, alcoholism, and heart disease affect our reservations at much higher rates than the national average. NCAI believes that economic development is the key to turning around these problems.

The lack of access to capital is one of the major barriers to successful economic development in Indian Country. Whether it is the inability to leverage lands or homes, having no access to banks, unwillingness of lenders to do business in Indian Country, or plain unfamiliarity with financial processes, Indian entrepreneurs have often had a hard time accessing money or the technical assistance that will enable them to pursue business development.

But this is not new knowledge. Studies undertaken by scholars like those at the Harvard Project for American Indian Economic Development and other institutions have shown that for almost all parts of the country, access to capital for Indian tribes and individual Indian entrepreneurs is a major problem. The question has always been one of capital formation: how do enterprises, whether private or tribally operated, obtain the necessary start-up and operating capital to build a permanent economic base for Tribal Nations?

This bill represents one approach – a starting point for a discussion that has been ongoing for many years about how the Federal government and the private sector can be brought together to assist in capital formation in Indian Country.

As you know, I am already very familiar with the efforts in Indian country to develop a means for private capital formation. Not only am I the President of NCAI, I am also the Chairman of the Board of the holding company that owns the Native American Bank, an enterprise that in general owes its creation to the efforts of some of the members of this Committee.

The Native American Bank represents one inter-tribal approach to capital formation in Indian Country, of which I am proud to be a part. The Native American Bank also has a Community Development Corporation component that is undertaking some of the same tasks assigned to the corporate entity established by S. 519, and we are constantly working to improve that component of our banking efforts.

But we all know that one financial institution cannot provide for all of the needs of Indian country with regard to the kind of intensive capital development that is necessary to sustain economic development in the long run. For example, many of our banks are not equipped to handle the large scale development projects that tribes wish to undertake, smaller lending institutions are able to provide small loans only to a few people, and are not able to invigorate reservation economies as a whole, and training and technical assistance programs do not always have the resources to provide all of the assistance our communities need. We have islands of success out in Indian Country, but it's often a far swim between them.

This makes the discussion started by S. 519 very important. S. 519 represents an effort by the Federal government to assist in development of Native American financial institutions.[1] This represents a different approach to capital formation than something like the Native American Bank, but nevertheless, we believe the approach stated in S. 519 is worthy of discussion and development.

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[1] It should also be noted, however, that S. 519 has a relatively limited definition of Native American financial institutions. The bill is not talking about all Tribally owned banks, for example, but rather is limiting the discussion to financial institutions which satisfy the requirements of Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

The Goals of S. 519

With this background in mind, it is my hope that S. 519 will be developed, amended and commented on by Tribal leaders, Tribal members, financial experts, and the Congress consistent with the following goals:

1) Any entity created Federally should provide assistance in capital formation for institutions like the Native American Bank and other similar Tribally owned banking institutions so that they can continue to grow and assist economic development in Indian country as private institutions;

2) The institution created should be able to provide technical expertise to Tribes and individual Tribal members and other financial institutions such as banks and other investment companies that are working to make capital available for economic development in Indian country; and

3) Any institution created Federally should be complementary to, not competitive with, existing Tribal financial institutions when it comes to providing services such as lending, venture capital and advice on business formation.

How does S. 519 measure up in relation to these goals? At present, I am not yet convinced that the structure of the Native American Capital Development Corporation outlined in S. 519 will do everything we want it to, but I do know that I and NCAI are willing to continue to work to find a structure that will.

We believe that the Native American Capital Formation and Economic Development Act can be a starting point for a discussion of how Congress and the Federal government can best assist Tribes to solve the economic development puzzle.

The Functions of the Native American Capital Development Corporation

It is important to look at what S. 519 does and does not include with regard to the functions of the Native American Capital Development Corporation (NACDCO) created by the Act. The Act calls for the creation of an Indian development corporation, to be capitalized by Indian tribes, and with instructions (stated in Section 102) to provide technical assistance to help establish Tribal financial institutions; to provide technical assistance to existing Tribal financial institutions as they develop a loan portfolio; to help provide technical assistance to overcome barriers on mortgage lending on Indian land and to assist Tribes and individuals to work with Federal home mortgage institutions; to act as an information clearinghouse on financial practices in Indian country; and to obtain capital investments from tribes.

Because of this last function of NACDCO, to obtain capital investments from tribes as mentioned in the Act, it is not clear to us whether the NACDCO is intended to be a source of capital for Tribal economic enterprises by itself, or if it is simply to become a technical advisor to Tribal financial institutions who themselves are doing the lending. As structured, we believe NACDCO can be most useful as a technical advisory institution, one that can contract with existing or newly forming Tribal financial institutions to provide technical assistance. However we would also note that some of the suggested functions of NACDCO may already be provided in the private sector, and it is our hope that the NACDCO will not be duplicative of existing private institutions.

Let me discuss what we see as the possible role of NACDCO in a little more detail. Several years ago, NCAI testified in support of the Native American Financial Services Organization that this committee proposed. The NAFSO proposal mirrored this Act. The NCAI continues to support all efforts to provide the kind of technical assistance needed to access capital and in general supports the technical assistance functions of S. 519. We recently developed an "Economic Development White Paper", and getting access to capital was at the top of the priority list for Tribal Nations. If NACDCO can provide technical assistance to obtain that capital, we see that role as very helpful.

As I said, there is a lot of good work going on already in Indian country, from a variety of directions. Some government programs have proven successful, other partnerships with educational institutions and non-Indian community organizations have been doing very useful and important work on reservations as well. Most meaningful, however, has been the hard work and dedication shown by Indian people themselves.

Institutions like the Native American Bank, the Lakota Fund, the First Nations Development Institution, and dozens of other smaller but no less vital organizations have done— far and away— the most work in the development of tribal economies. It is our hope that this Committee strongly considers the suggestions these organizations may have to improve this bill. We believe that the institutions created by S. 519 should be structured so as not to take anything away from these efforts.

NCAI believes it is essential to maintain the ability of these organizations to continue their work, and would hope that the NACDCO created by S. 519 will be able to assist in their efforts. Many of these organization hold the faith and trust of the tribal communities they work with, they are familiar with the complex and unique problems that the tribes in their areas experience, and they know the needs and capacities of their communities. In short, these organizations are specifically equipped to provide services in Indian country.

Again, as I have noted, there has been some concern about whether the services to be provided by the NACDCO will be duplicative of the services already provided in Indian country. We want the NACDCO to be complementary of, and supplemental to what is already going on in our communities.

The Structure of the NACDCO

Of great importance to NCAI, the NACDCO will be tribally owned. It should also be a corporate entity operated by Indian tribes and their members. This will give the corporation some additional credibility that will be important to its overall success.

The act also provides for an Advisory Council with regional representation to advise the board on its actions and policy determinations. This council is required to have an Indian majority, and that is very helpful.

The board of directors for NACDCO, on the other hand, is only required to have two members from Indian tribes. We believe that *de facto* control of the organization must reside with Indian people as they know the needs of their people best. We propose that the majority of corporate board members be required to be tribal members. Thus, in addition to the 2 of 3 Presidential appointed members being tribal members, we would like to see at

least 3 of 6 of those elected by class A shareholders and 2 of 4 of those elected by class B shareholders be members of Indian tribes.

Policy Analysis and Incubation Centers

S. 519 also sets up some two corollary funds proposed in this bill are also helpful additions to the work of the proposed organization. The Native American Economies Diagnostic Studies Fund is well positioned to analyze the state of Indian economies, the viability of policies both applied and removed from tribal business, legal and regulatory schema and their effects, as well as general economic trends on our reservations.

As we noted, there has been work done on the status of Indian Country's economies. However, we have not seen a strong relationship between the existing data and the financial policies that have been applied. Hopefully, the Diagnostic Fund will be able to deal directly both with the state of Indian Country economies, and-- as an arm of the NACDCO— the implementation of policies that will eliminate the identified barriers and problems.

The other fund, the Native American Incubation Center Fund could also be helpful. However, as mentioned above regarding the question of the purpose of the NACDCO, it is unclear exactly what are the purposes of the Incubation Center Fund. Is this fund intended to provide financial assistance to Tribal communities directly, or is it simply to be clearinghouse for other Federal funds that are available for economic development efforts on behalf of Tribal communities?

Summary - Potential of the Corporation

We believe that S. 519 acts to start the discussion of how the Federal government can help the Tribal Nations and help Tribal financial institutions grow and prosper. With a few amendments, it contains some of the important elements of that assistance - control and ownership by Tribal members and a commitment to technical assistance, among others. Conceptually, the corporation has the potential to be a force for financial reform for Indian Country economies.

But the success of this effort will depend largely on acceptance of the concepts in S. 519 throughout Indian country. Indian Tribes will have to be convinced that an investment in a federally chartered institution will be a good and wise investment. That may be a hard sell.

Further, whether NACDCO can create and maintain the availability of broad-based financial services and technical assistance for businesses in Indian Country will be critical to its success, and it will need to show that its particular expertise in the area of Tribal housing funding is useful and needed in Indian country. It will also need to complement existing private efforts that have been initiated by Tribes, both individually and inter-tribally, as has been mentioned.

Perhaps, in time, the NACDCO can also work to reduce the confusion and misconceptions surrounding political differences that arise from tribal sovereignty. Like the Overseas Political Insurance Corporation, perhaps NACDCO will be able to provide a sort of insurance for 'international' risk. NCAI has identified this as one of the keys to comprehensive development in Indian Country, and we feel that NACDCO may have the

potential to assist fulfilling this role farther down the road, but again, we would hope that NACDCO will do this in cooperation with existing and to be created Tribally owned institutions.

Conclusion

Again, we thank Senator Campbell for the opportunity to testify on this important bill. We believe this bill can provide a good starting point for discussion of these issues. We encourage further dialogue and work on this concept so that it can truly help existing Tribally owned economic development institutions and can help start new ones.

We also thank you again for introducing legislation to try to help tribes develop financial institutions that will enhance the lives of our citizens and will serve to strengthen our tribal governments. We look forward to working with the Committee to make this bill as effective and helpful to Indian Country as possible.

TESTIMONY TO THE SENATE COMMITTEE ON INDIAN AFFAIRS
APRIL 30, 2003
HEARING ON S. 519

PRESENTED BY
VICE PRESIDENT FRANK J. DAYISH, JR. OF THE NAVAJO NATION
OFFICE OF THE PRESIDENT AND VICE PRESIDENT

PART I. INTRODUCTION

President Joe Shirley, Jr. and I appreciate the opportunity to present our concerns and recommendations before the Senate Committee on Indian Affairs (SCIA) regarding Senator Ben Nighthorse Campbell's bill, S. 519, *Native American Capital Formulation and Economic Development Act of 2003*, a bill to create a financial institution that would build capital from tribes and private investors for the single purpose of building economic development in Indian Country.

A. THE NEED

The Navajo Nation understands very well about capital drought and its affect on the rest of Indian Country. S. 519 initiates a discussion about attracting Indian and non-Indian investors to Indian Country. President Joe Shirley, Jr. and I understand that finding solutions to economic, or rather, nation building is a responsibility that enjoins all of us around the country.

Building infrastructure for development's sake is not the only goal, however laudable. We, as Diné, seek to develop our lands in accordance with time honored traditions that protect our heritage, cultural and land assets for the benefit of future Navajo people. The Navajo Nation is not a lost child. We are a sovereign nation and accordingly, we seek to find long lasting solutions with the federal government, state governments, counties, and with other the sovereign Indian nations and pueblos as full partners by building active economic structures that will benefit each one of our communities.

B. THE POTENTIAL

There are thriving communities outside the borders of the Navajo Nation, but they are a social jump away. The Navajo Nation struggles to achieve what the rest of American takes for granted. This is why economic development is a centerpiece of the Shirley-Dayish administration. Without economic infrastructure, the Navajo people lose the opportunity to raise many of our families at "home" thereby suffering from continued "brain drain."

However, there is hope because tribal economics is not a foreign idea. Tribal nations have traded among themselves for thousands of years. You need only to attend local flea markets, ceremonial gatherings, or stop off the road at local sellers to see how buying and selling is alive on the Navajo Nation and throughout Indian Country.

For a long time, tribal economies cast tribes and tribal members as mere consumers. We have heard that the most successful Walmart in the United States is in Gallup, New Mexico, which is just outside the Navajo Nation's border. The Gallup Walmart is

supported by a majority of Navajo shoppers with Navajo dollars. Gallup's Walmart proves a point that a healthy economy is not how much one can buy, but the choices one has when a healthy local and national Navajo economy exists.

C. THE PROBLEM

The ability to choose what gets built and how *is* the true mark of a sovereign government. Indian Country lags in comparison to non-Indian communities' developed infrastructure, which is due, in part, to our unique Federal-Indian relationship. For example, the Navajo Nation has always seen its trust land status as limiting economic development because private investors tell us that they cannot invest if they cannot own the land. They also fear that they will not be able to get a fair hearing to disputes in tribal courts. The Navajo Nation appreciates S. 519 as a starting point to encourage finding solutions to these obstructions for attracting capital investment onto Indian reservations.

D. THE MODEL

In this testimony, we wish to present a not so new concept about the relationship to trust lands and trust responsibilities from the very government the United States based its laws upon --- England. As you know, property law in the United States is based upon concepts from English common law. While it may seem counterintuitive, we can also look to England (the United Kingdom) to develop our ideas about Indian trust land status.

England, as part of The United Kingdom, has trust land: Queen Elizabeth II's Crown Estates, which are essentially, trust lands for the Queen. Tribes have not fully appreciated how trust land gives the Navajo people a unique status to establish a healthy Navajo Nation now and for the future. The Queen, through her government, never let her trust land become an obstacle to economic development, so in our testimony, we will re-evaluate an option that has been with us all this time.

E. THE POSSIBLE SOLUTIONS

Part of the mechanism for operating on trust land is the mechanism for responsible development. The Navajo Nation is taking pro-active steps to aid local communities to build local their while securing the funding to establish much-needed infrastructure. The challenge is doing both well. Creating economic development on Indian lands will not be simply solved by writing a check.

Economic development involves social and economic re-education to achieve healthy economies on the Navajo Nation. Yet, today's tribes need a shift in thinking on how to achieve financial independence that will not only allow Indian people to create a livelihood on the reservation, but to remain and reinvest in Indian communities. This new paradigm would strengthen Indian people through education and a developed self-worth.

The Navajo Nation has begun changing this perception by encouraging local Navajo communities to invest in their communities by taking small steps to provide local services. The Navajo Nation does not judge its success in economic development by building the largest supermarket in the most rural area, but we can encourage our

people to establish Navajo valued home industries that will develop into truly thriving local economies.

PART II. THE NEED

LACK OF CAPITAL ACCESS

The Navajo Nation is frustrated because we lack the traditional access to capital necessary to begin building the infrastructure that big business needs when considering investing in the Navajo Nation. We do not have the luxury to ask whether investing in Indian Country is an honorable thing to do for we understand that private business must know and feel confident that they will be able get a great return for their own precious dollars invested.

Why aren't more private businesses investing on the Navajo Nation? Private investors, Navajo or non-Navajo, primarily lack confidence in the current system of business or leasing approval. Tribes have a notoriously cumbersome system to approve business site leases. It takes years to accomplish what takes days off the reservation. We recognize this and are slowly chipping away at this bureaucracy, but not fast enough. This is a perfect example of changing the local thinking about economic development or rather building a Navajo economy.

The Navajo Nation was successful in getting the Bureau of Indian Affairs (BIA) out of the business site leasing approvals through the passage of the Navajo Nation Trust Land Leasing Act of 2002 (25 USC § 2301 et seq.). The Navajo Nation's draft business site leasing regulations will augment this act and now await the Navajo Nation Council's approval before being sent to the Secretary of the Interior for her approval of the adopted *Navajo Business Site Leasing Regulations*. President Shirley directed the Navajo Nation Division of Economic Development to step up this process and to have it before the Navajo Nation Council for approval by this summer.

And while this approval of the Navajo Business Site Leasing Regulations will be a large step toward nation building, the Navajo Nation government knows it cannot solve all problems, but it can urge and encourage the Navajo people and non-Navajo business community to make the investment and take the small and steady steps toward economic development. I am frustrated because our people are so comfortable about being consumers that we fail to understand the basic components of economics.

The president and I hear suggestions from our people that we should build a shopping mall in the most rural of areas---fine. Building a mall in a very rural area does not solve economic development. This Committee and I both know that business sense dictates that there must be a strong local economy to support this new local business venture or else it will fail. Having a mall is not the epitome of a successful economic development plan.

PART III. THE POTENTIAL

Tribes live in unique places that not only offer a truly North American indigenous experience, but a quality of life that is missing in many parts of the world. Why is Santa

Fe and Sedona so successful at what they do? They are successful because they offer a southwest experience that is marketed to visitors because they value and search for the authentic southwest/Native American experience. Visitors to our areas also are willing to pay for it. What is disheartening is that some of us Navajos do not always value where we live and how valuable our culture is. Many youth tell me that we live "nowhere."

The Navajo People do not live "nowhere." The Navajo people live in a very blessed place, on our Dinébikeya (Navajo Land), and within our Four Sacred Mountains that guard our homeland. It's my duty to begin changing our youth's perceptions on where they live and how they are a vital part of the Navajo Nation's present and future.

PART IV. THE MODEL AND POSSIBLE SOLUTIONS

The Shirley-Dayish administration seeks to bring new ideas to the Navajo Nation that will encourage nation building and people development. The Navajo people must have the opportunity to be more than what fate and circumstance allows us to be. President Shirley and I seek to empower our people to have additional opportunities that allow them to imagine a life different that one that is imposed upon them by the current and outdated economic policies.

SUPPORTING PRIVATE BUSINESSES

The Shirley-Dayish administration supports existing private businesses that have ventured and pledged to remain in business on the Navajo Nation. The Navajo Nation government in the past has not been very supportive of businesses. This is due primarily because our consumer activity is done outside the Navajo Nation. One such fine example of a private business is MechTronics of Arizona.

MechTronics of Arizona continues to employ Navajos on the Navajo Nation in Fort Defiance, Arizona. These 90 Navajo employees build complex wiring for computer defense hardware that is fitted into F-16s, satellites, and automatic ship firing defenses on U.S. battleships. While MechTronics is entitled to give its off-reservation contractors tax credits for doing business on the Navajo Nation through MecTronics, MechTronics is having difficulty obtaining additional Defense contracts since they do not qualify being listed on the Small Business Administration's (SBA) Pro-Net system.

Pro-Net is primarily used by larger Defense contractors to find eligible disadvantaged (minority, women or Native American owned) small businesses to fulfill their quota employing disadvantaged small businesses. President Shirley and I are concerned that MechTronics should have the resources and access to be competitive with other potential contractors in order to employ more Navajos. President Shirley and I will seek congressional assistance that will allow MechTronics to be listed on Pro-Net, thereby enjoying the same level playing field as other Pro-Net businesses that are listed on SBA's Pro-Net.

While federal Indian tax credits have benefited a few businesses financially, the majority of the on-reservation businesses do not use these tax credits to their benefit. Mostly, this is done because they lack the necessary knowledge on how current tax laws operate and the benefits available for small businesses.

President Shirley and I seek to assist supporting Representative Tom Udall of New Mexico's bill, H.R. 1166, *Small Business Development Center Assistance to Indian Tribe Members, Native Alaskans, and Native Hawaiians*, to pass in the Senate. H.R. 1166 was referred to the Senate Committee on Small Business and Entrepreneurship on April 1, 2003 having been approved by the House of Representatives on March 31, 2003. His bill seeks to establish the Small Business Administration's (SBA) Small Business Development Centers on or near Indian reservations. These centers would provide the much-needed information and training to support local potential and existing Indian small businesses to increase their chances of being successful.

These kinds of non-monetary support are what the Navajo Nation can do on behalf of private businesses that continue to invest on the Navajo Nation. The Navajo Nation recognizes that assistance does not always come in the form of cash, important as that is, other assistance such as legislative support, small business development training, and even encouraging Navajo and other non-Navajos to take that important step of self-employment is a duty President Shirley and I are committed to fulfill. We stand to assist those who are invested in the Navajo Nation to assist making our homelands safe, secure and profitable, will help us build our Navajo Nation. Another way to assist private businesses is to ensure that our tribal courts can adequately handle complex business related issues, and that they are fair.

A STRONG JUDICIAL SYSTEM

The Navajo Nation understands that honesty and comfort is a must when dealing with investors. Everyone must feel that they can be honestly and fairly heard in tribal court when disputes arise. The Navajo Nation believes that if we want to strengthen our sovereignty and economic development opportunities, then our tribal courts must be unbiased and able to fairly litigate these disputes. Tribal courts are not suppose to be fair only toward Indians on Indian lands, but fair to all who reside, visit and do business in Indian Country. The mark of a true sovereign and responsible government is a justice system that offers anyone who has a case before their courts will receive a fair hearing. Without honest courts, economic development and private investments will never occur; this is why supporting tribal courts is and will remain a priority with the Navajo Nation.

A very successful tribal nation that has many non-Indian investors on their lands made a suggestion to the Navajo Nation to have a clause in business contracts for an investor or tribe that gives the option to have their dispute heard in federal court at any time. The tribe claimed that to date, not one non-Indian investor has ever used this option, but the simple fact that this clause exists, gives the investor a very strong sense of comfort. It also shows that the tribe is very comfortable about its own tribal courts. This is one way tribes can pro-actively help bring investors to their lands. We will explore this unique option.

OFF-RESERVATION INVESTMENTS

Another idea is for a tribe to buy real estate off their reservation that would *not be put into trust status*, but used as collateral to secure additional loans. This is a part of tribal responsibility that makes the market economy work. Tribal governments should try to put private investors concerns at ease regarding the security of their investments. President Shirley and I both understand that they simply want a favorable return on their

investments, and one way is to ease their concerns is to secure tangible property or collateral as a pledge against their investment.

Presently, the Navajo Nation cannot use its trust land as such; yet, many buildings, homes, and other stationary goods that are tied to trust lands could be used as collateral. The challenge is how to leverage these assets into usable collateral when our trust land cannot be sold. Is there a solution to have businesses invest on trust lands? President Shirley and I believe that there is and to find it, we must travel across the "Big Pond" to visit Her Majesty Queen Elizabeth II in her United Kingdom for an answer that began in 1760.

THE UNITED KINGDOM'S TRUST LAND ESTATES FOR QUEEN ELIZABETH II: THE CROWN ESTATES

For the United Kingdom, sovereignty is physically embodied in the Sovereign, Queen Elizabeth II of the United Kingdom. She has, by right, ownership of a vast array of lands throughout the United Kingdom. Yet, she cannot sell these lands for they are not her private property, but are tied to her title and position as queen. In other words, as part of the heritage and history of England and the United Kingdom, these lands are held "in trust" for the benefit for the people of the United Kingdom and it is her responsibility, managed though the Crown Estate Commissioners, to ensure that these lands are controlled and managed in a very responsible way for the people of the United Kingdom.

The following is from the Crown Estate website:
"The Crown Estate is an estate in land which includes:

- substantial blocks of commercial and residential property; and
- almost 300,000 acres of agricultural land [in the United Kingdom]."

"The Estate is the property of the Sovereign 'in right of the Crown' and, until the reign of George III, the Sovereign received the rent and profits from the Estate. However, since 1760, the surplus revenue, after deducting management expenses, has been surrendered by the Sovereign to the Exchequer every year as part of the arrangement for the provision of the Civil List (the queen's yearly operational costs of her household).

"The Crown Estate was established in its present form by the Crown Estate Act of 1961. Under this Act, the Estate is managed by a Board of Commissioners who have a duty to 'maintain and enhance the value of the estate and the return obtained from it, but with due regard to the requirements of good management.'

Additionally:

- "The Crown Estates seek to integrate environmental/stewardship issues into all our business activities through appropriate policies and procedures;
- Have in place a system to monitor applicable environmental legislation and regulation and ensure that changes are communicated to staff, managing agents, occupiers of Crown Estate properties, etc;
- Aim to identify and monitor the environmental impact of our business activities and seek ways to improve performance;
- Encourage awareness of best practice amongst staff, managing agents, consultants, contractors and occupiers of Crown Estate properties, providing the

> strategic direction and guidance necessary to ensure that our environmental/stewardship objectives are achieved."

Reading the above Crown Estate's function, one can easily substitute "the Navajo Nation" or "Indian Tribes" for "Crown Estate." Tribal governments' lands occupy a unique place among U.S. major land owners in that we seek to preserve our land, our natural resources, and our unique way of life for not only the present generation, but for those future generations of Indians who have a right to their land and heritage. Just as Her Majesty does not have a right to sell her trust land and the obligations tied to it, the Navajo Nation does not have a right to sell away these same responsibilities.

In comparison, the Crown Estates do not experience the same difficulties finding investors to invest in properties that they will never own. And as the Crown Estates own a major portion of Regent Street in London, where that name alone conveys quality and high priced shops, the Crown Estates does not have difficulty attracting quality businesses to a piece of land that cannot be bought. What have we missed and where did we gone wrong?

The Intercontinental and Four Seasons Hotels are located on trust lands (Crown Estate) in London and they continue to rent the land for their hotels without the least bit of concern that they will never will own this rented property. They do own their hotel buildings and fixed furnishings. Yet, the Crown Estate Commissioners understand that this property is valuable when used and managed to receive the best return on this real estate. The Crown Estates reinvests the rent collected back into the maintenance of these properties, thereby taking the responsibility to control, manage and rent this property in such a way that meets their objective to preserve this land as a resource --- a very valuable resource.

What the Crown Estates do not do is to also tax the hotel and its other tenants. This is the government and London's responsibility. From the taxes collected, the government provides additional resources for these businesses. Tribes need to understand that instead of taxes collected from the land, rent is collected instead. Rent provides the only source of income from the actual use of the property, and that additional taxable dollars come from the hotel guests, who will need a place to eat, to shop, to visit while they are in the immediate area. The government taxes these business activities. What tribes initially do is overtax the business since it is the only source of revenue in the area. This is not being business friendly; in fact, it punishes businesses for being successful. The power to tax is also the power not to tax. What the tribes and the Navajo Nation should be doing is providing a place to do optimal business in accordance with fair tribal regulations.

The Shirley/Dayish administration proposes a different way of viewing of "trust lands," not as an impediment to economic development, but like the Queen's Crown Estates, trust lands that ensure the responsibility and the duty to protect our lands exist and that the Navajo people will have land to protect.

Trust land status should not set us to be impoverished, but should set the guidelines on how we manage our lands and our resources in a responsible manner for the benefit of all people. The Navajo Nation's stance on not selling its land should be seen not as old fashioned, but seen as proactive and as thoughtful land management policies that

embody true Navajo Nation sovereignty for a future that will benefit the continued health of the Navajo people.

PART V. THE NEXT STEP

President Shirley and I have shared with you, though this testimony, various ideas on how we intend to support existing and future businesses. Yes, capital acquisition remains a challenge, but our administration seeks to think outside the box and not to let current Federal-Indian policies dictate how we should build our Navajo Nation. Our challenge and goal is to allow private investors to come with their investments to the Navajo Nation and not to actively or inactively impede free market economy opportunities.

We must also begin re-educating our Navajo people on their roles and responsibilities for building a nation. There must be personal responsibility, such as maintaining a good credit rating, paying for your HUD homes on time, and becoming more involved with local governance for the benefit of our individual communities. If the People's Republic of China can embrace the free market system, then certainly the Navajo Nation can do the same while protecting our united land resource.

Another part of the Navajo Nation's responsibility is to encourage whenever and wherever possible, to shop at home and to make the personal investment in the local Navajo economy. The Navajo Nation recognizes that choice availability and lower prices will dictate how and where our people shop, and with little available, its no wonder that we will travel four hours away to Gallup, Albuquerque, Flagstaff, and Phoenix to obtain what is not available locally. The Shirley/Dayish administration seeks to give a new meaning to free market competition.

We look forward to working with the Committee on S. 519, which we understand is a concept that is in the process of being finalized. The Navajo Nation looks forward to working with the Committee to finalize a bill that could possibly assist tribes take the initial steps toward financial independence and we submit our legislative concerns and recommendations for S. 519.

U.S. V. NAVAJO IMPLICATIONS

On a final note, we urge the Committee to begin writing legislation that is not broad or very generalized. The Navajo Nation learned from the U.S. Supreme Court's decision on U.S. v. Navajo that Congress must be very clear on the U.S. government's role and responsibility regarding Indian trust. What specifically is the trust responsibility in S. 519 and what happens if either the tribe or the federal government does not live up to its agreements? What are the penalties? We hope that the recommendations we give will clarify what we expect from future congressional bills. S. 519 represents a start, not only on how to bring much needed capital to Indian tribes, but to begin crafting and writing responsible legislation that have direct implications on your trust responsibility toward tribes.

CONCERNS AND RECOMMENDATIONS TO S. 519

SEC. 3. PURPOSES

(3) [The Corporation is] "*to provide a center for economic development policy and analysis with particular emphasis on diagnosing the systemic weaknesses with, and inhibitors to greater levels of investment in, Native American economies.*"

CONCERN
Native Americans have been studied extensively. There are many studies that address the lack of economic development in Indian County, and one more study or one more agency or entity that's funded to produce a study is a waste of time. The Corporation (i.e., bank) should concern itself with raising capital and becoming self-sufficient.

(4) [The Corporation is] "*to establish a Native-owned financial entity to provide financial services to Indian tribes...*"

CONCERN
What will be the future role of the already established Native American Bank (NAB) in terms of this proposed Corporation? Will the Corporation have oversight of NAB?

SEC. 4. DEFINITIONS

(13) Native American Financial Institution (NAFI)
(D) "[NAFI] *demonstrates that the person has the endorsement of the Native American community that the person intends to serve.*"

RECOMMENDATION

- That language should be added, in which NAFI "consults" tribal government body and should secure tribes' official endorsement. This clarifies who in the tribal government will be authorized and would avoid future, possible conflicts with NAFIs.

(14) Native American Lender
"*A Native American Lender means a Native American governing body, Native American housing authority, or other Native American financial institution that acts as a primary mortgage or economic development lender in a Native American community.*"

CONCERN
This is the only place in the bill where "Native American Lender" appears. There is no further mentioning of how the Corporation will work with a Native American Lender. The Navajo Nation understands that the Corporation would lend money to tribes. Clarification is needed in this bill.

TITLE I: NATIVE AMERICAN CAPITAL DEVELOPMENT CORPORATION
SEC. 101. ESTABLISHIMENT OF THE CORPORATION

Section 101. (C) Changes to Charter. "*The right to revise, amend, or modify the Corporation charter is specifically and exclusively reserved to Congress.*"

CONCERN
There is a lack of self-determination for the Corporation. This language is also not clear whether this congressional oversight authority remains once the Corporation becomes Native American controlled after the federal charter expires. Congress would potentially control the tribal and privately bought shares. Congress could, at any time, change the Corporation's operation, focus, and intent according to the current political climate. Language must be included that limits Congress's role, specifies any damages and liabilities for Congress and HUD if they fail to properly oversee the Corporation. We are concerned that any kind of fiduciary responsibility must remain separated from the political interference of tribes or the federal government.

(A). BOARD. *"The powers of the Board of the Corporation shall be vested in a Board of Directors, which Board shall determine the policies that govern the operations and management of the Corporation."* At no place does it state for the investors and tribal stockholders to make change, if necessary, to the Board.

RECOMMENDATION
- That language be inserted that gives the stockholders the authority to mandate change by voting or by other initiatives.

(b) POWERS OF THE CORPORATION

CONCERN
The Corporation may be able to dispose of the stock without any mention to protecting the stock of tribes with or without their consent. Reading the bill, the Corporation could dispose tribes' stock without adequately compensating them for it.

RECOMMENDATION
- Language must be included that clarifies the Board's financial duties to tribes, which would be tribal stockholders of Stock A.

The Corporation has the power to invest these funds raised from stock purchases or by other means. The Corporation will invest these funds in *"obligations of, or obligations guaranteed by the United States (or any agency of the United States); or in obligations, participations, or other instruments that are lawful investments for fiduciary, trust or public funds."*

CONCERN
That the Corporation can sell, at will, and for whatever price, tribal shares. There is no language that protects tribal shares.

RECOMMENDATION
- That language be placed to protect tribal shares, which set limits on how and when the Corporation can sell these tribal and Hawaiian shares, and to dictate the penalties if the Corporation violates this fiduciary trust.

(b)(4) [The Corporation] *may, if a settlement, adjustment, compromise, release, or waiver of a claim, demand, or right of, by, or against the Corporation, is not adverse to the interests of the United States---."*

CONCERN
We read that the Corporation has the authority to settle any claims or disagreements, as long as any settlement is not against the interest of the United States. This language is too broad and without any quantifiable rights listed to determine what is or is not in the best interest of the United States, let alone tribes.

RECOMMENDATION

- That language be included that explicitly states what "best interest" for the United States is.

The Corporation states that it:
(b)(5) "*may sue and be sued, complain and defend, in any Federal, State, tribal, or other court*;." Yet, in (d) Actions By and Against the Corporation:

(d) ACTIONS BY AND AGAINST THE CORPORATION

(d)(2) states that "*any civil action to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the appropriate district court of the United States shall have original jurisdiction over such action, without regard to amount or value; and*

(d)(3) *in any case in which all remedies have been exhausted in accordance with the applicable ordinances of an Indian tribe, in any civil or other action, case, or controversy in a tribal court, State court, or in any court other than a district court of the United States, to which the Corporation is a party, may at any time before the commencement of the civil action be removed by the Corporation, without the giving of any bond or security and by following any procedure for removal of causes in effect at the time of the removal---*

(A) *to the district court of the United States for the district and division in which the action is pending; or*

(B) *if there is no such district court, to the United States District Court for the District of Columbia*."

CONCERN
This language takes away the tribes' ability to hear disputes between it and the Corporation in a tribal court as stated in (5), that the Corporation could be sued in tribal court. But in (d)(2), the appropriate district court will have jurisdiction over any disagreements thereby eliminating what was stated in (5).

RECOMMENDATION

- That (5) is clarified whereby tribal courts and its authority are not eliminated, but is the first and preferred site for hearing claims against or for the Corporation while it is federally and tribally controlled.

SEC. 102. AUTHORIZED ASSISTANCE AND SERVICE FUNCTIONS
(4) [The Corporation may] *provide mortgage underwriting assistance* (but not originating loans) *under contract to Native American financial institutions*;"

CONCERN

The original intent of the Corporation is to provide capital to tribes, but under the Definitions of the bill, Native American financial institutions are described as those that:

"*has a primary mission of promoting community development; serves an investment are or targeted populations; provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate; maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted populations; and is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.*" (Section 103 of the Reigle Community Development and Regulatory Improvement Act of 1994 {12 U.S.C. 4703}).

By this very open definition, any other private entity that provides the type of services would be eligible to obtain a loan using bank capital that was originally meant for tribes themselves. So tribes, after investing into the Corporation, could possibly compete against non-tribally controlled organizations. This is not what we understand as the original intent of the bill, which is to provide much needed capital to Indian tribes.

RECOMMENDATION

- That the definition of "Native American Financial Institutions" should be tightened as not to exclude commercial banks, but neither should the definition include private entities (tribal or non-tribal) that could not provide financial assistance in the form of loans, but would otherwise be eligible for a loan from the Corporation per the description provided in Section 103 of the Reigle Community Development and Regulatory Improvement Act of 1994 {12 U.S.C. 4703}.

(5) [The Corporation may] *work with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other participants in the secondary market for home mortgage instruments in identifying and eliminating barriers to the purchase of Native American mortgage loans originated by Native American financial institutions and other lenders in Native American communities*;."

(9)(B) [The Corporation may] *under a contract authorizing another national or regional Native American financial services provider to assist the Corporation in carrying out the purpose of this Act.*"

RECOMMENDATION

- We strongly recommend that (9)(B) be taken out of the bill and that the Corporation be charged with executing all responsibilities for this act. Share holding tribes' much-needed funds should not be used to support subcontracts when the Corporation's main responsibility is to provide this service to tribes. The Navajo Nation does not want another layer of bureaucracy to come between the entity (the Corporation) and tribes for delivering services.

SEC. 104. AUDITS

(b) GAO AUDITS

In general, we support this language that gives GAO the authority to oversee internal and external audits, for this is the only way to have complete trust among all investors, tribal and private, in the bank. We are concerned that tribal financial records may be

obtained from tribes that bought stock. Language should be included that protects tribes' financial records from its investing activities with the Corporation.

SEC. 106. ADVISORY COUNCIL
(c) DUTIES. "*The Council shall* (1) *advise the Board (Corporation) on all policy matters of the Corporation.*"

CONCERN
What are the implications for the term, "advise"?

RECOMMENDATION

- That the term "advise" needs to be defined in more concrete language with the Advisory Council's role and its responsibility distinctly listed, as well as penalties if they do not live up to their appointment and responsibilities.

- That the term "advise" be clarified as to weight of their advice would be, and whether the Corporation would be bound to accept it.

SEC. 302. AUTHORITY OF THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
"*The Secretary shall* (1) *have general regulatory power over the Corporation.*"

CONCERN
What constitutes "general regulatory power?" When, if applicable, would the Secretary overrule the Corporation, and under what conditions?

RECOMMENDATION

- That language is inserted in this section that clearly defines the full condition of "general regulatory power."

SEC. 402. ADOPTION AND APPROVAL OF MERGER PLAN
(e) NO STOCKHOLDER APPROVAL OF MERGER PLAN REQUIRED. – "*The approval or consent of the stockholder of the Corporation shall not be required to accomplish the merger of the Corporation into the new corporation.*"

CONCERN
Any legislative language that holds or suspends the stockholders right to amend any of the bank's policies is detrimental and goes against free trade. While we appreciate the idea that the eventual transfer must be accomplished, the language is too broad and general and fears that this language may be used to derail or weaken stockholders' powers. We are not aware if this is standard practice in other banks or financial institutions, but any language that takes away stockholders' ability to choose cannot be good, nor would it build public confidence in this bank.

SEC. 405. EFFECT OF MERGER
(d) SAVINGS CLAUSE.
(1) PROCEEDINGS – "*The merger of the Corporation into the new corporation shall not abate any proceedings commenced by or against the Corporation before the designation merger date, except that the new corporation shall be substituted for the Corporation as a party to any such proceeding as of the designated merger date.*"

In effect, whatever legal proceedings the old federal Corporation has at the time of being turned over to tribes becomes the tribes' responsibility and it will be up to the tribes to sort through them. We see this situation similar to the on-going trust cases between tribes and the BIA. Also, there is no incentive for additional investing tribes or private investors to further invest in the Corporation when the federal government created a liability while under their jurisdiction and when the Federal Charter terminates. The present language lets the federal government wash its hands of all liability and tribes must assume whatever liability there is without further support from the federal government.

RECOMMENDATION

- That the federal government accepts and continues to assist the new tribal corporation in whatever legal matters exist at the time of transfer so that investing tribes and the new corporation does not bear the entire legal burden from the old federal operated and controlled Corporation. This not only lessens the existing investors' fears, but also shows "good faith" by the federal government on its existing projects. As the Navajo Nation stated before the SCIA on March 19, 2003 on Indian Energy, accountability for federal actions is necessary, due to U.S. v. Navajo. The Navajo Nation learned that trust responsibility might not be understood fully by Congress or the courts unless it is spelled out for Congress and the courts. When the federal government fails to fulfill its trust responsibility, legislative language must specify what is the tribe and the federal government's responsibility and the necessary corrective actions, if any, that are needed. We find that this is a similar situation that must be addressed specifically in the "Savings Clause." Senators Campbell and Inouye pointed out to BIA's legal counsel on March 19th that BIA having oversight of an Indian Energy plan without having any responsibility is not a good idea. We concur and find fault when the federal Corporation, which has oversight responsibility, suddenly transferred its legal obligation to the tribal corporation without assisting in any legal problems it originally created. The federal government must be responsible for any actions before transferring this corporation to tribes.

SEC. 502. NATIVE AMERICAN ECONOMIC INCUBATION CENTER FUND

(b) USE OF AMOUNTS FROM ECONOMIC FUND.

(1.) IN GENERAL. – "*The Corporation shall use amounts in the Economic Fund to ensure that Federal development assistance and other resources dedicated to Native American economic development are provided only to Native American communities with demonstrated commitments to ---*

(A) sound economic and political policies:

(B) good governance; and

(C) *practices that promote increased levels of economic growth and job creation."*

CONCERN

How the Corporation will be able to measure (A), (B), and (C).

RECOMMENDATION

- That the bill should include provisions to establish a level of measurement; otherwise this vague measure is left up to the discretion of the Corporation. In private banks, there are standards established that give the bank and its customers a level of understanding and comfort. This Corporation and tribally controlled corporation should operate no differently than private banks in order to obtain public confidence.

TESTIMONY TO THE SENATE COMMITTEE ON INDIAN AFFAIRS

APRIL 30, 2003

HEARING ON S 519

SUBMITTED BY

THE NATIVE AMERICAN BANCORPORATION

The Native American Bancorporation is pleased to have this opportunity to present testimony on S 519 and generally on issues involving capital formation in Indian Country. My name is Derrick Watchman, a member of the Navajo Nation and a member of the Board of directors of the Bancorporation.

In our testimony today, we will provide an introduction to the Native American Bancorporation (NAB), our views on S. 519, some general observations on capital formation in Indian Country and a set of recommendations on steps the Congress and the Federal agencies can take to assist capital formation on Indian reservations. In general, our bias is toward private sector (i.e. Indian originated and controlled) initiatives with appropriate governmental support but minimal bureaucratic involvement.

I. The Native American Bancorporation and its Subsidiaries

NAB is a bank holding company, certified by the Federal Reserve Board that is owned and controlled by twenty-one Tribal Nations and Alaska Native Corporations. The board of directors of NAB is composed of representatives from these investors. Our ten "Founding Tribes", each of which invested $1 million in NAB are:

Arctic Slope Regional Corporation
Blackfeet Indian Nation
Grand Traverse Band Economic Development Corporation
Mandan, Hidatsa and Arikara Nation
Mashantucket Pequot Tribe
Mille Lacs Reservation Business Committee
The Navajo Nation
Oneida Tribe of Indians of Wisconsin
Shoshone Business Council
Ute Mountain Ute Tribe

Senator Inoyue inspired the formation of NAB in the spring of 1997 during a meeting with tribal leaders who were discussing the same challenges to economic development in Indian Country that underpins this proposed legislation. We became a reality in the fall of 2001.

NAB's principal subsidiary is the Native American Bank N.A. (NABNA), a national bank chartered by the Office of the Comptroller of the Currency as a Community Development Focused Bank. NABNA offers a full range of community banking services to the Blackfeet Indian Community through its office in Browning Montana and we are pursuing opportunities to establish similar community banks in other reservation communities. Our executive offices are located in Denver, Colorado and serve as the base for our national market coverage. NAB N.A. offers the full range of banking services to all customers, but with a special focus on serving tribal governments, Alaska Native Corporations, Indian owned businesses and Indian non-profit organizations. The Bank has unique expertise in and sensitivity to the special circumstances involved in lending to tribes and on-reservation businesses – such as tribal sovereignty, the trust status of Indian land, and the use of credit enhancements such as the BIA loan guarantee program and mortgage programs under NAHASDA.

The Bank received its charter from the OCC on September 29, 2001 and opened for business shortly thereafter. We spent the subsequent year building our team and making ourselves known in Indian country. We are now fully operational, making loans, receiving deposits, and providing other services to our customers from all over the country. More than 80% of our new loans are to Indian Country interests. We also recently opened a trust department. Our long-term plans call for the opening of branches on reservations throughout the country and we are working to promote teaming relationships with other existing tribally owned financial institutions. The Bank is certified as a Community Development Focused Institution (CDFI) by the Treasury Department.

In addition to NABNA, NAB is the sponsoring organization of the Native American Community Development Corporation (NACDC) a 501©(3) non-profit corporation. When forming NAB, the tribal leaders of the founding tribes recognized that there were many financial needs in Indian country that could not be met by a for-profit national bank. Many loans that are needed -- for mortgages, for small business, for land acquisition and other purposes --are not bankable, either because the borrower does not meet the eligibility criteria for commercial loans or because the loan will not cash flow at standard interest rates and terms.

In addition, many of these potential borrowers need a substantial amount of technical assistance. Yet these small business loans and mortgage loans are needed in order to improve the economic conditions in Indian country and reduce the poverty that causes banks to reject so many loan requests. In other words, without access to capital through loans there can be no economic development, but without economic development, it is difficult for many prospective borrowers or loans to qualify.

To help break this vicious cycle, NAB created NACDC and gave it seed money to get started. NACDC's mission is three-fold – 1) to serve as a national source of loan funds for loans that will promote reservation development but which NABNA and other banks are not equipped to make, with an emphasis on low income mortgages, start-up

businesses, and land consolidation; 2) to break down barriers to credit faced by Indians, particularly those living on reservations and to become a center of expertise for Indian country on innovative approaches for addressing the credit needs on reservations; and 3) to provide financial literacy and other banking education programs to help increase access to banking services for reservation residents. To carry out its mission, NACDC will obtain the bulk of its funding from foundations, Federal grant programs, and large financial institutions' community reinvestment programs.

NACDC's first priority has been to focus on mortgage financing for reservation housing with the long-term goal of creating a source of low-interest funds available to local reservation housing programs for low-income mortgage-financed housing. While it is developing such programs it has already begun working with several tribes and their housing authorities on mortgage financed housing initiatives in which NACDC helps to break down barriers to mortgage financing, to access support from entities such as Fannie Mae, the Federal Home Loan Banks and mortgage finance institutions in order to package mortgage financed housing units on the reservation, and to assist the tribes develop much needed home buyer education programs. While NACDC has been in existence for less than a year, we are extremely excited about the opportunities that we see for a significant increase in mortgage financed housing on reservations through partnerships with NABNA and other private sector lenders.

NACDC's second priority is in the area of providing capital to deal with the issues of fractionated heirship interests and the re-acquisition of reservation land that has fallen into non-Indian ownership. In this area we have teamed with the Indian Land Tenure Foundation (ILTF), which is also testifying today and which will provide detailed information on the initiatives ILTF and NACDC have in mind for this area. Finally, NACDC plans to establish a national re-lending program for micro and startup loans to small businesses in reservation communities. Finally, NACDC is working to increase financial literacy in Indian Country, specifically through the expansion of the very successful Mini-Banks in the Schools Program developed on the Blackfeet Reservation.

II, Our Views on S. 519

NAB strongly supports the objectives of S. 519. There is a critical need to bring focused attention and expertise in order to promote mortgage financed housing on reservations and to tear down the barriers that have limited the amount of mortgage financed units to a trickle, notwithstanding the various Federal programs and commitments from large financial institutions to address this need. It is clear that the problems in this area will not be solved without a concentrated effort.

It is also important that there be resources available to provide tribes with more options for creating sustainable economic development in their communities. Tribal members need good jobs and the prospect of a brighter future in order to break the cycle of poverty endemic in so many reservations. We believe that the best way to facilitate this is through

Indian owned and controlled financial institutions that are responsive to the unique culture and needs in Indian country and the unique legal structure governing trust land.

Significant progress is being made in this area. In addition to NAB, there now exist at least twenty (20) certified Community Development Financial Institutions in reservation communities. Thirty-seven (37) Indian applicants (including NABNA) received grants under the CDFI Fund's NACTA grants program in 2002 and we expect even more activity in this area in 2003. We thank the Committee for its work in supporting this targeted effort to increase economic development activities at the local level.

Unfortunately, while a very encouraging start, the combined capacity of these institutions is a proverbial "drop in the bucket" compared to the realities in Indian Country. Confronted with the very real choices between funding badly needed social services to their members and allocating capital to economic development projects with a long term payback, tribal leaders are forced to make the proper decision of meeting today's needs first. With growing populations and budgets made even tighter by the returns now available on invested funds, investment capital is very hard to find in a reservation economy. We see this almost every day in our banking activities.

With respect to S.519, in the spirit of self-determination and private sector development, we believe that it is preferable for Congress, if it chooses to legislate in this area (and we hope it will), to focus the legislation on ways to strengthen the Indian financial institutions created by the tribes and individual Indians with as much decision-making as possible delegated to the local level. What is needed is access to a source of capital that is more patient and inexpensive that that which is available through private sector sources. In many ways, Congress, and this Committee in particular, have already succeeded in accomplishing many of the objectives of S. 519 through the extensive support and encouragement it provided for the development of financial institutions created by Indian tribes and individuals.

NAB recommends that Congress, the Federal agencies and the Indian community work together to improve the odds of success for those Indian-created institutions that are empowered under existing legislation. This help is critical given the huge unmet capital needs in Indian country. In particular, there is a need to 1) address the land issues of fractionated ownership, checker-boarded reservations and acquisition of ancestral homelands, 2) provide access to equity capital for business formation and expansion, and 3) create a better climate for business opportunity in Indian country, since when real business opportunity exists, capital soon follows - even to Indian reservations - as demonstrated by the Indian gaming industry.

In the view of NAB, it is these three goals that Congress should focus on as it works to address the capital formation needs in Indian country. In turn, we offer our hand in partnership to work with you on them. As a first step, we have set out below our suggestions on some specific actions Congress and the Federal agencies can take to help achieve them. Our primary goal is to increase economic activity and job creation on

those reservations and Alaska Native Villages that suffer unemployment rates far in excess of the national average.

III. Recommendations for Increasing Capital Formation in Indian Country

A. Actions that do not require new appropriations

Recognizing that obtaining new appropriations is always a struggle, we would like to begin with steps that can be taken that do not require new Federal dollars but instead make better use of existing dollars or that remove barriers to capital formation on reservations:

1. Provide that certain grant funds be administered by Indian financial institutions.

We ask that Congress review various Federal funding programs to determine if it would be more productive to give those funds to Indian financial institutions, which can leverage them, rather than to Federal agencies that cannot. One example, and Cris Stainbrook of the Indian Land Tenure Foundation will elaborate on it, is the funds Congress provides for the acquisition of fractionated interests. Last year, Congress provided the BIA with $7 million for the Indian Land Acquisition Fund, and the BIA proceeded to use those funds to purchase $7 million in fractionated interests. That is, one dollar in Federal funds purchased one dollar of land.

In contrast, if the funds were instead provided to an Indian Land Tenure Financial Institution of the kind that ILTF and NACDC are hoping to establish, that $7 million could be combined with low-interest loan funds from the Federal Home Loan Banks, regular loan funds from banks such as NABNA, and perhaps matching grant funds from foundations, to create subsidized, long-term, lower interest, land acquisition loans that cash-flow using the income from the land acquired. Through this approach, the $7 million could result in the acquisition of perhaps $70 million in fractionated heirship interests. We believe there are likely many other cases in which Federal funds could be leveraged to accomplish a great deal more if they were in the hands of Indian financial institutions rather than in the hands of Federal agencies.

2. Reduce BIA Red Tape

One of the biggest barriers to the effective flow of capital on reservations is the red tape that is imposed by the BIA in its capacity as trustee. We fully support that trust relationship and are not suggesting that it be diminished. However, we believe that the process can be streamlined so that transactions on reservations more closely resemble those in the private sector. For example, presently, it can take the BIA 6-9 months in some regions to process a title status report or to approve a mortgage. By the time those 6-9 months have passed, the time limit established by the bank for holding the interest rate has expired and the mortgage needs to be renegotiated. The net effect is to discourage prospective lenders because time is money and the extra time required to deal with this red tape or to have to reprocess a mortgage loan can eat up much of their profit.

This is not the proper time to expound on this issue, but NAB urges the Committee to hold a separate hearing on improving the property system on reservations, at which time NAB and NACDC will be pleased to provide some detailed recommendations on ways the red tape can be reduced.

3. Trust Funds

The Department of the Interior manages over $3 billion in Indian trust funds. An issue separate from the trust fund problems that have been discussed and fought over in this room and in the Federal courtroom is the fact that those $3 billion dollars contribute nothing to Indian economic development or capital formation. Meeting the Federal government's trust responsibility and allowing those funds to contribute to economic development are not mutually exclusive. Private financial institutions manage hundreds of billions of dollars in trust for both public and private sector investors. If those trust dollars were similarly managed by Indian financial institutions, those dollars would work for Indian country without in any way diminishing the trust relationship. Four years ago, Chairman Campbell and then-Senator Frank Murkowski introduced a bill, called S 739, which would have permitted tribes, at their option, to have private financial institutions manage their trust funds, under accepted trust standards, without losing the trust status of those funds. The bill provided a preference for Indian-owned financial institutions. Chairman Campbell, NAB urges you to dust off that old bill and re-introduce it. It is more relevant and necessary now than it was when first introduced. It will strengthen self-determination, improve capital formation in Indian country, and strengthen Indian-owned financial institutions.

4. Requiring Federal Capital Formation Programs to Recognize the Unique Situation in Indian Country

Congress has established several different programs to help promote capital formation in low-income communities, including the CDFI Fund and the New Markets Tax Credit Program. However, the criteria these programs use too often have the unintended effect of excluding Indian financial institutions. For example, the first round of the New Markets program was just completed and only one Native American institution received funding and tax credits under it – an Alaska Native entity – and we are thankful for the help. But the reason that only one Native institution benefited is that the criteria placed a heavy emphasis on demonstrated performance. But as indicated earlier in this testimony, most of the financial institutions in Indian country are new and lack the track records to meet these criteria. We urge Congress to direct programs such as New Markets to consider a set-aside for Indian-country that reflects the infancy of the Indian financial institutions.

5. Promoting Business Opportunities

One of the most important steps Congress can take to promote capital formation is to promote business opportunities in Indian country, such as helping to insure that a portion of those Federal contracts that can be performed on reservations are set aside for reservation-based firms. Capital is very mobile and it will flow to solid business opportunities wherever they are located. For example, thanks to the efforts of Senators Inouye and Stevens, $34 million was included in the FY 03 Defense Appropriations bill for a contract to a coalition of ten tribally owned 8(a) information technology firms. A $34 million contract is the kind of asset and business opportunity that attracts capital and, in fact, NAB is presently negotiating a $1million line of credit with that coalition. If Federal agencies were required to direct more such contracts to reservation-based firms, there would be a very rapid flow of capital to those locations, without the need for any new appropriations.

Unfortunately, Congressional pressure is needed to make this happen, even for Indian programs. For example, the Office of Historical Trust Records in the Interior Department is getting ready to award an $18 million contract for the scanning of trust records, many of them located on reservations. Yet that Office is unwilling to make that award in a manner that insures the award will go to reservation-based companies. As a result, the capital created by that contract will flow to Fairfax Virginia or New Delhi, India, rather than to Indian reservations. Congress needs to stop these shortsighted actions by those officials who supposedly are working for the Indian people.

B. Recommendations requiring new appropriations

There are also several steps needed that do require new appropriations. However, all of the steps recommended involve leveraging of the Federal dollars

1.Increase the Size of the BIA Loan Guarantee Program

The BIA loan guarantee program has become a valuable and successful program. NAB and many other banks use it so they can make loans that otherwise would not be bankable. These are good loans; they have to be because the bank is at risk for at least 10% of them. But for so many of the reasons discussed above, the bank cannot make them without a guarantee. The BIA loan guarantee program provides one of the best leveraging opportunities in the Federal budget. There is a need for only $8 in appropriations for every $100 in loans that can be guaranteed. The problem is that the limited funds presently appropriated to that program limit the amount of loans it can guarantee to $68 million. The program has approvable requests for 2-3 times that amount. We urge the Congress to double the ceiling this year and keep raising it in future years so long as there is a need. With 9-1 leverage, it is one of the most cost effective approaches for increasing capital formation in Indian country.

2. An Equity Fund

One of the most glaring deficiencies in Indian country is the lack of access to equity or venture capital for economic development. Financial institutions such as NABNA are senior lenders, not venture capitalists. SBA has a program called the Small Business Investment Company or SBIC program. Under it, SBA will provide four dollars in non-recourse debentures for each private sector dollar invested. An SBIC is permitted to make equity investments in small businesses. It also provides technical assistance to insure that the business it has invested in succeeds. There is a need for a national Indian SBIC, perhaps as part of the NACDC Small Business Intermediary. However, it is difficult to raise private sector funds for such an institution.

We therefore request that Congress create a matching program or challenge grant through a one-time $5 million appropriations. When Indian country raises an equal amount, those dollars would become available for an investment in an SBIC, where the $5 million in appropriated funds for this effort would produce a total of $50 million for equity investments in Indian country (the appropriated $5 million, the matched $5 million and the SBA match of four times that $10 million or $40 million). There is also a need to amend the Small Business Act so the definition of "small business" for the SBIC program parallels the definition in the 8(a) program because the latter has a definition of "small business" that has been tailored to reflect the unique circumstances of tribally owned businesses, while the SBIC program does not.

3. A Feasibility Fund

Another form of capital critically needed in Indian country is non-recourse loans for feasibility and development. NAB has first hand knowledge of the value of such money. Ten years ago, as part of a CRA agreement with the bank regulators, a large bank agreed to create a $15 million fund for non-recourse loans for feasibility and development activities in connection with the creation of minority-owned banks. If the activity produced an operating bank, the loan had to be repaid; if the bank never got off the ground, the loan was forgiven. NAB was a recipient of such a loan and it was critical to its ability to develop the present institution.

There is a need for a similar fund for feasibility studies of new businesses on reservations. Tribes are continually being approached and asked to invest in new business opportunities that can create jobs on reservations. Most tribes lack the ready funds to conduct proper feasibility studies or development activity. As a result, they either reject the opportunity, or in a few cases, make the investment and find that it was infeasible, but only after it has burned up the tribe's investment. If NACDC were provided a one-time grant of $2-$3 million dollars for such a feasibility fund, it believes it could leverage that with grants from private foundations to create a self-sustaining feasibility fund for reservation businesses.

Conclusion

Indian country now has or is planning to create many of the entities and programs needed to address the capital formation gaps on reservations and in Alaska Native villages. While they can facilitate the kind of local decision making that is most effective in steering capital to its highest and best use, what is needed is access to significant amounts of capital on appropriate terms. Also helpful would be a small amount of tailored funding for specialized institutions such as an SBIC and a feasibility fund, expansion of the BIA loan guarantee program, plus a number of non-appropriations actions by Congress to create business opportunity and remove barriers to capital formation. NAB was started through the support and assistance of Senator Inouye and other members of this Committee. It is now eager to assist the Committee in return, by using our banking expertise to work with you to nail down the specific actions needed to improve capital formation in Indian country and to advocate for those actions in Washington and throughout the country. We look forward to working with you on this important endeavor. Thank you for providing NAB with the opportunity to testify.

Testimony of Julie Kitka, President,
Alaska Federation of Natives
Senate Committee on Indian Affairs
Regarding S. 519
April 30, 2003

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify before the Committee today regarding S. 519. My name is Julie Kitka. I serve as President of the Alaska Federation of Natives, Inc., and I am pleased to appear here today in support of this important legislation.

The Alaska Federation of Natives commends Senator Campbell for his wisdom and foresight in developing and introducing S. 519. As noted in the findings of the bill, there is a special legal and political relationship between

the United States and Indian and Alaska Native Tribes, and that special legal and political relationship is grounded in treaties, the United States Constitution, federal statutes, court decisions and a course of dealing. We also note that this special legal and political relationship between the United States and Native American tribes includes Alaska Natives. Although the legal status of Alaska Native corporations is different than that of Tribes, it has long been recognized that a special legal and political relationship exists between the United States and Alaska Natives.

Also, as noted in the findings, Alaska Natives, like all other Native Americans, suffer high rates of unemployment, poverty, poor health, sub standard housing and social ills to a greater degree than any other group in

the United States. We have many successes in Alaska, of which we are quite proud. However, in many areas of the State, our people suffer as they do elsewhere around the country from serious unemployment and underemployment, and economic development efforts that have not proven successful.

We believe that the purposes behind S. 519 are sound and the bill would fulfill a need in Native American Communities. Despite owning and operating a number of successful corporations as Native American owned entities, promoting economic growth and reduction of poverty remains a huge challenge, which requires a paradigm shift -- movement to the next level of the historically successful federal self-determination policies.

Before I begin my comments specifically on the provisions of the bill, let me explain the sense of urgency for the Congress to assist the Alaska Native peoples. Alaska Native peoples face a dismal future if we cannot have the attention and assistance of the US Congress at this time. We see what has happened to other peoples in the world when the underpinning of their societies collapsed –

"According to World Development Indicators 1999 – an annual World Bank compilation of significant facts, figures, and analysis – developing countries, excluding the former Soviet Union grew at a rate of 5.3% from 1991-97, encouraging expectations that living standards would continue to rise in most regions of the world. However, the financial crisis, which began in Asia in 1997, has now tempered those expectations and could reverse the gains of many people who had previously migrated from poverty to the ranks of the middle class in the worst-affected crisis countries. In Eastern Europe and the countries of the former Soviet Union (FSU), millions of people have seen their living standards deteriorate sharply during their difficult move towards establishing modern market economies, **in 1989, about 14 million people in the transition economies of the FSU were living under a poverty line of four dollars a day. By the mid-1990's, that number was about 147 million, or about one-person-in-three**....."Cite 1

Given the economic disaster in over 100 Native villages, throughout Western Alaska due to weak salmon runs and the lowest fish prices in decades, the slow-down of the

State economy, the State fiscal crisis and the continued re-trenchment of the State of Alaska from rural, and primarily Native areas of the State, it is imperative that federal development assistance be shifted to high impact assistance. The experience on what works, what doesn't and why, as outlined in a recent World Bank Policy Research Report on international aid in developing countries may have relevance for this Committee's consideration.

High Impact Assistance

1) Aid works best in a good policy environment which leads to faster growth, poverty reduction, gains in social indicators in developing areas with sound economic management;
2) Improvements in economic institutions and policies in developing areas are the key to quantum leap in poverty reduction;
3) Effective aid complements private investment. It does not replace private initiative. It acts as a magnet and "crowds in" private investment by a ratio of almost $2 to every $1 of federal assistance. In highly distorted environments, federal aid "crowds out" private investment, which helps explain the small impact of aid in such cases;
4) The value of development projects is to strengthen institutions and policies so that services can effectively delivered. Aid brings a package of knowledge and finance. Aid finance is typically fungible. Aid is financing the entire public sector and the overall quality of policies and institutions is the key to securing a large return for this money;
5) An active community improves public services. Participatory approach to service delivery offers results in huge improvements. Best aid supports initiatives that

change the way the public sector does business. Top down, technocratic approaches have not worked;

6) Aid can nurture reform in even the most distorted environment, but it requires patience and a focus on ideas, not money. Successful assistance here aims to help reformers test their ideas. Cite 2

Development Assistance

Development Assistance is about supporting good institutions and policies. Bringing a package of finance and ideas – the right combination of the two to address different situations and problems. Money matters. The composition and efficiency of public expenditures affect both growth and poverty reduction. Cite 3

Further the World Bank Policy Research Report highlights five policy reforms which make development assistance more effective in reducing poverty.

1) Financial assistance must be targeted more effectively to low income areas with sound economic management. Catalyst for faster growth, more rapid gains in social indicators, and higher private investment;
2) Policy based aid should be provided to nurture policy reforms in credible reformers. Strong domestic leadership and political support. Go to areas with a strong track record or where there is a demonstrable basis for optimism;
3) Mix of aid activities should be tailored to areas and sector conditions. Evidence that aid is fungible = what you see is not what you get. Some areas money does not "stick" – simply expands government's budget. Allocation of expenditures alone does not guarantee success. Quality of public spending is as important as its quantity;
4) Projects need to focus on creating and transmitting knowledge and capacity. Even where money does not "stick", the local knowledge and institutional capacity created by the catalyst of aid projects can;
5) Government needs to find alternative approaches to helping highly distorted areas, since traditional methods have failed. Patience, flexibility and looking for windows of opportunity to nurture reform efforts Cite 4

Finally, the World Bank Policy Research Report on what they describe as "distorted" economies and what approaches are most successful.

Distorted Economies – Successful Approaches

1) Finding a champion – likely a reform-minded element in the community; support of them can have a big impact;
2) Having a long-term vision of systemic change. Successful reformers have a vision of how things can be different in 10 years – different both in outcomes and process;
3) Supporting knowledge creation – need to develop details of reform through innovation and evaluation. For reform to take root requires a demonstration that it actually works. Financing and evaluating innovation is the key role of development assistance; and
4) Engaging leadership – in the highly distorted environment, the government is failing to provide supportive policies and effective services. This is why government to government financial transfers provide poor results.

Aid is more effective when it focuses on long-term reform, beyond projects to systemic reform. More about ideas than money. Money is one input. Projects are useful inputs. Supporting people with new ideas and looking for new ideas is very useful. Working in partnership, rather than in competition is also important. Cite 5

In Alaska, thousands of Native people have had their lives touched, if not transformed by access to schools, clean water, sanitation, electric power, health clinics, roads – all financed by the federal government. On the flip-side, federal assistance has also been, at times, an unmitigated

failure. Our experience continually evolves as lessons of success and failure become clear. The Alaska Native peoples want to build on success and want to see federal development assistance that will ensure they have a solid economic base for the future. They do not want to risk seeing their standard of living decrease and all the hard work of the last thirty years crumble. The federal policy of self-determination remains the most highly effective federal policy affecting Alaska Natives and those policies are the ones we urge the Committee to use as building blocks to support the future of Alaska Native peoples.

Now, let me comment specifically, on Title V of the Bill, entitled, Other Native American Funds, which establishes two different financial funds, the Native American Economies Diagnostic Studies Fund and the Native American Incubation Center Fund". The first fund is the

"Native American Economies Diagnostic Studies Fund" designed to provide comprehensive economic analyses of Indian economies and, in turn, offer recommendations to remove or ameliorate inhibitors to greater investment and job creation. The second development fund is the "Native American Incubation Center Fund", designed to encourage the design and implementation of pro-growth economic policies to help stimulate Indian economies. AFN strongly supports the underlying rationale behind the establishment of funds designated to these purposes and believe they would assist economic development throughout Alaska if they were enacted into law. AFN would like to request inclusion of a new Alaska –specific provision that would authorize a ten year demonstration project for Alaska. We believe there is an urgent need in our communities for a Native Tribal Development Bank. Such a development

bank would help to coordinate funding dedicated to capital development and economic growth, and increase private sector development funding that is scarce and difficult to obtain in many parts of rural Alaska.

The reasons for an Alaska-specific provision has much to do with geography, the different economies, the multitude and complexity of the Native institutions, and the different cultural and ethnic groups within Alaska. It also has much to do with the desire of the Alaska Native peoples to have greater control over development assistance intended to improve the opportunities for their families and communities. Alaska's economy is natural resource-based and depends primarily upon the following employment sectors: oil production, tourism, fishing, timber, mining, government. Much of rural Alaska remains substantially dependent upon "subsistence", i.e., the taking of wild

plants, fish and wildlife for personal consumption and other non-commercial uses. The lack of infrastructure make it difficult in many areas to develop and bring to market the natural resources that abound in rural Alaska. Declining market prices for Alaska's wild salmon and other fisheries resources require new marketing approaches and development of niche markets. The same is true of the forest products industry, which peaked in 1990 and has been declining since then. Rural areas need substantial investment in education, communications, health and transportation infrastructure.

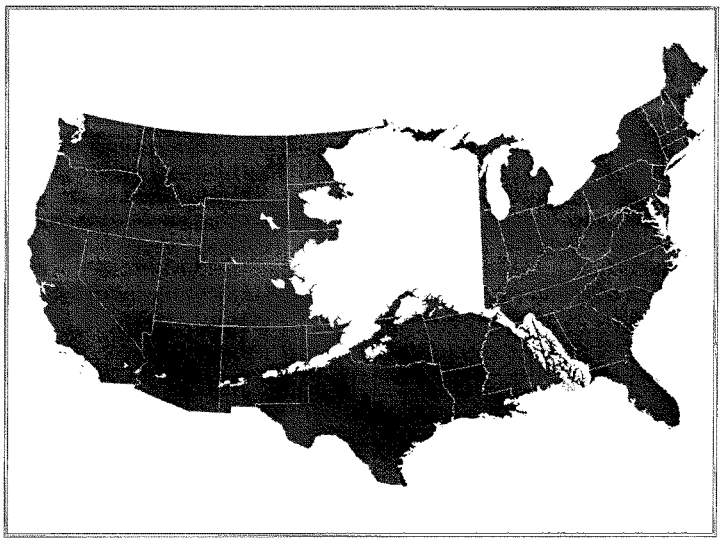
To get an idea of the complexity of the situation in Alaska, attached is a matrix on the various Native institutions; a matrix on the various economies (village Alaska; Arctic-Sub-Arctic Village Alaska; Maritime Village Alaska; Maritime Rural Alaska; and Urban Alaska); and a matrix

on the distinct, cultural and ethnic groups within the Alaska Native community. The issue of geography deserves a little more explanation.

Geography matters in development. For example the United States is about half the size of Russia, about 3/10th the size of Africa, about ½ the size of South America, or slightly larger than Brazil, slightly larger than China and about about 2 ½ times the size of Western Europe. Cite 6

The Congress takes geography and the breadth of this country into account every day in its development of policies and enactment of laws, and AFN urges you to consider the uniqueness of Alaska.

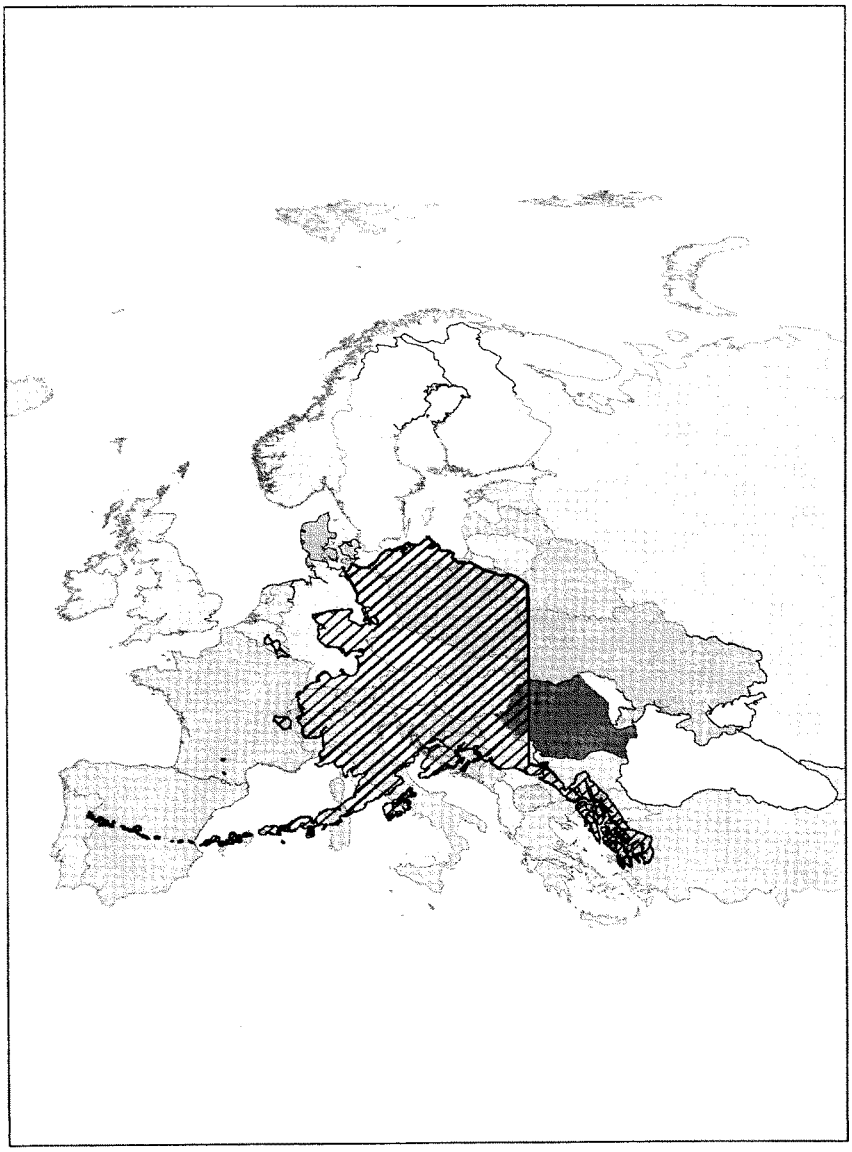
Alaska has about 640,000 residents who occupy 570,374 square miles or 365,039,104 acres of land. Alaska is the largest state, about 2.3 times the size of Texas and about 1/5th the size of the Lower 48 states. Cite 7



Alaska Native peoples make up about 16% of the total population in Alaska and our people are scattered across the entire breadth of the state. Our Native cultures are land-

based, and our occupation and use of our land predates Plymouth Rock and the pyramids.

For comparison purposes, the next map is created by overlaying the boundaries of the State of Alaska over Europe. As you study the overlay, you will see how many countries of Europe are totally engulfed, or touched within the boundaries – such as Portugal, Spain, Germany, France, Switzerland, Italy, Austria, Slovenia, Macedonia, Bulgaria, Romania, Ukraine, Hungary, Belarus, Slavakia, and the Czech Republic. If you just stop and think of this for a minute, you will understand how large Alaska is as a land mass, how we can have such diversity within the State, and why we may need consideration of options for our Alaska Native peoples.



When the Congress considers development assistance for Alaska Native peoples, I hope you keep in mind the immense breadth of our homeland, which necessitates consideration of sometimes different approaches than within the rest of the Native American community.

Mr. Chairman, there is a real need in many parts of remote and rural Alaska for a Native Tribal Development Bank dedicated to social, educational, economic and political development. We have seen through our own lives and any number of studies that social well-being is intertwined with political stability and economic prosperity. We simply cannot separate the health and well-being of Native people from strong economies and strong political institutions. We believe that a properly constructed institution dedicated to social, educational, economic, and political development

could and would leverage state, local and private funds, and be of great assistance to communities throughout Alaska in which Alaska Natives live, work and raise their families. With this in mind, we support S. 519, and believe the enactment of this legislation with provisions that applies specifically to Alaska would be highly beneficial to our people.

AFN Recommendation: AFN urges the Congress to authorize and fund an Alaska Native Tribal Development Assistance Committee that would function as the principle strategy-setting, policy and performance review entity for educational, social, economic and political development within the Alaska's Native communities. The Committee would focus on development objectives, promote coordination, and review effectiveness of federal

development assistance. The Committee would work with Alaska Native tribes and institutions to select appropriate social and economic development indicators from the list of 575 indicators established by the World Bank and set measurable goals for increasing economic growth and reduction of poverty. The broad categories of indicators would include size, growth and structure of population and demographics; determination of population growth (including fertility, infant mortality, and life expectancy), labor and employment; poverty and income distribution; education; and health. In addition, a set of indicators would be developed to measure the relationship between economic growth and poverty reduction.

Thank you for allowing AFN the opportunity to put the idea of an Alaska Native Tribal Development Assistance Committee, and Native Tribal Development Bank

demonstration project on the table at this hearing. We would be pleased to prepare a full demonstration project abstract for the 10 year demonstration project and legislative language for further review by the Members of the Committee.

At this point, we don't know what amendments may be considered for this bill. We would be pleased to work with you and the Members of the Committee on amendments, particularly as they apply to Alaska and Alaska Natives.

Once again, we commend you for developing such important legislation, and we stand ready to work with you on it throughout the legislative process.

I would be pleased to answer any questions that you or Members of the Committee may have.

Cite 1, 2, 3, 4, and 5:
World Bank Policy Research Report: Assessing Aid: What Works, What Doesn't and Why, Oxford University Press, 1998

Cite 6: CIA Website: World Fact book: United States

Cite 7: State of Alaska website.

Attachments:

1) Matrix of Alaska Native Organizations and State and Local Governments
2) Matrix on types of economies in Alaska (Village Alaska; Arctic/Sub-Arctic Village Alaska; Maritime Village Alaska; Maritime Rural Alaska; and Urban Alaska)
3) Matrix on Native Peoples and Languages of Alaska Federation of Natives

Attachment (1)

Alaska Native Organizations and State and Local Governments

229	Federally recognized tribal governments
168	ANCSA village corporations
4	ANCSA urban corporations (Juneau, Kenai, Kodiak and Sitka)
13	ANCSA regional corporations
12	ANCSA regional nonprofit corporations
85	Indian Housing Authorities
22	Alaska Native Regional Health Organizations
8	IHS Independent tribal 638 Compactors/Contractors
16	Organized State Boroughs (units of local government similar to counties found in most states), including 3 Unified Home Rule Municipalities (an organized borough which includes all the cities within the borough as a single unit of local government)
1	Unorganized borough encompassing about 2/3 of the State, made up of large areas of sparsely populated land, subdivided into **23 Regional Educational Attendance Areas (REAA's)** charged with administering local schools
21	First class cities
114	Second class cities

Attachment (2)

Types of Economies in Alaska

Between statehood and 1990, Alaska was dominated by petroleum-driven growth punctuated by a number of boom and bust cycles. Since 1990, economic growth has been slower because petroleum production is in decline. Alaska's economy is natural resource-based and depends primarily upon the following employment sectors: oil production, tourism, fishing, timber, mining and government. Other important industries include the service sector. There is also a large federal government presence in Alaska (defense assets and ownership of over 64% of the state's acreage) that plays an important part in Alaska's economic scene.

Economic Trends vary across the State:

1. Village Alaska. Village Alaska consists of two main geographic/climate divisions (arctic/sub-arctic and maritime), and encompasses nearly 87% of Alaska's land mass. Village Alaska remains heavily dependent upon "subsistence", i.e., the non-commercial taking of wild plants, fish and wildlife for food and other domestic uses. In most of village Alaska, the local economies depend largely on state and local government and Native corporation jobs and on government transfers. While these areas contain some of the State's most valuable resources and rich fishing grounds, there are natural barriers to development and the failure of salmon returns in the Kuskokwim and other Southwestern rivers in the late 1990's created an economic disaster that lead to state and federal assistance.

Arctic/Sub-Arctic Village Alaska. This area encompasses about 80% of Alaska, including the northern and western coastal regions and their adjacent inland areas, and most of interior Alaska. Alaska Natives make up over two-thirds of the population in this area. It spans three climate zones (arctic, continental and transitional) and is home to just over half of all Alaska Natives resident in the state. They include mostly Inupiat Eskimos in the North/Northwest, Yupik Eskimos in the southwest portion of the state and Athabascan Indians in the Interior. On the arctic slope, oil development employs many people at high wages, but virtually all the workers commute from other areas. The North Slope Borough, however, has been able to employ many local residents using property taxes on oil development.

Maritime Village Alaska. This area encompasses the maritime climate zone and stretches along the coastlines of southeast and southcentral Alaska (including Kodiak Island), as well as the length of the Aleutian Islands chain. Alaska Natives make up about 51% of the area's total population. The southeastern panhandle is the traditional territory of the Tlingit, Haida and Tsimshian Indian tribes. Alaska Natives constitute 79% of the population in 10 coastal villages. The North Gulf Coast is the most diverse and includes Eskimos, Eyaks, Athabascans, Koniags and Aleuts. Alaska Natives constitute about 30% of the area's overall population. Finally, the Aleutians area or maritime village Alaska encompasses the western end of the Alaska Peninsula and the

Aleutian and Pribilof Islands. Alaska Natives, primarily Aleut, comprise just over half the area's population. The oldest industries in Southeast Alaska are commercial fishing and logging; government and tourism have also developed there since statehood. Most of the small Native coastal villages are dependent upon the fishing industry, which is in serious decline. Economic disasters have been declared for the past three years for most western Alaska villages. The community development quota (CDQ) program may result in small increases in fishing employment for Alaska's Bering Sea coastal villages, but only if market prices make harvesting the resource economical. Competition from farmed seafood continues to reduce the value of Alaska stocks.

2. Maritime Rural Alaska. Maritime "rural" Alaska includes those areas not otherwise included in "village" Alaska that retain general rural characteristics but where Native populations and traditional cultures no longer predominate. These areas include mainly medium-sized municipalities where Alaska Natives generally constitute less than 15% of the population, i.e., Southeast Alaska (Wrangell-Petersburg Census Area, the Sitka Borough and the Haines Borough), the North Gulf Coast (Valdez-Cordova, Kenai-Cook Inlet and Kodiak City), and the Aleutians (Aleutians West Census Area). The service industry, tourism, forest products and fishing are the primary industries in these areas. The timber industry has been declining since the late 1980's, with the closing of regional pulp mills and saw mills that depend on timber from the Tongass National Forest and the decline in timber harvests from Native corporation lands. Tourism is currently the fastest growing industry in Southeast, with increasing numbers of cruise ship passengers and independent travelers and steady growth in eco-tourism firms.

3. Urban Alaska. Urban Alaska is made up of five distinct areas: the Municipality of Anchorage, the Fairbanks North Star Borough, the Juneau Borough, the Ketchikan Gateway Borough and the Matanuska-Susitna Borough. About 70% of the all Alaskans live in urban Alaska, whereas less than 32% of the Alaska Native population lives there. Urban Alaska has experienced the highest rates of Native in-migration of all census areas in the state. Because the majority of Alaskans live in these areas, most of the jobs are also located here. For the most part, the jobs are concentrated in three industry groups: service, trade and government.

Attachment (3)

Native Peoples and Languages of Alaska

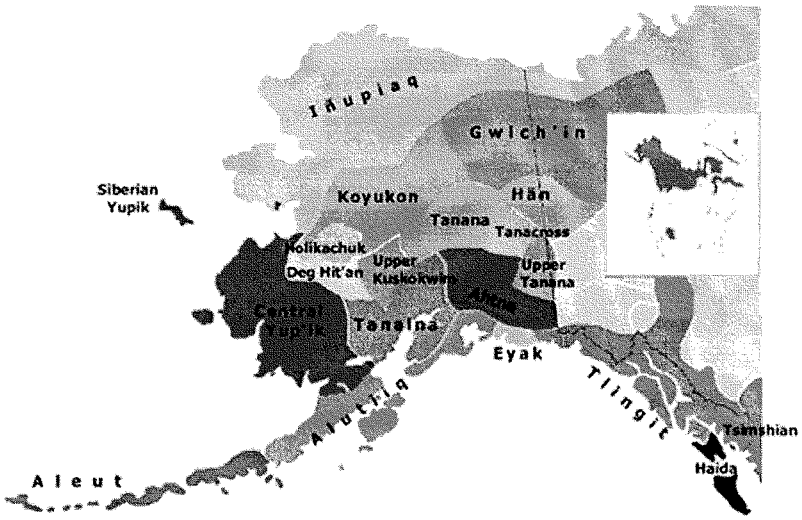
The aboriginal affiliation of Alaska Natives is derived from ancestral linguistic groups. The two major Alaska Native language families are the Eska-Aleutian and Na-Dene. Eska-Aleutian languages are further divided into Aleut and Eskimo—the two major languages in Eskimo are Yupik and Inupiaq. The Na-Dene family language includes the Athapaskan languages, Eyak and Tlingit. Other language families in Alaska are Tsimshian and Haida.

Alaska Native Language Groups

Language Family	Language Names
Eskimo-Aleut	
Aleut	Aleut
Eskimo	Alutiiq (Sugpiak) Central Yupik Siberian Yupik Inupiaq
Tsimshian	Tsimshian
Haida	Haida
Athabaskan-Eyak-Tlingit	
Tlingit	Tlingit
Eyak	Eyak
Athabaskan	Ahtna Tanaina Ingalik Holikachuk Koyukon Upper Kuskokwim Tanana Tanacross Upper Tanana Han Kutchin

Geographic Divisions

The Inupiat live in North Alaska, along the Beaufort and Chuckchi Sea coasts (and inland), along the Kotzebue Sound, and down to Unalakleet in the Norton Sound. The Siberian Yupik (Eskimos) live on St. Lawrence Island, while the Central Yupik can be found along the coast (and inland) of Norton Sound from Unalakleet to Egegik in Bristol Bay. The Alutiiq (Eskimos) are found primarily on the Alaska Peninsula, Kodiak Island, and along the coast into Prince William Sound up to Eyak. The Aleuts live primarily on the Aleutian Islands. Athabaskans (Tanaina, Ahtna, Ingalik, Upper Kuskokwim, Holikachuk, Koyukon, Tanacross, Upper Tanana, Han, and Gwich'in) are found in Interior Alaska. The Eyak, Tlingit, Haida and Tsimshian live primarily in southeast Alaska.



TESTIMONY OF CRIS E. STAINBROOK, PRESIDENT OF THE INDIAN LAND TENURE FOUNDATION (ILTF)

Before

THE SENATE COMMITTEE OF INDIAN AFFAIRS

April 30, 2003

Regarding S. 519, the Native American Capital Formation and Economic Development Act of 2003

Chairman Campbell, Vice Chairman Inouye, and distinguished members of the Senate Committee on Indian Affairs:

My name is Cris Stainbrook. I am Lakota and I serve as the President of the Indian Land Tenure Foundation (ILTF). The Indian Land Tenure Foundation is a relatively young non-profit organization that was created by a community of Indian people concerned with Indian ownership and management of land. Our mission, as directed by the community, is to strategically work toward a goal of having all land within the boundaries of every reservation and other areas of high significance where tribes retain aboriginal interest in Indian ownership and management.

On behalf of the ILTF Board of Directors and community, I thank you for this opportunity to present some perspectives and thoughts on S. 519 and also provide you with some information about our organization and work.

Four years ago a community planning process began with Indian people that had been working on Indian land issues for many years. The impetus for this planning process was the Community Ventures Program of the Northwest Area Foundation. The Community Ventures Program was designed to allow communities to develop 10-year strategic plans for reducing poverty and provide each community with substantial funding to assist in implementing the plan. In the case of the Indian Land Tenure Community, the Northwest Area Foundation drew the direct connection between the ownership and effective management of land and poverty on many of the country's Indian reservations.

The community planning process took place throughout the eight-state region of the Northwest Area Foundation but involved Indian people from throughout the nation as well. In total, several hundred Indian people participated in the planning process by providing input, writing sections of the plan, and providing comments on the initial drafts. Ultimately, the three-year process culminated in a strategic plan that the community felt would solidify the land holdings of Indian tribes and people, allow a greater self-determination, and would allow their most basic asset, land, to once again become a source of sustenance.

The community plan describes a course of action for the community to follow. The initial step was to create the Indian Land Tenure Foundation (ILTF), an institution that functions as a community foundation but with a very specific focus on resolving Indian land issues and creating land-based businesses. It is the role of ILTF to recruit resources and distribute those resources in a manner that will effectively accomplish the mission. In certain instances, the Foundation will operate programs when there is a lack

of existing land programs in Indian Country.

In addition to the mission statement mentioned earlier, the community identified four strategies for the Foundation and the community to work on. Those strategies include:

- Educate every Indian landowner about land management, ownership and transference issues so that knowledge becomes power when decisions about land assets are made.
- Increase economic assets of Indian landowners by gaining control of Indian lands and creating financial models that convert land into leverage for Indian owners.
- Use Indian land to help Indian people discover and maintain their culture.
- Reform legal mechanisms related to recapturing the physical, cultural and economic assets for Indian people and strengthening sovereignty of Indian land.

The completed strategic plan allowed the Indian Land Tenure community to enter a 10-year partnership agreement with the Northwest Area Foundation. The community agreed to meet a series of benchmarks that included measures regarding the return of alienated reservation lands to Indian ownership and the reduction of the number of undivided interests in the allotments. In return, Northwest Area Foundation provided a grant of $20 million to the Indian Land Tenure Foundation for operating costs, grants to local tribal efforts, and research and development of new methods to resolve this complex of land issues in Indian Country.

Not surprisingly, many in the community pointed toward, and much of the work of ILTF is directed toward, resolving Indian land issues that arose from two specific federal policies—allotment of the reservations and termination of tribal status. In both cases, substantial land holdings that had been guaranteed by treaties and executive orders for the exclusive use and occupation by Indian people were lost to non-Indian ownership. Through the provisions of the General Allotment Act of 1887 and subsequent Acts, more than 90 million acres of Indian land passed out of Indian ownership. The termination of tribal status led to the loss several million more acres of Indian land.

The loss of this land has created great difficulties for the tribes over the past 115 years. The checkerboard pattern of land ownership on reservations continues to foment jurisdictional battles between the tribes and the states and counties. And, the lost revenue that could be generated from the lost land base is substantial. In the Great Plains Region the tribes lost approximately 5,112,000 acres of land between 1887 and the passage of the Indian Reorganization Act in 1934. Simply leasing the lost land for grazing and receiving the Department of Agriculture's cash rent estimates for grazing land, the tribes would have received an additional $51 million in 2002 and nearly $3.5 billion since 1934. If even one-quarter of the land were leased at the higher cropland rates, the lost revenue in 2002 would be nearly $100 million.

As devastating as the loss of land has been, the more insidious outcome of the General Allotment Act has been the creation of the undivided interest or fractionated ownership of the Indian allotments. This pattern of ownership has effectively rendered millions of acres of Indian land unused, unmanageable, and in constant jeopardy of being taken out of Indian ownership. This, of course, says nothing of the large administrative costs borne by the federal government and the tribes in maintaining ownership records and distributing income from the allotments to the correct owners.

The Committee members are well aware of the fractionated ownership issues and have heard testimony on several occasions over the past several years about the magnitude of the problem. The total number of interests in the 183,000 existing allotments or tribal tracts now totals more than 3 million. A number of allotments have

ownership patterns which are now dividing at exponential rates every few years.

Anecdotally it is estimated that as many as 10 percent of the allotments are either completely unused or illegally used without lease payments to the owners because the properties ownership is so fractionated that tracking is virtually impossible. Beyond this are additional allotments that could be used for relatively advanced economic development but the difficulties in reaching agreement among so many owners remains an impediment. These are particularly distressing conditions when every opportunity for appropriate development in Indian Country is so important.

The cost to the federal government is staggering. Over the past several months, ILTF has tried to estimate the federal administrative costs of managing each ownership record. The best estimate that we could arrive at is $71 per year per ownership interest. Our discussions with Bureau of Indian Affairs (BIA) field staff suggest that this is an extremely conservative estimate. The costs may well exceed $100 per interest. The figures would put the total costs of administration between $213 million and $300 million per year.

As the Committee is aware, the BIA has operated a pilot project for land consolidation since 1998. While the project has had some qualified success, it is clearly not at a scale that can keep pace with the rate of increase in fractionation of the land ownership. The $21 million projected for the pilot projects in the next fiscal year is but a drop in the bucket as to what is needed to resolve the problem. To that point, an ILTF consultant recently calculated that it would require $1.25 billion to buy out all the existing undivided interests throughout Indian Country. This figure should in fact be considered very conservative.

It is in this context that ILTF would agree with the findings outlined in S. 519. The land issues in Indian Country must indeed be resolved if economic development is to occur on a significant scale. And further, that additional capital must be brought to bear to achieve a scope and scale of enough significance to be effective. However, Indian self-determination is a fundamental core value of ILTF and that self-determination is not limited to the political sector but also includes economic aspects. Therefore, while we very much appreciate the intent of S. 519, we do not see the need for the federal government to create the vehicles for investment in Indian Country. The creation of such entities is better left to the Indian communities that can adapt the disciplines of the private capital market to their own cultural settings. This is not to say that there is not a role for the federal government in fostering the economic development and capital investment in Indian Country through the application of monetary resources. Indeed, those resources certainly are important to address some of the failures of the capital market system in Indian Country as they have been in addressing similar failures in other communities.

Indicative of our concurrence with the findings and land-related goals of S. 519 is ILTF's work over the past year to develop a private capital investment mechanism that could be applied to the consolidating of undivided interests and limited recovery of alienated land within reservation boundaries. Through our developing relationship with the Native American Bank Community Development Corporation, the investment mechanism will also include opportunities for private and public capital resources to be brought to bear in the development activities on Indian land. Affordable housing development will be of primary concern initially.

The Indian Land Capital Fund is designed to be an equity investment pool and as such will provide Indian Country with a relatively new model of financial investment in Indian land. To date, most financial investment related to Indian land has been through

debt financing. The benefit of the equity investment is that it would help to leverage debt and would allow the Fund to develop more rapidly and larger.

The design of the Capital Fund will incorporate aspects of the BIA's Consolidation Pilot Projects but will be assisted through the application of ILTF and NACDC's non-profit activities including but not limited to estate planning, financial counseling, and technical assistance. Other significant aspects of the Indian Land Capital Fund include:

- Initially capitalized through a combination of philanthropic, tribal, government and private sources.
- Allows the tribes to own title to their land.
- Will work with all holders of undivided interests not just those with less than 2 percent interests to prevent further fractionation from occurring.
- Provides for a network of local sites that receive common technical assistance and training.
- Makes provisions for recognizing the individual ownership rights of Indian people and provides technical assistance and guidance in consolidating undivided interests while preventing future fractionation of ownership.
- Allows Indian people and tribes to build ownership interests in the investment pool.
- Adds value to the land through development.
- Becomes a long-term, self-sustaining, for-profit concern.

The financial vehicle we are proposing and constructing will not be without cost to the federal government. Indeed the undivided interests of Indian Country are of the federal government's making and it will need to provide resources to resolve that problem. However, the Capital Fund that is being created will be able to leverage between 5 and 10 dollars of philanthropic, tribal, or private capital to every federal dollar. Federal contributions to the Capital Fund could come in several forms including the provision of seed capital, tax credits for investors, or a program similar to the Energy Savings Performance Contracts found in the recent energy bill. In the case of the latter, it would be the savings that accrue to the BIA administrative costs that could be shared with the Indian Lands Capital Fund. When successfully implemented, the mechanism would provide a scale of activity in reducing fractionated ownership throughout Indian Country that the BIA is unable to achieve with the current budget allocations for the Consolidation Pilot Projects.

We have had some very preliminary conversations with the BIA and several tribes regarding the Indian Land Capital Fund. It is our intention to continue those discussions with the intent of obtaining at least some portion of the funds dedicated to the Pilot Projects for next fiscal year for the partial capitalization of the Capital Fund. If successful in obtaining these funds, the Indian Land Capital Fund will become operational during the Fall of 2003 at a minimum of four tribal sites.

Ultimately, we believe this model investment program will return decision making and control over their land asset to the tribes and Indian people. Currently the control and management of the asset is subjected to changes in federal policy, law and regulations. These changes seemingly are driven more by exasperation and expedience to resolve the overwhelming size and growth of the fractionation problem rather than resolving the problem with the welfare and concerns of Indian people in mind.

Thank you for the opportunity to appear before you today and have this discussion. The bill that is the subject of today's hearing has appropriately targeted two significant issues in the economic development of Indian Country—lack of investment capital and broadly applied analysis of the impediments. The Indian Land Tenure Foundation stands ready to assist the Committee and Congress in pursuing the goals of S. 519 through the Indian Land Capital Fund and our many other activities.

Before the
United States Senate
Committee on Indian Affairs

Hearing on S.519

The Native American Capital Formation and Economic Development Act of 2003

Statement of
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Lexecon Inc.

and

Research Fellow
The Harvard Project on American Indian Economic Development

April 30, 2003

My name is Eric Henson and I would like to thank you for the opportunity to appear today. I am employed as a Senior Consultant at Lexecon Inc., and I serve as a Research Fellow at The Harvard Project on American Indian Economic Development, both located in Cambridge, Massachusetts.[1] I am a member of the Chickasaw Nation, and hold graduate degrees in economics and public policy.

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[1] Lexecon Inc. is an economics consulting firm with offices in Chicago, IL, and Cambridge, MA. The Harvard Project on American Indian Economic Development is housed at the Malcolm Wiener Center for Social Policy at the John F. Kennedy School of Government, and is affiliated with the Harvard University Native American Program, a University-wide interfaculty initiative. I appear today not as a representative of Lexecon Inc., Harvard University, or the Kennedy School of Government. Further, I have no financial, organizational, or political interest in the proposed legislation.

THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT

Since its inception in 1986, the Harvard Project on American Indian Economic Development has focused on how tribes build healthy, prosperous Indian nations.[2] The Harvard Project has always worked closely with tribes and tribal leaders in an effort to gain a better understanding of this complex issue. The Project's co-directors, Professor Joseph P. Kalt, Ford Foundation Professor of International Political Economy at Harvard University, and Professor Stephen Cornell and Dr. Manley Begay, now directing the Udall Center for Studies in Public Policy and the Native Nations Institute at the University of Arizona, respectively, recognized early on that much of "Indian" economic development was actually derived from federal programs and policies, and reflected a view that we would later come to call the "Planner's Approach" to economic and community development.[3] This approach treated development as fundamentally a problem of resources and expertise, rather than incentives and institutions. Its prevailing tenet – reflected in a litany of federal programs – was that Indian reservations were underdeveloped because they lacked access to a number of the components for development, paramount among them financial capital and technical and managerial expertise.

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[2] Our service to Indian Country, much of it administered in conjunction with the Udall Center for Studies in Public Policy at the University of Arizona, includes comparative and case research, *pro bono* advisory services, executive education for tribal leadership, and a tribal governance awards program referred to hereinafter as "Honoring Nations."

[3] With a majority of development resources tied to grant-based projects *de jour*, it is not surprising that effective grant writing has been at a premium and tribal politics have oftentimes revolved around which leaders could most believably promise delivery of "the next big grant." Development in such a scenario allows any random project being funded by the Federal Government to leap ahead of well-planned projects that are not strategically positioned for grant dollars, undermines long-term planning efforts, and shifts energy and attention away from implementing projects once landed. Instead of project implementation and oversight, many of the creative and managerial talents of the Indian nations are wasted in the perpetual scramble to secure the next big grant, to the detriment of projects already funded.

The widespread and deep failure of the Planner's Approach is well documented, but a number of success stories, some of which have been highlighted in our Honoring Nations awards program, illustrate the innovation and skill Indian nations exhibit in overcoming and moving away from this model. I will briefly mention two well-known examples. First, the Mississippi Band of Choctaw Indians, which began its drive to development lacking abundant natural resources, an ideal location, or a highly experienced workforce. This tribe did, however, have one key raw material – a labor force that was willing to work hard when presented the opportunity. For this Indian nation, this key raw material, when coupled with decades of slow and steady growth, the reinvestment of tribal proceeds, and a consistent vision for the future, has produced a vibrant and diversified economy. From initial investments in the manufacturing sector to a wide range of ancillary services, the Mississippi Choctaw built an economy admirably poised to fend for itself, even in the face of the Federal Government's sometimes-fickle adherence to its trust responsibility.

The second example is that of the Mashantucket Pequot Tribal Nation. Most have heard of the Mashantucket Pequots, as they now receive more attention and press than many would have likely imagined just a few short years ago. I mention them here to provide an example of another highly successful Indian nation that found one key raw material – an excellent location for a gaming operation – and then paired that key material with a development plan that benefited from this underlying advantageous asset. The rapidity of the success of the Mashantucket Pequots is easily contrasted with Mississippi Choctaw's long, slow development path, but these two nations share a common thread in their rise to prosperity, a thread that bears on the discussion of legislation such as S.519. The similarity

between the development paths of the Mississippi Choctaw and the Mashantucket Pequots was a lack of sufficient start-up capital. It is perhaps difficult to believe today, but one of the common experiences these two Indian nations initially encountered was a near total exclusion from the financial markets and the funding necessary to initiate significant tribal development efforts. The Mississippi Band of Choctaw Indians largely overcame these obstacles by starting smaller than it might otherwise have, and by continually reinvesting in its tribal businesses. The Mashantucket Pequot Tribal Nation largely overcame these obstacles by finding overseas investors willing to take a chance on its developmental vision.

To be certain, the lack of capital flows into Indian Country has long been a pervasive problem, even for some of the most successful Indian nations such as the Mississippi Band of Choctaw Indians and the Mashantucket Pequot Tribal Nation. The proposed legislation presents a welcome opportunity to address this challenge head-on. Yet, as over a decade-and-a-half of research and fieldwork conducted by the Harvard Project demonstrates, the problem of inadequate access to capital cannot be treated in isolation. Removing barriers to obtaining capital or increasing the level of capital available to tribes, for example, is unlikely to produce robust development among those Indian economies that lenders and investors in the marketplace deem unsafe places to invest. The fundamental challenge is to create a political and institutional environment that attracts capital.

The Federal Government can play an important role in sparking economic development in Indian Country not only by improving tribes' access to capital, but also by assisting in tribal efforts to create environments that are conducive to economic development. As noted above, the pairing of these efforts is essential – and I am encouraged that S.519, in providing for the diagnosis of the political, legal, regulatory, and investment environments of particular tribes, recognizes the

importance of well-functioning institutions in the process of creating the setting for capital formation. To this end, the Harvard Project's research on the institutional bases of economic development may be instructive. I will not belabor them here, but a brief summary is warranted.

- **Capable Institutions:** Institutions of dispute resolution, business regulation, administrative law, property, taxation, and the like lay down the formal rules of the game that determine rewards and penalties, opportunities and risks. However, governmental infrastructure does not represent the only "institutions" in a society. Healthy and stable social and cultural institutions complement these more formal bodies, and together the appropriate mix of sound institutions can interact to promote economic development.

- **Cultural Match:** The structure of a society's formal institutions of governance and economic development must be consonant with underlying norms of political power and authority in order for those institutions to function effectively in service to that society. A nation that has internal agreement as to how it will be governed will create governing organizations that are legitimate in the eyes of the governed, absent some external constraint that prohibits the formation of such bodies.

- **Sovereignty and Self-Determination:** The policies of sovereignty and self-determination, embarked upon in the mid-1970s,[4] underpin

[4] The implementation of these policies has ebbed and flowed since their initiation, with greater consistency being beneficial for the Indian nations as it affords them a clearer understanding of the "rules of the game" in their planning and operational efforts.

> the only strategy we have been able to identify that has shown any prospect of breaking the patterns of poverty and dependence that became so familiar to Indian people, particularly on the reservations. A word of caution here, though – these policies are not enough in isolation. Economic development success stories in Indian Country are uniformly marked by (1) aggressive assertions of sovereignty that resulted in (2) self-governed institutions that are characterized by (3) cultural match. Continued *de facto* dependence on other governments' policies and approaches kills accountability for tribal leadership and puts others' norms and values in charge.

The compelling need to vigorously and proactively support sovereignty and self-determination cannot be overstated. Self-determination aligns the policies of the Federal Government with the proper incentives of the Indian nations themselves, and the appropriate incentives are central to the challenge of economic development. Our research makes it clear, for example, that contracting and compacting, whereby tribes take over the management and delivery of programs otherwise within the domain of the Federal Government (e.g., under PL 638), have been successful in both promoting economic development and enhancing tribes' experience in the business of self-governance. From forestry to health care, the hard, statistical evidence says that tribal takeover of programs is working.[5]

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[5] Matthew B. Krepps, "Can Tribes Manage Their Own Resources? The 638 Program and American Indian Forestry" in Cornell and Kalt, *What Can Tribes Do?* (University of California: 1992); Alyce Adams, "The Road Not Taken: How Tribes Choose Between Tribal and Indian Health Service Management of Health Care Resources," Doctoral Dissertation, Harvard University, October 1999; and National Indian Health Board, *Tribal Perspectives on Indian Self-Determination and Self-Governance in Health Care Management*, completed 1998. This research does not indicate that every instance of contracting or compacting is an unqualified success, but it supports the conclusion that self-determination is the only policy that has thus far worked to create viable and sustainable economic development in Indian Country.

Programs administered by tribal institutions (and tribal political leaders) that bear the risks, and simultaneously share the rewards, of development decisions outperform programs that are not characterized by this alignment of incentives. The ownership structure envisioned in S.519 includes a creative capitalization mechanism that appears to be an attempt to align the incentives of the ownership of the proposed Native American Capital Development Corporation ("NACDC") with the types of policies required to overcome a dearth of capital formation in Indian Country.

IMPLICATIONS OF THE RESEARCH FOR S.519 THE NATIVE AMERICAN CAPITAL FORMATION AND ECONOMIC DEVELOPMENT ACT OF 2003

The need for innovative solutions to the problems facing Indian nations is substantial, and legislation such as S.519 can help overcome the obstacles tribes confront today. If one thinks of the three core findings of the Harvard Project as the necessary components to construct the "engine" of sustained economic prosperity throughout Indian Country, an important question remains: What is the "fuel" that powers that engine? It is a combination of inputs, such as the labor force of the Mississippi Choctaws or the location of the Mashantucket Pequots, mixed with vision for the future, and complemented by financial expertise and the start-up funds necessary to get Native endeavors off the ground. Notwithstanding the success of certain tribes, and the access to financial markets that such success typically produces,[6] there remains a compelling need to fuel the economic engines of Indian

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[6] For a recent example, see "Mohegans Obtain Credit Facility to Pay Debt Costs on Casino," *Indian Country Today*, April 16, 2003, at C1. This article explains how the Mohegan Tribal Gaming Authority recently restructured its debt and will use $391 million in credit to meet its maturing obligations. The restructuring involved a syndicate of 12 lenders, which is led by Bank of America.

Country.[7]

S.519 is an attempt to provide the fuel needed in Indian Country, and as such is a commendable initiative. However, the proposed legislation leaves a number of questions yet to be answered. Examples include:

- **Organizational Questions:** (1) Is the NACDC an initiative of Indian Country, or will it be seen as the Planner's Approach to the obstacles of capital formation? (2) Is a Congressionally chartered corporation the proper entity to address the market failures inherent in delivering financial services to Indian Country? (3) How will this organization impact and interact with existing entities that attempt to address this problem, including private for-profit businesses, philanthropic foundations, and non-governmental organizations?

- **Operational Questions:** (1) Does the NACDC's ability to receive appropriations undermine its directive to operate as a self-supporting corporation? (2) Will attempts to address the inapplicability of standard underwriting criteria in Indian Country create a portfolio of unacceptably high risk lending in the Native American financial institutions served by the NACDC? (3) Does inclusion of the Native American Economies Diagnostic Studies Fund and the Native American Economic Incubation Center Fund unnecessarily burden an organization expected to be self-supporting?

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[7] A current focus in much of the popular press centers on the lucrative gaming industry, to the detriment of a more complete picture that we have observed in Indian Country. This focus misses at least two fundamental realities: (1) that numerous tribes do not have access to funding remotely approaching the revenue streams (and financial services more broadly) of the most successful gaming tribes; and (2) the fact that a given tribe's ownership of a successful business venture does not diminish the trust responsibility owed to that tribe.

I am not going to attempt to address these, or similar, questions in detail, but instead I will focus my comments on two conceptual aspects of S.519: the Native American Economies Diagnostic Studies Fund ("Diagnostic Fund") and the Native American Economic Incubation Center Fund ("Economic Fund").[8] These components of the proposed legislation are particularly noteworthy because they potentially differentiate this organization from some of the now-existing entities that are also attempting to address the lack of capital formation in Indian Country.

Activities undertaken through the Diagnostic Fund and the Economic Fund[9] present an opportunity to appropriately target efforts of the NACDC toward capacity-building for Indian nations. The NACDC will then join a select few Indian service organizations that strive to build the capabilities of Indian nations to implement self-determined economic development initiatives and, in turn, strengthen the capacities of those nations to exercise their sovereignty in real, meaningful ways. The language of S.519 acknowledges this goal, and the Committee's effort in establishing this organization is testament to the recognition that the level of capital flows has thus far been insufficient. Through the diagnostic and reformative research envisioned, the NACDC will attempt to help establish, tribe-by-tribe, settings into which capital will more freely flow. The tribe-by-tribe, situation-by-situation approach spelled out here is central – two of the great failings of the Planner's Approach have been (1) the consistent attempt to apply one-size-fits-all

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[8] Collectively referred to hereinafter as "the Funds."

[9] I do find that the language pertaining to the Economic Fund, specifically, "The Corporation shall use amounts in the Economic Fund to ensure that Federal development assistance and other resources dedicated to Native American economic development are provided *only* to Native American communities with demonstrated commitments to – (A) sound economic and political policies; (B) good governance; and (C) practices that promote increased levels of economic growth and job creation," (emphasis added) should be clarified and greater specificity should be established as the legislation progresses.

legislation to the varied and disparate Indian nations, and (2) the imposition of federal policy onto societies not greatly suited for the policy in question, not prepared to implement programs thus established, and not involved in the formulation of the legislation mandated by the Federal Government.

What does this capacity-building approach entail for a given diagnosis carried out under the auspices of the Funds? As implied above, it is impossible to provide a completely general answer – the need to tailor each analysis precludes formulation of an adequate checklist for every situation. However, we have learned a fair amount about the types of developmental infrastructure required for sustainable economic progress. The particular political, legal, regulatory, and investment setting underlying each tribal circumstance will differ in name, relative importance, and functional interaction, but the commonalities observed provide a starting point for the work of the NACDC. While recognizing that the importance of each of the components of a well-functioning economy will vary greatly from tribe to tribe, all are essential to ensure that the providers of capital will maintain the flows of funds required to keep these Indian economies operating. To this end, each diagnostic project should begin with an effort to understand the tribe's developmental infrastructure, including (but not limited to) the presence and effective implementation of:

- Financial and budgetary controls, such as third-party audits. This maximizes the probability that poor business decisions, or malfeasance, will not undermine commercial activities.
- Sound principles of corporate governance, including the separation of tribal politics from tribal businesses. This maximizes the ability of tribal businesses to succeed in competitive marketplaces.
- Regulatory codes, including land-use ordinances, commercial codes,

health codes, housing ordinances, tax provisions, etc. This maximizes the ability of all parties to understand the rules under which business and commercial ventures will operate.

- Planning and development policies, such as strategic plans or visioning documents. This maximizes the likelihood that suitable foresight and thought will be brought to bear upon development opportunities.
- A separation of powers between the branches of tribal government, including independent tribal courts. This maximizes the possibility that lenders and investors will not be subjected to arbitrary actions that could adversely affect them.
- A tribal Constitution (written or unwritten) supported by the governed. Evidence of broad-based acceptance of the above mechanisms of legal, regulatory and investment infrastructure may be indicated by the presence of a legitimate and effective Constitution.

These all help an economy develop by instilling confidence on the part of outside commercial interests, depoliticizing dispute resolution proceedings, standardizing and streamlining commercial practices and contract enforcement, and enhancing tribal sovereignty by allowing the tribe to exert its regulatory authority over business activity.[10] The net result is increased capital formation and the attendant benefits of expanded employment prospects, higher incomes, and improved standards of living.

I would like to close by noting that there is no need for an Indian nation today,

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[10] See Eric Henson and Luxman Nathan "Tool of Sovereignty: The Crow Commercial Code," Harvard Project Report Series 98-4 (Harvard Project on American Indian Economic Development: April 1998), and Eric Henson and Luxman Nathan, "Adopting Commercial Codes: Overcoming Lending Barriers on Reservations," *Communities and Banking*, No. 24 (Federal Reserve Bank of Boston: Winter 1999).

be it the poorest tribe only now embarking on a path for sustainable economic development, or the most prosperous Indian nation, to be arbitrarily and inappropriately excluded from the financial services that are readily available to other, non-Indian entities. Initiatives such as S.519 can join the gradually growing list of programs thoughtfully reversing the policy mistakes of the past – many of which are so well entrenched as to seem irreversible. To the extent that Indian Country supports S.519, and to the extent that it can help Indian nations overcome the numerous obstacles to capital formation and sustained economic development, it is an initiative that should fully receive the support of this Committee.

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