

# Increasing Community Economic Development and Deployment of New Market Tax Credits in Indian Country

A Report Commissioned by the Department of Treasury  
*on behalf of* the White House Council on Native American Affairs:  
Federal Initiative on Access to Capital in Indian Country



## Initiative on Access to Capital in Indian Country

Since his inauguration, President Biden has identified insufficient access to capital as a barrier to economic development in Indian Country and has committed to fixing this problem. In response, at the 2022 White House Tribal Nations Summit, the White House Council on Native American Affairs (WHCNAA) Committee on Economic Development, Energy, and Infrastructure (Committee) launched [the Federal Initiative on Access to Capital in Indian Country](#), a multi-agency strategy to improve awareness of, access to, and utilization of federal funding resources for Tribal governments, Tribal enterprises, Native entrepreneurs, and Native Community Development Financial Institutions (CDFIs).

The U.S. Departments of Agriculture, Treasury, the Interior, Commerce, the Small Business Administration, the Office of Management and Budget, and the White House Council of Economic Advisors committed to serving as the primary agencies for this WHCNAA effort.

The elements of the Initiative include three phases of actions:

- 1) Access to Resources:** identifying, summarizing, and disseminating to Tribal communities all loan and financing programs available to Tribes, including through the American Rescue Plan (ARP), the Bipartisan Infrastructure Law (BIL), the CHIPS and Science Act, and the Inflation Reduction Act (IRA);
- 2) Identification of Barriers & Solutions:** identifying barriers to access to capital and summarizing policy, regulatory, and statutory solutions to increase access to federal financing programs; and
- 3) Increasing Utilization:** seeking to increase use of federal capital programs by establishing baselines of use and setting and tracking metrics.

As a component of Phase 2, the Initiative will develop an interagency report outlining policy, regulatory, and statutory changes that will increase access to federal financing programs and develop an interagency action plan in response to the findings of the report. To commence Phase 2, the Initiative is releasing an inaugural report commissioned by the Department of Treasury (Treasury) extensively evaluating community economic development strategies and deployment of New Market Tax Credits (NMTC) in Indian Country.

The Department of Treasury has been active in the Initiative through its first Office of Tribal and Native Affairs which advises on the implementation of \$30 billion in recovery support to Tribal Nations and works on increasing access to economic development in collaboration with Treasury offices and bureaus.

## Treasury's Native Initiative and Research

The NMTC Program, established in 2000, helps economically distressed communities attract private capital by providing investors with a federal tax credit. The U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund) allocates tax credit authority to Community Development Entities (CDEs) through a competitive application process. CDEs use their authority to offer tax credits to investors in exchange for equity in the CDE. Using the capital from these equity investments, CDEs can make loans and investments to businesses operating in low-income communities on better rates and terms and with more flexible features than the market.

In exchange for investing in CDEs, investors claim a tax credit worth 39% of their original CDE equity stake, which is claimed over a seven-year period. The program supports activities as varied as schools, affordable housing, arts centers, grocery stores, food production facilities, buildings for human service providers, grain elevators, utilities, infrastructure, manufacturing plants, sustainable forestry, and more. Since the NMTC Program's inception, the CDFI Fund has recorded investments totaling over \$1.8 billion in Indian Country. While these credits have benefitted Tribal communities, Tribal and Native leaders have noted challenges to increased deployment in Native areas.

In response to this feedback, in April 2022, the CDFI Fund launched the NMTC Program Native Initiative. The NMTC Native Initiative supports efforts by the CDFI Fund to increase NMTC investment in *Federal Indian Reservations, Off-Reservation Trust Lands, Hawaiian Home Lands, and Alaska Native Village Statistical Areas* (collectively referred to as NMTC Native Areas). The primary goal of this initiative is to expand access to capital for Native communities via tax incentives the NMTC Program provides. The NMTC Native Initiative comprises several fundamental components, which include:

- A report titled "[Community Economic Development in Indian Country: Market Research Report](#)" which reports on successfully implemented community economic development strategies that resulted in attracting capital to Native communities and challenges that Native entities face in accessing capital for community economic development;
- A report titled "[New Markets Tax Credit Investments in Native Areas: Selected Case Studies and Best Practices](#)" that includes independent findings and recommendations from case studies on selected NMTC investments in Native Areas and an analysis of NMTC investment data describing the investments that have been made in Native communities;
- [Technical workshops](#) informing representatives of Native organizations about the purposes and mechanics of the NMTC Program;
- Individual training sessions with Native organizations seeking to learn more about specific elements of the NMTC Program and roles within NMTC-funded projects;
- A [Self-Assessment Guide for Native Organizations](#) that seek to participate in the NMTC Program describing the various roles and the corresponding responsibilities related to the NMTC.

As part of this initiative, technical workshops were held in September 2022 and February 2023 and attended by 49 participants. Technical assistance was provided to 6 Native organizations interested in utilizing NMTCs, totaling approximately 80 hours. These materials above and the attached reports underscore how new federal funding under the Biden-Harris Administration, and the growing sophistication of Native CDFIs and other Native actors accessing capital, have enhanced opportunities for community economic development in Indian Country.



# Community Economic Development in Indian Country

Market Research Report



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CONSULTING



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August 2023

Prepared by: Kevin Klingbeil, Chloe Adler, Amanda Hermans, Harry Maher, Nancy Pindus, and Devoni Whitehead

# Community Economic Development in Indian Country: Market Research Report

Prepared for:  
**New Markets Tax Credit Program Native Initiative**  
**Community Development Financial Institutions Fund (CDFI Fund)**  
U.S. Department of the Treasury  
Washington, D.C.

Prepared by:  
Kevin Klingbeil, Chloe Adler, Harry Maher, and Devoni Whitehead  
Big Water Consulting

Nancy Pindus and Amanda Hermans  
Urban Institute

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## Executive Summary

This Market Research Report is part of a larger project supporting the Community Development Financial Institution (CDFI) Fund's New Markets Tax Credit (NMTC) Program Native Initiative (NMTC Native Initiative). The project is being conducted for the CDFI Fund by Big Water Consulting and its partners. The NMTC Native Initiative supports efforts by the CDFI Fund to explore opportunities to increase Native NMTC investment in *Federal Indian Reservations, Off-Reservation Trust Lands, Hawaiian Home Lands, and Alaska Native Village Statistical Areas* (NMTC Native Areas) and expand Native communities' access to capital via the tax incentives allocated through the NMTC Program.<sup>1</sup>

The purpose of this report is to identify and review existing research and data on the unique history, challenges, industries, actors, and available funding and capital sources that shape how tribes and Native actors successfully participate in community economic development. This Market Research Report reviewed existing literature summarizing the history and current state of community economic development in Native lands in the United States, focusing on the last 10-20 years. Materials reviewed include articles or documents prepared by tribal entities; universities; philanthropic foundations; academic journals; federal, state, and local government or government-sponsored entities; Native membership associations; and Native news organizations.

Below are the highlights of each section of the report, including the foundations, essential components, sectors, actors, and funding sources that are relevant to community economic development in Indian Country, as well as a forward-looking overview of opportunities and challenges.

### Foundations of Community Economic Development in Indian Country

Since the 1970s, an era of reemerging self-determination has allowed for the renewed economic independence of tribes and Native communities through the steadily expanding assumption of traditional government functions, including oversight over health care, housing, roads, transportation, courts, and education. The strengthening of tribal capacity and governance practices has allowed for progress in tribal community economic development, including the growth of tribal gaming and other enterprises. Many tribes have established economic goals and are working to achieve parity with neighboring non-Indian communities on a variety of socio-economic indicators, a goal that has already been reached or surpassed by some tribes.

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<sup>1</sup> New Markets Tax Credit Native Areas (NMTC Native Areas) are defined to include Federal Indian Reservations, Off-Reservation Trust Lands, Hawaiian Home Lands, and Alaska Native Village Statistical Areas. In addition, this report includes community economic development in Oklahoma Tribal Statistical Areas (OTSA), as well as tribal projects in urban areas and state-recognized American Indian Reservations. The broader term, Native lands, as used in this report, refers to these areas and NMTC Native Areas. The term Indian Country is generally used in the common colloquial sense to mean tribal areas, including Alaska Native villages, and is not used as a legal term in this report. This report moves between these terms, reflecting the sources used.

A foundation of governance must be in place for community economic development efforts in Native lands to be successful. This includes comprehensive and strategic planning, establishing or maintaining a strong rule of law, effective management of tribal lands, and effective balancing of cultural values and community economic development goals.

Tribes and Native communities vary tremendously in terms of their governance history and structure, state or federal recognition, land ownership scale and status, and capacity to take on certain roles and authority. Specific distinctions related to the tribes and Native communities in Oklahoma, Alaska, Pueblos and Spanish land grants, and Hawaii are discussed in Appendix A of the full report.

## Essential Components of Community Economic Development

If you are a local or a tribal government pursuing a community economic development strategy, this requires several common elements:

- Suitable and available land;
- Skilled and ready workforce;
- Business development and digital capacity; and
- Capital formation.

However, economic development is complicated by the rural location, limited population density, lower income levels, and inadequate infrastructure of many communities on or near tribal lands.

## Sectors of Community Economic Development

Community economic development in Indian Country covers the spectrum of industry sectors, including:

- Natural resources processing;
- Manufacturing;
- Construction;
- Utilities;
- Casinos, hospitality, tourism, and recreation;
- Business services; and
- Public sector, government, and community services.

Gaming operations and natural resources extraction and processing have allowed many tribes and Native communities to develop the financial resources, business acumen, and relationships with external business partners necessary to expand and diversify their community economic development. This has been particularly true for Alaska Native Corporations and tribes closer to urban areas or major transportation corridors.

In recent years, the range of community economic development activities has dramatically expanded in some Native communities, including development of large-scale retail and health care facilities and regional utility and broadband service providers. This is especially true for tribes that can leverage revenue streams from large-scale gaming or natural resources extraction enterprises. Other tribes and Native communities that have been unable to leverage their location or natural resources have faced a much more challenging path to community economic development.

### Native Actors Promoting Community Economic Development in Indian Country

The growth in the scale and range of community economic development activities is largely a product of the varied Native entities deftly capitalizing on favorable federal contracting provisions, opportunities for partnering with Native and non-Native entities to serve regional markets, newly available capital, and an array of sector-specific grants and tax incentives targeting underserved and disadvantaged areas. These actors include:

- Tribal enterprises;
- Native-owned businesses;
- Tribal departments and chartered tribal entities;
- State licensed Community Development Corporations (CDCs);
- CDFI Fund-certified Native Community Development Financial Institutions (CDFIs); and
- Community Development Entities (CDEs) that are Native owned or controlled.

Deep and broad community economic development within individual Native communities often depends on the parallel, orchestrated efforts of numerous entities working in concert with one another to maximize opportunities available to small, medium, and large-scale projects across various sectors.

Growth in regional and national Native economic development-focused organizations, such as the Native American Finance Officers Association (NAFOA), National Center for American Indian Enterprise Development (NCAIED), and Native CDFI Network, that promote sharing of information and collective advocacy, has helped elevate tribal businesses and economic development entities throughout the country. Additionally, enhanced coordination with other tribes, nearby non-Native communities, and state and regional entities has allowed tribal

communities of all sizes to develop economies of scale and a critical mass of technical and financial resources to develop a broader spectrum of mutually beneficial facilities.

### Sources of Funding and Capital for Community Economic Development

Native organizations are accessing an expanding array of funding sources, including state and federal loans and grants, available private and tribal capital, and tax incentives in order to increase community economic development on Native lands. The ability to use and combine different funding and financing sources largely depends on the scale and purpose of the project in question as well as the tribe or Native community's ability to leverage its own available tribal capital or general funds and revenue streams.

Tribal community economic development is increasingly layered in terms of the range of different Native-owned businesses, tribal enterprises, and financial institutions working in coordination to attract new sources of capital to support an array of ventures. These organizations are becoming more adept at leveraging or stacking multiple sources to fund projects at various cost levels to support small businesses, community facilities, large retail centers, and regional service providers.

### Community Economic Development Topics Specific to Indian Country

This report aims to increase knowledge and understanding of community economic development strategies in Indian Country. To continue moving forward, economic actors within and outside of Indian Country need to hold a shared understanding of the increased opportunities that exist in Indian Country, the limitations posed by the need for more data, and the importance of respecting cultural values.

*Opportunities exist for enhanced community economic development in Indian Country.*

Although challenges remain, the community economic development capacities of tribal and other Native communities have improved over time, and tribal governments and enterprises are well-positioned to pursue new opportunities for growth. There are projects waiting to be done in Native communities in various stages of planning, approvals, and obtaining funding. Opportunities lie in the growth of tribal enterprises and jobs in the sectors of natural resources extraction, manufacturing, construction, hospitality, and public sector projects such as health facilities and community centers. Native American CDFIs (Native CDFIs) and other financial entities serving Indian Country continue to search for ways to meet a growing demand for credit and capital, which will only continue to increase as Native economies and tribal capacities grow. Many regional and national Native organizations argue that the issue of community economic development in Native lands is now less dependent on capacity-building than on adequate and equitable access to financing and capital. These organizations posit that the focus should be on developing grant and financing criteria that more fairly incorporate the unique circumstances of Native communities

into application selection criteria, as well as the creation of a set of tribal and Native set-asides to ensure tribal participation in certain programs.<sup>2</sup>

*The need for improved data underlies many limitations to community economic development in Indian Country.*

There are glaring gaps in the available data necessary to support community economic development in Native lands, resulting from both a lack of relevant or accurate data being collected, and restricted access to the data that do exist. Accurate federal, tribal, and other data describing Native lands is not only necessary for supporting internal community economic development planning efforts, but it is also essential for allowing lenders and investors to assess the opportunities and risks associated with bringing their capital to Native lands. This lack of critical data continues to hinder the attraction of capital to Indian Country, though several tribes, Native organizations, and local, state, and federal agencies are actively working to improve existing data sources and to create new ones.

Data sovereignty, a component of the overarching sovereignty possessed by Indian tribes, refers to the right of indigenous people and nations to govern the collection, ownership, and application of their own data.<sup>3</sup> As tribes continue to more fully express and implement data sovereignty, tribes and Native communities are more actively participating in the design and monitoring stages of data collection projects within their lands. They are also developing strong partnerships with other tribal and non-tribal organizations at state, regional, and national levels to produce much-needed accurate tribal data sets, while retaining tribal ownership and control over the use of the data collected. To improve and fill in the gaps in relevant data, a comprehensive evaluation of available data sources should be conducted. This evaluation should address the issues of data relevance, accuracy, and precision.

*Understanding of and respect for cultural values is essential for future community economic development in Indian Country.*

While tribal governments work towards economic growth, they are also focused on preserving tribal culture, identity, sovereignty, population, and land, creating a unique balance of priorities that is distinct from other rural communities. All components of community economic development in Indian Country are also considered through a cultural lens by tribal actors, helping to explain some of the economic decisions made by tribal governments. For example, many tribes might make an active choice to avoid developing or exploiting their natural resources, such as minerals, water, or forests, for economic gain. While natural resources are a common economic resource for most rural areas, land itself, in its unspoiled state, often holds

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<sup>2</sup> “Lawmakers Call for Expanded NMTC Access for Native Communities,” *Tax Notes*, September 28, 2020, <https://www.taxnotes.com/research/federal/legislative-documents/congressional-tax-correspondence/lawmakers-call-for-expanded-nmtc-access-for-native-communities/2d088>.

<sup>3</sup> Alex Tamaro, “Native Data Sovereignty Can Address Data Gaps and Improve Equity,” *Urban Wire*, Urban Institute, June 13, 2022, <https://www.urban.org/urban-wire/native-data-sovereignty-can-address-data-gaps-and-improve-equity>.

significant historical, cultural, and spiritual meaning for tribes. Therefore, the appropriate choice for a tribe might be to preserve the land rather than develop its resources for economic growth. Tribes might also decide to invest resources into acquiring more land, especially land of historic significance, rather than investing in other economic ventures.

Those interested in partnering on projects in Indian Country can benefit from enhanced cultural understanding. When surveyed, Native American nonprofit leaders stressed the desire for funders and foundations to have already conducted background research before establishing relationships, so that connections are cultivated based on deepened understanding of the specific community.<sup>4</sup> Outreach to Native tribes needs to be consistent and thorough while acknowledging the wide range of perspectives, unique experiences, and complexities of each tribe and community.

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<sup>4</sup> Ellie Buteau, Hannah Martin, and Katarina Malmgren, “Overlooked (Part Two): Foundation Support for Native American Leaders and Communities,” Center for Effective Philanthropy, 2021, [http://cep.org/wp-content/uploads/2021/07/CEP\\_Overlooked\\_Native\\_American.pdf](http://cep.org/wp-content/uploads/2021/07/CEP_Overlooked_Native_American.pdf).

## Section 1: Introduction and Purpose

This Market Research Report is part of a larger project supporting the CDFI Fund’s New Markets Tax Credit (NMTC) Program Native Initiative. The New Markets Tax Credit Native Initiative project is being conducted for the CDFI Fund by Big Water Consulting and its partners. The NMTC Native Initiative supports efforts by the CDFI Fund to explore opportunities to increase NMTC investment in *Federal Indian Reservations, Off-Reservation Trust Lands, Hawaiian Home Lands, and Alaska Native Village Statistical Areas* (NMTC Native Areas) and expand Native communities’ access to capital via the tax incentives allocated through the NMTC Program.<sup>5</sup> The NMTC Native Initiative incorporates several core components, including:

- This Market Research Report, which reports on successfully implemented community economic development strategies that resulted in attracting capital to Native communities and challenges that Native entities face in accessing capital for community economic development;
- Technical assistance workshops informing representatives of Native organizations about the purposes and mechanics of the NMTC program;
- Analysis of NMTC investment data describing the investments and activities of tribes and Native organizations in the NMTC program;
- Case studies exploring past NMTC projects that may provide replicable models for future projects; and
- A self-assessment guide for tribal entities that seek to participate in the NMTC Program describing the various roles and the corresponding responsibilities related to the NMTC.

The purpose of this report is to identify and review existing research and data on tribes that have successfully implemented community economic development strategies, focusing on NMTC Native Areas and other Native lands over the last 10-20 years. The intended audience for this report includes:

- The U.S. Department of the Treasury;
- Congress;
- Tribal and other Native leaders;
- Economic development entities operating within Native lands;

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<sup>5</sup> New Market Tax Credit Native Areas (NMTC Native Areas) include Federal Indian Reservations, Off-Reservation Trust Lands, Hawaiian Home Lands, and Alaskan Native Village Statistical Areas. In addition, this report includes community economic development in Oklahoma tribal statistical areas (OTSA), as well as tribal projects in urban areas and state-recognized American Indian Reservations. The broader term, Native lands, as used in this report, refers to these areas and NMTC Native Areas. The term Indian Country is generally used in the common colloquial sense to mean tribal areas, including Alaska Native villages, and is not used as a legal term in this report. This report moves between these terms, reflecting the source used. More complete definitions of these terms and others can be found in the Glossary.

- Local, state and federal agency staff involved in community economic development promotion or regulation;
- Non-Native entities involved in or interested in economic development activities in Native lands; and
- Others who are simply seeking to better understand the challenges of and opportunities for community economic development in Native lands in the United States.

To serve these varied audiences, this report provides a broad view of community economic development in Native lands. Community economic development refers to a combination or integration of community development and economic development processes. Community development aims to make a community a better place to live and work by building community assets and institutions. Economic development focuses on the creation of wealth and economic opportunities. Community economic development recognizes that the two processes are interrelated—economic development is not possible without a solid community foundation, and communities need economic opportunities to thrive.<sup>6</sup>

The report synthesizes information that will help you understand the unique context for community economic development in Native lands, including the types of projects that are underway, as well as challenges, opportunities, and successful strategies. This may be particularly interesting if you are interested in pursuing community economic development in Native lands as new enterprises, participants, partners, or investors.

No summary of community economic development in Native lands would be thorough or accurate if it did not address the actors, programs, and sources of funding and capital involved in catalyzing community economic development. But this report also considers the unique historical, cultural, geographic, and land-related contexts that shape community economic development activities in Native lands. As a result, each of the community economic development projects, initiatives, and programs described in this report are evaluated with the understanding that, in addition to traditional market forces and principles that drive decision-making, community economic development decisions within Native lands have an accompanying cultural overlay that may reshape, constrain, or even defeat projects or initiatives that may otherwise be viewed as economically sound.

The next section of this report, Section 2, describes the methodology we used to compile this information. Section 3, Foundations of Community Economic Development in Indian Country, includes a discussion of self-determination and governance, the rule of law and reliable tribal bureaucracy, land management and jurisdiction, and political stability and independence. All tribes and Native communities are unique in their land and governance structures pertinent to community economic development, but some groups face special circumstances not covered in Section 3. Appendix A is included to describe special circumstances pertaining to Alaska Native

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<sup>6</sup> Rhonda Phillips and Robert H. Pittman, eds, *An Introduction to Community Development*, (New York: Routledge 2009), Chapter 1.

Villages, Oklahoma tribes, pueblos and Spanish land grants, and Hawaiian Home Lands. Section 4, Essential Components of Community Economic Development, describes the elements that any local or tribal government pursuing a community economic development strategy needs: suitable land available for the intended purpose of economic development; a skilled and ready workforce; and business development and capital formation capacity. Section 5, Sectors of Economic Development, provides examples of the economic activities underway in Indian Country, including natural resource processing; manufacturing, construction and utilities; consumer and business services; and public sector, government, and community services. Section 6 describes the Native actors promoting economic development in Indian Country. Section 7 describes sources of funding and capital for community economic development. Section 8, Community Economic Development in Indian Country: Addressing Challenges and Moving Forward, concludes with a forward-looking summary of both the challenges and opportunities facing community economic development in Indian Country. It especially describes data limitations in Native communities, as well as the importance of respecting cultural values for future success.

## Section 2: Methods

*This section covers the methods used to conduct research and review of the current state of community economic development in Native lands in the United States.*

The foundation of this Market Research Report is a review of existing literature summarizing the history and current state of community economic development in Native lands in the United States. Materials reviewed for this report include:

- Peer reviewed and sponsored studies, such as articles or documents prepared by tribal entities;
- Universities;
- Philanthropic foundations;
- Academic journals;
- Federal, state, and local government or government-sponsored entities;
- Native membership associations; and
- Native news organizations.<sup>7</sup>

While we focused on identifying and incorporating materials that addressed community economic development in Native lands within the past 10-20 years, many of the challenges, opportunities, and models described in recently published materials were and are affected by laws, policies, programs, and funding mechanisms that long preceded them. To account for this, we occasionally drew from materials or reference events that fell outside of this period. This approach accounts for the slow evolution and relatively recent emergence of community economic development activities driven by sovereign tribal governments and Native communities on Native lands.

To guide the research that would inform this report, we first prepared an annotated bibliography of known resources from prior research that concerned community economic development in Indian Country, as well as relevant materials that were recently published or shared online by a variety of tribal and federal government, nonprofit, industry, and academic actors. We shared this bibliography with staff of the CDFI Fund to ensure that the materials were relevant, comprehensive, and appropriate. This step also provided the CDFI Fund staff with the opportunity to share any relevant materials compiled during the course of their work. We further targeted specific sectors, programs, funding sources, and model projects and activities to provide greater context for and specific examples of the themes found throughout the initial list of materials.

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<sup>7</sup> A government-sponsored entity, also known as a government-sponsored enterprise (GSE) is a quasi-governmental, privately held agency established by Congress to improve credit flow in some regions of the United States' economy. GSEs provide financial services to the public for various things, particularly mortgages, through capital market liquidity. GSEs help to facilitate borrowing for a variety of individuals, including students, farmers, and homeowners.

Many initiatives unfolding within Native lands are not summarized in traditional published academic journals or newspapers. Additional resources included materials that may have only been distributed internally, shared at conferences, or prepared for specific uses such as advocacy, congressional testimony, or inter-organizational collaboration.

To provide a more complete view and identify additional resources, we conducted conversations with individuals knowledgeable about the complexity of community economic development in Native lands. In preparation for these conversations, we developed an initial list of potential participants based on a list of organizations and contact persons provided to the team by the CDFI Fund. The lists included points of contact from:

- Native CDEs and Native CDFIs serving NMTC Native Areas;
- Non-Native CDEs that have made NMTC investments in NMTC Native Areas; and
- Staff members of federal agencies and national Native organizations that focus on community economic development in Native lands, including:
  - Native American Finance Officers Association (NAFOA)
  - Native CDFI Network
  - National Congress of American Indians (NCAI)
  - Federal Reserve Bank of Minneapolis' Center for Indian Country Development

We shared this list with staff of the CDFI Fund to ensure that the individuals and organizations included were relevant, representative, and appropriate. We developed a short list of standard questions concerning relevant materials and topics to provide structure and consistency for each conversation. The conversations were relatively limited in scope and length (30-60 minutes). Not all of the individuals who received a request responded or agreed to participate in a conversation with the research team. We conducted a total of 18 interviews over a 7-week period. Appendix B lists the organizations that participated in interviews.

These conversations unearthed new examples and model activities, while also allowing subject matter experts to address and contextualize the layering of challenges and opportunities for community economic development that are summarized in published materials. The conversations triggered further research and shaped our interpretation of topics that received only cursory treatment by other sources.

A list of all referenced materials accompanies this report and contains the full citations for the materials summarized in the report. An annotated bibliography with more extensive summaries of selected referenced materials is included as an addendum. This will allow you to further explore the focus and findings of these source materials.

## Section 3: Foundations of Community Economic Development in Indian Country

*This section provides brief context for the events that led to the economic marginalization of Native communities and how these communities have been prioritizing economic development in recent decades.*

Community economic development aims to create conditions that allow for both short- and long-term sustainability of an area and considers both physical and social infrastructure. In Native communities, community economic development activities, such as accessing resources and setting economic priorities, come with unique cultural and historical context. Considerations of self-determination, governance, the rule of law, land management and jurisdiction, the political landscape, population retention, and cultural values are all important.

### Self-Determination and Governance

The arc of Native community economic development in the United States resembles a swinging pendulum. European colonization of the Americas and the subsequent wars and United States policies resulted in the loss of tribal land and population, the disruption of tribal economies, and an increased tribal dependency on the federal government. Native economies that had been successful and sustainable before colonization became “reservation economies that were cut off from significant aboriginal lands and resources,” and were oftentimes dependent on failed federal programs.<sup>8</sup> As a result, Native tribes and communities have long suffered from economic marginalization and a lack of opportunity. Unemployment and family poverty rates for American Indians remain higher than for the general U.S. population, while per capita income and labor force participation are lower, according to 5-year estimates (2011-2015) of American Community Survey data.<sup>9</sup>

In recent decades, strengthened tribal capacity and governance has allowed tribes to make progress in community economic development. The continued implementation of the federal policy of self-determination has given tribes more opportunities to administer their own programming and has allowed for the growth of tribal gaming and other enterprises. Many tribes have established economic priorities and are working to achieve parity with neighboring non-Native communities on a variety of socio-economic indicators. This goal of parity has already been reached or exceeded by some tribes, while many others are making significant strides.<sup>10</sup>

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<sup>8</sup> Dick G. Winchell, “Indigenous Rural Renewal in the Inland Pacific Northwest: The Emergence of American Indian Tribes in Regional Economic Development,” *Journal of Rural and Community Development* 8, no. 3 (2013): 175, <https://journals.brandonu.ca/jrcd/article/view/1036/253>.

<sup>9</sup> Randall Akee, “Sovereignty and Improved Economic Outcomes for American Indians: Building on the Gains Made Since 1990,” *Washington Center for Equitable Growth*, January 14, 2021, <https://equitablegrowth.org/sovereignty-and-improved-economic-outcomes-for-american-indians-building-on-the-gains-made-since-1990>.

<sup>10</sup> Winchell, “Indigenous Rural Renewal.”

Tribal sovereignty is one of the critical elements that has made it possible for tribes and Native communities to engage more extensively in community economic development. The law of tribal sovereignty has developed in the federal courts and by federal statutes, executive orders and treaties over the last two centuries, and now rests on several fairly well-settled tenets:

1. Tribes have virtually unlimited authority over internal tribal affairs;
2. Tribes are subject to the plenary, or absolute, power that Congress has over them;
3. Tribes are presumptively immune from state law;
4. Tribes cannot be sued absent their express consent or a waiver of their immunity; and
5. Tribal sovereign immunity does not extend to individual tribal members except to the extent that tribal officials act within the scope of their official capacities.<sup>11</sup>

While the unique, and in many cases, treaty-affirmed, status of tribes as sovereign nations within the United States has always implied some level of legal self-determination tribes in the U.S. have only recently been able to practically take advantage of their status as sovereign entities. Despite the sovereign status of tribes, some land allotment and settlement strategies were designed to weaken or nullify traditional tribal governments by giving land ownership to individuals through fee simple titles instead of preserving more traditional communal land management practices. American Indians living on reservations were not granted citizenship until the Snyder Act in 1924, and other federal policies throughout the mid-twentieth century sought to weaken tribal power by drawing American Indian populations into urban areas and, in some cases, ending their federal recognition in exchange for cash settlements.<sup>12</sup>

With the passage of the Indian Self-Determination and Education Assistance Act in 1975, federal policy toward American Indian tribes shifted toward self-determination, giving tribes more power over the programs and resources available to them. Tribes and Native communities primarily used two common approaches to community economic development in this era: the standard approach and the nation-building approach.<sup>13</sup> The standard approach, which is characterized by external control, a short timeline, and a lack of big-picture strategy, has dominated tribal economic development for years. But the nation-building approach, which centers sovereignty, has been a more successful and sustainable strategy. The nation-building approach puts practical decision-making power in the hands of Indian nations and prioritizes effective governing institutions and strategic thinking. This approach to development starts not

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<sup>11</sup> Sue Woodrow, "Tribal sovereign immunity: An obstacle for non-Indians doing business in Indian Country?" *Federal Reserve Bank of Minneapolis*, July 1, 1998, <https://www.minneapolisfed.org/article/1998/tribal-sovereign-immunity-an-obstacle-for-nonindians-doing-business-in-indian-country>.

<sup>12</sup> Akee, "Sovereignty and Improved Economic Outcomes."

<sup>13</sup> Stephen Cornell and Joseph P. Kalt, "Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't," (2006): 2, [https://www.honigman.com/media/site\\_files/111\\_imgimgjopna\\_2005-02\\_Approaches.pdf](https://www.honigman.com/media/site_files/111_imgimgjopna_2005-02_Approaches.pdf).

with “what can be funded?” but with “what kind of society are we trying to build?” and pursues funding or economic opportunities from there.<sup>14</sup>

Strategic and comprehensive planning enables sustainable economic development in Indian Country. Comprehensive planning focuses on what can be done with the resources already on hand—such as land or natural resources—while strategic planning takes a larger view that includes attracting new capital investment. Careful development and adoption of both types of plans through strong grassroots participatory processes can pave the way for long-term, consistent decision-making. Ted Jojola, an indigenous planning expert, notes that initial successes with enterprises like gaming can make it easier for tribes to begin strategically planning because profits from existing enterprises can be reinvested in an “economic development strategy with the intent of diversifying outside of their own limited resource base.”<sup>15</sup>

This shift to self-determination and nation-building strategies has proven essential in promoting economic development for many tribes. Many tribes have taken three specific steps to create an environment where community economic development and entrepreneurialism can flourish:

1. Emphasizing the rule of law;
2. Separating politics from day-to-day administration and business; and
3. Creating efficient and reliable tribal bureaucracy.<sup>16</sup>

Despite the progress that has been made in these areas, there is still more work to be done in many tribal and Native communities to build a capacity capable of handling large economic development investments. We discuss some challenges and recommendations regarding these three capacity-building elements below.

### The Rule of Law and Reliable Tribal Bureaucracy

By taking steps such as establishing and enforcing property rights and methods for resolving disputes, tribal governments can establish a strong rule of law laying out clear rules of community economic development for all actors. This predictability and stability clarifies expectations and encourages confidence for private business investment.

Tribes seeking to promote economic development should have a bureaucracy that enables economic activity. Clear and timely permitting processes and dispute resolution mechanisms are just some of the ways that efficient and well-framed bureaucracy can encourage business

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<sup>14</sup> Cornell and Kalt, “Two Approaches,” 17.

<sup>15</sup> Ted Jojola, “Indigenous Planning—An Emerging Context,” *Canadian Journal of Urban Research* 17, no. 1 (2008): 44, [https://www.uwinnipeg.ca/ius/docs/cjur/37-47\\_Jojola.pdf](https://www.uwinnipeg.ca/ius/docs/cjur/37-47_Jojola.pdf).

<sup>16</sup> Pettit et al., “Continuity and Change: Demographic, Socioeconomic, and Housing Conditions of American Indians and Alaska Natives,” U.S. Department of Housing and Urban Development Office of Policy Development and Research. 2014. 37, [https://www.huduser.gov/portal/publications/commdevl/housing\\_conditions.html](https://www.huduser.gov/portal/publications/commdevl/housing_conditions.html).

development.<sup>17</sup> Native community members, Native entrepreneurs, tribal enterprises, and tribes themselves will have greater success as borrowers if tribal legal infrastructure signals that contracts will be honored, loans will be repaid, transactions will progress smoothly, and decision-making is transparent.<sup>18</sup> The adoption of Uniform Commercial Codes is one example of how tribes have sought to encourage investment and lending. These codes establish clear rules governing secured transactions between creditors and debtors that facilitate the flow of credit.<sup>19</sup>

Streamlining tribal bureaucracy can be complicated by the fact that tribal members and their lands are often at least partially subject to multiple legal jurisdictions. While many tribes in the United States are considered sovereign nations, their lands still sit within a state and county. Because most tribal land is held in trust by the federal government for the benefit of tribes and individual tribal members (discussed in detail below), often both federal and tribal officials have—sometimes conflicting—authority over these lands. In addition, in some limited cases states also have legal or tax authority over tribes or their enterprises.<sup>20</sup> This can make for a confusing mix of authority when it comes to community economic development.

To help enterprises and investors navigate this unique system, tribes should take care to make their own rules and regulations clear and clarify any state and local authority, or lack thereof, to regulate or tax specific activities through negotiation or litigation. When concurrent jurisdiction issues occur, tribes might use their community economic development plans to outline which lands are subject to concurrent, tribal, or non-tribal jurisdiction. If possible, tribal governments should create collaboration agreements with other jurisdictions that have authority within tribal areas, setting standards so that the timing of decisions is more predictable for developers. Some tribes have established specific agreements with states or counties regarding the collaborative exercise of jurisdiction. For example, the Tulalip Tribes have a tax sharing compact with the State of Washington.<sup>21</sup>

Sudden changes to the legal landscape or unclear legal or jurisdictional authority can put community economic development at risk. Many Native communities grappled with this issue following the passage of Public Law 280 (PL 280) in 1953. In response to what was considered “weak law enforcement apparatus” on reservations, PL 280 transferred jurisdictional authority over criminal and civil matters in Indian Country to the states.<sup>22</sup> This created concurrent jurisdiction of state and tribal authorities in tribal areas, which in many cases was confusing and ambiguous. It reduced tribal budgets while not providing any additional resources to states for

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<sup>17</sup> Stephen Cornell, “What Makes First Nations Enterprises Successful?” 12-13

<sup>18</sup> “Access to Capital and Credit in Native Communities,” Native Nations Institute, 2016, 73, [http://nni.arizona.edu/application/files/8214/6378/9056/Access\\_to\\_Capital\\_and\\_Credit\\_in\\_Native\\_Communities.pdf](http://nni.arizona.edu/application/files/8214/6378/9056/Access_to_Capital_and_Credit_in_Native_Communities.pdf)

<sup>19</sup> Susan Woodrow, “Uniform Commercial Codes: Bringing Business to Indian Country. Tribal Secured Transactions Laws: A Working Forum,” Presentation, 2013, retrieved on September 8, 2022 from [https://www.bia.gov/sites/default/files/dup/assets/as-ia/ieed/pdf/idc1-024558\\_508.pdf](https://www.bia.gov/sites/default/files/dup/assets/as-ia/ieed/pdf/idc1-024558_508.pdf).

<sup>20</sup> Lofthouse, “Institutions and Economic Development,” 237.

<sup>21</sup> “Tax Sharing Compact Between The Tulalip Tribe and the State of Washington,” 2020, <https://www.hca.wa.gov/assets/program/tax-sharing-compact-tulalip-tribes-of-wa-and-wa-state.pdf>.

<sup>22</sup> Valentina Dimitrova-Grajzl, Peter Grajzl, A. Joseph Guse, “Jurisdiction, Crime, and Development: The Impact of Public Law 280 in Indian Country,” *Law & Society Review* 49, no. 1 (2014).

enforcement. As Dimitrova-Grajzl, et al. put it, “PL 280, on the one hand, eroded the powers of the local community to deal with crime and social problems and, on the other hand, provided enough ambiguity for authorities not to deal effectively with enforcement on reservations.”<sup>23</sup>

In the last decades of the twentieth century, the push for self-determination brought with it the rise of tribally controlled law enforcement agencies. There are currently over 250 tribal law enforcement agencies, most of which are administered fully by tribes under contract with the Bureau of Indian Affairs (BIA)’s Division of Law Enforcement Services.<sup>24</sup> Officers and other law enforcement employees are most often tribal employees. Complementing the authority of tribal police agencies is the tribal court system. In 2014, about 234 tribal courts served federally recognized tribes in the lower 48 states, 77% of which exercised both civil and criminal jurisdiction. Approximately 80% of these tribal courts served 9,999 or fewer residents.<sup>25</sup>

Tribal authority over tribal issues plays a vital role in establishing stability and safety in tribal areas. According to Wakeling, et al., only those tribes that have acquired meaningful control over their governing institutions have experienced improvements in local economic and social conditions, and research has not found “a single case of sustained economic development where the tribe is not in the driver’s seat.”<sup>26</sup> Laws that protect people and property, effective law enforcement, and stable and reliable courts support community economic development by reducing risk or the perception of risk to investors. Few people would want to invest their money in places that cannot or will not protect their resources and interests, or where that protection is uncertain.

## Land Management and Jurisdiction

The management of tribal lands is a key function of tribal governments. Historical, political, and cultural forces have resulted in unique legal and regulatory circumstances governing tribal lands in the United States.<sup>27</sup> Through the federal trust system, the federal government is the legal owner and guardian of about 95% of the land in Indian Country—it holds about 56.2 million acres in trust for American Indian tribes or individuals.<sup>28</sup> Tribal lands placed into trust have been acquired by the secretary of the U.S. Department of the Interior (DOI), who then holds the titles

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<sup>23</sup> Ibid.

<sup>24</sup> “Tribal Law Enforcement,” Bureau of Justice Statistics, accessed September 6, 2022, <https://bjs.ojp.gov/topics/tribal-crime-and-justice/tribal-law-enforcement>.

<sup>25</sup> Steven W. Perry, Michael B. Field, and Amy D. Lauger, “Tribal Courts in the United States, 2014 – Statistical Tables,” Bureau of Justice Statistics, July 2021, [https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/tcus14st\\_0.pdf](https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/tcus14st_0.pdf).

<sup>26</sup> Stewart Wakeling, Miriam Jorgensen, Susan Michaelson, Manley Begay, “Policing on American Indian Reservations,” U.S. Department of Justice, July 2001, <https://www.ojp.gov/pdffiles1/nij/188095.pdf>.

<sup>27</sup> This section pertains specifically to tribal lands in the lower 48 United States. Certain areas in those states, as well as Alaska Native villages, and Hawaiian Home Lands operate under different legal and regulatory circumstances, described later in this section.

<sup>28</sup> Lofthouse, “Institutions and Economic Development,” 232-235.

for the benefit of a Native American tribe or individual tribal members.<sup>29</sup> There are two types of trust land:

- Tribal trust lands, which are held by the federal government on behalf of tribal governments, and
- Allotted trust lands, which are held by the federal government on behalf of individual tribal members.

Because allotted trust lands are held in trust for individual allottees and their descendants, trust parcels are often passed down to multiple descendants and are then owned by more than one owner as undivided interests.<sup>30</sup> This often results in fractionated land ownership, which can limit owners' ability to develop the land, because development decisions need the agreement of the owner(s) of a majority interest. There is some precedent for consolidating these fractionalized interests: As a part of the settlement of *Cobell v. Salazar* in 2009, the Land Buy-Back Program for Tribal Nations offered limited opportunities for willing sellers to sell their fractionalized interests in trust or restricted land at a fair market value to the established \$1.9 billion Trust Land Consolidation Fund. The newly consolidated interests were then restored to tribal trust ownership for uses that would benefit the reservation community and tribal members. The Land Buy-Back Program allowed for the consolidation of more than 800,000 interests, equivalent to 2.3 million acres across 50 locations in 15 states. But the program ended in 2022, curtailing its potential for future impact.<sup>31</sup>

While trust lands make up most tribal lands, reservations also frequently contain fee simple lands, or lands that are owned outright by individual tribal members, the tribe, or another owner, rather than being held in trust. Fee simple lands are subject to county and state jurisdiction unless they are purchased by the tribe and placed into trust with the federal government.<sup>32</sup> Different reservations have different mixes of land under these various systems of land tenure.

Although the trust system was designed to prevent further loss of Native lands, it complicates private property rights—an important tenet of U.S. market participation—for tribes and tribal members. Tribes and some tribal members lack the ability to use their homes or land as

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<sup>29</sup> “Benefits of Trust Land Acquisition (Fee to Trust),” Department of the Interior, accessed April 27, 2023, <https://www.bia.gov/service/trust-land-acquisition/benefits-trust-land-acquisition>.

<sup>30</sup> David Listokin, Kenneth Temkin, Nancy Pindus, David Stanek, “Mortgage lending on tribal land: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing needs,” U.S. Department of Housing and Urban Development, 2017, <https://www.huduser.gov/portal/publications/NAHSC-Lending.html>.

<sup>31</sup> “Land Buy-Back Program for Tribal Nations: About,” U.S. Department of the Interior, accessed January 10, 2023, <https://www.doi.gov/buybackprogram/about>.

<sup>32</sup> Rachel Kramer et al., “Assessment of the Housing Needs of American Indians, Alaska Natives and Native Hawaiians in Washington State,” Big Water Consulting for Washington State Dept. of Commerce, 2021, <https://www.commerce.wa.gov/about-us/reports-publications>.

collateral, since they are not the legal owners of that land.<sup>33</sup> This can constrain or even prevent the development or purchase of new homes, since potential homeowners may be unable to get loans. Homes on trust land also tend to be severely undervalued, as the market itself is stifled. These two factors constrain homeownership in Native communities, which is a significant tool for building intergenerational wealth. Economist Jordan K. Lofthouse concludes that the “land trust impedes market participation and skews economic calculation,” presenting a continued challenge for Native community economic development.<sup>34</sup>

Some tribes have found creative ways to circumvent the limitations of trust land using the Helping Expedite and Advance Responsible Tribal Home Ownership Act (HEARTH Act) of 2012. For example, according to Lofthouse, “some tribal governments have begun using leasehold mortgages and long-term lease income as collateral on loans.”<sup>35</sup> The HEARTH Act is a voluntary program administered by the Department of the Interior that offers tribes a more efficient land leasing process with less Bureau of Indian Affairs oversight. Tribes that have approved leasing regulations under the Act can significantly reduce the time it takes to execute and approve leases, which can encourage potential lessees to invest and develop in tribal communities. HEARTH Act leasing regulations can apply to residential, business, and agricultural leases, as well as leasing for public, religious, educational, or recreational purposes. The BIA maintains a list of all tribes with HEARTH Act authorization by year and type: As of 2022, 77 unique tribes have had tribal leasing regulations approved by the Secretary of the Interior.<sup>36</sup> Among these, 72 leasing regulations apply to the leasing of land for business purposes.

While many tribes have not developed their own land leasing regulations under the HEARTH Act, the Ho-Chunk Nation provides an example of a successful use of the law to speed up land leasing and unlock capital. Prior to the approval of the Ho-Chunk Nation’s land leasing regulations by the BIA, it took up to 18 months for the lease processing; but after 2016, when the Ho-Chunk Nation’s Ho-Chunk Realty Division was established, the time to acquire a lease was reduced to four to six weeks.<sup>37</sup> This more streamlined process can encourage business investment by reducing wait times, removing uncertainty in leasing processes, and allowing the tribe to provide longer leases to business entities. It can also help to attract larger job-generators, such as manufacturing plants, which must obtain site control and frequently borrow

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<sup>33</sup> Carla F. Fredericks and Kate R Finn, “Harnessing Private Equity for Indigenous Peoples. Boulder, CO: First Peoples Worldwide,” University of Colorado, Boulder, 2020, [https://www.colorado.edu/program/fpw/sites/default/files/attached-files/harnessing\\_private\\_equity\\_for\\_indigenous\\_peoples\\_-\\_final.pdf](https://www.colorado.edu/program/fpw/sites/default/files/attached-files/harnessing_private_equity_for_indigenous_peoples_-_final.pdf).

<sup>34</sup> Lofthouse, “Institutions and Economic Development,” 243.

<sup>35</sup> Lofthouse, “Institutions and Economic Development,” 234.

<sup>36</sup> “Approved Hearth Act Regulations,” Bureau of Indian Affairs, accessed September 2, 2022, <https://www.bia.gov/service/HEARTH-Act/approved-regulations>.

<sup>37</sup> Patrice H. Kunesh, “Case Study: HEARTH Act Implementation,” Essay, in *Tribal Leaders Handbook on Homeownership*, 88–92, Minneapolis, MN: Federal Reserve Bank of Minneapolis – Center for Indian Country Development, 2018.

predevelopment capital to perform preliminary construction design and bidding, site investigations such as environmental and geotechnical investigations, and to pursue construction financing. If lease approvals take a year or more, the holding costs for predevelopment capital and the risk of non-approval become severe impediments. The delays and leasing complexities of typical trust lands can make them noncompetitive for businesses that can otherwise locate outside of Native lands without encountering these problems. But by leveraging HEARTH Act authority, tribes can streamline access to capital through leasehold mortgages in an important step for bringing non-tribal capital to their area.

## Political Stability and Independence

After the Indian Reorganization Act (IRA) of 1934 allowed tribes to adopt their own constitutions, various forms of political and governance structures emerged across Indian Country. Many tribes have modeled their constitutions after the federal system with three distinct branches of government, but others have developed theocracies, parliamentary systems, and other government structures.<sup>38</sup> These various systems have different implications for tribal economic activity.

The differences in governance among tribes and other Native communities create challenges for non-Native capital providers and businesses because the knowledge and experience obtained by working with one tribe is not necessarily applicable to another tribe. Working with Alaska Native Corporations and Villages and Native Hawaiian communities also involves different sets of policies and procedures. Some tribal governments have institutionalized lease terms (see discussion of the HEARTH Act above). Others have developed processes for preparing and approving limited waivers of sovereign immunity and the related approvals and contract provisions and implemented environmental regulations, historical and archaeological reviews, systems development or impact charges, tribal taxes, and other regulatory mechanisms. It is vital for tribes to provide clear and reliable explanations of the issues relevant to their operations for non-Native partners, because they can help quantify timelines and establish standards for approvals. While the substance of the decision-making criteria may reflect tribal values and needs—and therefore be different from a nearby non-tribal government’s substantive regulations—clarity and consistency will allow non-Native tribal partners to predict and price their risk.

As with any jurisdiction, the political and economic realms of tribal affairs are likely to be closely tied. Constituents elect leaders who promise to respond to their desire for good jobs and other economic opportunities, and those leaders in turn pursue initiatives to spur economic growth. But having these two realms too closely tied together can impede economic development. Especially in systems where elections are involved, it is important to maintain a separation between politics and economic activity.

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<sup>38</sup> Lofthouse, “Institutions and Economic Development.”

Cornell notes that empowering business managers to make decisions free from political considerations can make for stronger business practices.<sup>39</sup> While tribal governments may have a role to play in creating the big picture goals for a tribe's economic development, the day-to-day management should be free from the sway of politics. A long-term strategic plan that has received community approval may help to promote stability and protect implementation from political influence.<sup>40</sup>

Cornell also suggests having a board of directors that oversees a Native-owned enterprise or collection of enterprises to help manage the politics-business connection. Such boards can introduce diverse expertise into upper-level decision-making and help protect the enterprise from political interference. Cornell further suggests board member terms that are longer than council terms, requiring two-thirds council approval to remove a board member, and allowing boards to appoint members themselves, with council approval, to maintain the balance between independence and accountability.<sup>41</sup>

However, a clean separation of economic development and politics is not in keeping with the governance models of some tribes. Many tribes are participatory democracies that actively encourage or require consensus through deliberation at the local level. These systems are built on historical tradition and continue to be practiced today.<sup>42</sup> And while separating politics and economic development is one strategy for creating economic stability, political stability in itself can also help encourage community economic development activity. A political system that is predictable and reliable makes investment less risky, as the economic landscape will not be subject to upheaval with each election season. Alternatively, long-serving politicians who are not subject to short term limits might provide consistency and can focus on long-term economic development goals and projects, rather than just the projects that will help advance their electoral platforms in the next cycle.

In summary, regulatory consistency and transparency on the part of tribal governments, federal policies that recognize sovereignty and facilitate efficiencies in development processes, and a recognition of Indian Country's diverse historical, cultural, and political context are all necessary components to fostering community economic development in Native lands.

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<sup>39</sup> Stephen Cornell, "What Makes First Nations Enterprises Successful? Lessons from the Harvard Project," *Joint Occasional Papers on Native Affairs*, 2006.

<sup>40</sup> Denny Hurtado, "From the Rebuilding Native Nations Course Series: 'The Importance of Strategic Planning,'" Native Nations Institute for Leadership, Management, and Policy, University of Arizona, Tucson, Arizona, March 26, 2009, Interview.

<sup>41</sup> Stephen Cornell, "What Makes First Nations Enterprises Successful?" 12-13.

<sup>42</sup> Kahente Horn-Miller, "What Does Indigenous Participatory Democracy Look Like? Kahnawá:Ke's Community Decision Making Process," *Review of Constitutional Studies* 18, no. 1 (2013).

## Section 4: Essential Components of Community Economic Development

*This section provides insights on key elements that are required for tribal governments to pursue community economic development.*

Any local or tribal government pursuing a community economic development strategy requires several common elements:

- Suitable land available for the intended purpose of community economic development;
- A skilled and ready workforce; and
- Business development and capital formation.

This section describes each of these elements. The discussion of land includes the particulars of location, infrastructure, and natural resources relevant to community economic development. The workforce section addresses the challenge of attracting workers as well as skills training and the role of tribal colleges and universities. Finally, the section on business development describes the importance of a market that includes suppliers, consumers, and adequate telecommunications.

### Land

#### Location

Proximity to markets is important for economic growth. For example, it would be difficult to maintain a successful resort and casino on a reservation that is too remote to draw visitors and tourists from the surrounding area. To attract or maintain successful business enterprises and outside investors in the manufacturing, hospitality, or retail sectors, tribes need consistent access to suppliers, consumers, and employees. In seeking new or additional locations, often businesses screen locations based on population density and income demographics to forecast sales per square foot, revenue, and capacity for stand-alone profitability—metrics that place remote communities at a significant disadvantage. For tribes that are near other rural or urban communities, it may be advantageous to establish economic relationships with those communities. Research has found that “tribes that are more integrated with off-reservation economies have higher individual income, employment, and quality of life.”<sup>43</sup>

It is important to point out that the remote locations of many reservations were the product of intentional choices made in the past by the federal government, choices that have “isolated the reservation from urban markets” and created a “legacy of federal neglect [that] has left an infrastructural base insufficient for development.”<sup>44</sup> While the federal outlook has shifted since

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<sup>43</sup>Lofthouse, “Institutions and Economic Development,” 239.

<sup>44</sup> Janet E. Kodras, “The Changing Map of American Poverty in an Era of Economic Restructuring and Political Realignment,” *Economic Geography*, 73:1 (1997): 87, DOI: 10.1111/j.1944-8287.1997.tb00085.x.

the time that these decisions were made, generations later tribes are still dealing with the consequences of these harmful policies,<sup>45</sup> and routine appropriations are inadequate to both catch up with and deal with the resulting current needs.<sup>46</sup> The remote locations of many reservations create impediments to siting grocery stores, pharmacies, chain restaurants, and other retail establishments, which have significant impacts on tribal members' quality of life and cost of living.

### Infrastructure

Adequate basic infrastructure—in the form of roads, energy, water, waste management, and telecommunications—is a prerequisite for community economic development. Access to these critical components can be a challenge for Native communities due to the remote location of many reservations, challenging terrain within their lands, and a lack of adequate funding for improvements. A 2017 survey related to housing development in tribal areas found that infrastructure development was the most frequently cited barrier driving rising development costs.<sup>47</sup> Several tribes cited a lack of available funding, in addition to physical construction challenges, when explaining why it was difficult to service new housing development with adequate infrastructure.<sup>48</sup>

Several funding sources are available to support the development or maintenance of infrastructure on tribal lands. These include funds from:

- The Indian Health Service (IHS) (especially Sanitation Facilities Construction);
- U.S. Department of Agriculture (USDA) Rural Development;
- Environmental Protection Agency (EPA), especially the Environmental General Assistance Program; and
- U.S. Department of Housing and Urban Development's (HUD) Indian Community Development Block Grant (ICDBG) and Indian Housing Block Grant (IHBG), which can be used specifically for infrastructure.<sup>49</sup> The Infrastructure Investment and Jobs Act of

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<sup>45</sup> For example, Opportunity Zones, included in the Tax Cuts and Jobs Act of 2016 and designed to promote economic development in underserved areas, initially excluded tribal governments from participating in Opportunity Funds, a vehicle that investors can use to pool funds for development in Opportunity Zones. This oversight has since been addressed in regulations that were updated in 2019. See [https://www.cherokeephoenix.org/news/tribes-shut-out-of-opportunity-zone-deals/article\\_1cfb3941-2635-50e9-a718-163e4d66d8b1.html](https://www.cherokeephoenix.org/news/tribes-shut-out-of-opportunity-zone-deals/article_1cfb3941-2635-50e9-a718-163e4d66d8b1.html). March 2019 and [https://www.cherokeephoenix.org/news/tribes-shut-out-of-opportunity-zone-deals/article\\_1cfb3941-2635-50e9-a718-163e4d66d8b1.html](https://www.cherokeephoenix.org/news/tribes-shut-out-of-opportunity-zone-deals/article_1cfb3941-2635-50e9-a718-163e4d66d8b1.html). September 2019.

<sup>46</sup> Nancy Pindus et al., "Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs," U.S. Department of Housing and Urban Development Office of Policy Development and Research, 2017, 127, <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>.

<sup>47</sup> Pindus et al., "Housing Needs of American Indians," 127.

<sup>48</sup> Since 1998, the first year that IHBG became operational, Congress has provided a consistent level of funding annually in nominal terms—an average of about \$667 million per year from 1998 through 2014. Over 17 years, however, inflation has seriously eroded that level. See Pindus et al., 2017.

<sup>49</sup> *Ibid.*

2021 (PL 117-58) also provided additional opportunities for infrastructure funding for tribes, with \$13 billion set aside for Indian Country.<sup>50</sup>

In light of the physical and funding challenges faced when improving infrastructure, some tribes have gotten creative in how they provide services to their members. For example, rather than providing development-wide infrastructure, Citizen Potawatomi Nation offers individual water wells and septic systems built by the tribal Office of Environmental Health for tribal members purchasing or building a home in the service area. Other tribes have developed beneficial partnerships with local utility providers. At Gila River Indian Community, for example, the tribe has developed a partnership with Verizon to provide internet and phone service for members.<sup>51</sup> Some tribes have also leveraged partnerships with nearby communities to develop better infrastructure. The Quileute Tribe in Washington state recently worked with the town of Forks on a broadband expansion initiative, and the Jamestown S’Klallam Tribe partnered with the city of Sequim to tap into the wastewater system of the city and lower infrastructure costs.<sup>52</sup>

The need for adequate basic infrastructure to support community economic development extends beyond the needs of housing developments. For instance, manufacturing facilities may require access to heavy rail, interstate freeways, an airport, or a port. These factors make major cities on rail lines and interstate freeways more competitive for manufacturing employers. Adequate water, wastewater treatment, energy, and telecommunications capacity are also site selection criteria for manufacturing facilities. Topography may be important for larger facilities—most manufacturing plants require level land. The geotechnical condition of the land, such as its load bearing capacity, is also a consideration.

These resource requirements can make siting manufacturing and other projects on tribal land difficult. State and local governments offer a range of incentives to attract employers to locations that require infrastructure upgrades, including waiving connection fees or systems development charges and offering land or tax abatements.<sup>53,54</sup> Tribes often compete for grants and capital against other communities that have shovel-ready sites where utilities are already in place or where developers have access to state and local incentives. Many tribes’ primary assets are land and natural resources, and smaller tribes may lack the capital to bring adequate utilities to an

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<sup>50</sup> “Fact Sheet: Biden-Harris Administration Releases Tribal Playbook, Announces Massive New Tribal Funding from Bipartisan Infrastructure Law,” The White House, May 31, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/31/fact-sheet-biden-harris-administration-releases-tribal-playbook-announces-massive-new-tribal-funding-from-bipartisan-infrastructure-law>.

<sup>51</sup> Pindus, et al., “Housing Needs of American Indians,” 129.

<sup>52</sup> Kramer et al., “Assessment of the Housing Needs,” 75.

<sup>53</sup> “Economic Development Incentives,” Chicago Metropolitan Agency for Planning, June 2009, accessed September 8, 2022, [https://www.cmap.illinois.gov/documents/10180/50455/Economic+Development+Incentives+Strategy\\_June.pdf/0722371d-51d3-4f3e-aa15-171347ad7455](https://www.cmap.illinois.gov/documents/10180/50455/Economic+Development+Incentives+Strategy_June.pdf/0722371d-51d3-4f3e-aa15-171347ad7455).

<sup>54</sup> John E. Anderson, and Robert W. Wassmer, *Bidding for Business: The Efficacy of Local Economic Development Incentives in a Metropolitan Area* (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 2000) 24, <https://doi.org/10.17848/9780585313610>.

undeveloped industrial site without charging the business owner or project developer. Yet, the employment benefits to the surrounding non-tribal community may be equal to or greater than the employment gains for tribal residents. Winchell’s study of the Inland Pacific Northwest found that successful tribal government operations and tribal economic and business developments in this region represent some of the most significant and positive economic change in rural areas anywhere in the nation.<sup>55</sup>

Community facilities providing services such as education, health care, and child care also rely on infrastructure and face challenges similar to housing and manufacturing projects. Transportation infrastructure is critical for accessing health care, child care, and schools. Tribal member access to IHS facilities, many of which are the only primary care access points in remote areas, can be limited by a lack of transportation options and harsh weather conditions. Many IHS facilities are outdated and their infrastructure cannot support the most up-to-date medical equipment and treatments.<sup>56</sup>

Broadband is critical for reliable and high-speed internet access and can enable distance learning and telemedicine, service needs that were highlighted during the COVID pandemic.<sup>57</sup> But while broadband access in tribal areas has grown steadily between 2013 and 2019, it does continue to lag behind other areas of the country. In 2019, all tribal areas were 20 percentage points behind urban areas, and about four percentage points behind other non-tribal rural areas in terms of individual access to broadband service.<sup>58</sup> Overall, approximately 65% of the population on rural tribal lands had access to fixed terrestrial 25/3 Mbps services in 2019, the minimum service speed necessary to be considered broadband. But the utility of that minimum speed has recently come under debate, with the Chairwoman of the Federal Communications Commission recently announcing a goal of raising it to 1 Gbps/500 Mbps in the near future.<sup>59</sup> The current rate of access for tribal members at that higher standard is much lower.

Many of these challenges related to infrastructure access can exacerbate potential employers’ and developers’ discomfort with community economic development in Native lands. Some funding programs assist low-income communities by reducing the cost of occupancy and offsetting infrastructure costs, but these programs are not a silver bullet for dealing with infrastructure issues, and come with their own challenges, such as jurisdictional issues, compliance

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<sup>55</sup> Winchell, “Indigenous Rural Renewal.”

<sup>56</sup> “Tribal Infrastructure: Investing in Indian Country for a Stronger America,” National Congress of American Indians, 2017, <https://www.ncai.org/NCAI-InfrastructureReport-FINAL.pdf>.

<sup>57</sup> “Breaking Down Barriers to Broadband Access,” U.S. Government Accountability Office, *GAO Watch Blog*, August 11, 2022, <https://www.gao.gov/blog/breaking-down-barriers-broadband-access>.

<sup>58</sup> Stephanie Henning and Anthony “Morgan” Rodman, “National Tribal Broadband Strategy,” U.S. Department of the Interior, Indian Affairs, January 15, 2021, 3, <https://www.bia.gov/sites/default/files/dup/assets/as-ia/doc/2020.%20December.%20National%20Tribal%20Broadband%20Strategy%20FINAL-cover%20change.pdf>.

<sup>59</sup> “Chairwoman Rosenworcel Proposes to Increase Minimum Broadband Speeds and Set Gigabit Future Goal,” Federal Communications Commission, July 15, 2022, <https://www.fcc.gov/document/chairwoman-rosenworcel-proposes-increase-minimum-broadband-speeds>.

requirements, attracting investors, and inconsistencies in application of U.S. tax policy on Native lands.<sup>60</sup>

### Natural Resources

In addition to often being forced into remote locations, tribes have historically been separated from prime natural resources, including land with the best agricultural potential.<sup>61</sup> In many cases, this has left tribes with limited community economic development opportunities. And even in cases where tribes are situated on resource-rich land, they had a limited ability to manage and benefit from those resources until the late twentieth century.

Many tribes have either discovered or recently regained access to their natural resources, and today, American Indians are stewards of a variety of land, water, mineral, oil and gas, and other resources. The passages of the Indian Mineral Development Act (IMDA) in 1982 and then the Tribal Energy Development and Self-Determination Act (TERA) of 2005 gave tribes substantially more control of the mineral resources on their lands. Now, once a tribe has gained approval from the Secretary of the Interior for a Tribal Energy Resource Agreement, the tribe has blanket authority to manage mineral development on its lands, without separate approval of each venture.<sup>62</sup>

Native lands encompass an estimated 30% of the nation's coal reserves west of the Mississippi, as much as 50% of potential uranium reserves, and up to 20% of known natural gas and oil reserves.<sup>63</sup> As of 2011, 42 federally recognized tribes produced oil and gas, three had significant coal operations, and others had deposits of copper, uranium, and other rare earth minerals on their lands.<sup>64</sup> Having access to these potentially valuable natural resources can lead to complicated decisions for many tribes. While some tribes choose to develop these resources for economic gain, others do not—they may opt instead to protect the land that the resources are on, which may hold spiritual or cultural significance for the tribes. For example, the Northern Cheyenne Tribe ultimately elected not to mine their coal reserves, despite conflicting views within the tribe, and the San Carlos Apache Tribe and others fought the opening of a copper mine that was not on their reservation lands but was on land that was sacred to their people.<sup>65</sup>

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<sup>60</sup> Chex Oxendine, “Barriers to Tribal Economic Development Hinge on Sovereignty-related Issues,” *Tribal Business News*, April 11, 2022, <https://www.tribalbusinessnews.com/sections/economic-development/13861-barriers-to-tribal-economic-development-hinge-on-sovereignty-related-issues>.

<sup>61</sup> Bryan Leonard, Dominic Parker, and Terry Anderson, “Land Quality, Land Rights, and Indigenous Poverty,” *Journal of Development Economics* 143, (2020): 4, <https://doi.org/10.1016/j.jdeveco.2019.102435>.

<sup>62</sup> Maura Grogan, Rebecca Morse, April Youpee-Roll, “Native American Lands and Natural Resource Development,” Revenue Watch Institute, 2011, 15, [https://resourcegovernance.org/sites/default/files/RWI\\_Native\\_American\\_Lands\\_2011.pdf](https://resourcegovernance.org/sites/default/files/RWI_Native_American_Lands_2011.pdf).

<sup>63</sup> Grogan, et al., “Native American Lands,” 3.

<sup>64</sup> Grogan, et al., “Native American Lands,” 8-9.

<sup>65</sup> Grogan, et al., “Native American Lands,” 7.

## Tribal Workforce

A sufficient pool of workers with the appropriate skills is necessary for sustained economic development. American Indians and Alaska Natives (AIAN) fare worse than individuals in the United States overall on each of the three most commonly used labor market metrics. Between 2019 and 2022:

- The labor force participation rate (the labor force divided by the population) for all of the country was 62.4% compared to 60.8% for AIAN people;
- The employment rate (the number of employed workers divided by the population) was 60.2% for the country and 57.4% for AIAN people; and
- The unemployment rate (the number of non-employed people who are available and looking for work—or who expect recall to a previous job—divided by the number of people in the labor force) was higher for AIAN people at 5.6% as compared to 3.6% for the U.S. overall.<sup>66</sup>

Research from 2018 finds that, for many reservations, the number of jobs per inhabitant is on par with nearby county areas.<sup>67</sup> However, the employment rate on tribal lands is heavily driven by just a few sectors, such as art, entertainment and recreation, and public administration, which are closely tied to gaming and tribal government. This suggests that there are potential opportunities to expand job creation and economic development in the sectors where Indian Country still falls far behind neighboring counties, such as retail, manufacturing, and health and social services.<sup>68</sup>

This opportunity for growth is further supported by evidence that, unlike the population of most of rural America, the American Indian population on tribal lands is growing, providing a potential workforce to fill new jobs.<sup>69</sup> Kunesh notes that Indian Country can be a positive part of the solution (or at least mitigation) of population loss in rural America.<sup>70</sup> Reservations are homelands for American Indians, creating intergenerational ties to the land and thus a rooted

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<sup>66</sup> Center for Indian Community Development, “Native American Labor Market Dashboard,” Federal Reserve Bank of Minneapolis, accessed December 11, 2022, <https://www.minneapolisfed.org/indiancountry/resources/native-american-labor-market-dashboard>. The numbers cited are for individuals 16 and older based on Current Population Survey (CPS) 3-month rolling averages in September 2022.

<sup>67</sup> Richard M. Todd, “Industry Concentration of Jobs Highlights Economic Diversification Opportunity in Indian Country,” Center for Indian Country Development, Federal Reserve Bank of Minneapolis, 2018, <https://www.minneapolisfed.org/article/2018/industry-concentration-of-jobs-highlights-economic-diversification-opportunity-in-indian-country>.

<sup>68</sup> Richard M. Todd, “Industry Concentration of Jobs Highlights Economic Diversification Opportunity in Indian Country,” Center for Indian Country Development, Federal Reserve Bank of Minneapolis, 2018, <https://www.minneapolisfed.org/article/2018/industry-concentration-of-jobs-highlights-economic-diversification-opportunity-in-indian-country>.

<sup>69</sup> “Rural America At A Glance,” U.S. Department of Agriculture, 2018, <https://www.ers.usda.gov/publications/pub-details/?pubid=90555>

<sup>70</sup> Patrice H. Kunesh, “Getting Real about Indian Country Surprising Progress in the Heartland,” *Indian Country Today*, 2019, <https://newsmaven.io/indiancountrytoday/opinion/getting-real-about-indian-country-surprising-progress-in-the-heartland-P9OJ5PA0aECquc42NM5dYg>.

population that can help temper the general depopulation trend. Reservations have important economic strengths to offer rural America, including the ability to attract tourist dollars (from casinos, but also amenities and culture), agriculture and natural resources (minerals, forests, water), and unique access to federal funding sources.

Furthermore, education outcomes are promising for AIAN individuals. A 2010 report of the National Congress of American Indians (NCAI) noted that, based on 2005-2009 American Community Survey 5-Year estimates, when compared with the total United States population:

- More American Indians and Alaska Natives completed high school or an equivalent program, without additional higher education, than the total U.S. population (32% as compared to 29.3%);<sup>71</sup>
- More American Indians and Alaska Natives completed some college or an associate degree than the total population (31.2%, compared to 27.7%); however,
- Fewer completed a bachelor's degree or higher (12.8% compared to 27.5% for the total U.S. population).<sup>72</sup> Nevertheless, this trend may be changing:
  - Native college enrollment more than doubled between 1976 and 2006;
  - The number of master's and doctoral degrees awarded to American Indians and Alaska Natives between 2000 and 2010 outpaced the total increase in master's and doctoral degrees awarded in total over that same time period (a 54% increase in the number of master's degrees awarded to Native students as compared to a 50.4% increase for the United States overall; and
  - An increase of 34.7% of doctorates awarded to Native students as compared to 31.9% for the United States overall.

While many tribal members with higher education degrees may leave reservations in search of economic opportunity, increased community economic development in tribal areas may encourage these individuals to remain or return to tribal lands.

Beyond having available jobs, improved education outcomes, and a growing population, tribes need to be able to equip potential workers for success with workforce development opportunities to build needed skills, as well as adequate pay and accessible and affordable housing. Developing housing near employment that is suitable for the income levels and family sizes of workers and near community amenities and services such as parks and schools is important for

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<sup>71</sup> General educational development tests are a group of four subject tests which, when passed, provide certification that the test taker has achieved American or Canadian high school-level academic skills.

<sup>72</sup> NCAI Policy Research Center, "Tribal Insights Brief: Higher Education & Workforce Development: Leveraging Tribal Investments to Advance Community Goals," National Congress of American Indians, June 18, 2012, [https://www.ncai.org/resources/ncai\\_publications/tribal-insights-brief-higher-education-workforce-development-leveraging-tribal-investments-to-advance-community-goals](https://www.ncai.org/resources/ncai_publications/tribal-insights-brief-higher-education-workforce-development-leveraging-tribal-investments-to-advance-community-goals).

attracting and retaining workers. These factors should be considered part of a comprehensive community economic development strategy.

Unfortunately, in remote areas, these workforce development and affordable housing resources are in particularly short supply. The availability of labor was noted as a barrier to housing development by tribal housing providers that participated in a 2017 survey of Native American and Alaska Native housing needs.<sup>73</sup> Tribal housing departments and Tribally Designated Housing Entities (TDHEs) do not have enough construction activity to support the hiring and retention of construction workers (either in-house employees or contractors) on a consistent basis. The combination of irregular employment for construction workers on tribal land, limited training opportunities in some remote locations, and higher paying employment outside of tribal areas leads to worker shortages and higher costs, further limiting the volume of new construction that can be initiated.

### Tribal Colleges and Universities

Tribal colleges and universities play an important role in meeting the postsecondary educational needs of American Indians, particularly those living in geographically isolated areas.<sup>74</sup> In addition to offering critical vocational training and academic opportunities, tribal colleges and universities are an important employer in many tribal communities. They also provide opportunities for tribal communities to build knowledge for generating wealth and economic development opportunities through the preservation of tribal culture, history, and traditions.<sup>75</sup>

The academic resources available through tribal colleges can be most effectively deployed in conjunction with a strategic community economic development plan that targets a few industries or sectors. This way, educational programs can focus on the jobs likely to be available. With clear priorities, companion small business lending can focus on vendor, supplier, and services businesses to support the target industries. Target industries should be chosen in the context of the character of available land and infrastructure—for example, manufacturing plants have to have level land with good transportation, water, and power, while health care facilities need to be located near roads that are accessible to workers, residents and emergency vehicles.

In recent years many tribal colleges have implemented training programs in construction, health care, and science, technology, engineering and mathematics (STEM) careers.<sup>76</sup> For example, in 2015, Oglala Lakota College partnered with the University of Colorado at Boulder to train youth on the Pine Ridge Reservation in green construction methods while they worked on completing

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<sup>73</sup> Pindus et al., “Housing Needs of American Indians.”

<sup>74</sup> Alisa F. Cunningham, “Tribal College Contributions to Local Economic Development,” Institute for Higher Education Policy, Washington, DC.; American Indian Higher Education Consortium, Alexandria, CA, 2000, [http://www.aihec.org/our-stories/docs/reports/TC\\_contributionsLocalEconDevmt.pdf](http://www.aihec.org/our-stories/docs/reports/TC_contributionsLocalEconDevmt.pdf).

<sup>75</sup> Cunningham, “Tribal College Contributions to Local Economic Development.”

<sup>76</sup> Paul Boyer, “Ready for Work,” *Native Science Report*, accessed September 1, 2022, <https://nativesciencereport.org/2020/02/ready-for-work>.

the general education development (GED) test. The goal was to move these youth into employee-owned construction firms.<sup>77</sup>

The Health Professions Opportunity Grants (HPOG) program, funded by the U.S. Department of Health and Human Services (HHS) Administration for Children and Families, provides education and training to Temporary Assistance for Needy Families (TANF) recipients and other low-income individuals for occupations in the health care field that pay well and are expected to either experience labor shortages or be in high demand. Five tribal colleges and other tribal organizations are HPOG grantees: Blackfeet Community College in Browning, MT; Cankdeska Cikana Community College in Fort Totten, ND; College of Menominee Nation in Keshena, WI; Cook Inlet Tribal Council, Inc. in Anchorage, AK; and Turtle Mountain Community College in Belcourt, ND.

In the first four years of the HPOG program (2010-2014) nearly 2,000 participants enrolled in the program across the five tribal colleges. Nearly half trained as nurse assistants, aides, or orderlies, and 18% trained as licensed practical nurses or vocational nurses. Other students trained as registered nurses, emergency medical technicians, medical records technicians, and other health-related occupations. As of year four of these five-year grants 1,138 students had completed the program, and 40% of those who were previously unemployed had found jobs in health care. Of those employed in other jobs at the time of enrollment, 35% were employed in health care by the time they completed the program.<sup>78</sup>

In addition to federal initiatives, tribal organizations have been active in promoting workforce development. For example, the National Congress of American Indians' (NCAI) Partnership for Tribal Governance works collaboratively with tribal nations to document their innovative approaches and share them with actors across Indian Country. Examples of innovative approaches include the Empowerment Department of Ysleta del sur Pueblo, which provides a wrap-around system striving to eliminate programmatic redundancies, increase fiscal efficiency, and streamline its services; and the Coeur d'Alene Tribe's Education Pipeline that features 15 chronologically sequenced, educational groupings from Early Child through high school and GED programs, various post-secondary tracks, graduate degrees, and professional degrees. The NCAI also seeks to identify common challenges, emerging trends, and effective strategies in tribal workforce development. The project has developed in-depth case studies of four tribal nations, including videos and recorded interviews, and has published a workforce development toolkit for tribal decision-makers. In 2020, NCAI prepared a policy brief on workforce development with recommendations to federal policymakers.<sup>79</sup>

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<sup>77</sup> Pindus et al., "Housing Needs of American Indians."

<sup>78</sup> Michael Meit, et al., "Higher Education & Workforce Development in Tribal Communities & the Role of Tribal HPOG," Administration for Children and Families, U.S. Department of Health and Human Services, July 2015, [www.acf.hhs.gov/sites/default/files/documents/opre/hpog\\_practice\\_brief\\_higher\\_education\\_and\\_workforce\\_development\\_in\\_0.pdf](http://www.acf.hhs.gov/sites/default/files/documents/opre/hpog_practice_brief_higher_education_and_workforce_development_in_0.pdf).

<sup>79</sup> "Workforce Development: Building the Human Capacity to Rebuild Tribal Nations," National Congress of American Indians, accessed September 1, 2022, <https://www.ncai.org/ptg/workforce-development>.

## Business Development, Credit Access, and Capital Formation

When it comes to business development in tribal areas, Cornell suggests that tribes look for opportunities to establish three distinct business types:

1. Non-Native-owned enterprises;
2. Tribally owned enterprises; and
3. Citizen-owned enterprises.<sup>80</sup>

This allows tribes to take advantage of the strengths of all three approaches while not being fully tied down by the disadvantages of any. Non-Native owners or partners can help bring in new expertise or capital, tribally owned businesses can control revenue distribution, and citizen entrepreneurship might be best suited for meeting daily community needs.<sup>81</sup>

Since the beginning of the self-determination era, tribal communities have been making progress when it comes to business development and economic growth. The number of tribal enterprises has grown significantly over the last 25 years, and especially the number of non-gaming tribal enterprises.<sup>82</sup> According to a 2021 analysis by the Federal Reserve Bank of Minneapolis, this growth has even ticked up in recent years: 99 new non-gaming tribal businesses were recorded in the U.S. Small Business Administration (SBA) database in 2020, the most of any year on record.<sup>83</sup> Tribes are diversifying their business portfolios and opening businesses in industries such as professional services, construction, general administrative support, and manufacturing.

Credit access and financial literacy, which can promote individual economic opportunity and drive economic development in communities, are still underdeveloped in Native American communities.<sup>84</sup> The challenges stem, in large part, from the rural locations of tribal lands, since access to credit in rural areas can be limited by geographic distance and the lack of auxiliary services such as widespread broadband coverage. In addition, many Native individuals are unable to build credit with loans made through payday lenders, tribal credit operations, or banks in tribal areas that don't report to credit bureaus. Native American financial institutions, discussed in Section 6, are entities that primarily serve Native communities or have majority-Native ownership or leadership. These organizations have begun to step in to fill this credit-building gap.

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<sup>80</sup> Cornell, "What Makes First Nations Enterprises Successful?"

<sup>81</sup> Ibid.

<sup>82</sup> Matthew Gregg and Elijah Moreno, "Examining tribal enterprises to understand Native economic development," Federal Reserve Bank of Minneapolis, July 14, 2021, <https://www.minneapolisfed.org/article/2021/examining-tribal-enterprises-to-understand-native-economic-development>.

<sup>83</sup> Ibid.

<sup>84</sup> Andrew P. Scott, "An Overview of Rural Credit Markets," Washington, DC: Congressional Research Service, September 21, 2021, <https://crsreports.congress.gov/product/pdf/R/R46914>.

The introduction of new facilities, organizations, and enterprises within and around tribal reservations provide an opportunity to increase earnings and employment for the local Native community, especially if they are tribally owned and operated. As Akee notes, tribally owned and operated businesses may have different priorities, and make business decisions that support tribal resilience and sovereignty, as compared to private business owners.<sup>85</sup> New development in Indian Country also has the potential to expand into new, innovative industries that can strengthen and diversify the economies in the area.<sup>86</sup> A coordinated effort to restore and expand existing land resources would give tribal governments the tools they need to improve job and income prospects, especially given the history of indigenous land theft.<sup>87</sup> This could include initiatives to lessen the disparity between tribe and private American Indian property ownership.<sup>88</sup> Additionally, it might give tribal inhabitants the option to support themselves through traditional subsistence activities in the nonmarket economy, which is something for which many tribal members commonly express a desire.<sup>89</sup>

### Digital Business Capacity

The COVID-19 pandemic has been devastating to tribal areas in many respects, but it has also compelled many tribes to improve their capacity to conduct business digitally. According to a report on the housing needs of Native communities in Washington State, many tribes were forced to update virtual communication and payment systems during the pandemic, and in many cases were able to leverage Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to do so.<sup>90</sup> This has made things like remote work, online rent payment and service requests, and virtual regional and national meetings more accessible to tribal members. However, according to the DOI National Tribal Broadband Strategy, the broadband capacity necessary to attract industry is still limited. Insufficient service impedes tribes' efforts to achieve self-governance and self-determination, as well as individuals' access to education, health care, and economic resources.<sup>91</sup>

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<sup>85</sup> Akee, "Sovereignty and Improved Economic Outcomes."

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Kramer, et al., "Assessment of the Housing Needs," 70.

<sup>91</sup> Henning and Rodman, "National Tribal Broadband Strategy," 2.

## Section 5: Sectors of Community Economic Development in Indian Country

*This section covers the economic development activities within specific economic sectors that have historically been the primary contributors to the wealth and capital for Indian Country.*

Local economies are an essential driver of economic well-being and the ability to improve living conditions in a given area.<sup>92</sup> For Indian Country, there are a set of industries and economic sectors that have historically been the primary contributors to the generation of local wealth and capital. This section describes economic development activities within four broad economic sectors:

- Natural resources processing;
- Manufacturing, construction, and utilities;
- Consumer and business services; and
- Public sector, government, and community services.

By the end of the 1980s, significant disparities had emerged between tribes with respect to the scale and diversity of their economic enterprises. Some tribes had been successful in developing diverse types of private businesses and capitalizing on rich resources, but others had generated very few private sector jobs.<sup>93</sup> In more recent years, the desire to diversify into new and different economic sectors has been a main focus for many tribal governments and supporting organizations, and many have taken steps to develop and implement structures that prioritize non-gaming revenue and job creation.<sup>94</sup> The COVID-19 pandemic, which shuttered many casinos and hospitality businesses during 2020, added further motivation to diversify.<sup>95</sup>

### Natural Resources Processing

#### Natural Gas Extraction

As discussed in the previous section, in a 2011 estimate, Native lands were believed to contain nearly one third of the western United States' coal reserves, 50% of the country's potential uranium reserves, and 20% of its natural gas and oil reserves.<sup>96</sup> However, non-Native actors have

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<sup>92</sup> Pettit, et al., "Continuity and Change."

<sup>93</sup> Stephen Cornell and Joseph Kalt, "American Indian Self-Determination: The Political Economy of a Policy that Works. HKS Faculty Research Working Paper Series" John J. Kennedy School of Government, Harvard University, 2010, [https://dash.harvard.edu/bitstream/handle/1/4553307/RWP10-043\\_Cornell\\_Kalt.pdf](https://dash.harvard.edu/bitstream/handle/1/4553307/RWP10-043_Cornell_Kalt.pdf).

<sup>94</sup> "True Economic Diversification Financial Roundtable: Economic Diversification in Indian Country," Tribal Government Gaming, Tribal Government Gaming, 2020, <https://tribalgovernmentgaming.com/article/true-economic-diversification>.

<sup>95</sup> Mario Koran, "We've got to get gaming out of our blood," *Indian Country Today*, April 5, 2022, <https://indiancountrytoday.com/news/weve-got-to-get-gaming-out-of-our-blood>.

<sup>96</sup> Grogan, et al., "Native American Lands."

historically done much of the extraction of natural resources from Native lands, and in some cases (especially where Tribal Energy Resource Agreements [TERA] have not been established) the federal government retains significant authority to approve or deny these projects.<sup>97</sup>

Despite these historical and administrative challenges, several tribes have created companies to control the extraction of natural resources on their lands. One such example is the Southern Ute Indian Tribe, located in Southwest Colorado. The tribe established the Red Cedar Gathering Company to control the extraction and treatment of natural gas within the bounds of its reservation in the San Juan Basin.<sup>98</sup> The Red Cedar Gathering Company is one division of the Southern Ute Indian Tribe Growth Fund; another is the Red Willow Production Company, which produces oil and natural gas both on the reservation and more broadly in the western United States and Gulf of Mexico.<sup>99</sup> The tribe also operates the Aka Energy Group with the goal of providing “infrastructure and innovation for the energy transition to carbon neutrality.”<sup>100</sup> Thanks largely to its resource extraction and alternative energy development activities, the tribe is the largest employer in La Plata County, Colorado, where the tribal headquarters and many tribal facilities are located.<sup>101</sup>

#### Natural Resource Protection and Conservation

There has been movement by many tribes with natural resource-dependent economies toward conservation and away from extraction industries. Many tribes have experienced extraction as exploitive and economic development efforts are pivoting towards environmental cleanup, including land reclamation and remediation.<sup>102</sup> Reclamation refers to the process of “converting disturbed or damaged land to its former or other productive uses,” and remediation specifically means the removal and mitigation of contaminants from soil and water.<sup>103</sup> For example, the Confederated Tribes of Grand Ronde Community of Oregon are in the process of restoring land at Willamette Falls that had formerly been used as a paper mill since the arrival of European settlers in the 1800s. The tribes purchased the land in 2019 and are now undergoing the process of testing the site for environmental hazards and contaminants, decommissioning underground storage tanks on the site, and repurposing or demolishing portions of the mill. They eventually

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<sup>97</sup> Grogan, et al., “Native American Lands.” The Tribal Energy Development and Self-Determination Act of 2005 allows tribes to gain approval from the Secretary of the Interior for a Tribal Energy Resource Agreement, giving them blanket authority to manage mineral development on its lands, without separate approval of each venture.

<sup>98</sup> “Business Areas,” Southern Ute Growth Fund, accessed September 6, 2022, <https://www.sugf.com/business>.

<sup>99</sup> “Red Willow Production Company,” Southern Ute Indian Tribe, accessed September 6, 2022, <https://www.rwpc.us>.

<sup>100</sup> “Business Areas.”

<sup>101</sup> Ibid.

<sup>102</sup> Carina Dominguez, “Indigenous Women Say ‘No’ to Extraction for Sustainable Future,” *Indian Country Today*, April 29, 2022, accessed September 6, 2022, <https://indiancountrytoday.com/news/indigenous-women-say-no-to-extraction-for-sustainable-future>.

<sup>103</sup> M. Anne Naeth, P. Michael Rutherford, and Allen M. Jobson, “Soil Reclamation and Remediation of Disturbed Lands,” University of Saskatchewan, August 12, 2021, accessed September 6, 2022, <https://openpress.usask.ca/soilscience/chapter/soil-reclamation-and-remediation-of-disturbed-lands>.

plan to use the land for mixed-use development and intend to find “opportunities to share the tribes’ cultural and historical stories” in and around the development.<sup>104</sup>

Renewable energy presents another opportunity for community economic development in the natural resources sector outside the realm of extraction. The Fond du Lac Band of Lake Superior Chippewa Indians completed a solar project on its reservation in 2016 in line with its strategic energy plan, which has a goal of cutting energy use and emissions by 20% over the course of four years through renewable energy development, energy efficiency measures, and reduced fossil fuel purchasing.<sup>105</sup> The tribe received technical assistance on the solar project from the U.S. Department of Energy’s (DOE) National Renewable Energy Laboratory to implement the project cost-effectively using cutting-edge technology. Bruno Zagar, the Band’s environmental specialist and energy projects manager, describes the technical assistance as helping “bring in expertise for Indian Country, but it also helped the local utility to adopt the smartest technology available.”<sup>106</sup> Not only did the Band reduce its fossil fuel use by 50% and its carbon emissions by 80% by 2020,<sup>107</sup> it set a new technological and sustainability precedent for the state of Minnesota.<sup>108</sup>

## Manufacturing, Construction, and Utilities

Manufacturing and construction make up a significant proportion of Native-owned enterprises relative to the proportion of enterprises in the United States at large: along with professional services and general administrative support, these industries make up three-fourths of Native establishments, compared to 30% of all U.S. business establishments.<sup>109</sup>

### Manufacturing

Manufacturing enterprises are important sources of both job and capital creation for many tribes. For example, electronics manufacturer S & K Electronics, owned by the Confederated Salish and Kootenai Tribes in northwestern Montana, employs nearly 1,200 people and returns a portion of its revenue—nearly \$1 million in 2020—to the tribe as a dividend each year to help fund government services.<sup>110</sup> Many tribes also look to manufacturing as an important area for growth and diversification away from the historically dominant industries in Indian Country, such as

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<sup>104</sup> Dean Rhodes, “Tribe Receives \$800,000 EPA Grant to Clean up Blue Heron Site,” *Smoke Signals*, May 13, 2021, accessed September 6, 2022, <https://www.smokesignals.org/articles/2021/05/13/tribe-receives-800-000-epa-grant-to-clean-up-blue-heron-site>.

<sup>105</sup> “Fond Du Lac Band Poised to Double 2020 Clean Energy Goal,” U.S. Department of Energy, September 27, 2016, <https://www.energy.gov/indianenergy/articles/fond-du-lac-band-poised-double-2020-clean-energy-goal>.

<sup>106</sup> “Fond Du Lac Band Poised to Double 2020 Clean Energy Goal,” U.S. Department of Energy, September 27, 2016, <https://www.energy.gov/indianenergy/articles/fond-du-lac-band-poised-double-2020-clean-energy-goal>.

<sup>107</sup> “Strategic Energy Plan,” FDL Resource Management, 2022, accessed September 7, 2022, <https://www.fdlrez.com/RM/energyplan.htm>.

<sup>108</sup> “Fond Du Lac Band Poised to Double 2020 Clean Energy Goal.”

<sup>109</sup> Gregg and Moreno, “Examining tribal enterprises.”

<sup>110</sup> James Robert Colombe and Rory Taylor, “Tribal Enterprises Drive Economic Activity in Indian Country and Beyond,” Federal Reserve Bank of Minneapolis, July 6, 2021, <https://www.minneapolisfed.org/article/2021/tribal-enterprises-drive-economic-activity-in-indian-country-and-beyond>.

natural resource extraction and gaming. Tribal colleges and universities, such as Navajo Technical University, are developing and expanding their engineering programs to expand available pathways to careers in manufacturing and other STEM industries.<sup>111</sup> A variety of federal programs are available for financing manufacturing projects in Native lands, including Economic Development Administration (EDA) grants and New Markets Tax Credits (NMTC).

### Construction

Construction, like manufacturing, provides a variety of opportunities for Native communities. Construction growth can provide needed jobs, but also additional facilities and infrastructure that are needed in tribal areas. Much of the work Native-owned construction firms do is in non-Native lands, but the percentage of projects controlled by Native firms in Indian Country is growing.<sup>112</sup> One construction firm making strides in Indian Country is Rosebud Construction, Inc., which is owned and operated by the Rosebud Sioux (or *Sicangu Oyate*) Tribe. As a tribally owned enterprise housed under the umbrella of the tribe's economic development corporation, Sicangu Co, their proceeds are reinvested in development projects that create jobs on the Rosebud Reservation in southern South Dakota.<sup>113</sup>

Housing construction, for example, is necessary for both community economic development and increasing homeownership rates in Indian Country. Not only does the construction of housing in Native communities create employment opportunities for community members, but it also addresses the housing shortages frequently seen on reservations where rates of homelessness and overcrowding are often high.<sup>114</sup>

Although HUD programs in tribal areas have always had the twin goals of supporting both housing and community economic development, current funding levels are insufficient for tribes and tribal housing entities to address the shortage of housing units, complete necessary repairs and renovations for existing housing units, and promote higher levels of homeownership.<sup>115</sup> Tribes are taking new approaches and leveraging additional funds. For example, on the Cheyenne River Indian Reservation, located in South Dakota, the Badger Park housing subdivision was developed in response to a housing needs assessment on the reservation demonstrating high demand for and low supply of units available for homeownership.<sup>116</sup> The

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<sup>111</sup> Marcella Bombardieri, "At Navajo Technical University, a World-Class Laboratory Is Building Native American Manufacturing Capacity," Center for American Progress, January 24, 2023, <https://www.americanprogress.org/article/at-navajo-technical-university-a-world-class-laboratory-is-building-native-american-manufacturing-capacity>.

<sup>112</sup> Michele Van Haecke, "Native American Construction on the Rise," *ENRSouthwest*, May 1, 2010, <https://www.enr.com/articles/23503-native-american-construction-on-the-rise>.

<sup>113</sup> "Rosebud Construction," Sicangu Co., accessed September 6, 2022, <https://www.sicangu.co/construction>.

<sup>114</sup> Jennifer Biess, "Homelessness in Indian Country Is a Hidden, but Critical, Problem," *Urban Wire*, Urban Institute, April 11, 2017, <https://www.urban.org/urban-wire/homelessness-indian-country-hidden-critical-problem>.

<sup>115</sup> Pindus et al., "Housing Needs of American Indians."

<sup>116</sup> Anne Celovsky, Amber Hunter, Katelin Jones, Kevin Klingbeil, Mary Lindeblad-Fry, and Nancy Pindus, "Cheyenne River Housing Authority Housing Needs Study Report," South Dakota Native Homeownership Coalition, accessed September 6, 2022,

Cheyenne River Housing Authority has been building modular single-family units (which are then placed on the subdivision) since 2016 to meet this demand.<sup>117</sup>

### Telecommunications Utilities

As described in Section 4, robust infrastructure and utilities are an essential element for community economic development. The construction and installation of these utilities also provide an opportunity for job creation and economic diversification in Native lands. Improving telecommunications utilities and internet access in Indian Country has been a major focus of tribal leadership in the last decade.

The need for expanded broadband access was acutely demonstrated during the shift to remote school and office work in the COVID-19 pandemic. With limited home internet access, students were especially challenged by the closure of schools, libraries, and other institutions that offer access to public Wi-Fi.<sup>118</sup> Established in 2021, the National Telecommunications and Information Administration's Tribal Broadband Connectivity Program has funded nearly 150 broadband projects to date across Indian Country to help close this gap.<sup>119</sup> Two reservations, Pine Ridge and Rosebud, received grants from the \$3 billion program in August 2022. The grants will allow the reservations to develop and operate their own broadband services and will fund broadband connections to an estimated 3,300 homes spanning 2.5 million acres. In response to the grant award, Kevin Killer, president of the Oglala Sioux Tribe noted that “how strong your internet is — is related to how strong your economy is going to be, essentially.”<sup>120</sup>

Alaska’s ambitious broadband connectivity push serves as an example of effective use of New Market Tax Credits (NMTCs). The AU-Aleutians Fiber Project is working to connect Alaska Native villages throughout the state, including some of its most remote communities.<sup>121</sup> The project is a collaboration between several community development entities and GCI, Alaska’s largest telecommunications company. According to Lewis Schnaper, vice president of GCI Business, using NMTCs to fund the project helped to unlock over \$200 million in private

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<https://static1.squarespace.com/static/5be730232487fdec648106ac/t/5c7078a1e4966b8d06adb454/1550874816156/Final+CRHA+Housing+Study+HQ+PDF+-+no+Bleed.pdf>.

<sup>117</sup> Brendan Pedersen, “Ignored by banks, Indigenous communities build their own financial system,” University of Arizona, July 14, 2021, accessed September 6, 2022,

[https://nnigovernance.arizona.edu/sites/default/files/resources/2021%20American%20Banker\\_0.pdf](https://nnigovernance.arizona.edu/sites/default/files/resources/2021%20American%20Banker_0.pdf).

<sup>118</sup> Brian Howard and Mikhail Sundust, “COVID-19: The Impact of Limited Internet Access and Issues with Social Distancing for Native Students,” American Indian Policy Institute, Arizona State University, accessed September 6, 2022, [https://aipi.asu.edu/sites/default/files/indigenous\\_digital\\_divide\\_policy\\_brief.pdf](https://aipi.asu.edu/sites/default/files/indigenous_digital_divide_policy_brief.pdf).

<sup>119</sup> “TBCP Awards,” National Telecommunications and Information Administration, accessed April 28, 2023, <https://broadbandusa.maps.arcgis.com/apps/dashboards/07f987529ae24273aec3320e5033d503>.

<sup>120</sup> Shalom Baer Gee, “Pine Ridge, Rosebud Reservations Receive \$70M Broadband Grant,” Rapid City Journal, August 23, 2022, accessed September 6, 2022, [https://rapidcityjournal.com/news/pine-ridge-rosebud-reservations-receive-70m-broadband-grant/article\\_04f7788c-ef2e-5115-9e7f-a7731c22aeca.amp.html](https://rapidcityjournal.com/news/pine-ridge-rosebud-reservations-receive-70m-broadband-grant/article_04f7788c-ef2e-5115-9e7f-a7731c22aeca.amp.html).

<sup>121</sup> “GCI, Wells Fargo Partner to Make AU-Aleutians Fiber Project a Reality,” GCI Newsroom, April 27, 2021, accessed September 6, 2022, <https://news.gci.com/news-releases/new-market-tax-credits>.

investment for a “broadband network now serving over 44,000 mostly Alaska Native people in 84 remote western Alaska communities.”<sup>122</sup>

## Consumer and Business Services

### Gaming

The success of gaming enterprises run by tribes has sparked and enabled much of the economic development activity happening in Indian Country. Winchell notes that after the Indian Gaming Regulatory Act (IGRA) was passed in 1988, many tribes were able to develop “extremely successful tribal gaming operations that produced a rapidly expanding capacity for tribal business operations and investment, and a re-emergence of successful and effective tribal economies.”<sup>123</sup> In many cases, the proceeds from the gaming industry have allowed tribes to “become self-determined, to purchase back the lands that were taken from them, and to re-establish sustainable tribal traditions, cultures, and successful economies.”<sup>124</sup> Economic growth resulting from these profits has also allowed tribes to demonstrate to outside actors their capacity for managing significant economic investment.

Despite the benefits of gaming for some tribes, these benefits have not been enjoyed equally. As Pettit, et al. point out, a large share of casino revenues goes to a small number of tribes: for instance, in 2011, 5% of tribal gaming enterprises (23 enterprises) generated about 38% of total Indian gaming revenues, and 18% (78 enterprises) accounted for close to 75%.<sup>125</sup> In addition, these revenues are geographically uneven, tending to be concentrated near major population centers. While tribal gaming enterprises in rural areas may still be important employers for local tribal members, they might not be particularly profitable community economic development solutions if they have limited nearby customer bases.

Of those tribes that have been able to benefit from gaming, many have used those revenues to pivot into other industries and diversify their tribes’ economic activity. In some cases, tribes are making investments with gaming capital that “put them in the ranks of America’s largest companies.”<sup>126</sup> For example, recent large-scale development deals in Las Vegas include the Mohegan Tribe’s Mohegan Sun Casino at Virgin Hotels Las Vegas, the San Manuel Band’s Palm Casino Resort, and a new property by the Hard Rock Hotel, owned by the Seminole Tribe of Florida.<sup>127</sup>

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<sup>122</sup> “Alaska – New Markets Tax Credit Coalition,” accessed September 7, 2022, <https://nmtccoalition.org/state/alaska>.

<sup>123</sup> Winchell, “Indigenous Rural Renewal,” 177.

<sup>124</sup> Winchell, “Indigenous Rural Renewal,” 175.

<sup>125</sup> Pettit, et al., “Continuity and Change,” xiii.

<sup>126</sup> Mark Trahant, “At The Crossroads: State of the Economy in Indian Country.,” Indian Country Today, 2022. <https://indiancountrytoday.com/news/at-the-crossroads-state-of-the-economy-in-indian-country>.

<sup>127</sup> Ibid.

## Hospitality and Tourism

The hospitality industry is becoming a growing focus for tribes looking to diversify their economic landscape beyond gaming.<sup>128</sup> Tourism and hospitality enterprises, such as attractions and lodging, can also generate opportunities for other local businesses by drawing people to a Native community. Grants like the BIA Tribal Tourism Grant and the Native Hawaiian Tourism Grants administered by the Hawaii Tourism Authority can support businesses in planning development to grow tribal economies.<sup>129</sup> One example of a successful and multi-faceted hospitality and tourism enterprise in this space is the Grand Canyon Resort Corporation, which is owned by the Hualapai Tribe and operates multiple tourism businesses, such as the Grand Canyon Skywalk. This tribal enterprise has been in business for over 30 years, and in 2015 the resort reached a milestone of one million total visitors. According to Sherry Counts, Hualapai Tribal Council chairwoman, the success of this enterprise has been used to improve the electrical and water systems at Grand Canyon West, provide housing for employees, construct new facilities for health care, and invest in Hualapai youth, including the tribe's Head Start program, Boys and Girls Club, and academic scholarships.<sup>130</sup>

## Business Services

Business services include any service that supports business but does not produce physical goods; for example, communications, insurance, the provision of business supplies, and technology support. AMERIND is one such business service provider, the only fully tribally owned insurance provider in the country. Based in New Mexico and originally created as a risk-sharing pool between 400 tribes, AMERIND provides property and liability insurance, workers' compensation, and employee benefits to tribal governments as well as businesses and individuals in Indian Country.<sup>131</sup> AMERIND's Chief Operating Officer Robert Dahl sees this as an embodiment of tribal sovereignty and self-determination: "[W]hen tribes purchase conventional, statutory workers' compensation policies, they are not only signing up for a standard, one-size-fits-all model, they're waiving their sovereign immunity and subjecting themselves to state jurisdiction and courts."<sup>132</sup> Business services companies created by and for tribes and tribal members allow for customized approaches. In the case of AMERIND, the tribe purchasing insurance can operate under its own jurisdiction and sovereignty in its business dealings.

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<sup>128</sup> Ibid.

<sup>129</sup> Tribal Business News Staff, "Office of Indian Economic Development Opens Applications for Tribal Tourism Grants Program," *Tribal Business News*, August 23, 2021, accessed September 6, 2022, <https://tribalbusinessnews.com/sections/tourism/14001-office-of-indian-economic-development-opens-applications-for-tribal-tourism-grants-program>.

<sup>130</sup> "Grand Canyon West reaches 1 million visitors, gearing up for 2016 tourism," *Navajo-Hopi Observer*, January 12, 2016, accessed December 12, 2022, <https://www.nhnews.com/news/2016/jan/12/grand-canyon-west-reaches-1-million-visitors-gear>.

<sup>131</sup> "Tribal Government & Business," AMERIND, accessed September 6, 2022, <https://amerind.com/services/tribal-government-business>.

<sup>132</sup> Robert Dahl, "AMERIND Empowers Tribes to Take Control of Their Insurance Programs," *Tribal Business News*, July 25, 2022, accessed September 6, 2022, <https://tribalbusinessnews.com/sponsored-content-category/13976-amerind-empowers-tribes-to-take-control-of-their-insurance-programs>.

## Public Sector, Government, and Community Services

The public sector is an important space for community economic development in Indian Country. Tribal governments and organizations themselves are often the largest or one of the largest employers on reservations and in Native communities.<sup>133</sup> Tribes provide a range of services, and tribal health centers and community facilities are often accessible in remote Native communities where other service providers are not.

### Health Care

As a necessary service, health care is an important sector driving employment in many Native communities. The federal government is obligated by law to provide health care to American Indians and Alaska Natives, and it does so through the IHS, which runs health centers in many tribal areas. In addition to health care, these health centers provide much needed jobs for tribal members. Furthermore, there is room to grow: Many tribes lack access to the necessary health care facilities, and IHS has been criticized for being chronically underfunded by congressional appropriations.<sup>134</sup> Many tribes are stepping in to leverage other federal funding sources to increase development in the health care sector.

In August 2022, the EDA awarded the Chippewa Cree Tribe a \$1 million grant to construct a tribal health center on the Rocky Boy's Reservation in Montana.<sup>135</sup> Funded by the American Rescue Plan, the grant will fund the infrastructure supporting the health center. About \$66,000 in local funds is matching the EDA grant. The project is expected to create 14 jobs and generate \$58,845 in private investment on the reservation, in addition to providing critical health services to the community where access to health care facilities was previously limited.<sup>136</sup>

Another Native community health center project, and one which demonstrates the use of NMTCs to support public sector development, is the West Hawaii Community Health Center in the Kealahou Hawaiian Home Land. Construction began in 2013 and the Health Center began serving patients in 2015.<sup>137</sup> A 10,000-square-foot facility, the center has four exam rooms, a procedure room, and five dental procedure rooms (two serving adults and three pediatric).<sup>138</sup> The center also provides behavioral health, family planning, and health education services, and an affiliated mobile dental clinic serves community members experiencing homelessness. The

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<sup>133</sup> Trahan, "At The Crossroads."

<sup>134</sup> Misha Friedman, "For Native Americans, Health Care Is A Long, Hard Road Away," *NPR*, April 13, 2016, <https://www.npr.org/sections/health-shots/2016/04/13/473848341/health-care-s-hard-realities-on-the-reservation-a-photo-essay>.

<sup>135</sup> "U.S. Department of Commerce Invests \$1 Million in American Rescue Plan Funds to Support Construction of Tribal Health Center on Rocky Boy Reservation," U.S. Economic Development Administration, August 16, 2022, accessed September 6, 2022, <https://eda.gov/news/press-releases/2022/08/16/rocky-boy-reservation.htm>.

<sup>136</sup> *Ibid.*

<sup>137</sup> "West Hawaii Community Health Center Opens," *Big Island Video News*, July 15, 2015, accessed September 7, 2022, <https://www.bigislandvideonews.com/2015/07/15/west-hawaii-community-health-center-opens>.

<sup>138</sup> "La'i 'Ōpua Celebrates New Health Center," Department of Hawaiian Home Lands, December 13, 2013, accessed September 7, 2022, <https://dhhl.hawaii.gov/2013/12/12/la%ca%bbi-%ca%bbopua-celebrates-new-health-center>.

center employs health care practitioners and social workers, as well as administrative and managerial staff, and provides on-the-job training in clinical entry-level roles.<sup>139</sup> The health center was the first step in the creation of the La‘i ‘Ōpua Community Center, which opened in 2020 and will provide community members with a preschool, social service center, intergenerational day care facility, abuse shelter, and community recreation facilities.<sup>140,141</sup>

### Child Care and Education

The development of child care and educational facilities provides another important opportunity for tribes to generate community economic development while also providing critical services to their communities. There are a variety of federal sources that fund the development of educational programs and facilities in Indian Country. For example, the USDA’s Community Facilities program provides grants and loans for education services and other community facilities projects in rural areas, while the U.S. Department of Education’s State Tribal Education Partnership (STEP) provides funds for capacity building around the administration of educational programs in Native communities. New Markets Tax Credits can also be leveraged to develop new educational facilities.

In 2013, the confederated Tribes of Warm Springs Reservation of Oregon leveraged a low-interest loan from the USDA’s Community Facilities Program for the construction of a new K-8 school complex. Additional funding was provided by the tribal government and Jefferson County School District 509-J. The new, 8,000-square-foot complex replaced an 83-year-old elementary school, benefitting approximately 720 schoolchildren.<sup>142</sup> The Winnebago Tribe used NMTC funding to open its Educare center in 2013, the first of its kind in a tribal community.<sup>143</sup> Located on the Winnebago Reservation in Nebraska, the center provides early childhood education and child care to infants, toddlers, and preschoolers, focusing specifically on families earning low incomes on the reservation. Serving nearly 200 students and families, the tribe’s long-term community development goal with the Educare center is to close the education gap that can disproportionately affect children in remote areas and those whose parents earn low incomes. The project has also created 59 permanent jobs paying about double the area’s average salary and supported 73 short-term construction jobs while the center was being built.<sup>144</sup>

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<sup>139</sup> “Employment – Hawai‘i Island Community Health Center,” accessed September 7, 2022, <https://www.hicomunityhealthcenter.org/employment>.

<sup>140</sup> “La‘i ‘Ōpua Breaks Ground on Community Center,” Department of Hawaiian Home Lands, March 15, 2017, accessed September 7, 2022, <https://dhhl.hawaii.gov/2017/03/15/la%ca%bbi-%ca%bbopua-breaks-ground-on-community-center>.

<sup>141</sup> “La‘i ‘Ōpua Celebrates New Health Center.”

<sup>142</sup> Jill Rees, “USDA Announces Funding for New School Complex for the Confederated Tribes of the Warm Springs Reservation,” U.S. Department of Agriculture, June 19, 2013, <https://www.rd.usda.gov/newsroom/news-release/usda-announces-funding-new-school-complex-confederated-tribes-warm-springs>.

<sup>143</sup> “Winnebago Educare,” New Markets Tax Credit Coalition, July 29, 2021, accessed September 7, 2022, <https://nmtccoalition.org/project/winnebago-educare>.

<sup>144</sup> “Winnebago Educare,” New Markets Tax Credit Coalition, July 29, 2021, <https://nmtccoalition.org/project/winnebago-educare>.

## Section 6: Native Actors Promoting Community Economic Development in Indian Country

*This section describes the actors, programs, and sources of funding and capital involved in catalyzing economic development in Indian Country.*

While tribal governments work towards economic growth, they also prioritize preserving tribal culture, identity, sovereignty, and land. This combination creates a unique set of interests that is distinct from other rural communities. Many organizations have been established to assist tribes in balancing these priorities while fostering economic development.

Increasingly, Native financial institutions have stepped up in response to limited access to capital and a sparse distribution of financial institutions on Native lands. Tribal economic development corporations, as well as regional and national Native organizations, help to promote economic development, share best practices, provide technical assistance, and advocate for policies that support economic development in Native communities.

But access to these specialized economic entities is not evenly distributed across Indian Country. The Federal Reserve Bank of Minneapolis' Center for Indian Country Development maps the headquarters locations and asset sizes of banks and credit unions owned by, and CDFIs primarily serving, American Indian, Alaska Native, and Native Hawaiian individuals and communities. Their map shows the unevenness of availability and access, with potential gaps in the Southeast and Mountain States, while Hawaii, Oklahoma, and South Dakota each contain more certified Native CDFIs than any other states.<sup>145</sup>

The section below describes the current distribution and capacity of Native actors promoting economic development in Indian Country.

### Community Development Financial Institutions (CDFIs)

Native Community Development Financial Institutions (Native CDFIs) are an important connector between Native communities and community economic development opportunities. Native CDFIs are community development financial institutions that direct at least 50% of their activities to serve Native Americans, Alaska Natives, or Native Hawaiian communities.

Native CDFIs have the potential to bridge the gap between the goals of tribes and non-Native investors. A recently announced grant award demonstrates federal policymakers' awareness of this gap and of the key role that Native CDFIs can play in tribal economic development. The Mountain Plains Regional Native CDFI Coalition, a group of Native-led and mission-driven community development loan funds, received a \$45 million grant through the competitive Build Back Better Regional Challenge, funded by the American Rescue Plan and administered by the

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<sup>145</sup> "Mapping Native American Financial Institutions," Center for Indian Community Development, Federal Reserve Bank of Minneapolis, accessed September 6, 2022, <https://www.minneapolisfed.org/indiancountry/resources/mapping-native-banks>.

EDA. The Coalition will use the grant to invest in indigenous businesses and entrepreneurs to drive business development and job creation in Montana, South Dakota, Wyoming, and North Dakota. It will also create a locally led financing infrastructure, including a Regional Revolving Loan Fund, which “aims to reverse decades of historical disinvestment and institutionalized inequities for Native communities.”<sup>146</sup> The EDA funding will also support a training program, improve data infrastructure, and make other investments that will expand the capacity of the indigenous financial sector.<sup>147</sup>

Jorgensen and Akee, reviewing the history and development of Native CDFIs, find that the demand for credit and capital remains high and will continue to increase as Native community economies grow.<sup>148</sup> They find that the greatest challenge facing the Native CDFI industry is greater capitalization, and that substantial capital additions to CDFI Fund awards, along with tribal government support, are needed to fuel a new level of growth. Native CDFIs currently rely primarily on equity capital, but one solution for greater capitalization is shifting towards a greater use of debt capital, which can be accessed from a variety of sources ranging from the federal government to private foundations, other tribes, and mainstream CDFIs.

A 2017 survey of 39 certified Native CDFIs across the United States confirms the finding that the Native CDFI industry is growing, but that there are still unmet lending opportunities in the industry.<sup>149</sup> The leading products and services provided by Native CDFIs are small consumer loans and consumer financial education. About 70% of the survey respondents indicated that their loan or investment portfolios contained less than \$5 million in assets, and about 43% reported total assets in their loan or investment portfolios of less than \$1 million. Meanwhile, 22% of the respondents reported portfolios of over \$10 million. Respondents also expected their portfolios to grow significantly by 2020.<sup>150</sup> The Department of the Treasury reports a total of 65 Native CDFIs located in 23 states as of March 2023.<sup>151</sup>

These portfolios demonstrate significant growth in the Native CDFI industry since 2001, when financials for seven Native CDFIs showed an average portfolio of \$1.1 million in assets and only

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<sup>146</sup> “U.S. Department of Commerce Invests Approximately \$45 Million to Grow the Indigenous Finance Sector in Montana, North Dakota, South Dakota, Wyoming Through American Rescue Plan Regional Challenge,” U.S. Department of Commerce, September 2, 2022, accessed September 14, 2022, <https://www.eda.gov/news/press-release/2022/09/02/us-department-commerce-invests-approximately-45-million-grow>.

<sup>147</sup> Ibid.

<sup>148</sup> Miriam Jorgensen and Randall K.Q. Akee, “Access to Capital and Credit in Native Communities: A Data Review,” Tucson, AZ: Native Nations Institute and the Arizona Board of Regents, 2017, [https://nnigovernance.arizona.edu/sites/nnigovernance.arizona.edu/files/2022-09/Accessing\\_Capital\\_and\\_Credit\\_in\\_Native\\_Communities\\_\\_A\\_Data\\_Review.pdf](https://nnigovernance.arizona.edu/sites/nnigovernance.arizona.edu/files/2022-09/Accessing_Capital_and_Credit_in_Native_Communities__A_Data_Review.pdf).

<sup>149</sup> Michael Kododoko, “Findings from the 2017 Native CDFI Survey: Industry Opportunities and Limitations.” Center for Indian Country Development, Federal Reserve Bank of Minneapolis, November 2017. <https://www.minneapolisfed.org/~media/files/community/indiancountry/resources-education/working-papers/cicd-wp-2017-04.pdf>.

<sup>150</sup> Ibid.

<sup>151</sup> “CDFI Certification,” CDFI Fund, U.S. Department of the Treasury, accessed April 24, 2023, <https://www.cdfifund.gov/programs-training/certification/cdfi>.

\$351,000 in loans and investments outstanding. Native CDFIs have been persistent in their growth in the intervening years: Four of the 2017 respondents obtained their CDFI certification in the years between 2007-2009, when the economic crisis was impacting the operations of many nonprofits. This is an indication of Native CDFIs' commitment to delivering financial services to Native American communities.<sup>152</sup>

Native CDFIs are also essential players bridging the Native homeownership gap that stems in large part from the challenges of mortgage lending and homeownership on tribal lands. Although programs exist to support mortgage lending to tribal members, including HUD's Section 184 Indian Home Loan Guarantee Program (which provides lenders with assurance should a Native borrower foreclose), these investments have largely not taken place on reservations, especially on trust land. Native CDFIs have stepped in to fill this gap, working with tribally designated housing entities to support Native borrowers with programs tailored to work for their specific communities. Four Bands Community Fund, founded in 2000 as part of a community and economic development push on the Cheyenne River Reservation,<sup>153</sup> partnered with the Cheyenne River Housing Authority to provide financial services supporting home ownership in Badger Park. This CDFI offers mortgages and credit builder loans to reservation residents in addition to providing homebuyer education programs.<sup>154</sup>

**Native CDFI: Lakota Funds.** Established in 1986 as the first Native CDFI, Lakota Funds was created with the goal of improving access to capital, technical assistance, business networks, and infrastructure on the Pine Ridge Indian Reservation in South Dakota. Since its inception, Lakota Funds has deployed over 1,250 loans totaling over \$17.5 million, has helped establish or expand nearly 850 businesses, and has created nearly 2,050 permanent jobs. The organization's loan portfolio now exceeds \$4 million, and its maximum loan size is \$300,000. It is also an active member of the South Dakota Native Homeownership Coalition.<sup>155</sup>

## Community Development Corporations (CDCs)

Community development corporations (CDCs) are community-centered nonprofit organizations whose primary purpose is to provide resources and revitalize low-income, historically underserved areas and neighborhoods that have experienced high levels of disinvestment.<sup>156</sup> CDCs often specialize in a variety of different initiatives, such as providing services related to affordable housing, sanitation, neighborhood planning, community health, and educational services.<sup>157</sup> CDCs operate by bringing in capital via property development (both residential and commercial). They are primarily composed of community members and often work to enhance

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<sup>152</sup> Kokodoko, "Findings from the 2017 Native CDFI Survey."

<sup>153</sup> Lakota Vogel, "Developing a Healthy Economy | Cheyenne River," The Architectural League of New York, September 11, 2020, accessed September 6, 2022, <https://archleague.org/article/cheyenne-river-reservation-healthy-economy/>.

<sup>154</sup> Celovsky et al., "Cheyenne River Housing Authority Housing Needs Study Report," 23.

<sup>155</sup> "Our Story," Lakota Funds, accessed January 11, 2023, <https://lakotafunds.org/about/>.

<sup>156</sup> "Community Development Corporations (CDCs)," Community-Wealth.Org, February 18, 2014, <https://community-wealth.org/strategies/panel/cdes/index.html>.

<sup>157</sup> "Community Development Corporations (CDCs)."

community conditions through community organizing, which is critical for citizen empowerment and building political power.<sup>158</sup>

**Homestead Community Development Corporation.** The Homestead Community Development Corporation (HCDC) is a Native Hawaiian-serving organization with the mission of developing affordable housing and economic opportunities on or near Native Hawaiian trust land, known as “homesteads” or Hawaiian Home Lands.<sup>159</sup> HCDC is one of the few developers that directly assists Native Hawaiians in increasing access to housing opportunities and homeownership through programs like modified self-help homes, modular tiny homes, and rental units.<sup>160</sup> In addition to housing, HCDC provides employment assistance and job opportunities through a variety of economic development projects, such as a community campground, an open-air marketplace, a youth center, a 55-acre commercial solar facility, and an enterprise center which provides educational services, low-cost retail spaces, community gathering space, and employment opportunities.<sup>161</sup> HCDC also provides lending for enterprises through its Homestead Loan Fund.<sup>162</sup>

**Native American Community Development Corporation.** An affiliate of the Native American Bank, the Native American Community Development Corporation (NACDC) works alongside Native communities to address factors which inhibit economic development in Indian Country, and to address critical needs related to the growth of family and community assets through sustainable economic development.<sup>163</sup> Located on the Blackfeet Indian Reservation, NACDC provides a range of services to Native community members, such as adult and youth entrepreneurship and financial literacy classes, alternative financing opportunities for start-ups and existing businesses, and credit repairing assistance.<sup>164</sup>

## Native Credit Unions and Banks

In the U.S., Native financial institutions such as banks and credit unions are one of the smallest categories of minority depository institutions, or MDI—in 2022, only 20 of the 145 MDI banks registered with the FDIC were Native MDIs.<sup>165</sup> Of the 65 Native CDFIs in the United States (as of March 2023), two are Depository Institution/Holding Companies (DIHCs), three are banks or thrifts, seven are credit unions, and 53 are loan funds.<sup>166</sup>

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<sup>158</sup> Ibid.

<sup>159</sup> “Creating Jobs and Affordable Housing on Hawaiian Homelands,” Homestead Community Development Corporation, accessed September 6, 2022, <https://hawaiianhomesteads.org>.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid.

<sup>163</sup> “Native American Community Development Corporation,” NACDC, 2008, <https://nacdc.org/about.html>.

<sup>164</sup> “Native American Community Development Corporation.”

<sup>165</sup> “Minority Depository Institutions List,” Federal Deposit Insurance Corporation, November 30, 2022, <https://www.fdic.gov/regulations/resources/minority/mdi.html>.

<sup>166</sup> “CDFI Certification.”

Unfortunately, many Native Americans live in “credit deserts,” or areas with limited access to credit, particularly those who live near or on Indian reservations.<sup>167</sup> The average distance between the center of a tribal reservation and the nearest bank is 12.2 miles, and the average distance between the center of a tribal reservation and the nearest ATM is 6.9 miles.<sup>168</sup> Residents of tribal reservations may have to travel more than 60 miles to the nearest bank or ATM. In contrast, the average distance that individuals not living on a tribal reservation need to travel to find an ATM is approximately 0.01 miles.<sup>169</sup> Jorgensen and Akee acknowledge that there have been some improvements in geographic access to financial services for Native communities between 2001 and 2013. As of 2013, a greater number of residents in Native communities appear to live “close enough to bank branches and ATMs to make banking a viable option.”<sup>170</sup>

Credit default is typically higher among Native Americans who live in majority-Native communities.<sup>171</sup> Poor credit scores, combined with the car dependency of rural areas and limited access to credit unions, makes high-risk lending, such as payday lending, a commonly used option. Native credit unions and banks that provide financial literacy education, reasonably priced access to loans for cars, small business lending, and credit builder loans are a significant help in moving Native communities away from high-risk lending options.<sup>172</sup> Credit unions often provide the same financial services that traditional banks provide, at a lower cost due to lower capital requirements and operational costs.<sup>173</sup>

**Bank: The Bank of Cherokee County.** Founded in 1907, the Bank of Cherokee County is a tribally owned bank in Cherokee County, Oklahoma which invests around 95% of deposits back into the county, unlike other traditional banks.<sup>174</sup> In addition, the Bank of Cherokee County strives to uplift the workplace and community through community services and volunteering. It

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<sup>167</sup> “Native-owned Banks and Credit Unions: Serving the Underserved,” Native American Financial Services Association, <https://nativefinance.org/news/native-owned-banks-and-credit-unions-serving-the-underserved>.

<sup>168</sup> “Native-owned Banks and Credit Unions: Serving the Underserved,” Native American Financial Services Association, <https://nativefinance.org/news/native-owned-banks-and-credit-unions-serving-the-underserved>.

<sup>169</sup> Ibid.

<sup>170</sup> Jorgensen and Akee, “Access to Capital and Credit.”

<sup>171</sup> Kassandra Martinchek and Alexander Carther, “Native Communities Face Sustained Challenges to Building Financial Resilience,” *Urban Wire*, Urban Institute, February 25, 2021, <https://www.urban.org/urban-wire/native-communities-face-sustained-challenges-building-financial-resilience>.

<sup>172</sup> Nikki Pieratos, “Native Credit Unions: A Middle Path for Building Financial Access and Capability in Native Communities,” Federal Reserve Bank of Minneapolis, February 15, 2019, <https://www.minneapolisfed.org/article/2019/native-credit-unions-a-middle-path-for-building-financial-access-and-capability-in-native-communities>.

<sup>173</sup> “Native Credit Unions Provide Needed Services for Tribal Communities,” *Native Knot*, April 18, 2019, <https://www.nativeknot.com/news/Native-American-News/Native-Credit-Unions-Provide-Needed-Services-for-Tribal-Communit.html>.

<sup>174</sup> “Our Story,” Bank of Cherokee County, <https://www.bankofcherokeecounty.net/about/our-story>.

is the only bank in the town of Hulbert, Oklahoma and has branches in Tahlequah and Park Hill.<sup>175</sup>

**Bank: Bay Bank.** The Oneida Nations' Bay Bank in Green Bay, Wisconsin is a tribally owned bank founded by the Oneida Nation in 1995 in partnership with a group of local business professionals.<sup>176</sup> From the start, it had the mission of providing the Greater Green Bay area with a locally controlled financial institution. The institution has been exclusively owned by the Oneida Nation since 2000, and while it serves all customers, its mission has expanded to include providing more federally funded programs to directly assist tribal members. For example, it is the only bank in the area to offer the HUD Section 184 Indian Home Loan Guarantee Program for Native home buyers. Bay Bank also developed specialized mortgage and business programs to assist tribal members in obtaining housing and entering entrepreneurial work.<sup>177</sup>

**Credit Union: The Lac Courte Oreilles Federal Credit Union.** Since 2000, the Lac Courte Oreilles (LCO) Band of Lake Superior Chippewa Indians located near Hayward, Wisconsin, has been served by the Lac Courte Oreilles Federal Credit Union, which is open to any LCO tribal member or employee of an LCO tribal entity such as the casino, tribal office, or schools.<sup>178</sup> The LCO Federal Credit Union strives to be responsive to the community's distinct financial needs, and to promote economic strength and development, as well as leadership, by assisting LCO tribal members in obtaining and accumulating savings, increasing purchasing power, and providing educational opportunities to promote financial literacy.<sup>179</sup> The credit union offers financial literacy classes once a season on topics such as operating a checking and savings account, budgeting, understanding credit, and local economy sustainability. Classes are held in various communities and locations on the LCO reservation to ensure accessibility.<sup>180</sup>

**Credit Union: The Seneca Nation of Indians Federal Credit Union.** Open to any enrolled members, immediate family members, or employees of the New York Seneca Nation of Indians and Seneca Gaming Corporations and subsidiaries, the Seneca Nation of Indians Federal Credit Union (SNIFCU) provides low-cost financial services and opportunities that provide local development and circulate wealth within the community.<sup>181</sup> In addition, SNIFCU members can participate in voting for the Board of Directors for the institution.<sup>182</sup>

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<sup>175</sup> "Our Story."

<sup>176</sup> "About Us," Bay Bank, <https://www.baybankgb.com/About-Us>.

<sup>177</sup> Ibid.

<sup>178</sup> "Welcome to LCO Federal Credit Union - Home," LCO Federal Credit Union, <https://www.lcofcu.com/index.php>.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> "Membership Eligibility - Seneca Nation of Indians Federal Credit Union," SNIFCU, <https://www.snifcu.org/membership.php/#HTJ>.

<sup>182</sup> Ibid.

## Tribal Economic Development Departments and Chartered Entities

Economic Development Corporations (EDCs) are organizations, often 501(c)(3) nonprofits, that provide economic development in a specific geographical location.<sup>183</sup> EDCs provide a variety of services to assist businesses and communities to generate and expand successful economic development. Some of their services include:

- Offering information, assistance, and resources to those launching new firms within corporate boundaries;
- Giving grants, loans, and tax-exempt bonds to businesses as financial aid within a specific location; and
- Business recruitment of new personnel and assistance with on-the-job training.<sup>184</sup>

These services are invaluable resources for business owners, many of whom would not have been able to launch their corporations without such assistance. Many of the services can act as a safety net for business owners, ensuring that their operations lead to additional profits and allowing for increased productivity and employment opportunities for the community.<sup>185</sup>

Tribal economic development corporations can be established to serve the economic development needs of Indian Country by increasing access to business resources. They promote the expansion of tribal resources and community development opportunities to increase wealth and business ventures. Corporations such as Ho-Chunk, Inc., the San Pasqual Economic Development Corporation, and the Sicangu Co. are all examples of Native-led EDCs established with the intent to serve a specific Native-community within a location while prioritizing community sustainability and economic resilience.

**Sicangu Co.** Sicangu Co. (formerly the Rosebud Economic Development Corporation, or REDCO) is a Native-focused, place-based EDC which focuses on addressing the systemic issues faced by the Sicangu Lakota Oyate Nation within the Rosebud Sioux Tribe.<sup>186</sup> Sicangu Co. is guided in improving the Sicangu Oyate by a “7Gen vision,” or the promotion of a “healthy, just, and abundant world Seven Generations from now” guided by ancestral, holistic, and cultural Lakota wisdom.<sup>187</sup> Sicangu Co. is the result of a merger between Rosebud Economic Development Corporation (REDCO) and Tatanka Funds, a Native CDFI, and is focused on business and policy development. Profits that are generated from Sicangu Co. are redistributed back into community development, tribal programming, and growth and development of the organization.<sup>188</sup> Sicangu Co. administers the 7Gen internship, an opportunity for individuals to

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<sup>183</sup> “Functions of an Economic Development Corporation,” Hardee County Economic Development Council, Hardeebusiness.com, <https://hardeebusiness.com/resources/functions-of-an-economic-development-corporation>.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

<sup>186</sup> “About Us,” SICANGU CO, <https://www.sicangucorp.com/about-us-1>.

<sup>187</sup> “Rosebud-Based Ecosystem Re-Brands as Sicangu Co,” Sicangu Co, 28AD, <https://www.sicangucorp.com/post/rosebud-based-ecosystem-re-brands-as-sic-a-%C6%9Eg-u-co>.

<sup>188</sup> “About Us,” SICANGU CO.

learn more about economic and community development and advocate for change by leading a community-based project.<sup>189</sup>

**Ho-Chunk, Inc.** The Winnebago Tribe—located in Thurston and Dixon counties, Nebraska, and Woodbury County, Iowa—started Ho-Chunk, Inc. in 1994 to help its people by creating jobs and diversifying the tribe’s revenue. Its goal was to establish an entrepreneurial company that was able to recognize and develop various economic opportunities. As Ho-Chunk, Inc. has grown, so has its economic impact—locally and across the tri-state region of Nebraska, Iowa, and South Dakota. Ho-Chunk, Inc. is now a leading regional employer and prominent developer of real estate and other capital projects. Recognizing the critical importance of qualifying tribal members for jobs with the company, Ho-Chunk, Inc. has established several education and training initiatives. These include internships that provide work experience within a business environment to college students ranging from the first year through the master’s level; college or technical college scholarships for selected candidates; and academic development opportunities to Winnebago tribal member students in 7th to 12th grade.<sup>190</sup>

**San Pasqual Economic Development Corporation (SPEDC).** SPEDC is authorized by the San Pasqual Band of Mission Indians, located in Southern California, to pursue economic development activities on behalf of the tribal government and members. The organization is charged with developing and implementing the tribe’s long-term strategy of sustainable economic self-sufficiency. The mission of the San Pasqual Economic Development Corporation is to preserve and safeguard the tribe’s culture and traditions through the creation of a long-term economic development structure, ensuring prosperity for the next seven generations of the tribe. SPEDC has developed and overseen several projects, including Horizon Gas Station and The Pit Stop Market in Valley Center, CA, a \$7 million project spanning 8,100 square feet that brings convenient retail to the surrounding area while holding true to the community’s roots. The Native Oaks Golf Course and restaurant is another SPEDC project that attracts visitors, employs tribal members, and follows the natural contours of the countryside.<sup>191</sup>

## Alaska Native Corporations<sup>192</sup>

Alaska Native Corporations, established in 1971 through the Alaska Native Claims Settlement Act (ANCSA), are the largest private landowners in the state of Alaska, and provide a significant contribution to Alaska’s state economy and a source of jobs and wages that benefit Alaska Natives.<sup>193</sup> In 2019, the combined revenue of all Alaska Native corporations totaled \$9.1

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<sup>189</sup> “Growing Lakota Knowledge, Building Lifelong Skills, Making Memories,” SICANGU CO, <https://www.sicangu.co/news/growing-lakota-knowledge>.

<sup>190</sup> “Ho-Chunk Incorporated,” Ho-Chunk, Inc., accessed April 30, 2023, <https://www.hochunkinc.com>.

<sup>191</sup> “Who We Are,” San Pasqual Economic Development Corporation, accessed April 30, 2023, <https://sanpasqualedc.com>.

<sup>192</sup> See Appendix A for additional information about the Alaska Native Claims Settlement Act (ANCSA).

<sup>193</sup> “Native Corporations Overview,” Resource Development Council, <https://www.akrdc.org/alaska-native-corporations>.

billion.<sup>194</sup> The often sizable dividends from the Alaska Native corporations constitute a substantial portion of household incomes for Alaska Natives. ANCSA divided the land of Alaska into 12 regions, each with a Regional Corporation delegated by Alaska Natives and dedicated to addressing the real social and economic needs of Natives within their corporation.<sup>195</sup> Alaska Native corporations frequently collaborate with resource industries on development projects and take advantage of economic opportunities that are available to them.<sup>196</sup>

The 12 Alaska Native Regional Corporations are as follows:

1. Ahtna, Inc.,
2. The Aleut Corporation,
3. Arctic Slope Regional Corporation,
4. Bering Straits Native Corporation,
5. Bristol Bay Native Corporation,
6. Calista Corporation,
7. Chugach Alaska Corporation,
8. Cook Inlet Region, Inc.,
9. Doyon Limited,
10. Koniag Incorporated,
11. Nana Regional Corporation, and
12. Sealaska Corporation.

### Homestead Associations of Hawaii<sup>197</sup>

Homestead Associations in Hawaii, comparable to tribes on the U.S. mainland,<sup>198</sup> are beneficiary-controlled organizations that serve and represent the interests of Hawaii's homestead community.<sup>199</sup> Homestead Associations work with Homesteads and Beneficiary Associations (HBA) to assist the DOI in administering federal laws that apply to trust lands and trust funds.<sup>200</sup> The Sovereign Council of Hawaiian Homestead Associations (SCHHA) is the longest running, largest self-governing federation of homestead associations, and is devoted to preserving and

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<sup>194</sup> Ibid.

<sup>195</sup> "Native Corporations Overview."

<sup>196</sup> Ibid.

<sup>197</sup> See Appendix A for additional information pertaining to Hawaiian Home Lands.

<sup>198</sup> "About the SCHHA," Homestead Community Development Corporation, <https://hawaiianhomesteads.org/schha>.

<sup>199</sup> Ibid.

<sup>200</sup> "Homestead & Beneficiary Associations: Frequently Asked Questions," U.S. Department of the Interior, <https://www.doi.gov/hawaiian/homestead-beneficiary-associations-faq>.

expanding self-determination and sovereignty of Native Hawaiians who are eligible under the 1920 Hawaiian Homes Commission Act.<sup>201</sup>

The Department of Hawaiian Home Lands (DHHL), governed by the Hawaiian Homes Commission Act of 1920, was created to improve and protect the lives of Native Hawaiians of Hawaiian heritage.<sup>202</sup> DHHL acts to serve Native Hawaiian beneficiaries and manage Hawaiian Home Lands within its land trust, which contains over 200,000 acres spread across the islands of Maui, Moloka'i, O'ahu, Kaua'i, Hawai'i, and Lāna'i.<sup>203</sup> DHHL serves Native Hawaiians in a variety of ways: beneficiaries may be granted 99-year homestead leases at a cost of \$1 per year for residential, agricultural, or pastoral purposes.<sup>204</sup> These leases may be extended for a total term of no more than 199 years.<sup>205</sup> Beneficiaries may receive financial assistance for home purchase, construction, replacement, or repair through direct loans, insured loans, or loan guarantees.<sup>206</sup> However, as a state agency, DHHL has received criticism for its failure to provide homesteads in a quick and efficient manner.<sup>207</sup> Program applicants have reported decades-long waiting lists, unclear financial expectations for qualification, and unsuitable homestead lands,<sup>208</sup> which create complications for Native Hawaiians looking to obtain homestead housing.<sup>209</sup>

## Tribal Organizations

Tribal organizations play an important role in providing information, convenings, training, and advocacy for tribes on the topic of community economic development. Each of the organizations described in this section has a unique focus, but all support tribal governance and community economic development.

**National Congress of American Indians.** The National Congress of American Indians (NCAI), founded in 1944, is the oldest and largest American Indian and Alaska Native rights organization meant to represent Native tribes in advocating for tribal sovereignty and against assimilation and the termination of tribal rights by the federal government.<sup>210</sup> NCAI's constitution includes the goal of improving "economic development, health, and welfare in Indian and Alaska Native communities."<sup>211</sup> The organization actively promotes tribal economic investments in Indian

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<sup>201</sup> "About the SCHHA."

<sup>202</sup> "About The Department of Hawaiian Home Lands," Department of Hawaiian Home Lands, <https://dhhl.hawaii.gov/dhhl>.

<sup>203</sup> Ibid.

<sup>204</sup> "About The Department of Hawaiian Home Lands."

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

<sup>207</sup> Rob Perez and Agnel Philip, "To Reclaim Ancestral Land, All Native Hawaiians Need Is a \$300,000 Mortgage and to Wait in Line for Decades," ProPublica, October 24, 2020, <https://www.propublica.org/article/hawaii-native-land-homesteads-department-of-hawaiian-home-lands>.

<sup>208</sup> Blaze Lovell, "The Problem With Hawaiian Homestead Land? Much Of It Can't Be Developed," *Honolulu Civil Beat*, <https://www.civilbeat.org/2019/06/the-problem-with-hawaiian-homestead-land-much-of-it-cant-be-developed>.

<sup>209</sup> Ibid.

<sup>210</sup> "About NCAI," National Congress of American Indians, <https://www.ncai.org/about-ncai>.

<sup>211</sup> "About NCAI," National Congress of American Indians, <https://www.ncai.org/about-ncai>.

Country with the goal of spurring innovative economic policy and growth while honoring tribal sovereignty.<sup>212</sup> NCAI conducts research and prepares policy reports which outline opportunities for economic development, how tribes are exercising and advocating for sovereignty and securing economic success through sustainable practices.

**Native American Finance Officers Association.** The Native American Finance Officers Association (NAFOA) was established in 1982 to financially assist tribal economies and strengthen tribal finance.<sup>213</sup> NAFOA promotes responsible fiscal and economic policy, promotes financial and economic literacy, and brings together tribal leadership, seasoned professionals, and business partners.<sup>214</sup> NAFOA provides memberships to 140 member tribes over more than 25 states and connects them to services such as training on financial management, grant management and improved administrative processes; advocacy opportunities; exclusive membership events and networking; and discounts on conference registrations and publications.<sup>215</sup> NAFOA also administers the NAFOA Institute, which provides educational and professional opportunities for tribal members, from early career and young professional development to executive leadership and grants management.<sup>216</sup>

**National American Indian Housing Council.** Founded in 1974, the National American Indian Housing Council provides training and technical assistance to all tribes and tribal housing entities, supporting them in providing safe, affordable, and culturally appropriate housing for Native people and communities.<sup>217</sup> NAIHC also conducts research and provides informational services within the realm of Native housing issues and programs.<sup>218</sup> NAIHC hosts the annual Legislative Conference in Washington D.C., an event which provides tribal advocates, leaders, attorneys, and other housing professionals the opportunity to hear directly from congressional members and federal representatives regarding the decisions that directly affect tribal programs, communities, and funding.<sup>219</sup> NAIHC also hosts an annual convention and trade show in partnership with AMERIND, and an annual legal symposium where over 500 tribal specialized housing professionals, tribal leaders, federal agencies, and law firms gather to address emerging tribal housing issues.<sup>220</sup>

**National Center for American Indian Enterprise Development.** The National Center for American Indian Enterprise Development (NCAIED) is the largest Native-centered national

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<sup>212</sup> “Economic Development & Commerce,” National Congress of American Indians, <https://ncai.org/policy-issues/economic-development-commerce>.

<sup>213</sup> “About NAFOA,” Native American Finance Officers Association, <https://nafoa.org/about>.

<sup>214</sup> “About NAFOA.”

<sup>215</sup> Ibid.

<sup>216</sup> “NAFOA Institute,” Native American Finance Officers Association, <https://nafoa.org/institute>.

<sup>217</sup> Erla Sagg, “About NAIHC,” Native American Indian Housing Council, <https://naihc.memberclicks.net/about-naihc>.

<sup>218</sup> “About the National American Indian Housing Council,” Native American Indian Housing Council, <https://naihc.net/about-2>.

<sup>219</sup> “NAIHC 2022 Legislative Conference,” Native American Indian Housing Council, <https://web.cvent.com/event/5312605d-98d4-413e-bc91-f9e245470cee/summary>.

<sup>220</sup> “NAIHC 2022 Legal Symposium,” Native American Indian Housing Council, <https://naihc.net/legal-symposium>.

business organization. It is a 501(c)(3) nonprofit that strives to improve the lives of current and future generations of Native Americans.<sup>221</sup> NCAIED hosts the annual Reservation Economic Summit (RES), the country's largest tribal economic development conference, which offers business development sessions and networking and collaboration opportunities aimed at facilitating access to capital and enterprise development.<sup>222</sup>

## Partnerships and Regional Development Efforts

Many tribal governments have addressed tribal economic development in collaboration with each other at a regional level, in addition to their individual efforts. For example, the Affiliated Tribes of Northwest Indians (ATNI), the South Puget Intertribal Planning Agency (SPIPA), the Great Lakes Inter-Tribal Council (GLITC), the Upper Columbia United Tribes (UCUT), and the United South and Eastern Tribes (USET) all pull together multiple tribes within specific regions of the United States for knowledge sharing, collaboration, and collective advocacy.

For example, the Affiliated Tribes of Northwest Indians (ATNI), which operates as a regional congress of tribal elected leaders and staff with over 50 member tribes in seven states, has actively worked to keep economic development issues on the forefront of tribal discussion through its Economic Development Committee (EDC).<sup>223</sup> ATNI's economic development subsidiary (ATNI-EDC) provides financial and technical assistance for community and economic development efforts to the ATNI member tribes and their tribal members.<sup>224</sup> The Upper Columbia United Tribes (UCUT), made up of the Coeur d'Alene Tribe of Idaho, the Kootenai Tribe of Idaho, the Confederated Tribes of the Colville Reservation, the Spokane Tribe of Indians, and the Kalispel Tribe of Indians, collaborate on several inter-tribal initiatives for natural resources and fisheries management on their lands in the Upper Columbia watershed.<sup>225</sup>

Beyond partnerships, many tribal entities have become powerful economic players and service providers in their surrounding regions. Winchell explores several examples of this in the Pacific Northwest. The Coeur d'Alene Tribe's wellness center, for example, is a public facility that is open to all residents of the region. It offers multiple swimming pools, gyms, weight and training rooms, as well as meeting rooms and an office for health care providers. The Confederated Tribes of the Colville Reservation operates four grocery stores that service rural areas. Overall, Winchell finds that "tribes have become important players within the rural regional economy and are now often in the lead in new innovations and investment in rural facilities and business operations."<sup>226</sup>

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<sup>221</sup> "About NCAIED: The National Center for American Indian Enterprise Development," The National Center for American Indian Enterprise Development, <https://www.ncaied.org/about>.

<sup>222</sup> "About the Summit | The National Center for American Indian Enterprise Development | RES 2022," RES 2022 - Reservation Economic Summit, accessed September 13, 2022, <https://res.ncaied.org/Summit-Info/About>.

<sup>223</sup> Winchell, "Indigenous Rural Renewal," 176.

<sup>224</sup> "Affiliated Tribes of Northwest Indians Economic Development Corporation," Affiliated Tribes of Northwest Indians Economic Development Corporation, accessed September 15, 2022, <https://atniedc.com>.

<sup>225</sup> Winchell, "Indigenous Rural Renewal," 191-192

<sup>226</sup> Winchell, "Indigenous Rural Renewal," 191-192

## Sovereign Wealth Funds

A sovereign wealth fund (SWF), also known as a social wealth fund or a sovereign investment fund, is a state-owned investment which generates wealth for the benefit of its citizens and economy.<sup>227</sup> SWFs are created to help diversify an entity's source of revenues to strengthen its types of income streams, and have been successfully managed by authorities such as the Abu Dhabi Investment Authority (ADIA) and the China Investment Corporation (CIC). The introduction of SWFs in Indian Country can help with the diversification of wealth beyond the sectors or industries that tribes currently engage in or have access to, such as casinos and agriculture.

**Seminole Tribes' Sovereign Wealth Fund.** The Seminole Tribe of Florida developed a sovereign wealth fund to improve financial benefits and generational wealth to the Seminole Tribe.<sup>228</sup> The Seminole SWF recently acquired its first real estate investment asset. Located in uptown Dallas, Texas, the McKinney Uptown Apartments are a midrise, upscale, residential 144-unit complex with luxury amenities and located close to dining, entertainment, and office space.<sup>229</sup> Due to the increase in demand for multifamily apartment rentals, the real estate market has seen a steep increase in demand for apartment units and is an investment opportunity that has provided wealth for the Seminole Tribe.<sup>230</sup> The tribe has historically received SWF revenue from casinos and other gaming properties, and the addition of commercial real estate allows for the tribe to further diversify contributions to the sovereign wealth fund.<sup>231</sup>

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<sup>227</sup> "Sovereign Wealth Fund (SWF)." Investopedia.

[https://www.investopedia.com/terms/s/sovereign\\_wealth\\_fund.asp](https://www.investopedia.com/terms/s/sovereign_wealth_fund.asp).

<sup>228</sup> Ari Rioseco, "Tribe Creates Sovereign Wealth Fund," The Seminole Tribune, <https://seminoletribune.org/tribe-creates-sovereign-wealth-fund>.

<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid.

## Section 7: Sources of Funding and Capital for Community Economic Development

*This section highlights the various potential sources of funding and capital available for community economic development in Indian Country.*

There are a wide number of federal tools that have been leveraged for community economic development in Indian Country, with varying degrees of success. Tribes have historically had to rely primarily on public funds and grants to support their development projects. But in recent decades, increased income from tribal enterprises, the need for more capital for larger development projects, and federal incentives to leverage private funding to develop tribal housing have led to a more diversified mix of funding and capital in Indian Country.

However, tribes still face challenges when it comes to accessing non-Native capital for projects, and private investors also note risks or perceived risks associated with investing in Native projects.<sup>232</sup> Recent trends such as social impact investing and the response to the COVID-19 pandemic are changing the way both tribes and investors evaluate and structure projects. The successful examples of community economic development projects listed in the previous sections show the range of expertise and capacity among tribal governments, Native CDFIs, Native banks, Native CDEs, and other tribal entities, as well as the expansion potential of Native economies.

To fully understand the scope of economic development activities within Indian Country, it is important to note the common primary funding sources, such as government and private grants and loans, tribal capital, private investment, and tax incentives, as well as the possible ways to combine them. Several federal agencies, such as HUD and the EDA, have created special programs, set-asides, or initiatives focused on addressing the unique needs of tribal entities. Existing tribal revenue streams from tribal enterprises and reimbursements can be used to leverage additional capital and enable capital stacking.

A recently completed study from the U.S. Government Accountability Office (GAO) examined economic development programs available to tribal entities and found that federal efforts to support economic development show fragmentation and some overlap. GAO reports that programs are fragmented across seven agencies: the USDA, U.S. Department of Commerce, DOE, HHS, HUD, DOI, and the SBA. The tribal organizations that GAO spoke with said many tribes have limited capacity to identify and access programs and may not be aware of the federal assistance available.<sup>233</sup>

Table 1 towards the end of this section provides a high-level summary of select significant federal programs that offer funding for economic development in Indian Country, including the

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<sup>232</sup> “Access to Capital.”

<sup>233</sup> “Tribal Economic Development: Action is Needed to Better Understand the Extent of Federal Support,” U.S. Government Accountability Office (GAO), August 2022, <https://www.gao.gov/assets/gao-22-105215.pdf>.

funding type, eligibility criteria, authorized purposes, and typical award amounts. In the following paragraphs, we offer a more in-depth look at these various funding categories. Additional funding that may be supportive of community economic activities may come from other sources, such as FEMA, EPA, DOE, and state and local programs.

## Grants

### U.S. Department of Housing and Urban Development (HUD)

HUD offers two primary block grant programs that are specifically designed for Native projects: the Indian Housing Block Grant (IHBG) and the Indian Community Development Block Grant (ICDBG). Per its name, IHBG is focused on the operation, maintenance, and development of affordable housing in Indian Country, while the ICDBG can be used for community facilities and other economic development activities, in addition to housing.

IHBG was authorized by the Native American Housing Assistance and Self-Determination Act of 1996, PL 104-330, as amended (NAHASDA). This legislation changed the system for funding and developing tribal housing, with a focus on tribal self-determination and flexibility to accommodate the diversity of needs and cultural preferences across Indian Country. It was also designed to enable and encourage tribes to secure more private investment for housing projects. IHBG funds are awarded by formula to federally recognized tribes or their Tribally Designated Housing Entities (TDHEs), as well as a limited number of state-recognized tribes.<sup>234</sup>

While the program was designed to encourage private investment, an analysis of Annual Performance Report data submitted by NAHASDA grantees (through 2013) showed that grantees received less than \$2 per \$100 of IHBG grants in private sector investment. However, the flexibility and complexity of leveraging private investment, which is often combined with other government or tribal funds, makes reporting this information especially difficult.<sup>235</sup>

The ICDBG grant funds are split up into two categories: single purpose and imminent threat.<sup>236</sup> Federally recognized tribes or villages and a limited number of state-recognized tribes and tribal organizations can apply for single-purpose grants on a competitive basis, while imminent threat grants are offered on a first-come, first-served basis to address threats to the public health or safety of tribal residents. Funds can be used for housing, community facilities, and economic development.

### U.S. Department of Agriculture (USDA)

The United States Department of Agriculture has several grant programs that help contribute to rural development in both tribal and non-tribal areas. These various programs provide funding

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<sup>234</sup> “Indian Housing Block Grant Program,” U.S. Department of Housing and Urban Development, accessed August 24, 2022, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/grants/ihbg](https://www.hud.gov/program_offices/public_indian_housing/ih/grants/ihbg).

<sup>235</sup> Pindus, et al., “Housing Needs of American Indians.”

<sup>236</sup> “Indian Community Development Block Grant Program,” U.S. Department of Housing and Urban Development, accessed August 24, 2022, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/grants/icdbg](https://www.hud.gov/program_offices/public_indian_housing/ih/grants/icdbg).

for activities such as the construction of water infrastructure, community facilities, utilities, telecommunications systems, as well as the preservation and construction of affordable housing, small business development, and initiatives at tribal colleges and universities.<sup>237</sup> The Community Facilities Direct Loan and Grant Program provides grants, low interest direct loans or a combination of the two, and offers a loan guarantee program. The funds can be used to purchase, construct, or improve essential community facilities, purchase equipment and pay related project expenses. The ReConnect Program offers loans, grants, and loan-grant combinations to facilitate broadband deployment in areas of rural America that currently do not have sufficient access to broadband. The Rural Business Development Grants and the Rural Innovation Stronger Economy (RISE) Grants provide businesses of various sizes with grants, loans, and technical assistance to secure employment opportunities in rural communities.

#### U.S. Economic Development Administration (EDA)

The EDA offers a variety of grant programs aimed at promoting community economic development for communities across the country, including Native communities. They include the Build to Scale program, which funds tech-based projects, the Economic Adjustment Assistance program, which provides support for public works and infrastructure projects in regions experiencing adverse economic changes, and the Local Technical Assistance and Planning programs, which support capacity-building activities such as economic feasibility studies, impact analyses, disaster resiliency plans, and project planning.<sup>238</sup>

Many tribes and Native organizations have leveraged EDA grants to develop businesses, public works, and infrastructure to support community and economic development. However, a 2004 GAO report found that the success of projects funded by these grant programs has been mixed, in terms of generating jobs, higher incomes, and private sector investment.<sup>239</sup> Additionally, the report found that these shortcomings were not a result of issues with tribal governance, but instead stemmed from the challenges associated with a complex federal grant process of application, review, approval and monitoring. This highlights one of the key challenges associated with using federal grant funding for economic development.

As a part of the American Rescue Plan Act of 2021 (ARPA), the EDA received an additional infusion of \$100 million to allocate to indigenous communities, with awards ranging from \$100,000 to \$5,000,000 towards projects designed to create the conditions for economic growth in indigenous communities. Recipients of these funds can include tribes, a consortium of tribes, or nonprofits that serve Native Hawaiians or Pacific Islanders. This money can be used to help

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<sup>237</sup> “All Programs,” U.S. Department of Agriculture, accessed on September 13, 2022, <https://www.rd.usda.gov/programs-services/all-programs>.

<sup>238</sup> “Federal Resources for Tribal Economic Development,” Bureau of Indian Affairs, July 12, 2022, [https://www.bia.gov/sites/default/files/dup/inline-files/oied\\_shared\\_ed\\_resource\\_directory\\_v1\\_7.12.22.pdf](https://www.bia.gov/sites/default/files/dup/inline-files/oied_shared_ed_resource_directory_v1_7.12.22.pdf).

<sup>239</sup> “Indian Economic Development: Relationship to EDA Grants and Self-determination Contracting Is Mixed,” U.S. Government Accountability Office, September 08, 2004, <https://www.gao.gov/assets/gao-04-847.pdf>.

fund vital infrastructure and other projects that could help lead to economic development.<sup>240</sup> We discuss more about the specific opportunities and challenges of ARPA funding below.

#### American Rescue Plan Act (ARPA): Opportunity and Inequitable Funding

ARPA provides a case study in grant distribution for tribal programs. Under ARPA, \$20 billion dollars was allocated to all federally recognized American Indian and Alaska Native tribal governments. Under the act, Treasury developed a formula to quickly allocate funding to tribal governments because Native communities were disproportionately impacted by COVID-19. The resulting formula distributed an initial \$1 billion evenly divided among all tribes. Sixty-five percent of the remaining funding was allocated based on the number of tribal citizens that tribes served, and 35% was based on the number of employees on reservations prior to the COVID-19 pandemic.<sup>241</sup> While this plan allowed for speed in the allocation of \$20 billion, the funding was disproportionately distributed, and as much as \$880,000 per tribal citizen went to already wealthy tribes, while tribes with higher poverty rates received less than \$10,000 per tribal citizen.<sup>242</sup> Future efforts to efficiently distribute grant money will need to improve upon this system to better track inequities and prioritize tribes with higher levels of need.

#### Loans and Leveraging Sources

Loan sources on reservation lands include government-backed loan guarantee programs, existing tribal capital from various revenue sources, and private capital loans. Government loan guarantee programs help extend low-interest credit to traditionally underserved communities or businesses and promote homeownership and wealth-building.

#### Federal Loan Guarantee Sources

Federal loan guarantee programs can help promote lending in Indian Country by providing lenders with security to approve loans or lines of credit. Federal loan guarantee programs have reportedly been underutilized by eligible parties due to stringent credit requirements, specific location requirements, high closing costs associated with mortgage loans, and loan limits that may discourage use for larger projects.<sup>243</sup>

Many agencies that offer grants for economic development activities also offer loan guarantee programs for similar activities. For example, the USDA offers both grants and loan guarantees

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<sup>240</sup> “EDA ARPA Plan Programs: Indigenous Communities,” Bureau of Indian Affairs, accessed September 9, 2022, <https://www.bia.gov/service/whcnaa/eda-arpa-indigenous-communities>.

<sup>241</sup> Eric C. Henson, Miriam R. Jorgensen, Joseph P. Kalt, & Isabelle G. Leonaitis, “Assessing the U.S. Treasury Department’s Allocations of Funding for Tribal Governments under the American Rescue Plan Act of 2021,” Native Nations Institute, November 3, 2021, [https://ash.harvard.edu/files/ash/files/assessing\\_the\\_u.s.\\_treasury\\_departments\\_allocations\\_of\\_funding\\_for\\_tribal\\_governments.pdf](https://ash.harvard.edu/files/ash/files/assessing_the_u.s._treasury_departments_allocations_of_funding_for_tribal_governments.pdf).

<sup>242</sup> Ibid.

<sup>243</sup> Kramer et al., “Assessment of the Housing Needs.”

for community facilities projects.<sup>244</sup> The USDA Community Facilities Guaranteed Loan Program provides 80% loan guarantees of up to \$100 million for loans going towards community facilities including health care services, fire and public safety, community or cultural facilities, transportation facilities, utilities, and more.<sup>245</sup> The USDA Business and Industry (B&I) Loan Guarantee Program guarantees 80% of loans under \$5 million, and 60% for loans over \$10 million.<sup>246</sup>

The Small Business Administration (SBA) provides two primary loan guarantee programs: The SBA 7(a) loan guarantee program helps small businesses obtain credit on reasonable terms and provides a guarantee of up to 85% for loans under \$150,000 and a 75% guarantee for loans up to \$5 million, while the SBA 504 Loan program provides additional low-interest loans of up to \$5 million through the SBA.<sup>247,248</sup> The BIA Loan Guarantee and Insurance Program provides loan guarantees for Native individuals and organizations funding projects that will benefit the economy of a reservation or tribal service area.<sup>249</sup>

HUD and the USDA also have loan guarantee programs targeted towards individual homeownership (USDA 502 and HUD Section 184) that help build intergenerational wealth through homeownership opportunities.<sup>250</sup> HUD's program is specifically for American Indian and Alaska Native borrowers, and can be used for the new construction, rehabilitation, purchase, or refinancing of a one to four unit home on or off Native lands.<sup>251</sup> Homeownership programs can promote community economic development by supporting private development enterprises, growing intergenerational wealth through asset ownership, and increasing housing options for workers.

The CDFI Fund provides a Bond Guarantee Program that can help CDFIs access capital. Through this program, CDFIs (including Native CDFIs) can issue federally guaranteed bonds and use their proceeds to extend credit for community development purposes. Through fiscal

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<sup>244</sup> "All Programs."

<sup>245</sup> "Community Facilities Guaranteed Loan Program," U.S. Department of Agriculture, accessed September 13, 2022, <https://www.rd.usda.gov/programs-services/community-facilities/community-facilities-guaranteed-loan-program>.

<sup>246</sup> "Business & Industry Loan Guarantees," U.S. Department of Agriculture, accessed September 13, 2022, <https://www.rd.usda.gov/programs-services/business-programs/business-industry-loan-guarantees>.

<sup>247</sup> "7(a) Loans," U.S. Small Business Administration, accessed September 9, 2022, <https://www.sba.gov/funding-programs/loans/7a-loans>.

<sup>248</sup> "504 Loans," U.S. Small Business Administration, accessed September 9, 2022, <https://www.sba.gov/funding-programs/loans/504-loans>.

<sup>249</sup> "Indian Loan Guarantee and Insurance Program (ILGP)," U.S. Department of the Interior Bureau of Indian Affairs, accessed September 13, 2022, <https://www.bia.gov/service/loans/ilgp>.

<sup>250</sup> Kramer, et al., "Assessment of the Housing Needs."

<sup>251</sup> "Section 184 Indian Home Loan Guarantee Program," U.S. Department of Housing and Urban Development, accessed January 11, 2023, <https://www.hud.gov/section184>.

year (FY) 2022, more than \$ 2.1 billion had been guaranteed in bonds through the CDFI Bond Guarantee Program.<sup>252</sup>

Citizens Potawatomi Community Development Corporation, headquartered in Shawnee, Oklahoma, was the first Native CDFI to participate in the CDFI Bond Guarantee Program, receiving a \$16 million bond in 2015, with plans to use the bond loan to provide financing for large scale commercial real estate projects in the Citizens Potawatomi Nation.<sup>253</sup>

### Using Existing Revenue Streams as Loan Collateralization

Since tribes often cannot use trust land as collateral for loans, a reliable revenue stream becomes very important in securing capital and better loan terms. Examples of potential revenue streams that may be used as collateral include reimbursement from health care facilities, successful hospitality operations, and Indian Housing Block Grant (IHBG) allocations that serve as collateral for HUD Title VI loans. Blackfeet Housing Authority's Glacier Heights Expansion project successfully leveraged a Title VI loan that used existing IHBG revenue streams as collateral to help cost-effectively develop 40 single-family homes.<sup>254</sup> In this project, 19 units housed Native Veterans, which helped leverage additional future revenue streams, including Tribal HUD-VASH rental assistance and administrative fees. Other similar projects have been able to collateralize IHBG funding and other consistent revenue sources.

### Tax Incentives

Tax credits and other tax incentives can encourage economic development by offering tax benefits to investors in return for their investment in specific types of economic development projects. Tax credits allow taxable entities to subtract the amount of the credit from their owed taxes.<sup>255</sup> Other types of tax incentives include tax abatement and tax exemptions.

The Low-Income Housing Tax Credit (LIHTC) is a major tax incentive program for affordable housing and community development projects, and is often used in Native projects. During site visits conducted as part of a HUD tribal housing study, LIHTC was the program most often mentioned by tribes in connection with leveraging funds and was used at nine of the 22 sites visited. Many tribes welcomed the opportunity to leverage funds for developing new housing — the White Earth Nation, for example, was working on its fifth LIHTC project at the time of the survey and noted that more investors and developers are interested in building with LIHTC tax

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<sup>252</sup> “Agency Financial Report Fiscal Year 2022,” CDFI Fund, U.S. Department of the Treasury, accessed April 12, 2023, [https://www.cdfifund.gov/sites/cdfi/files/2023-01/CDFI\\_Fund\\_FY22\\_AFR\\_FINAL508.pdf](https://www.cdfifund.gov/sites/cdfi/files/2023-01/CDFI_Fund_FY22_AFR_FINAL508.pdf).

<sup>253</sup> “Treasury Guarantees \$327 Million in Bond Funding for Projects in Low-Income Communities,” September 29, 2015, <https://www.cdfifund.gov/news/178>.

<sup>254</sup> “ONAP National Best Practice Webinar: Featuring Blackfeet Housing,” Office of Native American Programs, March 4, 2020, <https://www.hud.gov/sites/dfiles/PIH/documents/National%20Webinar%20Blackfeet%20Housing%20HUDVASH%20FINAL.pdf>.

<sup>255</sup> Troy Segal, “Tax Credit,” *Investopedia*, January 27, 2022, <https://www.investopedia.com/terms/t/taxcredit.asp>.

credit incentives. But others noted that many LIHTC projects require the availability of leveraged funds and involve complicated paperwork and application requirements, which can be difficult to meet. The Bad River Tribe appointed a project manager specifically for tax credits and American Reinvestment and Recovery Act (ARRA) projects because the application and compliance process required too much work for regular staff.<sup>256</sup>

The overwhelming need for affordable housing in Native communities makes it easier to demonstrate demand and attract investors. In contrast, for NMTC investments, it may be more difficult to demonstrate demand for various commercial and community facility projects. However, LIHTC does require tribes to accept limited partnerships with outside entities, limited waivers of sovereign immunity, extended compliance periods, and other perceived "intrusions" into their sovereignty and this experience can serve as a gateway to larger, more complex transactions using NMTCs.

The New Markets Tax Credit (NMTC) Program, established in 2000, helps economically distressed communities attract private capital by providing investors with a federal tax credit. The CDFI Fund allocates tax credit authority to Community Development Entities (CDEs) through a competitive application process. CDEs use their authority to offer tax credits to investors in exchange for equity in the CDE. Using the capital from these equity investments, CDEs can make loans and investments to businesses operating in low-income communities on better rates and terms and with more flexible features than the market. In exchange for investing in CDEs, investors claim a tax credit worth 39% of their original CDE equity stake, which is claimed over a seven-year period.<sup>257</sup> The program supports activities as varied as schools, apartment buildings, arts centers, restaurants, food production facilities, buildings for human service providers, grain elevators, manufacturing plants, sustainable forestry, and more.

By design, the NMTC is a flexible tool that allows CDEs discretion over which projects they fund.<sup>258</sup> A recent analysis of NMTC investments from 2001- 2019 conducted by researchers at the Center for Indian Country Development, identified a total of 54 NMTC investments that involved a tribal entity. Those projects were directed to 36 of the 347 federally recognized tribes in the contiguous United States, one Alaska Native Village Corporation, and two consortia of Alaska Native Villages.<sup>259</sup> The report finds that “while the share of NMTC investments involving tribal entities is increasing, the total number of tribes involved remains small, and the

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<sup>256</sup> Pindus, et al., “Housing Needs of American Indians,” 143-145.

<sup>257</sup> “New Markets Tax Credit Program Fact Sheet,” CDFI Fund, U.S. Department of the Treasury, accessed December 12, 2022, <https://www.cdfifund.gov/sites/cdfi/files/documents/nmtc-fact-sheet-english-16sept2020-final.pdf>.

<sup>258</sup> Brett Theodos, Christina Plerhoples Stacy, Daniel Teles, Christopher Davis, and Ananya Hariharan, (Washington, DC: Urban Institute, April 2021. [https://www.urban.org/sites/default/files/publication/103956/which-types-of-projects-receive-new-markets-tax-credit-funding\\_0.pdf](https://www.urban.org/sites/default/files/publication/103956/which-types-of-projects-receive-new-markets-tax-credit-funding_0.pdf) Accessed December 20, 2021.

<sup>259</sup> Matthew Gregg, Michou Kokodoko, and Elijah Moreno, “Take-up of New Markets Tax Credit Increases in Indian Country, With Potential for Far More, Federal Reserve Bank of Minneapolis, May 10, 2022, <https://www.minneapolisfed.org/article/2022/take-up-of-new-markets-tax-credit-program-increases-in-indian-country-with-potential-for-far-more>.

number of financial intermediaries directing NMTC investments to tribal entities is even smaller.”<sup>260</sup>

There are other tax incentives aimed at attracting investment capital such as Opportunity Zones and renewable energy credits. The Tax Cuts and Jobs Act of 2017 included a federal incentive—Opportunity Zones—to spur investment in undercapitalized communities. Local areas (defined by census tracts) were eligible for selection as Opportunity Zones if they are Low Income Communities (LICs) under the high poverty or low median income definitions established for the New Markets Tax Credit program. Also eligible for selection were census tracts contiguous to LICs if median family income did not exceed 125% of the qualifying tract. About 56% of tracts in the United States were eligible for selection as Opportunity Zones and of these, governors selected over 8,700 zones, roughly 12% of tracts. Corporations and individuals that invest capital in Opportunity Zones defer or reduce taxes on capital gains.<sup>261</sup>

Governors in 26 states named census tracts that include tribal areas. Of the 1,341 census tracts eligible for selection in tribal areas, 30% were selected. This, of course, is a first step as these areas need to attract investors and a tract being designated a zone does not ensure it will access Opportunity zone capital.<sup>262</sup> But for the 360 designated opportunity zones on rural lands in Indian Country, with 90 in Oklahoma and 70 in Alaska, the picture is bleak. Because of an oversight in the federal law, tribal governments cannot form or participate in Opportunity Funds and thus cannot pool investments from external sources.<sup>263</sup> The law allows territories like Guam and American Samoa to set up opportunity funds, but tribal governments were not given the same status. The Opportunity Zones Program is still relatively new and reporting is limited, so its potential, especially in Indian Country, remains to be seen.

The Inflation Reduction Act of 2022 allows state, local, and tribal governments, as well as nonprofit organizations and other tax-exempt entities, such as rural electric cooperatives, to receive certain tax credits as direct payments from the Internal Revenue Service as an incentive to continue making investments to build a clean energy economy.<sup>264</sup>

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<sup>260</sup> Gregg, Kokodoko, and Moreno, “Take-up of New Markets Tax Credit,” 1.

<sup>261</sup> Brett Theodos, Brady Meixeil, and Carl Hedman, “Did States Maximize Their Opportunity Zone Selections?” May 18, 2018, revised July 18, 2018, [https://www.urban.org/sites/default/files/publication/98445/did\\_states\\_maximize\\_their\\_opportunity\\_zone\\_selections\\_7.pdf](https://www.urban.org/sites/default/files/publication/98445/did_states_maximize_their_opportunity_zone_selections_7.pdf).

<sup>262</sup> Nancy Pindus and Brady Meixeil, “Why Opportunity Zones are Important for Indian Country,” June 7, 2018, <https://www.urban.org/urban-wire/why-opportunity-zones-are-important-indian-country>. Note: This analysis included all Opportunity Zone tracts that had been approved by Treasury as well as proposed tracts awaiting approval as of publication date.

<sup>263</sup> Paul Monies. “Tribes Shut Out of Opportunity Zone Deals.” March 26, 2019, <https://nondoc.com/2019/03/26/tribes-shut-out-of-opportunity-zone-deals/>

<sup>264</sup> “Fact Sheet: Four Ways the Inflation Reduction Act’s Tax Incentives Will Support Building an Equitable Clean Energy Economy,” U.S. Department of the Treasury, 2022, <https://home.treasury.gov/system/files/136/Fact-Sheet-IRA-Equitable-Clean-Energy-Economy.pdf>.

Another tax incentive financing tool is tax-exempt bonds. Tribal Economic Development Bonds (TED Bonds), created by the ARRA, have been one of the broadest and most flexible forms of tribal tax-exempt bonds. They are not fully subject to the limits that typically affect tribal government's use of tax-exempt funds for the financing of "essential government functions."<sup>265</sup> However, the tool has limitations: gambling establishments are excluded and projects must be located on tribal land, to name a few. TED Bonds were funded at \$2 billion in 2009.<sup>266</sup> Issuance of tribal economic development bonds is subject to a national volume cap for all such bonds and a Published Volume Cap Limit for the aggregate amount of national volume cap that may be allocated per Indian tribal government. As of May 2, 2023, the amount of remaining available national volume cap was \$0. The Published Volume Cap Limit per Indian tribal government is \$100,000,000 and does not change. While no new Tribal Bond funding is available, there may be national volume cap available in the future if previously allocated volume cap is forfeited.<sup>267</sup>

While the issuance of bonds is a promising source of capital—since the bonds can attract investors and enable tribes to borrow funds at a reduced interest rate—they also come with administrative and compliance issues. If you are a tribal applicant, you must apply for an allocation of bonds that specifies what the capital will be used for, the cost of the project or projects, a financing plan, and outside documentation that the bonds will be marketable. Not all tribes that received allocations were able to use them due to delays in projects, difficulties obtaining loans, or selecting other financing options. Allocations that are not deployed within 180 days are returned to the Treasury.<sup>268</sup>

Initial demand for TED Bonds in their early years was slow, though activity has picked up in subsequent years. The first tranche of allocations to 58 applicants totaled just under \$1 billion with allocations ranging from \$1.5 million to \$22.4 million. The second tranche of allocations totaled just over \$1 billion with allocations to 76 applicants ranging from \$2.7 million to \$30 million.<sup>269</sup> As of August 1, 2022 the remaining available national volume cap was about \$63 million.<sup>270</sup> Gregg et al. comment that "the allocation pool has been effectively exhausted," pointing out that there is no shortage of potential investments and there is a need to continue this program or provide other ways to provide greater tax parity between states and tribes.<sup>271</sup>

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<sup>265</sup> "Treasury Department Fact Sheet: Tribal Economic Development Bonds," U.S. Department of the Treasury, 2014, <https://www.irs.gov/pub/irs-tege/Tribal%20Economic%20Development%20Bonds%20Fact%20sheet%202014.pdf>.

<sup>266</sup> "Treasury Department Fact Sheet: Tribal Economic Development Bonds."

<sup>267</sup> "Published Volume Cap Limit for Tribal Economic Development Bonds," Internal Revenue Service, U.S. Department of the Treasury, last updated May 4, 2023, <https://www.irs.gov/tax-exempt-bonds/published-volume-cap-limit-for-tribal-economic-development-bonds>.

<sup>268</sup> Ibid.

<sup>269</sup> "IRS Announces Tribal Economic Development Bonds Allocations," Internal Revenue Service, last updated February 2, 2022, <https://www.irs.gov/tax-exempt-bonds/irs-announces-tribal-economic-development-bonds-allocations>.

<sup>270</sup> "Published Volume Cap Limit for Tribal Economic Development Bonds."

<sup>271</sup> Matthew Gregg, Ryan Nunn, and Casey Lozar, "An Urgent Priority: Accurate and Timely Indian Country Data," Federal Reserve Bank of Minneapolis, May 10, 2022, <https://www.minneapolisfed.org/article/2022/an-urgent-priority-accurate-and-timely-indian-country-data>.

## Programs Incentivizing or Promoting Tribal Community Economic Development

The Small Business Association (SBA)’s 8(a) Business Development Program is a nine-year program that provides management, technical, financial, and procurement assistance to firms owned or controlled by socially and economically disadvantaged individuals.<sup>272</sup> There are also special exceptions in the law that govern enterprises owned by Alaska Native corporations, tribes, Native Hawaiian organizations, and CDCs. These entities may have multiple 8(a) firms, but for most firms and individuals, participation is one time only.

Once certified, participating businesses can compete for certain federal sole-source and competitive set-aside contracts. Up to \$7.5 million in sole-source contracts is authorized for assigned manufacturing North American Industry Classification System codes, and \$4.5 million for all other acquisitions.<sup>273</sup> Alaska Native corporations have been particularly successful at leveraging 8(a) status into productive contracts. A 2007 GAO report found that obligations for 8(a) contracts to ANC firms increased from \$265 million in FY 2000 to \$1.1 billion in 2004.<sup>274</sup>

Table 1 | Summary List of Federal Funding Sources

### 1.1 Bureau of Indian Affairs

Agency/ Program	Funding Type	Eligibility	Authorized Purposes	Typical Amounts
Indian Business Incubators Program	Grants	Indian entities; tribal organizations; tribal colleges or universities; institute of higher education in any state admitting students as per 20 U.S.C. 1091(d); joint applicants who are independently eligible	Establish and run business incubators that serve entrepreneurs who will provide products or services in American Indian and Alaska Native communities.	\$100,000-\$300,000 <sup>275</sup>

<sup>272</sup> “8(a) Business Development program,” U.S. Small Business Administration, accessed September 13, 2022, <https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program>.

<sup>273</sup> “8(a) Business Development program.”

<sup>274</sup> Katherine V. Schinasi, “Alaska Native Corporations: Increased Use of Special 8(a) Provisions Calls for Tailored Oversight,” U.S. Government Accountability Office, September 19, 2007, <https://www.gao.gov/assets/gao-07-1251t.pdf>.

<sup>275</sup> “Indian Business Incubators Program,” Bureau of Indian Affairs, accessed September 6, 2022, <https://www.bia.gov/service/grants/ibip>.

Agency/ Program	Funding Type	Eligibility	Authorized Purposes	Typical Amounts
Indian Loan Guarantee and Insurance Program	Loan Guarantee and Insurance	Most lending institutions, including CDFIs, may obtain a guarantee or insurance; non-bank lenders may be eligible to access guarantees. Borrowers must be an enrolled member of a federally recognized tribe or group; or a business entity owned by federally recognized AIAN individuals	Loans may be used for a variety of purposes including operating capital, equipment purchases, acquisition and refinancing, building construction, and lines of credit. The project must benefit the economy of a reservation or tribal service area.	In 2000, the average loan guarantee was \$7 million. <sup>276</sup> In addition, lenders issued insured loans at an average amount of just over \$57,000
Living Languages Grant Program	Grant	Federally recognized tribal governments	Funding to document and revitalize languages that are at risk of disappearing because of a declining native-speaker population.	\$150,000 to \$200,000 <sup>277</sup>
National Tribal Broadband Grant	Grant	Federally recognized tribal governments	Developing or extending broadband services in communities to spur economic development and commercial activity, create opportunities for self-employment, enhance educational resources and remote learning opportunities, and meet emergency and law enforcement needs. <sup>278</sup>	\$100,000 - \$175,000 <sup>279</sup>

<sup>276</sup> “Indian Loan Guarantee and Insurance Program,” Bureau of Indian Affairs, accessed December 28, 2022, <https://www.bia.gov/service/loans/ilgp/what-indian-loan-guarantee-and-insurance-program-ilgp>.

<sup>277</sup> “Past Funded LLGP Grant Projects,” Bureau of Indian Affairs, accessed August 24, 2022, <https://www.bia.gov/service/grants/llgp/past-funded-llgp-grant-projects>.

<sup>278</sup> “National Tribal Broadband Grant (NTBG),” Bureau of Indian Affairs, accessed August 24, 2022, <https://www.bia.gov/service/grants/ntbg>.

<sup>279</sup> “Past Funded NTBG Grant Projects,” Bureau of Indian Affairs, accessed August 24, 2022, <https://www.bia.gov/service/grants/ntbg/past-funded-ntbg-grant-projects>.

Agency/ Program	Funding Type	Eligibility	Authorized Purposes	Typical Amounts
Native American Business Development Institute Grant	Grant	Tribes and tribal organizations	Funds go to hiring consultants to perform feasibility studies or business plans to help tribes and tribal organizations weigh their risks to determine whether a project is worth pursuing and empowers them to make informed decisions about their economic futures. All projects must be completed within one year.	\$25,000- \$40,000 <sup>280</sup>
Tribal Tourism Grant Program	Grant	Tribes or organizations	Hiring consultants, preparing project feasibility studies, and expanding or developing tourism business plans, awarded tribes and organizations can leverage grant funding to explore COVID-19 recovery options.	\$25,000 - \$150,000

**1.2 U.S. Department of Agriculture**

Agency/Program	Funding Type	Eligibility	Authorized Purposes	Typical Amounts
Business and Industry Loan Guarantees	Loan guarantee	For-profit or nonprofit businesses, cooperatives, federally recognized tribes, public bodies, individuals engaged or proposing to engage in a business	Business development activities, business acquisition, land acquisition for commercial or industrial properties, the purchase and installation of machinery and equipment, supplies or inventory, debt refinancing.	\$25 million loan maximum, 80% loan guarantee in 2022. <sup>281</sup>
Community Facilities Grants	Grant	Organizations and tribes in cities, towns, unincorporated areas with less than 20,000 individuals	Nonprofit public improvement projects, including real estate and equipment projects.	\$15,000 - \$50,000 <sup>282</sup>

<sup>280</sup> “Past Funded NABDI Grant Projects,” Bureau of Indian Affairs, accessed September 6, 2022, <https://www.bia.gov/service/grants/nabdi/past-funded-nabdi-grant-projects>.

<sup>281</sup> “OneRD Guarantee Loan Initiative Lender Guide,” U.S. Department of Agriculture, November 4, 2020, <https://www.rd.usda.gov/sites/default/files/OneRDLenderGuide.pdf>.

<sup>282</sup> Ibid.

<b>Agency/Program</b>	<b>Funding Type</b>	<b>Eligibility</b>	<b>Authorized Purposes</b>	<b>Typical Amounts</b>
Community Facilities Guaranteed and Direct Loans	Loans and loan guarantees	Organizations and tribes in cities, towns, unincorporated areas with less than 20,000 individuals	Nonprofit public improvement projects, including real estate and equipment projects.	\$100,000 - \$5 million <sup>283</sup>
Intermediary Relending Program	Loan	Nonprofits, federally recognized tribes, public agencies, cooperatives	Provides 1% low-interest loans to local lenders that re-lend to businesses to improve economic conditions and create jobs in rural communities.	Up to \$1 million for local lenders; up to \$400,000 to ultimate recipient <sup>284</sup>
ReConnect	Loan or grant	Tribes or organizations	Construction, improvement, or acquisition of facilities and equipment to provide broadband service in eligible rural areas. <sup>285</sup>	\$25 million - \$50 million <sup>286</sup>
Rural Business Development Grants	Grant	Public bodies, government entities, nonprofit entities, and federally recognized tribes	Technical assistance and training for small rural businesses.	\$10,000 - \$500,000 <sup>287</sup>
Rural Innovation Stronger Economy (RISE) Grant	Grant	Nonprofit entities, state entities, tribal entities, institutions of higher education, public bodies	Building or supporting a business incubator, providing worker training for new or higher-paying jobs.	\$500,000 - \$2,000,000 <sup>288</sup>

<sup>283</sup> “Housing Support Programs Across the Federal Government.”

<sup>284</sup> “Intermediary Relending Program,” U.S. Department of Agriculture, accessed April 11, 2023, <https://www.rd.usda.gov/programs-services/business-programs/intermediary-re lending-program>.

<sup>285</sup> “ReConnect Loan and Grant Program,” U.S. Department of Agriculture, accessed August 24, 2022, <https://www.usda.gov/reconnect>.

<sup>286</sup> Ibid.

<sup>287</sup> “Rural Business Development Grants (RBDG),” U.S. Department of Agriculture, December 2019, [https://www.rd.usda.gov/sites/default/files/fact-sheet/508\\_RD\\_FS\\_RBS\\_RBDG.pdf](https://www.rd.usda.gov/sites/default/files/fact-sheet/508_RD_FS_RBS_RBDG.pdf).

<sup>288</sup> “Rural Innovation Stronger Economy (RISE) Grants,” U.S. Department of Agriculture, accessed April 11, 2023, <https://www.rd.usda.gov/programs-services/business-programs/rural-innovation-stronger-economy-rise-grants>.

<b>Agency/Program</b>	<b>Funding Type</b>	<b>Eligibility</b>	<b>Authorized Purposes</b>	<b>Typical Amounts</b>
Rural Microentrepreneur Assistance Program	Loan or grant	Nonprofits, federally recognized tribes, institutions of higher education	Provides loans and grants to Microenterprise Development Organizations (MDOs), which can then provide loans and technical assistance to small rural businesses.	Up to \$500,000 for MDOs, up to \$50,000 for ultimate recipients. <sup>289</sup>
Section 502 Direct Loan Program	Loan	Low-income homebuyers in rural areas	Purchase homes in rural areas; build, repair, renovate or relocate a home; or purchase and prepare sites.	Loan limits vary by county, typically below \$500,000 for a 1-unit property. <sup>290</sup>

**1.3 U.S. Department of Health and Human Services**

<b>Agency/Program</b>	<b>Funding Type</b>	<b>Eligibility</b>	<b>Authorized Purposes</b>	<b>Typical Amounts</b>
Social and Economic Development Strategies (SEDS) Grants	Grant	Federally recognized tribal governments, tribal organizations, nonprofits	Community-driven projects designed to grow local economies, strengthen Native American families, preserve Native American cultures, and strengthen community-based businesses and social and economic infrastructure in Native American communities.	\$100,000 - \$400,000 <sup>291</sup>

<sup>289</sup> “Rural Microentrepreneur Assistance Program,” U.S. Department of Agriculture, accessed April 11, 2023, <https://www.rd.usda.gov/programs-services/business-programs/rural-microentrepreneur-assistance-program>.

<sup>290</sup> “Single Family Housing Direct Home Loans,” U.S. Department of Agriculture, accessed April 11, 2023, <https://www.rd.usda.gov/programs-services/single-family-housing-programs/single-family-housing-direct-home-loans>.

<sup>291</sup> “Social and Economic Development Strategies -SEDS,” U.S. Department of Health and Human Services, April 6, 2021, <https://www.grants.gov/web/grants/view-opportunity.html?oppId=329546>.

#### 1.4 U.S. Department of Housing and Urban Development

Agency/Program	Funding Type	Eligibility	Authorized Purposes	Typical Amounts
Indian Community Development Block Grant	Grant	Federally recognized tribes/villages, limited state-recognized tribes and tribal organizations	Housing, community facilities, and other economic development activities. <sup>292</sup>	\$500,000 - \$1.2 million <sup>293</sup>
Indian Housing Block Grant	Grant	Federally recognized tribes/villages, limited state-recognized tribes	Affordable housing development, assistance, services, and problem solving; safety and crime prevention. <sup>294</sup>	\$86,000 - \$650 million (dependent on tribe size and need) <sup>295</sup>
Section 184 Indian Home Loan Guarantee Program	Loan guarantee	American Indians or Alaska Natives who are members of a federally recognized tribe, federally recognized Indian tribes, tribally designated housing entities, Indian Housing Authorities	New home construction or rehabilitation, the purchase of an existing home, or refinancing, both on and off Native lands. Can be used for homes with between one and four units.	Loan limits vary by county, typically below \$500,000 for a 1-unit property <sup>296</sup>

#### 1.5 U.S. Department of the Treasury

Agency/Program	Funding Type	Eligibility	Authorized Purposes	Typical Amounts
CDFI Bond Guarantee Program (CDFI Fund)	Bond Guarantee	CDFIs, including Native CDFIs	Enables CDFIs to issue federally guaranteed bonds and use their proceeds to extend credit for community development.	Through FY 2019, nearly \$1.6 billion had been guaranteed in bonds through the CDFI Bond Guarantee Program <sup>297</sup>

<sup>292</sup> “Indian Community Development Block Grant Program.”

<sup>293</sup> “FY 2021 Indian Community Development Block Grant,” U.S. Department of Housing and Urban Development, accessed August 24, 2022, <https://www.hud.gov/sites/dfiles/PA/documents/ICDBG-Competitive-Awards-2022.pdf>.

<sup>294</sup> “Indian Housing Block Grant Program.”

<sup>295</sup> “Housing Support Programs Across the Federal Government,” U.S. Department of Agriculture, September, 2016, <https://www.usda.gov/sites/default/files/documents/housing-support-programs-federal-government.pdf>.

<sup>296</sup> “Section 184 Indian Home Loan Guarantee Program.”

<sup>297</sup> “Fact Sheet: CDFI Bond Guarantee Program.”

Agency/Program	Funding Type	Eligibility	Authorized Purposes	Typical Amounts
Native American CDFI Assistance Program (NACA, CDFI Fund)	Grant	Competitive process; Native CDFIs	Facilitates the creation and advancement of Native CDFIs. Serves organizations in the early planning stages of CDFI formation; tribal entities working to certify an existing lending program; and established Native CDFIs in need of further capacity-building assistance.	FY 2022: Technical Assistance \$125,000 - \$150,000  Financial Assistance \$197,000-\$1,000,000 <sup>298</sup>
New Markets Tax Credit Program (CDFI Fund)	Tax credit	Competitive process; CDFI-certified Community Development Entities (CDEs) receive authority to issue tax credits	CDEs offer loans, equity investments, and other services to Qualified Low Income Community Businesses in a wide variety of industries including manufacturing, food, retail, housing, health, technology, energy, education, and child care. <sup>299</sup>	Leveraged funding varies by type of project, but typically range from \$1-20 million <sup>300</sup>
Low Income Housing Tax Credit (IRS)	Tax credit	Developers producing affordable housing throughout the U.S.	Affordable rental housing development.	\$1 million - \$2 million <sup>301</sup>
Tribal Economic Development Bonds (TED Bonds) (IRS)	Tax exempt bonds that can be issued by tribal governments	Federally recognized tribal governments	To finance any project or activity for which state or local governments could issue tax-exempt bonds. For example, TED Bonds could be used to finance water treatment facilities, sewage facilities, solid waste disposal facilities, and qualified residential facilities.	Volume cap limit per tribal government for the two-month period starting August 1, 2022, was \$100,000,000. <sup>302</sup>

<sup>298</sup> “NACA Program Award Book,” CDFI Fund, U.S. Department of the Treasury, 2022, [https://www.cdfifund.gov/sites/cdfi/files/2023-02/2022\\_NACA\\_Award\\_Book.pdf](https://www.cdfifund.gov/sites/cdfi/files/2023-02/2022_NACA_Award_Book.pdf).

<sup>299</sup> “New Markets Tax Credit,” CDFI Fund, U.S. Department of the Treasury, accessed December 28, 2022, <https://www.cdfifund.gov/programs-training/programs/new-markets-tax-credit>.

<sup>300</sup> CDFI Fund, *FY 2022 NMTC Public Data Release: 2003-2020 Data File*, (October 6, 2022), distributed by CDFI Fund, <https://www.cdfifund.gov/documents/data-releases>.

<sup>301</sup> “2022 QAPs and Applications,” Novogradac, accessed August 24, 2022, <https://www.novoco.com/resource-centers/affordable-housing-tax-credits/2022-qaps-and-applications>.

<sup>302</sup> “Published Volume Cap Limit for Tribal Economic Development Bonds.”

## 1.6 U.S. Economic Development Administration

Agency/Program	Funding Type	Eligibility	Authorized Purposes	Typical Amounts
CARES Act Economic Recovery Corps and Equity Impact Investments Programs	Grant	Local and state governments, Native tribal governments, 501(c)(3) nonprofits	Two programs designed to support underserved communities across the country in developing successful economic plans and projects.	\$3 million - \$30 million <sup>303</sup>
Build to Scale	Grant	States, local governments, tribes, nonprofit organizations, higher education institutions, public-private partnerships, research organizations, venture development organizations, economic development organizations	Projects aimed at furthering tech-based economic development initiatives.	Between \$300,000 and \$2 million <sup>304</sup>
Public Works and Economic Adjustment Assistance	Grant	District Organizations of Economic Development Districts, federally recognized tribes and any Alaska Native Village or Regional Corporations, state and local governments, institutions of higher education, public or private nonprofit organizations	A wide range of technical, planning, and public works and infrastructure assistance in regions experiencing adverse economic changes.	\$100,000 - \$30,000,000 <sup>305</sup>

<sup>303</sup> “CARES Act Economic Recovery Corps and Equity Impact Investments,” U.S. Economic Development Administration, accessed August 24, 2022, <https://www.grants.gov/web/grants/view-opportunity.html?oppId=341163>.

<sup>304</sup> “2022 Build to Scale Program Notice of Funding Opportunity,” U.S. Economic Development Administration, May 2022, <https://www.eda.gov/sites/default/files/2022-05/FY22-Build-to-Scale-NOFO.pdf>.

<sup>305</sup> “FY 2023 EDA Public Works and Economic Adjustment Assistance Programs,” U.S. Department of Commerce, March 14, 2023, <https://www.grants.gov/web/grants/view-opportunity.html?oppId=346815>.

<b>Agency/Program</b>	<b>Funding Type</b>	<b>Eligibility</b>	<b>Authorized Purposes</b>	<b>Typical Amounts</b>
Indigenous Communities Program	Grant	Tribes or nonprofits serving Native Hawaiians or Pacific Islanders	Develop projects to recover from the pandemic and build economies.	\$100,000 - \$5,000,000 <sup>306</sup>
Planning and Local Technical Assistance Program	Grant	Individual and consortia of: local and state governments, Native tribal governments, 501(c)(3) nonprofits, and higher education entities	Economic feasibility studies, impact analyses, disaster resiliency plans, and project planning.	\$100,000 <sup>307</sup>

**1.7 Small Business Administration**

<b>Agency/Program</b>	<b>Funding Type</b>	<b>Eligibility</b>	<b>Authorized Purposes</b>	<b>Typical Amounts</b>
The SBA 7(a) Loan Guarantee Program	Loan guarantee	Small businesses	Helps small businesses obtain credit.	Guarantee of up to 85% for loans under \$150,000 and a 75% guarantee for loans up to \$5 million <sup>308</sup>
SBA 504 Loan Program	Loan	For-profit company	Long-term, fixed rate financing for major fixed assets that promote business growth and job creation.	Up to \$5.5 million <sup>309</sup>

**Private Capital and Investment**

Despite progress being made in tribal economic development, for many tribes there are inherent tensions in working with non-Native investors. While the influx of private capital holds the

<sup>306</sup> “Funding Opportunities.”

<sup>307</sup> “Funding Opportunities,” Economic Development Agency, accessed August 24, 2022, <https://eda.gov/funding-opportunities>.

<sup>308</sup> “7(a) Loans.”

<sup>309</sup> “504 Loans.”

potential to expand tribal economies and allow tribal governments to improve services to residents, the interests of investors may not align with tribes' self-determined goals.<sup>310</sup>

In addition, as discussed in Section 3, many investors still hold biases and misperceptions concerning the riskiness of lending to Native borrowers. Jorgensen recommends that non-tribal providers of capital and credit educate themselves about the business-related infrastructure of tribes with whom they work, and that tribes and other advocates take the lead in such education. In some cases, Jorgensen points out that the reduced flow of funding can be understood as a symptom of some Native nations' limited preparedness to engage with lenders and lending institutions.<sup>311</sup> The use of Native CDFIs or other Native financial institutions as intermediaries can also help make connections and ease uncertainties between parties. Access to credit lags in tribal areas that have a dearth of financial institutions, a lack of diversity of funding sources, and less access to collateral and equity resources. Successful examples of projects financed with private capital are discussed in Section 4 and others are included below in the subsection on capital stacking.

A 2013 survey of home mortgage lenders, Native CDFIs and credit unions, and other organizations serving Indian Country provides some insights into the motivations behind private lending in Indian Country. Tribally owned mortgage lenders were primarily motivated by their ability to serve their own people. Other lenders were motivated to provide mortgages to a traditionally underserved population, but mortgage lending on Native lands itself was not expected to be especially profitable because of the lengthy time to close loans and their relatively modest dollar amount.<sup>312</sup>

Some lenders hoped their presence and service to Native homeowners would achieve greater economic returns from future long-term business opportunities, such as business loans to tribes, especially to tribes that operated casinos or other business activities requiring capital for investment. Lender respondents noted the importance of being visible within the Native community, for example by sending representatives to community events and meeting with groups to make sure tribal members are aware of what the lender has to offer.<sup>313</sup>

## Role and Potential of Philanthropy

Philanthropies and foundations offer a wide variety of opportunities for community organizations and other entities to access funding. But Native American nonprofit leaders report having less positive experiences with foundation funders than do nonprofit leaders of other races and ethnicities. Native nonprofit leaders cite similar challenges to those that arise when partnering with private investors, including difficulties building relationships and a lack of understanding on the part of foundations. In a 2021 survey, almost two thirds of foundation

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<sup>310</sup> Fredericks and Finn, "Harnessing Private Equity."

<sup>311</sup> "Access to Capital."

<sup>312</sup> Listokin et al., "Mortgage Lending on Tribal Land."

<sup>313</sup> Ibid.

leaders said that they provide little or no grant dollars to organizations primarily serving Native American communities.<sup>314</sup>

Native-serving nonprofits, such as the First Nations Development Institute, Native Americans in Philanthropy, NDN Collective, and Native Ways Foundation, have urged foundations to take actions to better support their communities, including participating in their organization's meetings and events, conducting site visits, being more communicative, and hiring Native American staff. Several of these nonprofits have developed resource materials that are available to foundations to learn more about working effectively with Native American leaders and communities.<sup>315</sup>

Generally, Native American communities and causes are underfunded relative to their share of the population: A 2019 report found that large U.S. foundations provided just 0.4% of their funding towards Native American communities and causes even though 2% of the total population of the United States is American Indian and Alaska Native.<sup>316</sup> Between 2006 to 2022, a total of 53,513 grants from over 6,000 large funders were designed to benefit American Indian, Alaska Native and Native Hawaiian populations in the United States. These grants totaled \$3.8 billion, and were granted to 5,748 organizations.

Top funders that provided more than \$100 million in grants each to Native communities over this period include the Ford Foundation, W.K. Kellogg Foundation, The Robert Wood Johnson Foundation, Northwest Area Foundation, Novo Foundation, and Bush Foundation. The top project categories funded by foundation grants in Native communities include education, human rights, arts and culture, and community and economic development.

The outlook for philanthropic investments in Native communities appears to be improving. The Johnson Center for Philanthropy reports that “philanthropy is entering a new era of engagement with Native communities.”<sup>317</sup> Events in recent years such as the stand-off at Standing Rock and the racial reckonings of 2020 have brought an increased awareness in the philanthropic community of the unique experiences, strengths, and challenges faced by Native American communities.<sup>318</sup> MacKenzie Scott's philanthropic efforts, both in their scale and hands-off approach, are influencing the philanthropic landscape.<sup>319</sup>

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<sup>314</sup> Ellie Buteau, Hannah Martin, and Katarina Malmgren, “Overlooked (Part Two): Foundation Support for Native American Leaders and Communities,” Center for Effective Philanthropy, 2021, [http://cep.org/wp-content/uploads/2021/07/CEP\\_Overlooked\\_Native\\_American.pdf](http://cep.org/wp-content/uploads/2021/07/CEP_Overlooked_Native_American.pdf).

<sup>315</sup> Buteau, Martin, and Malmgren, “Overlooked (Part Two).”

<sup>316</sup> Avi Bond, et al., “Investing in Native Communities: Philanthropic Funding for Native American Communities and Causes,” Candid, 2019, <https://www.issuelab.org/resources/35493/35493.pdf>.

<sup>317</sup> Trish Abalo, Adam Engwis, and Tory Martin, “Philanthropy is Entering a New Era of Engagement with Native Communities,” Dorothy A. Johnson Center for Philanthropy, January 18, 2022, 1, <https://johnsoncenter.org/blog/philanthropy-is-entering-a-new-era-of-engagement-with-native-communities/>.

<sup>318</sup> Abalo, Engwis, and Martin, “Philanthropy is Entering a New Era.”

<sup>319</sup> MacKenzie Scott, “Seeding by Ceding,” *Medium*, June 15, 2021, <https://mackenzie-scott.medium.com/seeding-by-ceding-ea6de642bf>.

In describing the selection process for her donations, MacKenzie Scott noted a focus on community-centered service. She and her advisors conducted research to identify and evaluate equity-oriented nonprofit teams working in areas that have been neglected. Furthermore, she chose to make relatively large gifts with no restrictions, trusting in the experience and judgment of organizations on the front line.<sup>320</sup>

Eight Native American and Alaska Native organizations focused on supporting indigenous higher education, philanthropy, and arts and culture received a portion of the \$2.74 billion in donations announced in June 2021 by MacKenzie Scott. These organizations are:

- American Indian College Fund, which gives scholarships to Native American students;
- American Indian Higher Education Consortium (AIHEC), a group representing tribal colleges;
- First Peoples Fund, a national nonprofit that supports Native artists and youth through entrepreneurship and cultural practice;
- Native Americans in Philanthropy, an organization that invests funding throughout Native communities;
- Native Arts & Cultures Foundation, which grants funding and mentorship to Native artists;
- NDN Collective, an indigenous-led organization supporting self-determination and movement building;
- Alaska Native Heritage Center, which works to preserve and strengthen Alaska Native languages, cultures and traditions; and
- Santa Fe, N.M.-based IAIA Museum of Contemporary Native Arts, the country's only art museum focusing on modern Native art.<sup>321</sup>

Tribal colleges and cultural institutions are an important component of community economic development, for building the future workforce and for providing jobs to residents of Native communities. A 2013 report sponsored by the First Peoples fund found that an estimated 30% of Native peoples are practicing or potential artists, but many are living below the poverty level and lack the arts-specific business skills and training needed to operate successful art ventures. With

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<sup>320</sup> Scott, "Seeding by Ceding."

<sup>321</sup> Jenna Kunze, "Indigenous Nonprofits Included in Philanthropist MacKenzie Scott's Latest \$2.74B Round of Donations," *Tribal Business News*, June 15, 2021, <https://tribalbusinessnews.com/sections/economic-development/13526-indigenous-nonprofits-included-in-philanthropist-mackenzie-scott-s-latest-2-74b-round-of-donations>.

additional support, the Native arts economy “has the potential to expand dramatically, affecting not only the artists themselves, but their communities, as well.”<sup>322</sup>

At the same time, global efforts to address climate change are increasing recognition of the value of the cultural and historical knowledge of indigenous people.<sup>323</sup> In September 2021, nine grantmakers signed on to the Protecting Our Planet Challenge. Their collective \$5 billion commitment to conservation efforts included a pledge to work closely and differently with indigenous communities going forward.<sup>324</sup> At the United Nations Climate Change Conference (COP26) in November 2021, the United States and four other countries, in partnership with 17 funders, pledged to invest \$1.7 billion to help indigenous and local communities protect the biodiversity of tropical forests that are vital to protecting the planet from climate change, biodiversity loss, and pandemic risk.<sup>325</sup> While much of this effort is directed at tropical rainforests, the overarching approach represents a change in the relationship of philanthropy to indigenous communities, including Native entities in the United States.

## Capital Stacking

Jorgensen has documented examples of tribes successfully gaining access to capital and credit, including in the sectors of health care facilities, infrastructure projects (water and sewer, cellular towers and telecommunication equipment, broadband), grocery stores, and land purchases.<sup>326</sup> Successful projects in each of these categories have used unique combinations of multiple sources of financing, such as tribal revenue; a tribal bond issue secured by a pledge of third-party billing revenues (for the health care facility); federal awards and grants from IHS, EPA, and USDA; loans from tribal banks and the USDA; and loans from several CDEs that raised investment capital through the NMTC program. While capital stacking is a common approach to funding community economic development within and outside of Native communities, these examples demonstrate how creative tribes must be to acquire the funding they need to build the communities they desire. These projects also demonstrate the importance of a reliable revenue stream to secure and repay loans, and that tribes and Native financial institutions and banks can realize benefits by building relationships and working together.

Capital stacking does not always bring in new private investment. During site visits for a HUD report on Native American and Alaska Native housing, tribes mentioned combining other federal

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<sup>322</sup> “Establishing a Creative Economy,” First Peoples Fund, July 2013, 7, <https://static1.squarespace.com/static/57be24e9d1758e95b6146331/t/57c9d010c534a5aa98846f6ce/1472843798529/document-market-study.pdf>.

<sup>323</sup> Abalo, Engwis, and Martin, “Philanthropy is Entering a New Era of Engagement.”

<sup>324</sup> Jim Rendon, “\$5B Conservation Plan Offers New Approach, But Faces Hurdles,” AP News, September 28, 2021, <https://apnews.com/article/climate-change-science-business-philanthropy-oceans-6ca70181c532be88358cbedda72dce1e>.

<sup>325</sup> “Governments and Private Funders Announce Historic US\$1.7 Billion Pledge at COP26 in Support of Indigenous Peoples and Local Communities,” Ford Foundation, November 1, 2021, <https://www.fordfoundation.org/news-and-stories/news-and-press/news/governments-and-private-funders-announce-historic-us-17-billion-pledge-at-cop26-in-support-of-indigenous-peoples-and-local-communities>.

<sup>326</sup> “Access to Capital.”

funds, such as ICDBG funds, or tribal funds or land to support a project, in addition to their main funding source.<sup>327</sup> Several tribes mentioned using the HUD Title VI Loan Guarantee program, which allows recipients of Indian Housing Block Grant Funds to use current and future fund allocations as a means of leverage to obtain HUD guaranteed financing. While combining funding sources can allow some projects to move forward, it can also impose an administrative burden: several site visit respondents mentioned the need to work with experts, hire additional staff, or obtain more training to improve their ability to leverage funding and combine multiple funding sources. In addition, many smaller tribes view leveraging as unfeasible because their recurring funding streams are small, limiting their ability to develop the project scale necessary to make other sources, such as LIHTC, work for them.

In 2021, Nesika Illahee, an affordable housing development in northeast Portland's Cully neighborhood, was completed using a unique partnership of federal, tribal, state, and local resources.<sup>328</sup> Community Development Partners (CDP), the Native American Youth and Family Center (NAYA), and the Native American Rehabilitation Association (NARA) partnered with the Confederated Tribes of Siletz Indians (Siletz) to develop the project. The Siletz Tribe sponsored a portion of the project with its HUD IHBG funding. Twenty of the development's 59 units give first residential priority to Siletz tribal members and second priority to members of a federally or state-recognized tribe and Alaskan Natives. One goal of the project is to combat homelessness, which is experienced disproportionately by Native Americans relative to other county residents. It also aimed to foster a sense of belonging for tribal members in an urban setting through culturally specific design, services, and amenities. This project provides an interesting example of capital stacking that involves a tribe, but it is located in an urban area, which may bring other unique opportunities or challenges.

The Nesika Illahee development reflects the combination of funding sources and their requirements. Oregon Housing and Community Services (OHCS) granted 4% low-income housing tax credits, which required that the development accommodate households making no more than 60% of area median income. The tribe's IHBG funds supported 20 units that give first residential priority to Siletz tribal members and second priority to members of a federally or state-recognized tribe and Alaskan Natives. Since IHBG funds do not guarantee that renters will provide tribes and TDHEs with rental income, the development received additional support for these units, including \$1.5 million that will provide \$75,000 per year in rental subsidies over 20 years. The OHCS Mental Health Housing and General Housing Account programs funded 15 units that are set aside as recovery housing for tenants with substance use disorders. These residents receive additional support from NARA through drug and alcohol counseling. Located about a half-mile from the complex, NAYA serves families with children through wraparound services that provide food, clothes, and domestic violence interventions along with other forms of emergency assistance.

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<sup>327</sup> Pindus, et al., "Housing Needs of American Indians," 143.

<sup>328</sup> "Innovative Funding Provides Culturally Specific Affordable Housing to Native Americans," PD&R Edge; U.S. Department of Housing and Urban Development, 2021, <https://www.huduser.gov/portal/pdredge/pdr-edge-inpractice-072621.html>.

All units contain ENERGY STAR® appliances and LED lighting. The OHCS Multifamily Energy Program (MEP) covered the costs of these energy-efficiency measures, which have reduced Nesika Illahee's electricity use by nearly 50% and earned the development Platinum certification from Earth Advantage. OHCS also provided a loan through its Local Innovation and Fast Track rental housing program, bringing its total contribution to Nesika Illahee to more than \$10 million.

With Native American households making up 90% of its residents, Nesika Illahee is a culturally specific community whose design and amenities give residents a place to partake in tribal traditions at different scales, including virtual and oral storytelling using art pieces created by local and national Native American artists. Signage and murals provide a familiar cultural element for residents.

## Section 8: Community Economic Development in Indian Country: Addressing Challenges and Moving Forward

*This concluding section highlights opportunities and promising practices that can further economic resilience in Native lands and address the need for more and better data, including recommendations for future data collection.*

To best support the community economic development aims of American Indians, Alaska Natives, and Native Hawaiians, it is essential to be aware of the challenges that have historically prevented Native communities from accessing opportunities, as well as the challenges that remain today. The objective of the CDFI Fund's NMTC Native Initiative is to support efforts to increase NMTC investment in NMTC Native Areas. This Market Research Report aims to increase knowledge and understanding of community and economic development strategies in Indian Country as one step toward increasing investments in NMTC Native Areas and other Native lands. A shared understanding of the following points is critical for moving forward:

- Opportunities exist for enhanced community economic development in Indian Country because of new federal funding, increased tribal capacity to plan projects, and the growing sophistication of Native CDFIs and other Native actors accessing capital.
- The need for more and better data underlies many limitations to community economic development in Indian Country.
- Understanding of and respect for cultural values is essential for future community economic development in Indian Country.

### Opportunities for Community Economic Development in Indian Country

Although challenges remain, the community economic development capacities of tribal and other Native entities have improved over time and tribal governments and enterprises are well-positioned to pursue new opportunities for growth.

Increased federal funding, including ARRA (2009) and the CARES Act (2020), which included set-asides for Native communities, provided significant amounts of new, time-sensitive funding. When these funds needed to be deployed quickly, tribes gained experience prioritizing and structuring projects. The COVID-19 pandemic raised awareness of disparities in infrastructure, broadband, housing, and health care in tribal areas. Implementing projects to address these disparities has provided tribes with experience in addressing complex financing and land issues and working with non-Native outside investors.

Federal funding sources continue to provide opportunities for tribes and Native communities. GAO identified eight federal programs that are specifically for tribal entities and provided over \$930 million in grants and loan guarantees in FY 2017–2021. An additional 14 programs were identified that provide significant amounts to tribal entities but also to a wider range of eligible recipients, such as small businesses or local governments. However, the total amount of

assistance provided by these 14 programs to tribal entities is unknown because two of these agencies, SBA’s Office of Capital Access and USDA’s Farm Service Agency, do not analyze data to estimate obligations provided to tribal entities. GAO states that “estimating and reporting the amount of program obligations provided to tribal communities would allow federal agencies and decision makers, such as Congress, to better understand the reach of these programs and identify areas where tribal entities may need additional support.”<sup>329</sup>

Historically, the Community Reinvestment Act (CRA) has not been a strong incentive for banks to invest in Indian Country. Banks have some flexibility in setting their CRA assessment areas, but they have to include areas where they have branches and ATMs, as well as surrounding communities. Since reservations tend to be under-banked—in part because of population density issues—many banks do not include these areas as part of their CRA assessment areas, choosing instead to invest in other low- and moderate-income communities to obtain CRA credit. But recently proposed (2020) updates to Community Reinvestment Act (CRA) rules include some incentives for increased lending in Indian Country including:

- Specific measures aimed at spurring investments in tribal public safety, housing, education, health care, and communications infrastructure, as well as other community and economic development projects on tribal lands;
- Providing banks with CRA credit for serving tribal communities even when Indian Country falls outside their CRA assessment areas; and
- Creating CRA scoring incentives for banks that choose to do business in Indian Country.<sup>330</sup>

Since these rules are proposed and not final, they may face additional changes before potential adoption. It is too early to know whether a final version of these rules will have a significant impact on the number of entities involved in Native communities.

The growth of Native financial entities also presents opportunities for increased access to capital and credit in Indian Country. Native CDFIs, credit unions, and other tribal entities are beginning to develop and offer lending options specifically crafted for potential Native homeowners' incomes, employment status, expense loads, credit histories, and relative borrowing comfort levels. Native financial institutions have the opportunity to strengthen their impact and community support through the inclusion of services that will serve the unique needs of their clients. However, this is contingent on the ability of Native CDFIs to continually collaborate and work closely with both tribal governments and outside investors to be successful. According to a survey of mortgage lenders, a physical presence near Indian land and developing consistent,

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<sup>329</sup> “Tribal Economic Development: Action is Needed.”

<sup>330</sup> “Community Reinvestment Act Proposed Rulemaking,” Board of Governors of the Federal Reserve System, August 24, 2022, <https://www.federalreserve.gov/consumerscommunities/community-reinvestment-act-proposed-rulemaking.htm>.

working relationships between tribes and financial actors is effective for improving tribal collaboration with non-tribal entities.<sup>331</sup>

The details discussed in this report confirm that the pieces and players are in place to continue to build a pipeline of community economic development projects in Native communities. As described in Section 3, tribes have increased their land management and planning capacity, and as described in Section 6, Native actors are expanding the diversity and volume of their partnerships and access to capital. There are projects waiting to be done in Native communities in various stages of planning, review and approval, and funding. Opportunities lie in the growth of tribal enterprises and jobs in the sectors of natural resources extraction, manufacturing, construction, hospitality, and public sector projects such as health facilities and community centers. Native CDFIs and other financial entities serving Indian Country continue to search for ways to meet a growing demand for credit and capital, which will only continue to increase as Native economies and tribal capacities grow.

### The Need for Better Economic Data Regarding Indian Country

There are glaring gaps in the available data necessary to support community economic development in Native lands, resulting from both a lack of relevant or accurate data being collected and restricted access to the data that do exist. This lack of critical data continues to hinder the attraction of capital to Indian Country, though several tribes, Native organizations, and local, state, and federal agencies are actively working to improve existing data sources and to create new ones.

Quality data on economic and community characteristics can be thought of as the “lingua franca of investors and policymakers”—necessary for attracting investment and facilitating policy change.<sup>332</sup> Despite this, the historical misuse of tribal data in non-economic contexts, “like the study of tribal health issues [without the consent of the tribal members participating in the study], has generated mistrust about sharing tribal data more broadly.”<sup>333</sup> One concrete example of the consequences this mistrust has for tribes and tribal enterprises: In 2020, the federal government was unable to determine the total debt of tribally-owned enterprises, which left the government unable to determine sufficient levels of economic support for these entities during the COVID-19 pandemic.<sup>334</sup>

That sufficient data for community economic development is lacking in Indian Country is no secret. A 2012 report from the Board of Governors of the Federal Reserve System found that insufficient research and data and a lack of coordination of research efforts across federal

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<sup>331</sup> Listokin et al., “Mortgage Lending on Tribal Land.”

<sup>332</sup> “The Role of Data in Building Vibrant Tribal Economies,” Financial Security Program, The Aspen Institute, November 30, 2022, <https://www.aspeninstitute.org/blog-posts/the-role-of-data-in-building-vibrant-tribal-economies>.

<sup>333</sup> Ibid.

<sup>334</sup> Ibid.

agencies were major impediments to the development of Native American economies.<sup>335</sup> There are three primary data challenges facing Indian Country: “inadequate sample sizes, mismatched geographies, and unique data characteristics.”<sup>336</sup> Inadequate sample size, resulting from the relatively small Native populations in many areas of the U.S., is the reason often cited for the exclusion of Native populations from national statistics reporting. Longitudinal datasets “often do not have a sufficient number of American Indians to conduct the standard analyses employed for other races,” due to the small relative size of the population.<sup>337</sup> The data that is available from the U.S. Census Bureau’s Decennial Census, American Community Survey (ACS), and other surveys does not provide information about how individuals are doing over time, making it difficult to evaluate the impact of policies and programs aimed at improving economic and quality of life outcomes.<sup>338</sup> Additionally, although the ACS does oversample in Native and tribal areas, the ACS has a smaller sample size than the 2000 decennial census long-form that it replaced and thus wider confidence intervals, particularly for smaller or more rural geographies seen in many tribal areas.

Some surveys and reports fail to incorporate American Indian, Alaska Native, or Other Pacific Islander as an available answer choice altogether. For example, the monthly Bureau of Labor Statistics Jobs Report did not publish monthly labor force estimates for Native Americans because of “issues around sample size,” before changing its policy in early 2022.<sup>339,340</sup> Data collected on Native communities might also require unique attributes that are typically not collected in existing surveys, such as tribal affiliation and enrollment.<sup>341</sup>

Geography becomes a challenge for accurate data collection in Native lands and service areas because “the geographic units used in many surveys do not line up precisely with Indian Country maps,” and conditions can vary dramatically just inside and just outside tribal-area borders.<sup>342</sup> Tribal lands and Native communities often cross other political boundaries, including county and state boundaries, and adjacent non-Native communities may exhibit very different characteristics that may obscure real needs and opportunities or even prevent tribes and Native entities from being eligible for certain grants, tax credit programs, and other community economic development incentive programs. Furthermore, while data may be available at a county or

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<sup>335</sup> “Growing Economies in Indian Country: Taking Stock of Progress and Partnerships,” Board of Governors of the Federal Reserve System, April 2012, <https://www.federalreserve.gov/newsevents/conferences/GEIC-white-paper-20120501.pdf>.

<sup>336</sup> Gregg, Nunn, and Lozar, “An Urgent Priority,” 1.

<sup>337</sup> Gabriel R. Sanchez, Robert Maxim, and Raymond Foxworth, “The monthly jobs report ignores Native Americans. How are they faring economically?” *The Avenue*, Brookings, November 10, 2021, <https://www.brookings.edu/blog/the-avenue/2021/11/10/the-monthly-jobs-report-ignores-native-americans-how-are-they-faring-economically>.

<sup>338</sup> Ibid.

<sup>339</sup> Ibid.

<sup>340</sup> Alicia Wallace, “The US will now break out jobs data for Native Americans,” *CNN Business*, March 5, 2022, <https://www.cnn.com/2022/03/05/economy/native-american-monthly-employment-data/index.html>.

<sup>341</sup> Akee, “Sovereignty and Improved Economic Outcomes.”

<sup>342</sup> Gregg, Nunn, and Lozar, “An Urgent Priority.”

reservation level, it may not be available at other vital levels, such as service areas, funding formula areas, or tribally established reservation districts.

The Census Bureau’s application of “differential privacy,”—the deliberate introduction of noise into a dataset to prevent users from identifying individual respondents—to its decennial census data set has created significant concern about the accuracy of that essential source of demographic data for Native communities, other racial groups, and other areas with smaller populations. Differential privacy methods are especially implemented in areas with lower population counts, “such as rural or remote areas where commercial data could more easily be used to identify individuals.”<sup>343</sup> This could significantly change population counts in areas “where a disproportionate number of individuals from certain racial and ethnic groups reside, especially when they are in small numbers in that area or geographic region,” and for small populations such as the American Indian, Alaska Native, and Native Hawaiian populations.<sup>344</sup> This practice has the potential to exacerbate the aforementioned issues with the availability and reliability of data on Native populations.

### The Role of Data Sovereignty

Data sovereignty, a component of the overarching sovereignty possessed by Indian tribes and a critical manifestation of tribal self-determination, refers to the right of indigenous people and nations to govern the collection, ownership, and application of their own data.<sup>345</sup> Historically, Native communities were essentially treated as laboratories by universities and research institutions, with resource-limited tribes unable to exercise substantial control over potentially harmful research activities within their lands.<sup>346</sup>

To prevent the exploitative and extractive practices of some researchers operating within reservations and Native communities, and to ensure that tribes and Native communities retain access to and ownership of information collected from their people as well as the authority to determine how that information can be used, many tribes have established Institutional Review Boards (IRBs).<sup>347</sup>

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<sup>343</sup> “Differential Privacy and the 2020 U.S. Decennial Census: Impact on American Indian and Alaska Native Data,” NCAI Policy Research Center, National Congress of American Indians September, 2019, [https://www.ncai.org/prc/2020\\_Census\\_and\\_AIAN\\_data\\_FINAL\\_9\\_11\\_2019.pdf](https://www.ncai.org/prc/2020_Census_and_AIAN_data_FINAL_9_11_2019.pdf).

<sup>344</sup> Ibid.

<sup>345</sup> Alex Tammaro, “Native Data Sovereignty Can Address Data Gaps and Improve Equity,” *Urban Wire*, Urban Institute, June 13, 2022, <https://www.urban.org/urban-wire/native-data-sovereignty-can-address-data-gaps-and-improve-equity>.

<sup>346</sup> Danielle Hiraldo, et al., “Native Nation Rebuilding for Tribal Research and Data Governance,” Tucson: Native Nations Institute, University of Arizona, January 1, 2020, <https://nnigovernance.arizona.edu/sites/nnigovernance.arizona.edu/files/resources/Policy%2520Brief-%2520Native%2520Nation%2520Rebuilding%2520for%2520Tribal%2520Research%2520and%2520Data%2520Governance.pdf>.

<sup>347</sup> “Institutional Review Boards,” Indian Health Service, accessed April 28, 2023, <https://www.ihs.gov/dper/research/hsrp/instreviewboards>.

These boards are generally composed of experienced researchers from tribal colleges and nearby universities, local leaders, and community members who are tasked with reviewing the purpose, methodology, and efficacy of proposed research; evaluating potential or anticipated harms or negative impacts on community members who will be asked to participate in the research; and retaining the authority to approve or reject proposed uses or publication of the information gathered. In addition to protecting community members from harm or exploitation, IRBs often also seek to coordinate, and in some cases limit, externally developed research activities within reservations and Native communities, which are already frequently surveyed internally by tribes and tribal programs themselves to assess needs, refine programs and services, and plan for the future.<sup>348</sup>

As tribes continue to more fully express and implement data sovereignty, and other non-tribal entities embrace and incorporate the guiding principles of data sovereignty into their processes, tribes and Native communities are more actively participating in the design and monitoring stages of data collection projects within their lands. They are also developing strong partnerships with other tribal and non-tribal organizations at state, regional and national levels.<sup>349</sup> By capitalizing on the resources and expertise of each of the partners, they can produce much-needed accurate tribal data sets, while retaining tribal ownership and control over the use of the data collected. For many tribes, the next step along the path toward true data sovereignty and self-determination is the development of the requisite data management infrastructure and human resources necessary to securely store, organize, analyze, and efficiently use and share the data that they possess.<sup>350</sup>

#### Impacts of Data Limitations for Native Communities

The lack of accurate, relevant, and precise subject-specific data undercuts the efforts of tribes and Native organizations to promote and sustain community economic development activities. This data is not only necessary for supporting internal community economic development planning efforts, but it is also essential for allowing lenders and investors to assess the opportunities and risks associated with bringing their capital to Native lands. The unique land ownership issues and stunted housing markets in many Native communities, for example, limits or prevents many mainstream data-related services, such as Zillow, from covering Native communities. Many appraisers located outside of Native lands may be discouraged from conducting land and structure valuation activities in these areas due to the lack of available databases of comparable property values.<sup>351</sup> As a result, land sales are hindered due to

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<sup>348</sup> Deana Around Him, et al., “Tribal IRBs: A Framework for Understanding Research Oversight in American Indian and Alaska Native Communities,” *American Indian and Alaska Native Mental Health Research* 2, no. 2 (2019): 71–95.

<sup>349</sup> Heather Erb, “Tribal Data Sovereignty and the Critical Role of Data in Public Health Governance,” American Indian Health Commission for Washington State, accessed April 28, 2023, <https://bja.ojp.gov/doc/tribal-data-sovereignty-presentation.pdf>.

<sup>350</sup> Hiraldo, et al., “Native Nation Rebuilding for Tribal Research and Data Governance.”

<sup>351</sup> Kevin Klingbeil and Harry Maher, “Appraisal Market Study,” South Dakota Native Homeownership Coalition, February 2, 2021, <https://www.sdnativehomeownershipcoalition.org/2019/wp-content/uploads/2019/10/SDNHC-Appraisal-Market-Study-Final-Report.pdf>.

uncertainty regarding property values for both the seller and the buyer. Many tribes have created their own realty and title offices to reduce the amount of time necessary to obtain title status reports to facilitate land and home sales and purchases, and to develop their own databases recording real property sales to support their land and housing markets.

Similarly, because many businesses operating on reservations are owned by the tribe and are not subject to federal taxation, critical business data, such as average return on investment, anticipated growth in terms of hiring and revenue, numbers and timing of new business or facility development, or telecommunications connectivity of households and local enterprises, which demonstrate the viability of economic development in Native lands, may not be disclosed.<sup>352</sup> In cases where it is disclosed, such as in the National Indian Gaming Commission (NIGC) annual reports on the Native gaming industry, it may only be available in the form of aggregated data sets or comprehensive tribal economic reports.<sup>353</sup>

The limited presence and scope of measurement and reporting of community economic development activities in tribal lands, via tribal planning departments, data/vital records centers, and chambers of commerce, also likely contributes to the challenge of attracting capital to Native lands. Without consistent and available measurement or reporting, potential investors and grantmaking entities have a more difficult time identifying the broader framework in which a project or investment will fit, and may not believe that the necessary infrastructure will be created or maintained to support their investment. There is no standardized system for measuring the contributions that some tribal governments provide to their regional and local economies. Recent tribal efforts to measure economic impacts include a 2014 summary of the economic impacts of the five tribes of Idaho on Idaho's economy, a 2019 study of economic impacts of Oklahoma tribes,<sup>354</sup> a 2019 Michigan study of the benefits of non-gaming tribal enterprises, and a 2022 report on the impact of investments made by 29 Washington tribes to the state's quality of life.<sup>355</sup>

The absence of reliable demographic and community economic development data also has a direct impact on the levels of federal grant funding allocated to tribes and Native communities as well as their eligibility to participate in specific programs designed to target areas with demonstrated need.<sup>356</sup> For example, the Indian Housing Block Grant (IHBG) formula allocates Native American Housing and Self-Determination Act (NAHASDA) funding based on the number of self-identified American Indian Alaska Native and Native Hawaiian (AIANNH) individuals and households in an area, since these services can only be provided to tribal

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<sup>352</sup> "Indian Country's Once-in-a-Seven-Generation Opportunity," Wells Fargo, 2022, <https://www08.wellsfargomedia.com/assets/pdf/commercial/focus/2022-tribal-economic-resiliency-report-0929.pdf>.

<sup>353</sup> "The Role of Data in Building Vibrant Tribal Economies."

<sup>354</sup> "Oklahoma Native Impact," Oklahoma Native Impact Study, 2019, <https://www.oknativeimpact.com>.

<sup>355</sup> Meister Economic Consulting, "The Economic Impact of Tribal Gaming: A State-by-State Analysis," American Gaming Association, November, 2018, <https://www.americangaming.org/wp-content/uploads/2018/11/Economic-Impact-of-Tribal-Gaming-Two-Pager-11.5.18.pdf>.

<sup>356</sup> "Data and Funding Gaps in Tribal Early Care and Education," Bipartisan Policy Center, April, 2021, <https://bipartisanpolicy.org/explainer/gaps-in-tribal-care>.

members.<sup>357</sup> Funding for the tribal transportation program is partially based on the AIANNH population data incorporated into the IHBG formula, so any inaccuracy within the data set used for IHBG funding is then magnified when used as the basis for another critical federal funding formula. Other tax incentive programs, such as the LIHTC and NMTC programs, require that projects be located in Qualified Census Tracts or areas designated as low-income communities, which are based on the income levels of households in the relevant area. But tract boundaries do not always correspond to the geography of Native lands, and many “landless” tribes have service areas rather than official reservation lands. Geographical mismatches between tribal lands or services areas and official Census boundaries can prevent tribes from qualifying for federal programs, especially if tribal lands fall into tracts that overlap with wealthier non-Native communities.

### Recommendations for Future Data Collection

To improve and fill in the gaps in federal, tribal, and other data describing Native communities, a comprehensive evaluation of available data sources should be conducted. This evaluation would address the issues of data relevance, accuracy, and precision described above. One example of a similar but narrower exercise was an evaluation of an array of potential data sources for the IHBG formula, completed by the Data Study Group to support the Indian Housing Block Grant Formula Negotiated Rulemaking Committee. The Data Study Group highlighted the specific reasons why federal, tribal, and other data sources would or would not work for the specific purpose of supporting the IHBG formula and allocation of funds pursuant to NAHASDA. The researchers also recommended changes to certain surveys and data collection processes to better serve Native communities, such as oversampling in Native lands or revisiting the use of proxies (such as neighbors or knowledgeable non-members of the household) to collect information about large or multi-family households.<sup>358</sup>

Changing large scale data collection processes to better cover specific populations is not always feasible or practical without significant legislative advocacy. But efforts to further analyze or visualize existing data or analyze datasets in relation to one another can help increase their value in promoting community economic development in Native lands. The Center for Indian Country Development (CICD) launched an effort to expand the evaluation, analysis, and visualization of data regarding tribal and Native communities, which includes analysis of Current Population Survey (CPS) data to more appropriately capture the employment and labor force participation rates of individuals who self-identify as either AIAN alone or AIAN in combination with other races.<sup>359</sup> CICD has also mapped financial resources in American Indian, Alaska Native and Native Hawaiian (AIANNH) areas and layered geospatial data to enable users to identify

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<sup>357</sup> “Data Use and Regulatory Status of the Indian Housing Block Grant Program,” U.S. Government Accountability Office, GAO-15-353R, Washington, DC: U.S., March 10, 2015, <https://www.gao.gov/products/gao-15-353r>.

<sup>358</sup> “IHBG Negotiated Rulemaking Data Study Group Final Report,” Indian Housing Block Grant Formula Negotiated Rulemaking Committee, no. 1, July 31, 2015, [https://ihbgrulemaking.org/images/Library/IHBG\\_Negotiated\\_Rulemaking\\_Data\\_Study\\_Group\\_Report\\_080315\\_Volume\\_I.pdf](https://ihbgrulemaking.org/images/Library/IHBG_Negotiated_Rulemaking_Data_Study_Group_Report_080315_Volume_I.pdf).

<sup>359</sup> “Native American Labor Market Dashboard.”

economic development activities in AIANNH areas as well as areas eligible for Community Reinvestment Act activities.<sup>360,361</sup>

Any evaluation of existing data sources must include an inventory of local and tribal data. Tribal governments gather a wide array of informative data through their own departments and chartered entities because of their ongoing relationships with local and state governments, utility providers, and other local, state, and national organizations. For example, application and certification processes enable programs to collect vital information about household incomes, telecommunications and utility costs, the condition of housing and community infrastructure, health and wellness, and employment status.

Many tribes and Native organizations have recognized that new data collection is necessary to ensure that Native communities are equipped with databases that are appropriate for their intended purposes and that accurately reflect the conditions, needs, and opportunities in their communities. The resulting surveys, market studies, and needs assessments enable tribes and Native communities to gather more accurate data regarding:

- Informal economies (including self-employment in the form of craft-making and fishing);
- Available skills sets and experience within their communities;
- Individual interest in new employment, small business development and further education;
- Community interest in specific new tribal enterprises and services; and
- The potential interest and availability of members living off-reservation to support new enterprises, tribal departments, and homeownership programs.

As tribes and Native communities become collectors and providers of new, more accurate local datasets, their ability to serve as partners in regional planning and economic development efforts will increase.

Critical requirements for tribal data collection include the internal tribal, organizational, or departmental capacity to complete data collection efforts with the statistical rigor required for the proposed data use. It might be necessary to locate new sources of funding to conduct data collection activities. Programs such as the HUD Section 4 Capacity Building program, implemented in Native communities by Enterprise Community Partners, provides funding specifically for tribes and community development organizations to build data collection capacity. Additionally, specific federal grant programs managed by Federal Emergency

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<sup>360</sup> Center for Indian Community Development, “Native American Funding and Finance Atlas,” Federal Reserve Bank of Minneapolis, accessed January 13, 2023, <https://www.minneapolisfed.org/indiancountry/resources/native-american-funding-and-finance-atlas>.

<sup>361</sup> “Mapping Native American Financial Institutions.”

Management Agency (FEMA),<sup>362</sup> the Substance Abuse and Mental Health Services Administration (SAMHSA),<sup>363</sup> and EDA<sup>364</sup> provide funding for needs assessment and planning activities, which includes a community-based data collection component. Tribal grants and planning departments, vital records offices, data and business resource centers, and other organizations engaged in using existing and newly collected data are vital for maximizing the utility and value of collected data and for highlighting areas for improvement for tribal, federal, and other surveys.

## Cultural Values and Economic Development

While tribal governments work towards economic growth, they are also focused on preserving tribal culture, identity, sovereignty, population, and land, creating a unique balance of priorities that is distinct from other rural communities. All components of community economic development in Indian Country are also considered through a cultural lens by tribal actors, which can help explain some of the economic decisions made by tribal governments.

Tribal self-governance adds a layer of complexity to economic growth, which is distinct from the layers of governance non-tribal rural areas experience. For example, many tribes might make an active choice to avoid exploiting or developing their natural resources, such as minerals, water, or forests, for economic gain. While natural resources are a common economic resource for most rural areas, land itself, in its unspoiled state, often holds a significant historical, cultural, and spiritual meaning. Therefore, the appropriate choice for a tribe might be to preserve the land rather than develop resources for economic growth. Tribes might also decide to invest resources into acquiring more land, especially land of historic significance, rather than investing in other economic ventures. Tribal land ownership through the trust system is critical to maintaining tribal sovereignty and preserving the reservation land base. This system is unique to Indian Country and does not occur in other rural areas.

Tribes often weave their cultural values into their decisions for how to run their businesses. For example, many tribes have designated their casinos as alcohol-free, which is not a common choice among non-tribal casinos. Many tribal casinos offer day care centers on site for employees. Tribes may also incorporate their Native languages into their economic development strategies by adding them to road, interstate, town, and business signage.

Many tribes have strong community, family, and cultural ties that help communities stay together even if poverty rates are high, in an effort to protect cultural identity. This is different from many other rural areas, where large-scale migration is a common response to poverty. This

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<sup>362</sup> “Hazard Mitigation Grant Program,” Federal Emergency Management Agency, accessed January 13, 2023, <https://www.fema.gov/grants/mitigation/hazard-mitigation>.

<sup>363</sup> “Circles of Care,” Substance Abuse and Mental Health Services Administration, U.S. Department of Health & Human Services, accessed January 13, 2023, <https://www.samhsa.gov/tribal-ttac/circles-care>.

<sup>364</sup> “Fiscal Year 2021-2023 EDA Planning and Local Technical Assistance Program,” U.S. Economic Development Administration, accessed January 13, 2023, <https://www.eda.gov/funding/funding-opportunities/fiscal-year-2021-2023-eda-planning-and-local-technical-assistance>.

community dynamic might inform tribal decisions to use general tribal funds and gaming or enterprise revenue to preserve and create affordable housing, when possible, to allow members to remain near their tribal lands and communities.

Those interested in partnering on projects in Indian Country can benefit from enhanced cultural understanding. When surveyed, Native American nonprofit leaders stressed the desire for funders and foundations to have already conducted background research before establishing relationships to cultivate connections based on deepened understanding of the specific community.<sup>365</sup> Outreach to Native tribes needs to be consistent and thorough while acknowledging the wide perspectives and unique experiences and complexities of each tribe and community.

## Conclusion

After emerging from several generations of near-complete federal (and, in some cases, state) government control of economic development within most Native lands and communities, tribes and Native communities have been steadily building their community economic development capacity and diversified their local economies since the onset of the self-determination era in the 1970s. This has resulted in an expansion of tribal enterprises and community economic development activities, including in the gaming, health care, clean energy, and environmental sectors.

Tribes and Native communities have successfully used federal programs, grants, and tax credit allocations, as well as land leasing authority granted under the HEARTH Act, to leverage investment in housing and develop mechanisms that support and promote expanded investment within trust lands. This review of community economic development in Indian Country describes the diverse range of approaches and successful efforts to funding and planning community economic development in Indian Country, as well as challenges still facing the space.

Many regional and national Native organizations argue that the issue of community economic development in Native lands is now less dependent on capacity-building than on adequate and equitable access to financing and capital. These organizations posit that the focus should be on developing grant and financing guidelines that more fairly incorporate the unique circumstances of Native communities into selection criteria, as well as the creation of a set of tribal and Native set-asides to ensure tribal participation in certain programs.<sup>366</sup> Such set-asides would outweigh or defray the cost and uncertainty related to applying for competitive grants, tax credits, and other financing mechanisms.

Despite the progress that has been made, federal policymakers, funders, and private investors still often lack necessary understanding about the community economic development goals and

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<sup>365</sup> Buteau, Martin, and Malmgren, “Overlooked (Part Two).”

<sup>366</sup> “Lawmakers Call for Expanded NMTC Access for Native Communities,” *Tax Notes*, September 28, 2020, <https://www.taxnotes.com/research/federal/legislative-documents/congressional-tax-correspondence/lawmakers-call-for-expanded-nmtc-access-for-native-communities/2d088>.

outlooks of Native American leaders, planners, and communities. Relationship-building and consultation should continue to ensure that all parties can participate in the array of opportunities that exist for investment and economic development in Native lands. Furthermore, there are structural factors in current federal and state programs and policies that limit the abilities of even well-intended programs to adequately support and encourage participation of Native communities and meet their needs in ways that are consistent with their cultural values. This Market Research Report is a first step towards bridging that divide.

## Glossary

**AIANNH:** American Indian, Alaska Native, and Native Hawaiian. The Indian Housing Block Grant formula allocates NAHASDA funding based on the number of self-identified AIANNH individuals and households in an area.

**ANCSA:** Alaska Native Claims Settlement Act: Authorized Alaska Natives to 44 million acres of public land in Alaska and \$962.5 million in cash as settlement of their aboriginal claim to land in the state. It established Alaska Native villages and regional Alaska Native corporations to oversee the lands and payments, changing the land ownership model from one of shared co-ownership to one of corporate shareholding.

**ANVSA:** Alaskan Native Village Statistical Areas. Census-defined areas representing the permanent or seasonal residences for Alaska Natives who are members of, or receiving governmental services from, a defined Alaska Native village.

**ATNI:** Affiliated Tribes of Northwest Indians. Formed in 1953, today ATNI is a nonprofit organization representing 57 Northwest tribal governments from Oregon, Idaho, Washington, southeast Alaska, Northern California and Western Montana, dedicated to tribal sovereignty and self-determination.

**CDC:** Community Development Corporation. Community-centered nonprofit organizations whose primary purpose is to provide resources to and revitalize low-income, historically underserved areas that experience high levels of divestment.

**CDFI Fund:** Community Development Financial Institutions Fund. Created for the purpose of promoting economic revitalization and community development through investment in and assistance to community development financial institutions. The CDFI Fund was established by the Riegle Community Development and Regulatory Improvement Act

of 1994. Native American CDFIs and a special CDFI Native Initiative Fund stimulate and aid these CDFIs.

**CDFI: Certified** Community Development Financial Institution. Banks, credit unions, loan funds, microloan funds, or venture capital providers that provide access to financial products and services for residents and businesses in low-income communities.

**CRA:** Community Reinvestment Act. Enacted in 1977, the Community Reinvestment Act requires the Federal Reserve and other federal banking regulators to encourage financial institutions to help meet the credit needs of the communities in which they do business, including low- and moderate-income neighborhoods.

**fractionated ownership:** The term used to note ownership of a property in the name of more than one individual. It is typically used in conjunction with allotted or individual trust lands to describe situations in which, over time and through division of inheritance, multiple parties have claim to a single property.

**Federal Indian Reservations:** Land reserved for a tribe or tribes under treaty or other agreement with the United States, executive order, or federal statute or administrative action as permanent tribal homelands, and where the federal government holds title to the land in trust on behalf of the tribe.

**GLITC:** Great Lakes Inter-Tribal Council, Inc. is a consortium of federally recognized Indian tribes in Wisconsin and the Upper Peninsula of Michigan. The organization was chartered in 1965 as a nonprofit corporation. Today, GLITC is recognized as a tribal organization under the Indian Self-Determination and Education Act. Its mission has evolved to support member tribes in expanding self-determination efforts by providing services and assistance.

**GSE:** Government-sponsored entity. A government-sponsored entity, also known as a government-sponsored enterprise, is a quasi-governmental, privately held agency established by Congress to improve credit flow in some regions of the United States' economy. GSEs provide financial services to the public for various things, particularly mortgages, through capital market liquidity. GSEs help to facilitate borrowing for a variety of individuals, including students, farmers, and homeowners.

**Hawaiian Home Land Trust:** More than 200,000 acres set aside by Congress in 1921 via the Hawaiian Homes Commission Act (HHCA), managed today by the State of Hawaii Department of Hawaiian Home Lands (DHHL). Eligible Native Hawaiians—those who are 50% or more Native Hawaiian by blood quantum—can apply to live on designated trust land.

**HEARTH Act:** Helping Expedite and Advance Responsible Tribal Homeownership. The HEARTH Act of 2012 creates an alternative land leasing process. Tribes are authorized to execute agricultural and business leases of tribal trust lands for a primary term of 25 years and up to two renewal terms of 25 years each without approval by the Secretary of the U.S. Department of the Interior, provided governing tribal leasing regulations have already been submitted to the Secretary.

**Homestead Associations:** Comparable to tribes on the main continent, these are Native Hawaiian entities that are beneficiary-controlled and serve and represent the interests of a homestead community.

**Indian Country:** The definition of “Indian Country” has changed throughout history, but the term is used here in the common colloquial sense to mean tribal areas, including Alaska Native villages. The term “Indian Country” is not used as a legal term in this report.

**ICDBG:** Indian Community Development Block Grant. A grant program administered by HUD to promote community development in Native communities.

**IHBG:** Indian Housing Block Grant, a formula grant that allocates funding for a range of affordable housing activities on Indian reservations and Indian areas. The block grant approach to housing for Native Americans was enabled by the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA.)

**IMDA:** Indian Mineral Development Act of 1982. Allowed tribes to enter into agreements for the development of their mineral resources.

**Indian Self-Determination and Education Assistance Act of 1975:** This piece of legislation redistributed power from the federal government to tribes in education and program administration. Later amendments in the 1980s and 1990s established block grants from the Indian Health Service and Bureau of Indian Affairs to cover other programs.

**LIHTC:** Low-Income Housing Tax Credit. Created by the Tax Reform Act of 1986, the LIHTC program gives state and local LIHTC allocating agencies the equivalent of nearly \$8 billion in annual budget authority to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households.

**Native American Credit Unions:** A credit union is a financial cooperative, owned entirely by its members. Typically, more than half of a Native American credit union's current and eligible potential members and more than half of its current board of directors are Native American.

**NAFOA:** The Native American Finance Officers Association. Established in 1982 to

financially assist tribal economies and strengthen tribal finance.

**NAHASDA:** Native American Housing Assistance and Self Determination Act. Signed on October 26, 1996, NAHASDA replaced the myriad programs that had previously provided housing assistance to Native American tribes under the U.S. Housing Act of 1937 with a block grant that allowed tribes or their Tribally Designated Housing Entities (also called TDHEs) more flexibility to decide whom to serve, what services to offer, and how to deliver programs and services. As with the 1937 Act, under NAHASDA, tribes are still required to primarily serve low-income families.

**NAIHC:** The National American Indian Housing Council. Founded in 1974, NAIHC provides training and technical assistance to tribes and tribal housing entities to support the development of safe, affordable, and culturally appropriate housing for Native people and communities.

**NCAI:** The National Congress of American Indians. Founded in 1944, NCAI is the oldest, and largest American Indian and Alaska Native rights organization meant to represent Native tribes and advocate for tribal sovereignty.

**NCAIED:** The National Center for American Indian Enterprise Development. The largest Native-centered national business organization.

**Native CDFI:** Native Community Development Financial Institution. CDFIs that direct at least 50% of their activities to serve Native Americans, Alaska Natives, or Native Hawaiian communities.

**New Markets Native Areas (NMTC Native Areas):** Defined by the CDFI Fund as Federal Indian Reservations, Off-Reservation Trust Lands, Hawaiian Home Lands, and Alaskan Native Village Statistical Areas.

**NMTC:** New Markets Tax Credits. The New Markets Tax Credit Program, established in 2000, incentivizes community development and economic growth through the use of tax credits that attract private investment to distressed communities.

**off-reservation trust lands:** Areas off of reservations but for which the United States holds title in trust for the benefit of a tribe (tribal trust land) or for an individual American Indian (individual trust land). Census-recognized off-reservation trust lands are associated with a specific federally recognized reservation or tribal government, and American Indian tribes have primary governmental authority over these lands.

**OTSA:** Oklahoma Tribal Statistical Area. Census-designated areas representing former American Indian reservations that existed in Indian and Oklahoma territories prior to Oklahoma statehood.

**Pueblo:** Communities and homelands of the Pueblo peoples, mostly in the Southwestern United States.

**State-recognized American Indian Reservations:** Tribal lands that are recognized by a state but not necessarily recognized by the federal government.

**SWF:** Sovereign wealth fund. Also known as a social wealth fund or a sovereign investment fund, these are state-owned investments which generate wealth for the benefit of its citizens and economy.

**TDHE:** Tribally Designated Housing Entity. The entity designated by each tribe that is responsible for administering its housing assistance program that is funded by the federal government.

**TERA:** Tribal Energy Development and Self-Determination Act of 2005 allows tribes to gain approval from the Secretary of the Interior for a

Tribal Energy Resource Agreement, giving them blanket authority to manage mineral development on its lands, without separate approval of each venture.

**USET:** United South and Eastern Tribes, Inc., established in 1969, is a nonprofit, inter-tribal organization serving thirty-three (33) federally recognized tribal nations from the Northeastern

Woodlands to the Everglades and across the Gulf of Mexico. USET is dedicated to enhancing the development of tribal nations, improving the capabilities of tribal governments, and improving the quality of life for Indian people through a variety of technical and supportive programmatic services.

## Appendix A: Special Circumstances Pertaining to Alaska Native Villages, Oklahoma Tribes, Pueblos, and Hawaiian Home Lands

While all economic development throughout Native communities is shaped by unique legal, historical, and cultural contexts, there are some important distinctions between Alaska Native villages and Alaska Native corporations, Oklahoma tribal lands, Pueblos and Spanish land grants, and Hawaiian Home Lands.

### Alaska

Passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971 radically changed the way the United States deals with Indian tribes and Native villages in Alaska and dramatically affected the path of economic development for Alaska Natives. What is now Alaska is the aboriginal home of several Indian tribes and many Alaska Native groups, including Athabascan Indians, Aleuts, and Inuit (the Inuit include the Inupiat and Yupik peoples). Before 1971, the United States dealt with Indians and Native groups in Alaska in a fashion similar to that used with Indian tribes in the lower 48 states: through treaties, legislation, and executive orders.

ANCSA extinguished Native land claims to almost all of Alaska in exchange for about one-ninth of the state's land plus \$962.5 million in compensation. By conveying Native land title to 12 regional and 200 local Village Corporations chartered under Alaska state law, ANCSA changed the relationship between Natives and the land from one of co-ownership of shared lands to one of corporate shareholding (that is, land ownership was based on a corporate model). After ANCSA, Native villages served members and Native village corporations, and Native regional corporations served shareholders. A thirteenth regional Native corporation was created for Alaska Natives who had left the state and were not shareholders in one of the 12 regional corporations.

The Native regional corporations and Native village corporations operate very differently from most Native villages and Indian tribes. They have stockholders, substantial liquid assets, and are governed by a board of directors. Through a combination of corporate structure where individual members of tribes or Native villages own shares in the corporation, the relatively large amount of liquid assets they received when they were created (pursuant to the enactment of ANCSA), and their mission of protecting and expanding their assets, Alaska Native corporations are generally more open to investment outside their Native communities and have invested broadly in the economy of the United States.<sup>367</sup>

### Oklahoma

The history of Oklahoma Indians is unlike that of any other state, and differences remain in land ownership and legal jurisdiction that continue to affect the economic development activities of Oklahoma tribes. Most of the tribes in Oklahoma are there as a result of relocation policies,

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<sup>367</sup> Walter Hillbrant, Judy Earp, Mack Rhoades, and Nancy Pindus, "Overcoming Challenges to Business and Economic Development in Indian Country," Princeton, NJ: Mathematica Policy Research, Inc. 2004.

which forced the movement of some tribes to the state from as far away as New England and the Pacific Northwest. The Five Civilized Tribes of the Southeast United States (Seminole, Choctaw, Chickasaw, Cherokee, and Creek) were among those forcibly removed to lands in Oklahoma in exchange for their homelands in the east.<sup>368</sup>

By 1837, all of Oklahoma's Indian Territory had been assigned to the Five Civilized Tribes, although some plains tribes such as the Kiowa, Comanche, Wichita, and Apache were granted hunting rights in the area. Between 1837 and the outbreak of the Civil War, the tribes largely functioned with limited interference from the U.S. government. The Civil War, however, had a devastating effect on the tribes. Some Indians remained loyal to the Union; others joined the Confederacy. The United States used the latter to abrogate all treaties made with the Five Civilized Tribes. Over the next few years, a new series of treaties resulted in extensive land cessions.<sup>369</sup>

Shortly after the Civil War, hostilities with the Southern Plains tribes led to the segregation of the Native population into Indian Territory. Many tribes were moved into the lands ceded by the Five Civilized Tribes. This move accounts for the current day boundaries of the reservations in Western Oklahoma. Life in Indian Territory again went through a period of relative calm, until the enactment of the Dawes Act, also known as the General Allotment Act, in 1887, which finally destroyed the notion of Indian Territory. The law authorized the President to break up reservation land, which was held in common by the members of a tribe, into small allotments to be parceled out to individuals. This, in effect, terminated the centralized reservations of the Five Civilized Tribes. The tribes of the western side of Oklahoma, such as the Comanche, the Kiowa, the Apache, the Tonkawa, and the Shawnee, remained largely independent of the white way of life; they maintained their nomadic hunting way of life.<sup>370</sup>

This complicated history has led to variation in state policies affecting Oklahoma Native populations, and ongoing legal disputes regarding land and mineral rights, court jurisdiction, taxation, and tribal sovereignty. While the situation has improved since 1976, legal issues continue. Oklahoma Tribal Statistical Areas (OTSAs) used by the Census denote areas that were formerly reservations, and still contain significant Native populations. The Census also recognizes OTSA joint-use areas, which are OTSAs that are administered jointly or claimed by two or more American Indian tribes that have a delineated OTSA.<sup>371</sup> Despite these Census-recognized areas, Oklahoma tribes have a limited amount of reservation land held in trust by the

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<sup>368</sup>Hank Adams, John Echohawk, Dough Nash, Kevin Gover, and Roman Bitsuie, "Report on Trust Responsibilities and the Federal-Indian Relationship; Including Treaty Review. Final Report to the American Indian Policy Review Commission., Section VI Oklahoma," HathiTrust, American Indian Policy Review Commission, 1976, <https://babel.hathitrust.org/cgi/pt?id=uc1.31210015689068&view=1up&seq=1&skin=2o21>.

<sup>369</sup> Adams, et al., "Report on Trust Responsibilities."

<sup>370</sup> Ibid.

<sup>371</sup> Nancy Pindus, et al., "Technical Appendixes: Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs," U.S. Department of Housing and Urban Development, January, 2017.

federal government. Unlike many tribal communities in the lower 48, most land ownership in Oklahoma tribal areas is in fee-simple ownership which can be readily mortgaged.

### Pueblos and Spanish Land Grants

From the end of the seventeenth century to the mid-nineteenth century, Spain (and later Mexico) made land grants to individuals, towns, and groups to promote development in the frontier lands that now constitute the American Southwest. There were two kinds of grants—private grants given to individuals, and community grants to settlers for new towns.<sup>372</sup>

Spain also issued land grants to several indigenous pueblo communities, which had occupied the areas granted long before Spanish settlers arrived in the Southwest. For example, in the Albuquerque area the Spanish governor awarded grants to the Pueblo de Sandia and the Pueblo de Isleta peoples. Under Spanish and Mexican law, common land was set aside as part of the original grant for the use of the entire community. The Spanish system required that the land surrounding an Indian pueblo be allotted to that pueblo for one league in each direction from the pueblo. This set up political and cultural boundaries for the Pueblo Indians and helped sustain Pueblo cultures.<sup>373</sup>

In 1848, the Treaty of Guadalupe Hidalgo formally ended the Mexican-American War, and the United States assumed control over vast new territories, including much of what is now the state of New Mexico. Under the treaty, the United States agreed to recognize all types of property ownership within the ceded areas. Over the next half century, the United States developed procedures to validate land grants in the territory of New Mexico to implement the treaty provisions.

But land tenure and ownership patterns were very different in Mexico and the United States. The Mexican and Spanish systems were based on a rural, community-based system of land holding prevalent in medieval Europe, and not on fee-simple ownership. Land was viewed more in its relationship to the community and was used primarily to provide sustenance to the local population, rather than as a commodity that could be exchanged or sold in a competitive market. The Surveyor General at the time found that many boundaries could no longer be found. Some grants overlapped. Owners had lost their original papers.<sup>374</sup> Whether the United States accurately carried out the provisions of the treaty, especially regarding community land grants, has been a controversial issue for generations. Many persons, including grantee heirs, scholars, and legal experts, still claim that the United States did not protect the property of Mexican-Americans and their descendants, particularly the common lands of community land grants.<sup>375</sup> They remain

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<sup>372</sup> “Treaty of Guadalupe Hidalgo: Definition and List of Community Land Grants in New Mexico,” U.S. Government Accountability Office (GAO), GAO-01-951, September 2001, <https://www.gao.gov/assets/gao-01-330.pdf>.

<sup>373</sup> “History: Land Grants,” Albuquerque Historical Society Tricentennial, accessed September 6, 2022, <https://albuqhistosoc.org/SecondSite/pkfiles/pk208landgrants.htm>.

<sup>374</sup> Ibid.

<sup>375</sup> “Treaty of Guadalupe Hidalgo.”

critical of the federal courts' treatment of the common lands and the failure to approve more of the acreage claimed. These disputes still arise and can delay or prevent economic development.

## Hawaii

Although Congress has repeatedly acknowledged its special political and trust relationship with the Native Hawaiian community since the overthrow of the Kingdom of Hawaii more than a century ago, the federal government does not maintain a formal government-to-government relationship with the Native Hawaiian community as an organized, sovereign entity.

As part of this relationship and to support the self-sufficiency and well-being of the Native Hawaiian people, Congress established the Hawaiian Home Land Trust in 1921, a set-aside of more than 200,000 acres of land via the Hawaiian Homes Commission Act (HHCA). The State of Hawaii Department of Hawaiian Home Lands (DHHL), a state agency, manages the Hawaiian Home Land Trust, with oversight provided by the U.S. Department of the Interior (DOI). HHCA provides eligible Native Hawaiians—those who are 50% or more Native Hawaiian by blood quantum—with the ability to live on designated trust land. These trust lands are leased to HHCA trust beneficiaries for residential, agricultural, and pastoral purposes in homestead communities. From a legal perspective, the Hawaiian Home Lands are public lands held in trust by the State of Hawaii for the benefit of Native Hawaiians, as defined in HHCA. Thus, HHCA beneficiaries who become residents on one of the Hawaiian Home Lands are not landowners, but rather “lessees.”

The Native Hawaiian population receives federal housing funds through the Native Hawaiian Housing Block Grant (NHHBG), which is authorized by an amendment to the Native American Housing Assistance and Self-Determination Act (NAHASDA). DHHL manages NHHBG funds in addition to their day-to-day management of the Hawaiian Home Lands program. In 2014, Hawaii had 56 occupied homestead communities with 9,838 leases and, in 2010, according to the 2010 Census, there were 30,858 residents on the Home Lands.<sup>376</sup> Apart from the Home Lands, Native Hawaiians are not eligible for any other federal set-asides available to recognized tribal or Native entities. Demand for homestead leases has consistently outstripped supply.<sup>377</sup>

Economic development within Hawaiian Home Lands is both supported and complicated by the fact that the DHHL manages the land held in trust for Hawaiian Home Lands trust beneficiaries. Most of the housing, infrastructure and economic development activities within these lands is conducted or coordinated by DHHL and are subject to applicable legal, regulatory, staffing, and

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<sup>376</sup> Kristen Corey, Jennifer Biess, Nancy Pindus, Doray Sitko, “Housing Needs of Native Hawaiians: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs,” U.S. Department of Housing and Urban Development, 2017.

<sup>377</sup> Nancy Pindus, et al., “Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs,” U.S. Department of Housing and Urban Development, January, 2017.

financial constraints.<sup>378</sup> But homestead associations and organizations such as the Hawaiian Community Development Corporation allow Native Hawaiians to engage in economic development and engage in programs such as the Native CDFI program. Homestead associations are beneficiary-controlled organizations that serve and represent the interests of their homestead communities. They assist the DOI to communicate and work with Homestead and Beneficiary Associations (HBA) to administer federal laws that apply to Trust Lands and Trust Funds.<sup>379</sup> Nonprofit organizations and homestead associations representing Native Hawaiian beneficiaries throughout the islands are developing greater capacity, expanding critical partnerships and program eligibility, and attracting greater and more diverse sources of funding and capital to serve Native Hawaiians and carry out community economic development activities within Hawaiian Home Lands and in communities throughout the Hawaiian Islands.<sup>380</sup>

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<sup>378</sup> “Maui Beneficiary Ho’ohui Project,” Big Water Consulting, October 12, 2021, <https://static1.squarespace.com/static/5be730232487fdec648106ac/t/622250eba04b4565ed2e8982/1646416112418/Maui+Beneficiary+Ho%27ohui+Project+Final+Report.pdf>.

<sup>379</sup> “Homestead & Beneficiary Associations: Frequently Asked Questions.”

<sup>380</sup> “Maui Beneficiary Ho’ohui Project.”

## Appendix B: Organizations Participating in Information Gathering Discussions

Many initiatives unfolding within Native lands are not summarized in traditional academic journals or newspapers. To provide a more complete view of current models, challenges and opportunities for community economic development in Native lands and identify additional sources of information describing them, the research team conducted conversations with knowledgeable individuals from the organizations listed below.

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This is the final report prepared by the American Indian Policy Review Commission in 1976. Congress charged the Commission with conducting a comprehensive review of Indian Affairs in the U.S., including "a study and analysis of the Constitution, treaties, judicial interpretations and Executive Orders to determine the attributes of the unique relationships between the federal government and Indian tribes and the land and other resources they possess." The report covers federal Indian law, trust law, and treaty law, as well as Oklahoma, water use and development, and forestry. It is based on a review of historical documents, field studies, hearings, site visits, conferences, and Indian reservation community interviews. The report finds that the history of legal concepts and policy applications in the field of Indian Affairs discloses a constant stream of abandonment and abuses of law within the executive, legislative, and judicial processes of America. It recommends a path towards a positive and promising future for the Native American people within the United States. It explores the concepts of sovereignty, treaties, and trust relations and trust responsibilities and illustrates the differences among tribes and some of the factors related to outside finance. The report also recognizes the importance of economic development and access to sufficient capital to allow for development programs compatible with the environment of the tribal area.

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This policy brief was conducted by the Harvard Project for American Indian Economic Development and Native Nations Institute. This resource looks at Treasury's allocation of CARES funding to tribal governments, and seeks to understand the extent to which

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<sup>381</sup> Note that some of the sources listed here are not directly referenced in the final report but are included as important context for understanding community economic development in Indian Country.

reusing the IHBG formula impacts CARES funding outcomes. This brief analyzes the HUD IHBG formula, Census data, and tribal data to compare populations using different datasets and concludes that different datasets result in different funding allocations. It highlights the complications of using existing data for assessing tribal needs. The authors conclude that an appropriate allocation rule would employ the current tribal enrollment figures submitted by tribes to Treasury.

Akee, Randall. "Sovereignty and Improved Economic Outcomes for American Indians: Building on the Gains Made Since 1990." *Washington Center for Equitable Growth*, 2021. <https://equitablegrowth.org/sovereignty-and-improved-economic-outcomes-for-american-indians-building-on-the-gains-made-since-1990>.

This essay provides an overview of the economic status within Indian Country, including recommendations for improving the economic well-being of American Indians. This resource supports the exercise of tribal sovereignty and the expansion of innovative industries on reservations to increase revenue. In addition, the report recommends that steps should be taken to reduce obstacles to economic development on tribal lands, including by providing funding for educational institutions on tribal reservations to develop skills and reduce the barrier to entry for economic development. The source also recommends increasing data collection efforts to include the American Indian population in nationally representative datasets.

American Indian Policy Review Commission. "Report of Special Joint Task Force on Alaska Native Issues." American Indian Policy Review Commission, 1976. <https://babel.hathitrust.org/cgi/pt?id=purl.32754070365295&view=1up&seq=3&skin=2021>

This report is an extension of the 1976 Report on Reservation and Resource Development and Protection administered by the Indian Policy Review commission. It provides historical background of economic development specifically for Alaska Natives. The report looks at the relationship between Alaska Native tribes and the federal government.

Bowman, Michelle. W. "Engagement, Research and Policy: Integrating Indigenous Voices into Economic Inclusion at the Federal Reserve." Federal Reserve Board, November 29, 2021. <https://www.federalreserve.gov/newsevents/speech/bowman20211129a.htm>. This speech by Governor Michelle W. Bowman at the Virtual Symposium on Indigenous Economies details the current state of Native banking, the importance of including Native voices in banking, and the federal government's relationship to Native banking. Her talk considers the unique challenges of financial institutions in Native communities. Bowman states that "bank branches are harder to find in Indian Country. Credit is often more expensive for reasons not fully explained by available borrower characteristics alone."

She notes that in response, the number of Native-led Community Development Financial Institutions (CDFIs) has quadrupled over the past two decades. While Native CDFIs cannot singlehandedly resolve Indian Country's credit needs, “research and pilot programs demonstrate the power of cultural fit as they bring credit, financial services, and consumer education into tribal communities.”

Brashares, Edith, and Siobhan O’Keefe. “Indian Tribal Government Access to Tax-Exempt Bond Financing.” U.S. Department of the Treasury, October 27, 2013.

<https://ssrn.com/abstract=2370079> or <http://dx.doi.org/10.2139/ssrn.2370079>

This paper provides background information on the tax rules for the use of tax-exempt bonds by tribal governments. The authors use an analysis of IRS Statistics of Income (SOI) data to look at how tax incentives are used by tribes. According to the findings, tribes with resources such as gaming income or energy resource royalties, as well as tribes with members in need, are more likely to borrow using tax-exempt bonds.

However, tribes with populations that have the greatest need, as measured by their SNAP population and poverty rate, may be more likely to use tax-exempt bonds to finance tribal government investment.

Buteau, Ellie, Hannah Martin, and Katarina Malmgren. “Overlooked (Part Two): Foundation Support for Native American Leaders and Communities.” Center for Effective Philanthropy, 2021. [http://cep.org/wp-content/uploads/2021/07/CEP\\_Overlooked\\_Native\\_American.pdf](http://cep.org/wp-content/uploads/2021/07/CEP_Overlooked_Native_American.pdf).

This report is based on research by the Center for Effective Philanthropy (CEP) including survey data and interviews with Native nonprofit leaders. CEP found that Native nonprofit leaders report having fewer positive experiences with their foundation funders than nonprofit leaders of other races/ethnicities, which has been the case since prior to the COVID-19 pandemic. Almost two thirds of foundation leaders say that they provide little or no grant dollars to organizations primarily serving Native American communities. The report also highlights that most foundations continue to overlook nonprofits that serve Native American communities, including rural tribal lands, despite the significant challenges facing Native American communities. The report concludes with advice for funders working with tribal communities.

Ciampoli, Paul. “SRP, Navajo Tribal Utility Authority Extend Solar Agreement, Sign New Solar Contract.” SRP, Navajo Tribal Utility Authority Extend Solar Agreement, Sign New Solar Contract | American Public Power Association. [PublicPower.org](https://www.publicpower.org/periodical/article/srp-navajo-tribal-utility-authority-extend-solar-agreement-sign-new-solar-contract), 2022.

<https://www.publicpower.org/periodical/article/srp-navajo-tribal-utility-authority-extend-solar-agreement-sign-new-solar-contract>.

This online news article focuses on the contract expansion of Navajo Nation’s large-scale solar farm, also known as the “Kayenta” facilities. The agreement was signed between officials with the Navajo Tribal Utility Authority (NTUA), leaders of the Navajo Nation, and the state of Arizona’s Salt River Project (SRP). This project will assist in the development of the Navajo Nation through the generation of around \$15 million in tax revenues, and help transition their economy away from coal-dependency.

Corey, Kristen, Jennifer Biess, Nancy Pindus, and Doray Sitko. “Housing Needs of Native Hawaiians: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs.” U.S. Department of Housing and Urban Development, 2017. <https://www.huduser.gov/portal/publications/housing-needs-native-hawaiians.html>. This report focuses on the housing conditions of the Native Hawaiian community in Hawaii. The report describes housing conditions on the Hawaiian Home Lands, presents comparisons with the population of Hawaii as a whole, and provides a history of federal policies affecting land and housing of Native Hawaiians living in Hawaii. It illustrates that the Native Hawaiian homeownership rate lags behind that of residents of Hawaii at large.

Cornell, Stephen and Joseph P. Kalt. “Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn’t.” *Joint Occasional Papers on Native Affairs*, (2006). [https://www.honigman.com/media/site\\_files/111\\_imgimgjopna\\_2005-02\\_Approaches.pdf](https://www.honigman.com/media/site_files/111_imgimgjopna_2005-02_Approaches.pdf). This working paper analyzes two common approaches to economic development in Indian Country: the “standard” approach and the “nation-building” approach. In the view of the authors, the standard approach is more common historically but less successful, and involves short-term thinking and outside actors driving decision-making. The nation-building approach, alternatively, is rooted in Native self-determination, strategic planning, and long-term goals.

Cunningham, Alisa, F. “Tribal College Contributions to Local Economic Development.” Institute for Higher Education Policy, Washington, DC.; American Indian Higher Education Consortium, Alexandria, CA, 2000. [http://www.aihec.org/our-stories/docs/reports/TC\\_contributionsLocalEconDevmt.pdf](http://www.aihec.org/our-stories/docs/reports/TC_contributionsLocalEconDevmt.pdf). This report examines the role that tribal colleges play in entrepreneurship and small business development in Native communities. The report’s objective is to understand how tribal colleges impact local economic development in Indian Country using the analysis of case studies and literature reviews. While published in 2000, the resource remains valuable because it highlights instances where the introduction of Native values and local traditions into entrepreneurial training led to greater success and economic

development than those that did not, and includes a list of procedures for policymakers to advance community development efforts in tribal colleges.

Fogarty, Mark. “New Markets Tax Credit Program only now getting off the ground in Indian Country.” Tribal Business News Home, 2022.

<https://tribalbusinessnews.com/sections/economic-development/13921-new-markets-tax-credit-program-only-now-getting-off-the-ground-in-indian-country>.

This article seeks to understand why growth in NMTC Native Areas is so slow in regards to the development and distribution of NMTCs through the collection of interviews and Native NMTC data. The author finds that for every \$100 allocated for NMTC investments, only \$1 is being directed towards Native tribal entities, despite the fact that there is a disproportionately high amount of tracts in NMTC Native Areas that are eligible for NMTC investment. This resource illustrates the need for NMTC investment in NMTC Native Areas, and the direction of attention to increase Native NMTC recipients.

Fogarty, Mark. “Wheels of economic development grind slowly for Natives in Federal New Markets Tax Credit Program.” Tribal Business News Home, 2021.

<https://tribalbusinessnews.com/sections/finance/13630-wheels-of-economic-development-grind-slowly-for-natives-in-federal-new-markets-tax-credit-program>.

This article on the NMTC program and its relationship with Native communities provides a good overview of the obstacles Native organizations face in applying for and being awarded NMTC allocations. The article seeks to understand why rural and tribal communities are at a disadvantage in the LIHTC and NMTC allocation process and provides suggestions for addressing disparities. This resource looks at comments from the Native CDFI network and LIHTC and NMTC allocation histories, and suggests potential improvements to programs to make the process more equitable in Native communities.

Fredericks, Carla F. and Kate R. Finn. “Harnessing Private Equity for Indigenous Peoples.” Boulder, CO: First Peoples Worldwide University of Colorado, Boulder, 2020.

[https://www.colorado.edu/program/fpw/sites/default/files/attached-files/harnessing\\_private\\_equity\\_for\\_indigenous\\_peoples\\_-\\_final.pdf](https://www.colorado.edu/program/fpw/sites/default/files/attached-files/harnessing_private_equity_for_indigenous_peoples_-_final.pdf).

This report, conducted at the University of Colorado Boulder through First Peoples Worldwide, seeks to understand how to better facilitate larger scale financing in Native Country, with a specific emphasis on tribal sovereignty and social prosperity through advancing private equity. This report contains three major components: the overall interest and need for large-scale economic development in Native Country, the necessary “core values” that center indigenous perspectives and prosperity, and how private equity plans, according to the authors, must align with said core values. This resource provides

historical and contemporary context to economic development in Indian Country, methods to harness private equity for Native people, and recurring themes and initiatives to ensure a sustainable and non-extractive deployment of services and facilities.

Graham, Lorie M. “An Interdisciplinary Approach to American Indian Economic Development.” *North Dakota Law Review*: Vol. 80: No. 4, Article 2, 2004.  
<https://commons.und.edu/ndlr/vol80/iss4/2>.

This journal article looks at the reasons for variation in levels and rates of economic growth for Native American tribes. It explores various dimensions affecting tribal economic growth, such as politics, socioeconomics, and cultural norms, as well as the legal dimensions that influence tribal developments. Published in 2004, this journal article remains valuable because it provides a legal background of how development has occurred in tribal areas through various lenses, such as sovereign immunity, land ownership and control of property, and taxation and regulation.

Gregg, Matthew, Michou Kokodoko, & Elijah Moreno. “Take-up of New Markets Tax Credit Increases in Indian Country, With Potential for Far More.” Federal Reserve Bank of Minneapolis, 2022. <https://www.minneapolisfed.org/article/2022/take-up-of-new-markets-tax-credit-program-increases-in-indian-country-with-potential-for-far-more>. This article analyzes the extent to which NMTC investments have been used to create new capital for tribal governments, tribal enterprises, nonprofit tribal consortia, and Alaska Native Corporations. This source identifies 30 NMTC investments between 2001 and 2019 which are affiliated with a tribal business or government, an Alaska Native Village government, or a Native nonprofit organization, in addition to 24 other projects that occurred on tribal lands and involved tribal entities. This resource provides further evidence for the disparities in awards provided to tribal areas, but highlights that investments for NMTC Native Areas are slowly rising. It also outlines the current state of NMTC lending in Indian Country.

Gregg, Matthew, Ryan Nunn, and Casey Lozar. “An Urgent Priority: Accurate and Timely Indian Country Data.” The Federal Reserve Bank of Minneapolis, 2022.  
<https://www.minneapolisfed.org/article/2022/an-urgent-priority-accurate-and-timely-indian-country-data>.

This article outlines current challenges in data collection and research in Indian Country. It highlights gaps that exist in the way public data is or is not collected in Indian Country, and reaffirms that government, individual, and business-level data is often scarce for Indian Country. It also discusses how the unique characteristics of Indian Country provide opportunities for data collaborations. It posits that more complete data on Native communities will help create opportunities for better decision-making.

Hillabrant, Walter, Judy Earp, Mack Rhoades, and Nancy Pindus. "Overcoming Challenges to Business and Economic Development in Indian Country." Princeton, NJ: Mathematica Policy Research, Inc. 2004. <http://webarchive.urban.org/publications/411104.html>. This report was prepared for tribal, state, and federal officials and other stakeholders in welfare reform in Indian Country. It was one of four reports on the evaluation of tribal Welfare to Work programs as mandated by the Balanced Budget Act of 1997. The evaluation describes (1) examples of business and economic development activities and the federal programs and initiatives used by a convenience sample of eight tribes and two Alaska Native corporations; (2) the legal, historical, and cultural context of tribal business and economic development; and (3) the challenges tribes/Native corporations face in pursuing business and economic development, as well as the promising approaches they are developing to minimize or overcome them.

Horn-Miller, Kahente. "What Does Indigenous Participatory Democracy Look Like? Kahnawà:ke's Community Decision Making Process." *Review of Constitutional Studies* 18, no. 1 (2013). [https://papers.ssrn.com/sol3/papers2.cfm?abstract\\_id=2437675](https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2437675). With the 1979 Community Mandate to move towards traditional government, the community of Kahnawà:ke, part of the Mohawk Territory in Quebec, has consistently requested more involvement in decision-making on issues that affect the community. The Kahnawà:ke Community Decision Making Process is a response to the community's call for a more culturally relevant and inclusive decision and law-making process. The process is a transitory measure to assist and facilitate the legislative function of Kahnawà:ke governance. This paper examines the development of the process and how it functions in the modern Kahnawà:ke community as an example of indigenous participatory democracy in action.

Jorgensen, Miriam, and Stephanie Gutierrez. "Native Nation Building: It Helps Rural America Thrive." Aspeninstitute.org, 2021. <https://www.aspeninstitute.org/wp-content/uploads/2021/11/TR-FP-2-Native-Nation-Building-FINAL1.pdf>. This report provides historical background and context with a focus on Native populations in rural areas, and provides characteristics of successful Native nation building. It highlights strategies for equitable rural development with a Native perspective, including emphasizing that efforts for Native nation building must stem from Native nations' own self-determination efforts, and that building Native nations can spread wealth through other non-Native communities that live nearby.

Jorgensen, Miriam and Randall K.Q. Akee. "Access to Capital and Credit in Native Communities: A Data Review." Tucson, AZ: Native Nations Institute and the Arizona Board of Regents, 2017.

[https://nnigovernance.arizona.edu/sites/nnigovernance.arizona.edu/files/2022-09/Accessing\\_Capital\\_and\\_Credit\\_in\\_Native\\_Communities\\_\\_A\\_Data\\_Review.pdf](https://nnigovernance.arizona.edu/sites/nnigovernance.arizona.edu/files/2022-09/Accessing_Capital_and_Credit_in_Native_Communities__A_Data_Review.pdf). This document is the second part of a two-part series and a follow-up to the 2001 Native American Lending Study. It uses a range of datasets to document the evolution of Native communities' capital access since 2001. Its three main sections summarize data describing access to capital and credit for Native consumers, Native business owners, and tribal communities and governments.

Kokodoko, Michou, Valentina Dimitrova-Grajzl, Peter Grajzl, and Joseph Guse. "Native CDFIs Improve Credit Outcomes for Indian Country Residents." Federal Reserve Bank of Minneapolis, 2021. <https://www.minneapolisfed.org/article/2021/native-cdfis-improve-credit-outcomes-for-indian-country-residents>.

This article published by the Federal Reserve Bank of Minneapolis describes the ways in which Native CDFIs specifically help improve access to financing in Indian Country, and explores whether it is more difficult to get mortgage financing for Native Americans. The authors find that mortgage loans with Native Americans as the primary borrower are more likely to be higher-priced than loans that have other races or ethnicities as the primary borrower. In addition, the loans have an average interest rate nearly two percentage points above the average loan for non-Native Americans. This demonstrates that for Native borrowers, obtaining financing has historically been less accessible than for other Americans.

Kokodoko, Michael. "Findings from the 2017 Native CDFI Survey: Industry Opportunities and Limitations." Center for Indian Country Development, Federal Reserve Bank of Minneapolis, November 2017. Accessed December 16, 2022.

<https://www.minneapolisfed.org/~media/files/community/indiancountry/resources-education/working-papers/cicd-wp-2017-04.pdf>.

This article provides insight into how Native CDFIs operate and provides financial institutions with more information regarding Native CDFI-based investment opportunities. By surveying 39 certified Native CDFIs across the United States about their funding options and programs, this research noted that Native CDFIs are ready to deploy more funding in an effective manner, despite the variety of challenges that prevent economic development in their communities from taking place. In addition, this resource indicates the capacity of Native CDFIs and their current limitations, as well as providing the recommendation to increase Native capacity for NMTC use.

Kokodoko, Michou. "Making the New Markets Tax Credit work in Native communities." Federal Reserve Bank of Minneapolis, 2017.

<https://www.minneapolisfed.org/article/2011/making-the-new-markets-tax-credit-work-in-native-communities>.

This article seeks to understand the unique challenges Native communities face in accessing NMTCs, and how Native CDFIS and CDEs have used NMTCs successfully. Successful examples illustrate a strong relationship between the financial institution and the tribes. Some challenges are also noted in this document, including: the inability to use NMTCs on gambling facilities; many corporations that are owned by tribes are ineligible to be QALICBs; and the complicated structures regarding land ownership. The discussion regarding successful examples may be useful for pinpointing common themes that can benefit future projects.

Kramer, Rachel, Harry Maher, Kevin Klingbeil, Nancy Pindus, Megan Knox, and Lonny Macy. “Assessment of the Housing Needs of American Indians, Alaska Natives and Native Hawaiians in Washington State.” Big Water Consulting for Washington State Department of Commerce, 2021. [https://www.commerce.wa.gov/wp-content/uploads/2022/04/CommerceReports\\_2021\\_CSHD\\_NA-Housing\\_4.26.22\\_Final.pdf](https://www.commerce.wa.gov/wp-content/uploads/2022/04/CommerceReports_2021_CSHD_NA-Housing_4.26.22_Final.pdf).

This report was conducted on behalf of the Washington State Department of Commerce, and looks at the current housing conditions for American Indians, Alaska Natives, and Native Hawaiians in the state of Washington, as well as what programs can help address needs for housing. This report looks at American Housing Survey (AHS) and University of Washington Real Estate data through literature and data reviews, in addition to interviews, surveys, and focus groups with tribal leaders. The study found that inflationary erosion hurts IHBG funding, the main source of funding for most TDHEs; LIHTC projects often do not pencil out for small TDHEs (which is likely also the case for NMTCs); housing and economic development are intertwined; many of the tribes with strong funding for housing beyond IHBG also have casino revenue; and high turnover among professional housing staff makes work difficult.

Kurlander, Phyllis. “Creating an Environment to Attract Investors and Develop New Enterprises on the Fort Mojave Indian Reservation.” John F. Kennedy School of Government, Harvard University. Malcolm Wiener Center for Social Policy, 1994. <https://hwpi.harvard.edu/files/hpaied/files/prs94-4.pdf?m=1639579236>.

This report, published in 1994, identifies key components for successful private investment and business development on the Fort Mojave Indian Reservation, which includes an integrated approach to economic development to enable the tribe to move towards economic self-determination and a sustainable economy. Interviews were conducted with Native American economic development professionals, Fort Mojave tribal members, federal government officials and more, to determine the key recommendations for spurring economic development in Indian reservations. This

resource's recommendations are as follows: 1) incorporate tribal assets into business strategy; 2) boost tribal government through self-government efforts; 3) distinguish between business and government goals; and 4) establish a dependable contract enforcement and dispute resolution system. While this resource is dated, it provides context for considering how these recommendations can fit into current economic development efforts.

Lhamon, Catherine E., Patricia Timmons-Goodson, Debo P. Adegbile, Gail L. Heriot, Peter N. Kirsanow, David Kladney, Karen Narasaki, and Michael Yaki. "Broken Promises: Continuing Federal Funding Shortfall for Native Americans." The United States Commission on Civil Rights, 2018. <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf>.

This report highlights the difficult relationship between Native tribes and the federal government. It looks at the nature of relationships between tribes and the federal government since the year 2003 and concluded that the federal government has failed to assist tribes with individualized economic development necessary for tribes to exercise self-determination. The programs that are designed to support Native Americans remain chronically underfunded. In addition, data collected about Native Americans are often incomplete, inaccurate, old, or simply not tracked by the federal government. These factors and more have led many tribes to have a fraught relationship with the federal government, which can exacerbate the economic disparities in Indian Country.

Listokin, David, Kenneth Temkin, Nancy Pindus, and David Stanek. "Mortgage lending on tribal land: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing needs." U.S. Department of Housing and Urban Development, 2017. <https://www.huduser.gov/portal/publications/NAHSC-Lending.html>.

This report provides the perspective of outside lenders working in Indian Country in the context of mortgage lending. It describes the contemporary mortgage program availability and activity in Indian Country (focusing on Section 184) and examines how today's lenders view challenges to and best practices for mortgages in Indian Country; much of the report reflects the perspectives of the interviewed lenders. The analysis also examines the Section 184 Program's effect on lending activity during the 2008 financial crisis.

Lofthouse, Jordan K. "Institutions and Economic Development on Native American Lands." *The Independent Review* 24, no. 2 (Fall 2019): 227-248. [https://www.independent.org/pdf/tir/tir\\_24\\_2\\_04\\_lofthouse.pdf](https://www.independent.org/pdf/tir/tir_24_2_04_lofthouse.pdf).

This paper brings market-process theory and entrepreneurship into the broader discussion of the institutional effects on Native American economic development. The author states

that this is important because it gives greater insight into the intimate connections between institutions, entrepreneurship, and economic growth. The author concludes that Native Americans live under fundamentally different institutions than other Americans and notes that the complex property rights regime of the federal land trust stifles mutually beneficial exchange, hampers the market processes, and allows government officials to intervene heavily into economic affairs. Also, the author notes that the dual bureaucracy of federal and tribal officials increases transaction costs because of the broad authority and discretion that these officials have to make public policy. Under those unique institutions, the federal government has created an environment of uncertainty and high costs that pose significant constraints for entrepreneurial action, thus limiting economic development at large.

MacDonald, Peter, Kenneth Smith, Philip Martin, Lorraine Ruffing, Leo Denetsone, Bill Douglass, Frank Ryan, Ron Trosper, Pat Porter, and A.T. Anderson. "Report on Reservation and Resource Development and Protection." Final Report of the Indian Policy Review Commission, 1976.

<https://babel.hathitrust.org/cgi/pt?id=nyp.33433048657716&view=1up&seq=17&skin=2021>.

This 1976 report was conducted by the Indian Policy Review Commission provides foundational information regarding economic development in Indian Country. It looks at how the federal government has historically interacted with tribes, addresses how economic development looks for different Indian tribes, and considers what a successful relationship between tribes and the federal government would look like. Surveys and interviews of different tribes and tribal members are used to compare and contrast the meanings and interpretations of economic development. The authors conclude that total Indian economic development cannot be reached if the federal government does not provide American Indian governments' control of their own affairs.

Miller, Robert JR. *Reservation Capitalism: Economic Development in Indian Country*. Lincoln NE: U of Nebraska Press, 2013.

This book describes economic disparities of Native Americans and their history, but provides a hopeful perspective that economic development will lead to improved conditions and sustainable economies. The author also provides background information on Indigenous economic systems and property rights and explains how the vast majority of Native lands and natural resource assets were lost. Historically, most tribal communities were prosperous, composed of healthy, vibrant societies sustained over hundreds and in some instances perhaps even thousands of years. Miller focuses on strategies for establishing public and private economic activities on reservations and for

creating economies in which reservation inhabitants can be employed, live, and have access to the necessities of life, circumstances ultimately promoting complete tribal self-sufficiency.

Native Nations Institute. “Access to Capital and Credit in Native Communities.” 2016. [http://nni.arizona.edu/application/files/8214/6378/9056/Access\\_to\\_Capital\\_and\\_Credit\\_in\\_Native\\_Communities.pdf](http://nni.arizona.edu/application/files/8214/6378/9056/Access_to_Capital_and_Credit_in_Native_Communities.pdf).

This report, which was commissioned by the CDFI Fund, seeks to understand the challenges Native communities face in accessing credit and capital. It uses public comments, consultations, focus groups, literature reviews, and interviews with key informants to pinpoint challenges that Native communities face in accessing the means for financial wellness and development.

Oweesta Corporation. Snapshot 2018 The Growing Native CDFI Movement, 2018. [https://www.oweesta.org/wp-content/uploads/2018/11/Snapshot-2018-Growing-NCDFI-Movement\\_web.pdf](https://www.oweesta.org/wp-content/uploads/2018/11/Snapshot-2018-Growing-NCDFI-Movement_web.pdf).

This report describes the Native CDFI industry in 2018, focusing on capital needs, contextualizing these needs within the history of the Native CDFI movement. The authors used surveys, interviews, and public sharing of data internal to Oweesta, and concluded that the Native CDFI wrap-around service model is successful, with growing financial and operational sustainability. This report also documents Native CDFIs’ increasing needs for lending and operational capital and discusses the current obstacles restricting this capital flow. Finally, this report makes recommendations for Native CDFIs and future partners for confronting these challenges and better supporting this impactful movement.

Palmer, Vanessa, Ryan Nunn, & Casey Lozar. “Native American Labor Market Dashboard Fills Important Data Gap for Indian Country.” Federal Reserve Bank of Minneapolis, 2021. <https://www.minneapolisfed.org/article/2021/native-american-labor-market-dashboard-fills-important-data-gap-for-indian-country>

This study introduces tools and tracks unemployment among the American Indian and Alaska Native (AIAN) population, a measure which is not sufficiently tracked by the Census or Bureau of Labor Statistics measurements. This report acknowledged that unemployment, which is reported by the Census Bureau, often looks different from unemployment in AIAN communities, and that federal statistical agencies do not report data specific to the AIAN population due to it being a relatively small sample size. This resource can be helpful to offer relevant insights on the monitoring of AIAN-specific data.

- PD&R Edge. “Innovative Funding Provides Culturally Specific Affordable Housing to Native Americans.” U.S. Department of Housing and Urban Development, 2021.  
<https://www.huduser.gov/portal/pdredge/pdr-edge-inpractice-072621.html>.  
This case study highlights examples of using multiple funding streams to support an affordable housing project, including the Indian Housing Block Grant Program. While this case study provides an example of a project done in an urban area outside of tribal lands, it provides a perspective of how projects can be developed with cultural identity in mind, as well as a successful example of creatively leveraging multiple funding streams.
- Pettit, Kathy, G. Thomas Kingsley, Jennifer Biess, Kassie Bertumen, Nancy Pindus, Chris Narducci, & Amos Budde. “Continuity and Change: Demographic, Socioeconomic, and Housing Conditions of American Indians and Alaska Natives.” U.S. Department of Housing and Urban Development Office of Policy Development and Research, 2014.  
[https://www.huduser.gov/portal/publications/commdevl/housing\\_conditions.html](https://www.huduser.gov/portal/publications/commdevl/housing_conditions.html).  
This resource looks at the economic diversity that exists across different tribal areas and provides examples of economic development and Native CDFI successes. The findings illustrate that real per capita income in Indian Country grew 2-3x the rate of the general U.S. population from 1990 to 2000. Economic development has been uneven across Indian Country.
- Pindus, Nancy, G. Thomas Kingsley, Jennifer Biess, Diane Levy, Jasmine Simington, & Christopher Hayes. “Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs.” U.S. Department of Housing and Urban Development Office of Policy Development and Research, 2017.  
<https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>.  
This report provides information regarding the demographic, social, and economic conditions of American Indians and Alaska Natives (AIAN) in tribal and non-tribal areas through a housing lens. It determines housing conditions and housing shortage via nationally representative survey of housing conditions and needs among AIAN households in tribal areas, a survey of 110 Tribally Designated Housing Entities (TDHEs), and 22 site visits. This report illustrates a significant need for housing in AIAN areas.
- Pindus, Nancy, and Kevin Klingbeil. “Tribes are Using Creative Place-Based Solutions to Increase Homeownership Options.” *Housing Matters*, Urban Institute, 2019.  
<https://housingmatters.urban.org/articles/tribes-are-using-creative-place-based-solutions-increase-homeownership-options>.

This online blog post explains the importance of Native CDFIs and their essential role in providing financing in Indian Country. It explains the unique challenges of mortgage lending and homeownership in Indian Country and provides an overview of several studies. It notes that Native CDFIs are essential for bridging the gap between traditional financial institutions and Native communities.

Scott, Andrew P. “An Overview of Rural Credit Markets.” Washington, DC: Congressional Research Service, September 2021.

<https://crsreports.congress.gov/product/pdf/R/R46914>.

A significant portion of the U.S. population lives in rural areas, where access to financial services—specifically credit products—varies compared to access in urban areas. One reason for this variation is that the demographics and economic realities of rural areas differ from those of urban areas in several ways. For example, rural populations are more likely to be older and have lower incomes relative to urban populations, and local rural economies tend to be less diversified in terms of number and types of industries present, making them more susceptible to economic shocks. Credit access is broadly underdeveloped in Native American communities, which constrains economic development. The federal government supports economic development in tribal nations through various development, community development, and housing programs. This report describes Rural Consumer Financial Services, including for housing, manufactured housing, retail banking, and alternative credit as well as agricultural and commercial financial services. The report includes sections on credit in Native American communities and federal programs to promote Native credit access.

Trahan, Mark. “At The Crossroads: State of the Economy in Indian Country.” *Indian Country Today*, 2022. <https://indiancountrytoday.com/news/at-the-crossroads-state-of-the-economy-in-indian-country>.

This is a series of 10 articles from the Institute for Nonprofit News, Indian Country Today and nine other news partners. The series highlights the current state of the economy in Indian Country. It used a nationwide survey that was administered by Indian Country Today and various partners, and found a lack of data surrounding the economic size of Indian Country. In addition, it found that many tribes are the largest employers in their rural areas, and described the potential of certain sectors to boost economic growth, such as health care and green energy like solar and wind.

U.S. Government Accountability Office. “Tribal Economic Development: Action is Needed to Better Understand the Extent of Federal Support: Report to Congressional Committees.”

GAO-22-105215. Washington, DC: U.S. 2022. <https://www.gao.gov/products/gao-22-105215>.

GAO conducted this study in accordance with a provision of the Indian Community Economic Development Act of 2020. This report examines economic development programs available to tribal entities and the extent of fragmentation, overlap, and duplication among these programs; analyzes available data on obligations to tribal entities for these programs; and describes selected tax incentives available to tribes. GAO reviewed program information, analyzed obligations data, and interviewed tribal entities, agency officials, and Native Community Development Financial Institutions. GAO reported that programs are fragmented across seven agencies: the U.S. Departments of Agriculture (USDA), Commerce, Energy, Health and Human Services, Housing and Urban Development, and the Interior, and the Small Business Administration (SBA). Tribal organizations GAO spoke with said many tribes have limited capacity to identify and access programs and may not be aware of the federal assistance available. Some programs that serve a wider range of eligible recipients do not identify the amount that went to tribal entities. Using location data for the New Markets Tax Credit, GAO estimated that from 2004 through 2019, tribal communities (defined as individuals and businesses on or near reservations, trust land, or Oklahoma Tribal and Alaska Native Village Statistical Areas) received between \$734 million and \$891 million of investment (1.3 to 1.6% of the total dollars invested via the credit). GAO recommended that Commerce maintain information on economic development programs available to tribal entities across the federal government and that SBA and USDA establish plans to periodically analyze and report the amount of economic development assistance provided to tribal entities.

Winchell, Dick G. “Indigenous Rural Renewal in the Inland Pacific Northwest: The Emergence of American Indian Tribes in Regional Economic Development.” *Journal of Rural and Community Development* 8, no. 3 (2013): 174-197.

<https://journals.brandonu.ca/jrcd/article/view/1036/253>.

This journal article explores policies that have historically harmed or helped economic growth in Indian Country using various data sources. Findings illustrate that tribal communities don’t score well in terms of impact per dollar invested because they are less condensed than non-tribal rural areas. The author also highlights that there is a historical lack of successful NMTC applications for Native CDFIs, which discourages many tribal projects from expending money and time to apply. The author highlights the need for Native set-asides for NMTC allocations, which already exists for LIHTC.

# New Markets Tax Credit Investments in Native Areas: Selected Case Studies and Best Practices



**BIG WATER**  
CONSULTING



# New Markets Tax Credit Investments in Native Areas: Selected Case Studies and Best Practices

Prepared for:  
**New Markets Tax Credit Program Native Initiative**  
**Community Development Financial Institutions Fund (CDFI Fund)**  
U.S. Department of the Treasury  
Washington, D.C.

Prepared by:  
Kevin Klingbeil, Chloe Adler, and Harry Maher  
Big Water Consulting

Nancy Pindus  
Urban Institute

Karen Williams  
IDP

Sean Zielenbach  
SZ Consulting

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## Executive Summary

### a. Overview

This Case Study Report is part of the Community Development Financial Institutions (CDFI) Fund's New Markets Tax Credit (NMTC) Native Initiative. The goal of the NMTC Native Initiative is to increase NMTC investments in Federal Indian Reservations, Off-Reservation Trust Lands, Hawaiian Home Lands, and Alaska Native Village Statistical Areas, collectively referred to as NMTC Native Areas. This Case Study Report presents findings, best practices, and recommendations derived from an online survey and subsequent interviews with participants in past NMTC investments in NMTC Native Areas.

### b. Methodology and Selected Cases

The research team developed a list of NMTC projects that would potentially illustrate varied, successful, and replicable paradigms with specific, on-the-ground examples. The research team then worked closely with the CDFI Fund to curate a list of nine representative projects. Ultimately, the team conducted interviews with one Community Development Entity (CDE) for each project, and with Qualified Active Low-Income Community Businesses (QALICBs) for several projects.

### c. Summary of Past NMTC Transactions in Native Areas

Overall, 225 Qualified Low-Income Community Investments (QLICIs) within 149 unique projects made by 51 CDEs took place in American Indian, Alaska Native and Native Hawaiian (AIANNH) lands within the United States between 2003 and 2020. NMTC investments across all these projects totaled \$1.8 billion in 2021 dollars. NMTC investments on AIANNH lands make up 2.6% of all NMTC investments. Since 2017, there have been an average of 12 projects a year and \$144 million in NMTC investment each year in AIANNH lands.

### d. Findings, Best Practices, and Recommendations

The survey was developed as a precursor to the interview, wherein CDEs were given significantly more room to expand on their experience working on the NMTC transaction case at hand. Select survey findings include:

- Two-thirds (66%) of responding CDEs had over 10 years of experience lending/investing in Indian Country prior to the transaction.
- More than half (56%) of these CDEs stated that they encountered tribal cultural or legal matters that had to be addressed as part of the project process.
- About one fifth (22%) of CDEs had a pre-existing relationship with the tribe or project sponsor involved in the case project.

- Two-thirds (66%) of responding CDEs would request future allocations to finance other NMTC projects in Native Areas based on their experience with the case project.

A set of more robust findings from the interviews conducted are summarized below. Findings are accompanied by recommendations for future policy changes to address the identified challenges, and by best practices used in the past to address said challenges.

- Challenges for obtaining allocations in Native Areas and with Native CDEs include:
  - Native CDEs often have limited staff capacity to develop compelling applications and lack the financing track record to justify their allocation requests.
    - Recommendations for the CDFI Fund:
      - Provide additional training for tribes, Native individuals, and Native organizations related to financing and economic development planning and implementation;
      - Increase Native CDE participation in NMTC transactions;
      - Provide programmatic support for greater NMTC investment in Native Areas and Native CDEs; and
      - Provide funding to help Native CDEs access technical assistance in preparing for NMTC applications.
    - Recommendations for Native CDEs/CDFIs:
      - Seek to engage as secondary CDEs with tribes; investors and allocatee CDEs and the CDFI Fund should support this goal to serve as Secondary CDEs; and
      - Participate as a partner/collaborative lender to a Native QALICB.
  - NMTC reviewers often do not understand the unique challenges associated with attracting capital to Native Areas and consequently may not appreciate the critical role that NMTCs can play in these communities.
    - Recommendation: Train NMTC application reviewers about community economic development in Native Areas.
  - Outcomes on Native lands often center around essential human services, basic needs, or cultural initiatives that may not generate significant job numbers or easily quantifiable outcomes.
    - Recommendation: Give greater weight to qualitative project outcomes in NMTC allocation application.

- Unrelated party financing requirements and the complexity of the NMTC Program pose barriers for tribally controlled CDEs in financing projects owned or controlled by the same tribe, limiting their ability to obtain competitive scores in the application process.
  - Recommendation: Provide more flexibility for Native CDEs in the definition of related entities.
- Timing challenges, such as the project closing deadlines and limited lookback period, have made it harder to use NMTC capital for Native projects.
  - Recommendations:
    - Promote greater collaboration among federal agencies involved in Native Area transactions; and
    - Tribes that have not obtained Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act authority to issue commercial leases without Bureau of Indian Affairs (BIA) approval should consider doing so. If tribes use this authority, their policy guidelines for lease terms and conditions, and the requirements of leasehold mortgage provisions, should be made available to funders early in financing processes.
- There is a limited timeframe to reimburse prior-incurred costs, which disadvantages Native projects, as projects in Native Areas often take longer to close an NMTC investment.
  - Recommendation: Extend the prior-incurred cost reimbursement period.
- Project viability challenges:
  - These often-rural projects have higher construction costs and difficulties attracting and keeping staff to work at facilities.
  - There are eligibility challenges with sprawling footprints that may extend beyond NMTC-eligible areas.
    - Best Practices:
      - Sponsors use conventional debt underwriting standards to ensure the project can meet basic lending and NMTC Program underwriting principles and criteria.
      - Utilize Targeted Populations as an alternative to census tract qualification.

- Land ownership issues complicate NMTC financing for tribal business development due to restrictions on land alienation and the need for leasehold mortgages.
  - Collateralizing NMTC projects in non-metropolitan areas can be challenging due to difficulties in defining rural land values and limited transaction data for accurate appraisals.
  - Land held in trust by the federal government cannot be used as collateral, leading to reliance on leasehold mortgages, other assets or leveraging non-real estate assets for loans.
    - Best Practice: Tribe facilitates access to leasehold mortgage security.
- Tribally sponsored projects may face difficulties meeting lenders' requirements for collateral because of the trust status of land, or the complexity of tribal finances resulting in difficulty offering tribal guarantees.
  - Best Practice: Tribal sponsors identify and develop processes for enforceable and adequately secured promissory notes and loan agreements.
- Uncertainty remains regarding the eligibility of tribal corporations as QALICBs, resulting in additional steps such as creating state law entities and lease agreements to navigate the issue.
  - Recommendation: Participants should work with Treasury/IRS to prioritize creating greater clarity regarding the eligibility of tribal corporations to be QALICBs.
- Sovereign immunity of tribes can hinder transactions from moving forward, as investors and CDEs require enforceable promissory notes.
  - Best Practice: Tribes consider limited waivers of sovereign immunity.
- Understanding the complexities of the NMTC Program and compliance issues can take time and resources due to the potential need for legal and accounting guidance, especially for tribes with limited exposure to the program and staff turnover; additionally, issues with local politics and leadership turnover can delay NMTC transactions.
  - Best Practice: Tribal sponsors and potential CDE applicants evaluate the cost and benefit of engaging NMTC experts.
- Tribal politics and leadership turnover may delay the closing of NMTC transactions in Native Areas.
  - Best Practices:
    - Cohesive tribal governance and economic development strategies; and

- Determine acceptable practices regarding choice of venue and applicable law and establish these policies before working with third-party lenders.
- Effective outreach to partners requires a deep understanding of specific communities and learning about and acknowledging their unique experiences, perspectives, and complexities.
  - Recommendation: Lenders should take steps to facilitate better relationships with Native Entities.
- Interviewees shared that a Native set-aside for either Native organizations or projects within Native Areas could effectively increase NMTC investment in Native Areas.

## I. Introduction

### a. Project Overview

This report, titled “New Markets Tax Credit Investments in Native Areas: Selected Case Studies and Best Practices” (referred to as the Case Study Report), is a component of the Community Development Financial Institutions Fund’s (CDFI Fund) New Markets Tax Credit Program Native Initiative (the NMTC Native Initiative). Big Water Consulting and its partners conducted the project on behalf of the CDFI Fund. The NMTC Native Initiative supports efforts by the CDFI Fund to explore opportunities to increase NMTC investment in *Federal Indian Reservations, Off-Reservation Trust Lands, Hawaiian Home Lands, and Alaska Native Village Statistical Areas* (collectively referred to as NMTC Native Areas). The primary goal of this initiative is to expand access to capital for Native communities via tax incentives the New Markets Tax Credit Program (NMTC Program) provides. The NMTC Native Initiative comprises several fundamental components, which include:

- This Case Study Report on the findings from case studies on selected New Market Tax Credit (NMTC) investments in Native Areas;
- A report titled “Community Economic Development in Indian Country: Market Research Report” (referred to as the Market Research Report), which reports on successfully implemented community economic development strategies that resulted in attracting capital to Native communities and challenges that Native entities face in accessing capital for community economic development;
- Technical workshops informing representatives of Native organizations about the purposes and mechanics of the NMTC Program;
- Individual training sessions with Native organizations seeking to learn more about specific elements of the NMTC Program and roles within NMTC-funded projects;
- An analysis of NMTC investment data describing the investments and activities of tribes and Native organizations in the NMTC Program; and
- A document titled “Self-Assessment Guide for Native Organizations” (referred to as the Self-Assessment Guide), a guide for tribal entities that seek to participate in the NMTC Program describing the various roles and the corresponding responsibilities related to the NMTC.

### b. About the New Markets Tax Credit (NMTC) Program

The New Markets Tax Credit Program, established by Congress in December 2000, permits individual and corporate taxpayers to receive a non-refundable tax credit against federal income taxes for making equity investments in financial intermediaries known as Community Development Entities (CDEs). CDEs that receive the tax credit allocation

authority under the program are domestic corporations or partnerships that provide loans, investments, or financial counseling in low-income urban and rural communities. The tax credit provided to the investor totals 39% of the cost of the investment and is claimed over a seven-year period. The CDEs in turn use the capital raised to make investments in low-income communities. CDEs must apply annually to the CDFI Fund to compete for New Markets Tax Credit Program allocation authority. Since the inception of the NMTC Program, the CDFI Fund has completed 18 allocation rounds and has made 1,461 awards totaling \$71 billion in tax allocation authority. This includes \$3 billion in Recovery Act Awards and \$1 billion of special allocation authority used for the recovery and redevelopment of the Gulf Opportunity Zone.

To learn more about the New Markets Tax Credit Program, please visit [www.cdfifund.gov/nmtc](http://www.cdfifund.gov/nmtc).

#### c. About the Community Development Financial Institutions Fund (CDFI Fund)

Since its creation in 1994, the CDFI Fund has awarded more than \$5.5 billion to CDFIs, community development organizations, and financial institutions through:

- The Bank Enterprise Award Program;
- The Capital Magnet Fund;
- The CDFI Rapid Response Program;
- The Community Development Financial Institutions Program, including the Healthy Food Financing Initiative;
- The Economic Mobility Corps;
- The Financial Education and Counseling Pilot Program;
- The Native American CDFI Assistance Program; and
- The Small Dollar Loan Program.

In addition, the CDFI Fund has allocated more than \$71 billion in tax credit allocation authority to Community Development Entities through the New Markets Tax Credit Program, and guaranteed bonds for over \$2.1 billion through the CDFI Bond Guarantee Program.

To learn more about the CDFI Fund and its programs, please visit the CDFI Fund's website at [www.cdfifund.gov](http://www.cdfifund.gov).

#### d. Report Purpose and Contents

This report provides a comprehensive overview of the case studies conducted as part of the CDFI Fund's NMTC Program Native Initiative. The report:

- Outlines the methodology used for selecting and implementing the case studies;
- Summarizes CDFI Fund data that describes past NMTC transactions in Native Areas;

- Describes the projects selected to serve as case studies for this component of the Native Initiative;<sup>1</sup>
- Summarizes the results and findings from the online surveys and interviews that were conducted in furtherance of the case studies;
- Describes best practices for increasing the availability of NMTC capital in Native Areas; and
- Provides recommendations for increasing Native participation in the NMTC Program and promoting partnerships between Native Entities, Allocatees, and NMTC Investors.

By examining these case studies, the report seeks to identify common challenges and opportunities for expanding NMTC investment in Native Areas. The findings help inform strategies and recommendations to expand Native communities' access to capital through the NMTC Program.

In presenting the findings from the case studies, the report delves into a variety of factors affecting the deployment of NMTCs in Native Areas. It explores the challenges faced in obtaining and utilizing NMTC capital for projects within Native Areas, including project viability challenges, land-related concerns, and uncertainty surrounding the eligible roles of tribal corporations within NMTC transactions. The report also examines factors influencing the use of the NMTC Program and its complications within Native communities, such as sovereign immunity, tribal politics, and lender familiarity with Native Areas.

By highlighting these insights, the report aims to facilitate a better understanding of the challenges and opportunities that exist in utilizing the NMTC Program to benefit Native communities.

Furthermore, this report offers best practices and recommendations for increasing the availability of NMTC capital in NMTC Native Areas. Survey and interview respondents emphasized the best practices that were critical to the success of their participation in the NMTC Program, such as the importance of cohesive tribal governance and economic development strategies, tribal policies that support development financing, and the value of engaging with NMTC experts.

Additionally, the report suggests steps that Native Community Development Entities (CDEs) can take to increase their participation levels in NMTC transactions, as well as increase their competitiveness for NMTC allocation authority. The research team includes additional recommendations that propose policy or legislative changes, and are directed to either the CDFI Fund or Congress, to enhance tribal and Native enterprise understanding of, interest in, and competitiveness for NMTC financing. These recommendations address the specific challenges faced by Native communities as described by both the survey participants and the findings of the Market Research Report, and also draw from the prior experience of the research team.

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<sup>1</sup> The word “project” will be used for the remainder of this report to mean a real estate, equipment, or working capital investment unless otherwise specified.

## e. Report Structure

This report is divided into eight sections as described below:

- The executive summary provides a high-level overview of the purpose, findings, and recommendations within this report.
- “Section 1: Introduction” provides a more in-depth outline of this report and places it within the larger context of the CDFI Fund's NMTC Native Initiative.
- “Section 2: Methodology for Case Study Selection and Implementation” details how case studies were selected, and how the survey and interviews were conducted. Limitations to outreach and data collection are described in this section.
- “Section 3: Summary of Past NMTC Transactions in Native Areas” includes the amount invested over time, a map of transaction locations, information about the CDEs making NMTC investments, and the types of businesses involved. The section includes information that served as a foundation for the selection of case studies within this report.
- “Section 4: Description of Selected Case Study Projects” describes the case study projects in detail; it includes a table with selected high-level information surrounding the case study projects.
- “Section 5: Findings, Best Practices and Recommendations” describes the findings of both the online case study surveys and follow-up interviews, as well as relevant best practices and recommendations for addressing the key challenges identified in the survey and interview findings. The research team briefly summarizes quantitative survey findings but delves into a more profound discussion surrounding the themes that emerged over the course of interviews that exemplify the experiences of individuals and organizations involved in NMTC projects within NMTC Native Areas. Following each finding, the research team either describes an existing best practice or provides a recommendation for program improvements drawn from the case study findings and research team’s experience with the NMTC Program.
- “Section 6: Conclusion” provides a brief summary of the results from the case studies. It also details the other project components that informed the findings, best practices, and recommendations identified in this report and their implications for increasing the investment of NMTC capital in Native Areas.

## II. Methodology for Case Study Selection and Implementation

The case studies are intended to provide richer and more nuanced case-specific detail concerning NMTC investment in NMTC Native Areas that cannot be gleaned by data analysis.

Understanding the impetus for these investments, as well as challenges and opportunities experienced by the participants in NMTC investments in Native Areas, can provide insights on making NMTC capital more accessible and better utilized in Native Areas. The research team reviewed transaction data concerning NMTC investments in NMTC Native Areas and Tribal Statistical Areas to identify a diverse set of projects that would illustrate a variety of successful approaches for using NMTC to address the capital needs of tribes.

By filtering the data set provided by the CDFI Fund, the research team developed a list of NMTC projects that would fulfill the task-specific goal of incorporating and examining a diverse range of projects. Based on discussions with the CDFI Fund, the research team initially refined the candidate list to eighteen case studies located on Native lands or tribally owned property.

Case study selection was based on the following characteristics:

- Project locations in the contiguous United States, Alaska, and Hawaii;
- Metropolitan and non-metropolitan areas;
- Size of tribal enrollment;
- Total project cost;
- Project business type or asset class;
- Project year; and
- The name of the Community Development Entity (CDE) that financed the project.

The first selection criterion for potential case studies was project location. This entailed choosing at least one project from each of the U.S. Department of Housing and Urban Development's Office of Native American Programs (HUD ONAP) regions, including one project from Hawaii and one from Alaska.<sup>2</sup> Additionally, the selection of projects sought to maintain a balance between projects located inside and outside of Metropolitan Statistical Areas (MSAs),<sup>3</sup> with the majority of projects situated outside of MSAs.

Another criterion used in case selection was tribal enrollment numbers. Projects located on reservations that are home to small tribes (less than 1,500 members), large tribes (more than 10,000 members), and mid-size tribes (between 1,500 and 10,000) were included in the initial selection. According to 2024 Indian Housing Block Grant (IHBG) data, the median size tribe had

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<sup>2</sup> U.S. Department of Housing and Urban Development Office of Native American Programs. (2023). National Directory of Tribes and TDHEs by ONAP Regions.

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/codetalk/onap/map/nationalmap](https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/onap/map/nationalmap).

<sup>3</sup> Per the U.S. Census Bureau, a metropolitan statistical area (MSA) is a geographical region with a relatively high population density at its core and close economic ties throughout the region.

626 enrolled members, and the average tribe had 4,150 enrolled members.<sup>4</sup> Tribes of various sizes can have access to different levels of resources, and, in the initial analysis (described below), the data showed that larger tribes are more likely to receive NMTC allocations than smaller tribes.

The research team selected projects at different project cost levels, including projects with a total cost under \$10 million, projects with a total cost between \$10 million and \$30 million, as well as projects with a total cost above \$30 million. For reference, the median project cost within the dataset was \$12.8 million.

Project industry category was also used as a selection criterion. The research team used a typology first developed by the Urban Institute to categorize NMTC projects.<sup>5</sup> At least one project was chosen from each of the most common categories identified. The selected categories included:

- Manufacturing and Food Processing;
- Health Care Services;
- Community Facilities or Tribal-Use Buildings;
- Energy, Water, Waste, and Sewage;
- Schools and Child Care; and
- Hotels; and Office and Professional Services.

These categories were selected based on the fact that at least five projects within the dataset containing all NMTC projects in Native Areas fell within each individual selected category.

Project completion date was included as a criterion to ensure that projects selected to serve as case studies reflected changes in the program as well as communities served over time. Projects were divided into three different time periods: 2003-2010, 2010 to 2015, and 2016 to 2020. These periods were selected so the research team could better understand and evaluate how the NMTC Program's evolution and policy changes have influenced its impact on community development in Native Areas.

Finally, potential projects were sorted based on the number of Community Development Entities (CDEs) involved in the project. This ensured that projects with multiple CDEs were represented as well as projects with a single CDE. Projects were selected to incorporate a diverse set of CDEs, with a mix of both Native CDEs and non-Native CDEs.

After this list of 18 projects was compiled, the research team shared this list and associated project-specific characteristics with the CDFI Fund, which subsequently selected nine projects

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<sup>4</sup> FY 2024 IHBG Formula Estimates.

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/codetalk/onap/ihbgformula](https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/onap/ihbgformula)

<sup>5</sup> For a list of all categories used, see: Theodos et al. (2021). Which Types of Projects Receive New Markets Tax Credit Funding. The Urban Institute. [https://www.urban.org/sites/default/files/publication/103956/which-types-of-projects-receive-new-markets-tax-credit-funding\\_0.pdf](https://www.urban.org/sites/default/files/publication/103956/which-types-of-projects-receive-new-markets-tax-credit-funding_0.pdf)

and three alternate projects that could be drawn from in case the research team had difficulty obtaining initial survey responses for any of the nine projects that were initially selected. The CDFI Fund selected the nine projects based on representativeness of the use of NMTCs in a particular region or sector (and/or representativeness of the business financed), and for which the CDFI Fund had no prior direct knowledge (e.g., via site visits). For projects that involved more than one CDE, the CDFI Fund selected the CDE with organizational characteristics that were not represented by CDEs for other single CDE projects.

Ultimately, one case was added to the sample to replace another case that was found not to be located on reservation land, not involving a tribal entity, and not specifically serving a Native population. The same selection criteria were used to choose a replacement case: a similar mixed-use commercial and municipal building transaction located on reservation land and involving a tribe.

Following the CDFI Fund's selection of the nine projects that would serve as the subjects for the case studies, the research team began the process of reaching out to the five key participants (the CDE, leverage lender, investor, Qualified Active Low-Income Community Businesses (QALICB), and tribe/tribal sponsor)<sup>6</sup> involved with each project to gather online survey responses and schedule follow-up interviews regarding the projects.

The research team initially administered an online survey to gather foundational background information about the project's participants, laying the groundwork for more in-depth exploration through subsequent interviews. The research team used the platform LimeSurvey to host the online survey, which allows for survey skip logic.<sup>7</sup> Outreach was done via phone and email, and attempts were made to contact the CDE, leverage lender, investor, QALICB, and tribe/tribal sponsor involved in each project.

The research team started by contacting the CDEs, with the hope that these key participants would be able to provide the critical - and potentially difficult to source - contact information for the other key participants involved with each project. Respondents were initially given two weeks to respond to the survey, but this period was extended another two weeks. At least one CDE responded for each transaction.

The research team was less successful in its efforts to obtain responses from other key participants within transactions, as described further in the Limitations section of this report below. Only two QALICBs responded to the QALICB survey. One investor responded to the survey for investors, and no tribal leaders or leverage lenders completed the surveys.

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<sup>6</sup> Definitions of these terms and others are available in Appendix B: Glossary.

<sup>7</sup> Skip logic refers to a type of survey logic in which a respondent's answer to a question may determine the subsequent questions they are asked. In the case of these surveys, it was used to ensure respondents were only asked questions relevant to their experience, e.g., if they responded that they had not faced additional challenges related to NMTC regulations due to the project's location in a Native Area, they would not then be presented with a question asking them to elaborate on these challenges.

The surveys were formatted as below:

- CDE survey: 15 substantive questions and other questions asking CDEs to list other key participants within the transaction in question
- QALICB survey: 17 questions
- Investor survey: 16 questions
- Tribal leader survey: 10 questions
- Leverage lender survey: 7 questions.

The research team crafted distinct online survey instruments for each of the five roles in the NMTC projects. Each survey was designed to collect quantitative information about the key participants' level of pre-existing experience with NMTCs, challenges they faced utilizing NMTCs for the specific project of interest, availability of capital for the project, challenges related to the project's location in a Native Area, resources utilized for the project (including expert consultants and capital), and community outcomes associated with the project.

Upon completion of the brief online survey, respondents were prompted to schedule a follow-up interview with the research team. These interviews were designed to gather more extensive qualitative information regarding the responses to the survey and to understand better the respondents' experience using NMTCs for a project located in a Native Area. Interviews were conducted virtually via Zoom and lasted between 30 and 60 minutes each. The research team developed standard scripts for each role, gave the interviewees opportunities to elaborate on their responses, and, if they chose to do so, make additional points regarding the project and their experience with NMTCs and the NMTC Program. Interviews were recorded and transcribed for later reference.

#### a. Limitations

Two key obstacles prevented the research team from connecting with each of the five key participants for each project. First, many of the projects selected were over a decade old. Many of the key organizations had experienced staff turnover since the projects closed, creating a barrier to contacting sources familiar with the details of these specific projects. This turnover contributed to lower-than-expected response rates. Second, the Paperwork Reduction Act<sup>8</sup> limited the number of organizations that could be contacted to nine, meaning that, once meaningful contact was made with a key participant for that project, the research team could not replace the case with another.

After several attempts were made to gather a response from each key participant, the research team adjusted the outreach strategy by shifting their focus from obtaining a response from all of the key participants for each project, to gathering responses from just the CDE and tribe/tribal

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<sup>8</sup> "A Guide to the Paperwork Reduction Act: Do I Need Clearance?"  
<https://pra.digital.gov/do-i-need-clearance/>

sponsor or QALICB. One project was added to the list after participants in another project could not be reached.

To provide additional context, interviews were also conducted with sources knowledgeable about the deployment of NMTCs in Native Areas who had not worked on one of the specific cases identified, typically because they were identified as a resource by one of the selected key participants. These knowledgeable sources included a consultant brought in on many NMTC deals in Native Areas because of their specific expertise, a lawyer well-versed in the NMTC Program, and a NMTC underwriter for a bank with significant experience involving NMTC transactions. The interviews with these sources did not follow a predetermined script but were more free-form.

Ultimately, the team conducted interviews with individuals from the CDE for each project, and with QALICBs for several projects. While lack of response from project sponsor representatives may have resulted in fewer alternative solutions to challenges that are uniquely tribal, the research team's workshop-based discussions with Native lenders including the Native CDFI Coalition, Native American Bank, and Citizen Potawatomi Community Development Corporation helped to mitigate this potential impact. Furthermore, the ultimate designs of some of the transactions illustrate measures to address such challenges, such as the pledge of revenue instead of real estate for the Navajo Tribal Utility Authority office discussed later in this report.

Coming after the completion of several key deliverables for the Native Initiative, this Case Study Report draws upon additional recent and relevant work to provide context and further documentation for this report's findings, best practices, and recommendations (discussed in Sections V). For example, this section incorporates relevant additional insights from the research team's analysis of NMTC investment data, and from the research conducted to prepare the Market Research Report. These findings are included in this report as additional context for the discussion of several key NMTC topics.

### III. Summary of Past NMTC Transactions in Native Areas

This section provides an overview of the NMTC investments made in American Indian, Alaska Native, and Native Hawaiian (AIANNH) lands<sup>9</sup> within the United States between 2003 and 2020.<sup>10</sup> It focuses on the amount invested and types of investments made over time in these areas, highlighting the contributions of Qualified Low-Income Community Investments (QLICIs) in various projects. Additionally, this section explores the extent of the involvement of different Community Development Entities (CDEs) and the breakdown of Qualified Active Low-Income Community Businesses (QALICBs) by ownership structure, race, gender, and establishment age based on data reported by CDEs. The information presented in this section served as a foundation for further analysis and the selection of the case studies summarized in subsequent sections of this report.

#### a. Amount Invested and Investments Over Time

Overall, 225 Qualified Low-Income Community Investments (QLICIs) within 149 unique projects made by 51 CDEs took place in AIANNH lands within the United States between 2003 and 2020. NMTC investments across all these projects totaled \$1.8 billion in 2021 dollars.<sup>11</sup> Across this time period, the median QLICI investment amount was \$6.9 million, the median NMTC investment per project was \$10.2 million, and the median total project cost was \$12.8 million (all in 2021 dollars). NMTC investments on AIANNH lands make up 2.6% of all NMTC investments. Total project costs on AIANNH lands make up 2.4% of the total project costs for all NMTC projects during this period.

Since 2017, there have been an average of 12 projects a year and \$144 million in NMTC investment each year in AIANNH lands. Figure 1 shows this general increase in the number of projects from 2003 to 2020. NMTC investment by year follows a similar pattern, peaking in 2011 at \$267.9 million. This peak was not driven by a few outsized projects, but rather reflects an increase in both the amount of allocation deployed and the number of projects financed using NMTCs.

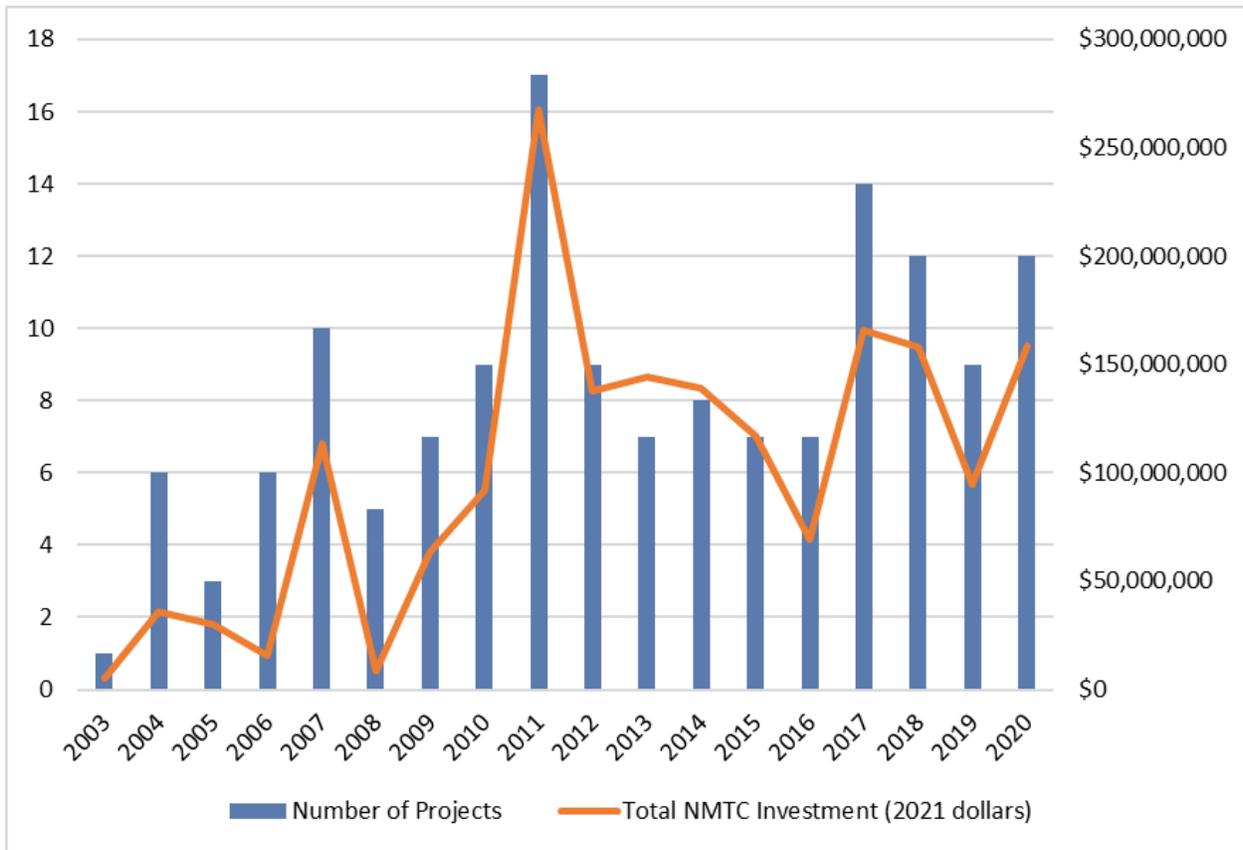
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<sup>9</sup> American Indian/Alaska Native/Native Hawaiian (AIANNH) Areas refer to geographical regions in the United States that are designated for the Native indigenous populations, including American Indians, Alaska Natives, and Native Hawaiians. This includes the following legal entities: federally recognized American Indian reservations and off-reservation trust land areas, state-recognized American Indian reservations, and Hawaiian home lands (HHLs). The statistical entities included are Alaska Native village statistical areas (ANVSAs), Oklahoma tribal statistical areas (OTSAs), tribal designated statistical areas (TDSAs), and state designated tribal statistical areas (SDTSAs).

<sup>10</sup> CDEs that receive NMTC allocations are required to provide the CDFI Fund with annual reports, one of which is the transaction-level report on the investments made using the NMTC proceeds. Transaction level reports are submitted within 180 days of the CDE's fiscal year end date. At the time of this analysis, the transaction level report consisted of NMTC investments made in fiscal years ending 2020.

<sup>11</sup> All dollar amounts reported in this section were converted to 2021 dollars.

Figure 1 | Projects and NMTC Investment in AIANNH Lands by Year Closed

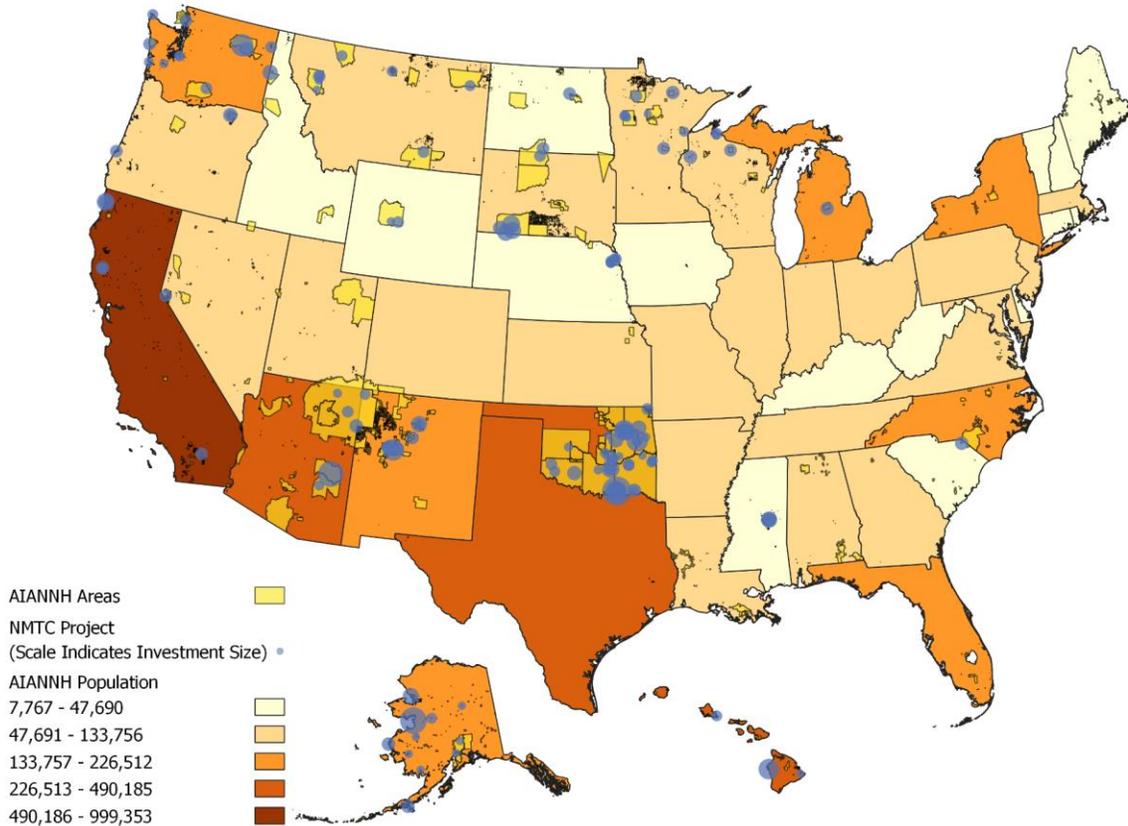


Source: CDFI Fund New Markets Tax Credits (NMTC) Investments Made in American Indian, Alaska Native, and Native Hawaiian (AIANNH) Areas, 2001 through 2020

## b. Map of Transaction Locations

The map in Figure 2 below shows NMTC Projects, the location of AIANNH lands, and AIANNH population by state (AIANNH alone or in combination with one or more other races).

Figure 2 | NMTC Projects, AIANNH Lands, and AIANNH Population by State



*Data sources: CDFI Fund New Markets Tax Credits (NMTC) Investments Made in American Indian, Alaska Native, and Native Hawaiian (AIANNH) Areas, 2001 through 2020; Population data from U.S. Census 2010 Decennial Census. TIGER/Line Shapefiles® obtained from U.S. Census Bureau include 2022 American Indian/Alaska Native/Native Hawaiian Area and 2022 State and Equivalent.*

Figure 3, below, shows the locations of the cases chosen for this case study report.

Figure 3 | Case Study Project Locations



Source: Big Water Consulting, 2023

Figure 4, below, shows the Office of Native American Programs (ONAP)’s regions of the United States for the purposes of demonstrating in which ONAP region each case was located.

Figure 4 | Map of ONAP Regions



Source: National Directory of Tribes and TDHEs by ONAP Regions<sup>12</sup>

<sup>12</sup> [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/codetalk/onap/map/nationalmap](https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/onap/map/nationalmap)

### c. Number of CDEs Making Investments

There were fifty-one (51) CDEs that made investments in AIANNH lands between 2003 and 2020. Of those CDEs, 43% were only involved in one NMTC project in AIANNH lands during that time period. Just over half (51%) of these CDEs completed more than one but less than ten projects in AIANNH lands. Only three CDEs completed ten or more projects in AIANNH lands. Of the fifty-one (51) CDEs that have made investments in AIANNH lands, 90% were not Native-owned/controlled.<sup>13</sup> The research team ascertained this based on the knowledge of experts familiar with the CDEs and by contacting the CDEs to inquire about their Native-owned/controlled status.

Of the 149 projects conducted by these CDEs, 81% involved only a single CDE. Of these projects, 19% involved multiple CDEs.<sup>14</sup> This is similar to the breakdown in the full CDFI Fund NMTC public data, where 20% of all NMTC projects are flagged as multi-CDE projects and 80% are not.

### d. Qualified Active Low-Income Community Business (QALICB) Characteristics

The QALICBs involved in investments in NMTC Areas on AIANNH (American Indian, Alaska Native, and Native Hawaiian) lands varied by ownership structure, ownership race and gender, and the age of the organization, with newer organizations being classified as startups.

Overall, there were seventy-three (73) projects in AIANNH lands that had for-profit QALICBs, with an average NMTC investment of \$13.2 million. Forty-three (43) projects had nonprofit QALICBs with an average NMTC investment of \$11.4 million. Twenty-three (23) projects had tribal QALICBs with an average NMTC investment of \$9.8 million. For ten projects, the QALICB type was classified as "missing."<sup>15</sup>

Among the projects in AIANNH lands, 57% had Qualified Active Low-Income Community Businesses (QALICBs) that were classified as startups, meaning the date that the entity was established was two years or fewer before the year the deal closed. These projects with startup QALICBs had an average NMTC investment of \$12.7 million. On the other hand, 19% had QALICBs that were not classified as startups, with an average investment of \$9.8 million. The remaining 24% of QALICBs fell under the "missing" category due to undefined or conflicting years of establishment for Qualified Low-Income Community Investments (QLICIs) within the same project.

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<sup>13</sup> The NMTC Program Allocation Application defines a Native American-owned or Native American-controlled entity as “a for-profit entity, including an MDI, that has at least 51% of its equity ownership (or the equivalent in limited liability companies) interest being owned by individuals who are Native American” or “a not-for-profit entity with at least 51% of its Board of Directors (i.e. Governing Board) comprised of individuals who are Native American.” [https://www.cdfifund.gov/sites/cdfi/files/2022-11/CY\\_2022\\_NMTC\\_Program\\_Application.pdf](https://www.cdfifund.gov/sites/cdfi/files/2022-11/CY_2022_NMTC_Program_Application.pdf)

<sup>14</sup> Transactions in the dataset involved between one and three CDEs.

<sup>15</sup> The "missing" category includes projects where the QALICB was undefined and projects with multiple QLICIs that defined QALICBs differently.

Eight percent of the projects had QALICBs that were identified as being more than 50% owned or controlled by women, with an average NMTC investment of \$6.9 million. Additionally, 40% had QALICBs that were identified as being more than 50% owned or controlled by racial/ethnic minorities, with an average NMTC investment of \$12.7 million.

Qualified Active Low-Income Community Businesses (QALICBs) separately reported the race of the owner/director of the QALICB to the CDFI Fund. Of these QALICBs, 3% had an Alaska Native owner/director, 32% had an American Indian owner/director, 4% had a white owner/director, and 38% were owned by corporations and had no specific race reported. Nearly a quarter (23%) of projects had “missing” data for the race or ethnicity of the QALICB owner or director.<sup>16</sup>

The information presented above played a crucial role in the selection of case studies for the project. As described in the previous section of this report, the case studies aim to delve deeper into specific investment projects on AIANNH (American Indian, Alaska Native, and Native Hawaiian) lands, providing valuable insights into their impact, success factors, and challenges. Case studies were selected by examining a range of projects across different regions, at different periods of time, involving a variety of different CDEs, business types, tribal enrollment numbers, and Native and non-Native project ownership.

Through this focused approach, the research team sought to capture the lessons learned and highlight best practices in a diverse and representative array of AIANNH lands.

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<sup>16</sup> Many project sponsors use newly formed single-purpose QALICBs. The CDFI Fund's data doesn't distinguish between a newly formed special-purpose QALICB and a newly formed operating business sponsoring a project.

## IV. Description of Selected Case Study Projects

Based on the criteria explained in the previous section, the research team narrowed the list of potential case studies to a final list of nine projects. These represented a diverse range of business types, geographical regions, and strategies for maximizing the usefulness of the NMTC Program.

Table 1, below, and the following project descriptions provide an overview of the selected case studies.

Table 1 | Overview of Case Study Projects

<b>Project<sup>17</sup></b>	<b>Year Closed</b>	<b>Region</b>	<b>Project Total QLICs</b>	<b>Sector</b>	<b>Native CDE?</b>
Choctaw Early Childhood and Elementary Education	2020	Eastern/Woodlands Region	\$15,000,000	Community - Schools and child care	No
Crain Manufacturing	2007	Southern Plains	\$8,100,000	Other - Manufacturing and Food Processing	No
Makah Commercial Fishing Dock	2014	Northwest	\$7,620,320	Other - Forest, agriculture, fishing, mining, and quarry	No
Maniilaq Nursing Home	2010	Alaska	\$17,460,995	Health	Yes
Minnewaukan Public School District K-12 School	2012	Northern Plains	\$10,864,000	Community - Schools and child care	No

<sup>17</sup> Project names were developed by the research team using project descriptions to aid in succinctly and accurately representing and referencing each project.

Table 1 Continued | Overview of Case Study Projects

<b>Project</b>	<b>Year Closed</b>	<b>Region</b>	<b>Project Total QLICIs</b>	<b>Sector</b>	<b>Native CDE?</b>
Navajo Tribal Utility Authority Administrative Building	2010	Southwest	\$9,500,000	Other - Energy, water, waste, broadband and sewage	No
St. Croix Chippewa Indians Judicial Center	2017	Eastern/ Woodlands Region	\$13,840,000	Mixed Use - Community Facilities and Retail	No
Wa She Shu Travel Plaza	2015	Southwest	\$10,500,000	Retail	No
West Hawaii Community Health Center	2013	Hawaii	\$21,807,500	Health	No

- a. The **Choctaw Early Childhood and Education Center** project funded the construction of two new early childhood education centers and the expansion of an elementary school on the Choctaw Reservation (Pearl River and Standing Pine Early Childhood Education Centers and the Pearl River Elementary School).
  - i. The early childhood centers each serve 50 children ages eight weeks to five years.
  - ii. The expansion to the Pearl River Elementary School added 25 new classrooms serving 400 additional students, as well as a new library.
  - iii. The expansion created 42 new full-time jobs.
  - iv. Dakotas America was the Community Development Entity (CDE) associated with this investment and the Qualified Low-Income Community Investment (QLICI) was closed in 2020.
  
- b. **Crain Manufacturing** was a Durant, OK-based manufacturer of trailer jacks and hitches. It was located in Choctaw territory, but not on tribally owned land.
  - i. At its peak, Crain employed 40 people and generated annual sales of about \$5 million. However, it was affected heavily by spiking steel prices in the late 2000s and had to close its doors.

- ii. REI New Markets Investment, LLC was the CDE associated with this investment and the QLICI was closed in 2007.
- c. The **Makah Commercial Fishing Dock** is crucial to the Makah Tribe’s economy. Located on Neah Bay in Northwest Washington, fishing accounts for 50% of the tribe’s economic activity. In 2013, the existing commercial dock collapsed, rendering it unusable. The tribe responded quickly and completed a new commercial dock within nine months, funded in part by New Markets Tax Credits.
  - i. Ninety small businesses and Native fishing operations use the new dock and facilities, which employ 400 people and support the trade of \$7-10 million worth of fish annually. Dock leasing, moorage, and fuel sales based around the commercial dock also support the tribe and its members.
  - ii. Although the dock is not located on the Makah Reservation, it is on tribal property.
  - iii. HEDC New Markets was the CDE associated with this investment and the QLICI was closed in 2014.
- d. The **Maniilaq Nursing Home (Utuqqanaat Inaat, or “a place for Elders”)** is located within the Maniilaq Health Center and opened in October 2011. It fills the “critical need for Elder care in low-income resident villages,” and employs 20 full-time staff members. Operated by the Maniilaq Association, a consortium of 12 Northwest Alaskan tribes/villages, it is the region’s first nursing home—before its construction, Elders had to travel 550 miles south to Anchorage to receive long-term care.
  - i. Located in Kotzebue, AK, which is considered a “hub community” for the region, it is situated on Alaska Native Village Statistical Area and Alaska Native Claims Settlement Act land. This was a targeted population project specifically serving Native Elders qualifying as low-income.
  - ii. The nursing home houses 18 Elders at any given time, all of whom have low incomes, and provides long-term, 24-hour care.
  - iii. Alaska Growth Capital BIDCO, Inc., a Native CDE, is the CDE associated with this investment, and the QLICI was closed in 2010.
- e. The **Minnewaukan Public School District** needed to replace and relocate one of its K-12 schools, which was at risk of flooding due to rising water levels of a nearby lake and was not meeting the space and facility needs of its students (over 90% are members of the Spirit Lake Tribe or Turtle Mountain Band of Chippewa Indians). When it was unable to use flood insurance as collateral on a conventional loan to construct a new school building, the school district used NMTC financing from Travois to construct a new building with classrooms, cafeteria, gym, computer lab, and library.

- i. In its first school year after opening, the school served 296 students and employed 60 teachers and staff. The new school building created 18 new full-time jobs.
  - ii. The school is on property owned by the public school district and is not on tribal land, although it serves a largely Native student body and was built as a replacement for the school on tribal land.
  - iii. Travois was the CDE associated with this investment, and the QLICI was closed in 2012.
  
- f. The **Navajo Tribal Utility Authority** (NTUA) has several district offices on the Navajo Reservation, including an office in Chinle, Arizona. NTUA is a nonprofit enterprise of the Navajo Nation, providing utilities and communication services to the Navajo People of New Mexico and Arizona. The NMTC financed the renovation and construction of multiple NTUA administrative buildings, which, prior to these efforts, had been affected by mold, dim lighting, and other environmental concerns. The new building replaced a 40-year-old dilapidated building and consolidated administrative operations. NTUA serves an area that is the size of West Virginia but has a population of only 40,000, meaning that the average per-customer cost of delivering services is high.
  - i. An estimated 14,000 households in this service area do not have access to infrastructure including electricity, indoor plumbing, or waste disposal, and more than half of NTUA’s customers pay their bills at the office in person because of their lack of access to banking, internet, or postal services. Restoring this office building greatly reduces the amount of time and travel required for these families to pay their bills for NTUA services.
  - ii. The construction of the new building created 8 new full-time jobs.
  - iii. Stonehenge Community Development was the CDE associated with this investment, and the QLICI was closed in 2010.
  
- g. The **St. Croix Chippewa Indian Tribe of Wisconsin** used NMTCs to construct a mixed-use judicial center, grocery store, market, RV park, and amphitheater on the St. Croix Reservation. The NMTC deal provided refinancing of existing gaming debt, loans for new economic development project construction, repurposing of the existing judicial building, and the development of a new judicial center. This mixed-use facility contains both governmental and retail space on the St. Croix Reservation.
  - i. The center created 90 full-time jobs.
  - ii. The transaction involved two CDEs: Forward Community Investments, Inc. and Bremer CDE, LLC. The QLICIs were closed in 2017.

- h. The **Wa She Shu Travel Plaza** has a fuel station, convenience store, dining options, and overnight parking for trucks and RVs. The travel plaza is situated next to the western Nevada-based Washoe Tribe's Wa She Shu Casino.
  - i. The travel plaza created 27 new full-time jobs, and brings in over \$1 million annually in revenue for the tribe, while serving 1,550 tribal members annually.
  - ii. Clearinghouse CDFI, acting as the CDE, combined federal and Nevada state NMTCs to fund this project, and revenue from a state of California program was used as collateral for the leverage loan. The QLICI was closed in 2015.
- i. **West Hawaii Community Health Center** is a federally qualified health center established in 2006 on Hawaiian Home Lands property, which is subject to unique regulations. It provides integrated medical, dental, and behavioral health services to primarily low-income individuals and families in three clinic locations on the Big Island of Hawaii, with a part-time mobile dental clinic that serves homeless individuals five hours a week at a shelter in Kailua Kona.
  - i. The new medical center building, the La'i'Opua Health Center, provides medical and dental care to approximately 4,300 patients a year. The center created 35 new permanent positions.
  - ii. Three CDEs provided allocations: Nonprofit Finance Fund, Punawai 'O Pu'uhonua, LLC, and USBCDE, LLC.

## V. Findings, Best Practices, and Recommendations

This section discusses the findings from the online survey and interviews with key participants in the nine case study projects, as well as interviews with other parties involved in previous NMTC transactions in Native Areas. It augments those findings with takeaways from other components of the NMTC Native Initiative, including the Market Research Report and (to a lesser extent) the Analysis of Summary Data. This section highlights themes and experiences shared by key participants that will provide guidance for CDEs investing or seeking to invest in Native Areas, recommendations for tribes and QALICBs, and insights into systemic challenges hindering greater utilization of the NMTC Program in Native Areas.

Following each of the key findings are either:

- A description of a practical solution, or best practice, developed by one or more NMTC participants that enabled them to overcome the specific challenge or obstacle summarized in that finding;
- A recommendation directed to the CDFI Fund or Congress for a policy or legislative change that would diminish or eliminate that challenge or obstacle; and/or
- Recommendations for how Native CDEs and potential CDEs, conventional lenders, and/or investors can facilitate greater investment in Native Areas and Native projects.

### 1. Online Surveys

Full responses to the CDE survey can be found in Appendix B to this report. The survey acted as a precursor to the interview, wherein CDEs were given significantly more opportunity to expand on their experience working on the specified NMTC project. Deeper analysis of the findings can be found in Subsection 2 of this section, which summarizes findings from the follow-up interviews. The online survey offered structure and guidance for these conversations, as well as the ability to aggregate quantitative data to the extent that the sample size of nine CDEs allowed.

The following are the key findings from the CDE survey:

- CDEs associated with the case study projects were most likely to specialize in deploying NMTC capital for not-for-profit or community facilities and/or health clinics. Among the respondents, 89% stated that these are areas of specialization for their organizations and 67% noted economic development and owner-occupied real estate as areas of specialization.
- Two-thirds of responding CDEs did not act in any other roles besides CDE for the case transaction. One-third of responding CDEs also acted as the leverage lender, and 11% served as the investor for the transaction.

- Two-thirds of responding CDEs had more than ten years of experience lending/investing in Native Areas prior to the case transaction.
- Nearly 80% of responding CDEs retain staff members or consultants to advise on projects in Native Areas.
- No CDE indicated that the amount of private or conventional (i.e., non-NMTC) capital available for the project exceeded the project’s need. Fifty-six percent noted that project capital was available but not to the extent necessary, 22% stated that project capital was not available, and 22% found that the amount of capital available matched but did not exceed the project’s need.
- More than half (56%) of these CDEs stated that they encountered tribal cultural or legal matters that had to be addressed as part of the project process.
- More than 20% of interviewed CDEs had a pre-existing relationship with the tribe or project sponsor involved in the case study project.
- More than half (56%) of the CDEs answered that NMTC regulations<sup>18</sup> (e.g., risk of recapture; the “substantially all” requirement; QALICB eligibility criteria) posed a greater challenge in attracting interest from a tax credit investor or closing the transaction for the case project than for projects outside of Native Areas. (Further discussion of this topic is available in Appendix B).
- The most common reasons CDEs gave for deciding to provide capital to the case study project were that the QALICB otherwise had limited or no access to capital, the CDEs had an organizational commitment to supporting Native projects, and the project was likely to generate significant community impacts/outcomes.
- Two-thirds of responding CDEs would request future allocations to finance other NMTC projects in Native Areas based on their experience with the project in question.

## 2. Interviews

As noted in the methodology section, the research team conducted a series of virtual interviews with representatives of the CDEs involved in each of the projects, as well as with representatives of several borrowers (tribal sponsors or QALICBs), tax credit investors in the transactions, and other individuals with experience working to provide NMTC capital to projects in Native Areas. The research team believes that the individuals interviewed represent a good cross-section of participants in Native NMTC transactions but recognizes that their experiences may not be wholly reflective of the experiences of all those involved in Native projects. Similarly, the

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<sup>18</sup> 26 U.S. Code § 45D:

[https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def\\_id=26-USC-375442294-332392142&term\\_occur=999&term\\_src=title:26:subtitle:A:chapter:1:subchapter:A:part:IV:subpart:D:section:45D](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-375442294-332392142&term_occur=999&term_src=title:26:subtitle:A:chapter:1:subchapter:A:part:IV:subpart:D:section:45D)

selected case study projects represent a sample of those closed in Native Areas and on behalf of Native populations, but they are by no means exhaustive of the types of transactions that have used NMTCs.

With those caveats, the following subsections describe the themes that emerged over the course of these interviews. They offer guidance for other CDEs interested in working in Native Areas, recommendations to tribes and QALICBs that are considering utilizing the program to fund projects in their communities, and insights into the challenges preventing greater NMTC use in Native Areas. They also include policy and programmatic recommendations for the CDFI Fund and Congress to address the identified challenges.

### **A. Challenges Native or Tribally Focused CDEs Face in Obtaining NMTC Allocations**

Several interviewees for both the Market Research Report and the case studies noted that Native-focused CDEs received few NMTC allocations in recent years. The Congressional Native American Caucus also has noted the lack of NMTC allocations awarded to CDEs whose primary mission is to serve Native Areas.<sup>19</sup> In the CY 2020 Application Round, the CDFI Fund awarded an NMTC allocation to Alaska Growth Capital BIDCO, Inc., an Anchorage-based Native owned/controlled CDE and CDFI. It was the first allocation secured by a Native CDFI or Native-owned/controlled CDE since 2017.<sup>20</sup>

The lack of awards has generated considerable resentment on the part of tribal members and their advocates. Some claimed that the CDFI Fund has not viewed the NMTC Program in terms of the government's responsibility to serve as a trustee for Native lands and indigenous populations.

Interviewees perceived several reasons for the dearth of allocations going to Native-oriented CDEs:

- 1. Human Resource Constraints:** Several CDE representatives and NMTC consultants noted that many tribes do not have the staffing resources necessary to develop the most compelling applications or to deploy the requested allocation effectively and efficiently. The NMTC Program is inherently complex, from identifying eligible transactions to piecing together the necessary capital, to ensuring that the CDE and the QALICB comply with all program regulations. Even many of the larger and more sophisticated CDEs need to pay attorneys, accountants, and other financial consultants for assistance with their allocation applications, the development of their investment infrastructure, and the monitoring of program compliance.

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<sup>19</sup> “Lawmakers Call for Expanded NMTC Access for Native Communities,” *Tax Notes*, September 28, 2020, <https://www.taxnotes.com/research/federal/legislative-documents/congressional-tax-correspondence/lawmakers-call-for-expanded-nmtc-access-for-native-communities/2d088> (cited in Community Economic Development in Indian Country: Market Research Report, July 2023., p. 10).

<sup>20</sup> <https://nativecdfi.net/blog/2021/09/03/native-cdfi-network-statement-on-new-market-tax-credit-allocations/>

Many Native or Native-oriented CDEs and other financing entities have small staffs, in part because of their comparatively limited amount of assets under management (typically \$10 million or less, according to CDEs and investors interviewed). Moreover, the bulk of these financing entities historically have tended to focus more on small/micro business financing and /or consumer financing. These organizations do not necessarily have the capacity in-house to underwrite and monitor the larger commercial, community facility, and real estate projects that receive the bulk of NMTC capital. In effect, the tribes with the fewest resources have the least ability to participate in a program intended to boost economic development in Low-Income Communities.<sup>21</sup>

- **Recommendation 1: Provide Ongoing Training to Tribes and Tribal CDEs about Development Financing.**

As the research team found in the course of developing the Market Research Report and conducting the NMTC Technical Workshops, knowledge of and access to development finance varies widely across Native Areas. While some tribes have very sophisticated capital programs, other tribal governments have never used third-party loan capital for projects, relying almost exclusively on grant or government program capital in the past. The unfamiliarity with debt contributes to several of the other challenges described earlier.

NMTC project underwriting involves not only the typical issues of collateral, cash flows, borrower credit history, and the like, but also the complexity of tax credits and the potential recapture thereof. For some tribes, the shift from entitlement or grant capital to entrepreneurship capital (i.e., underwriting against the risk of non-repayment) requires considerable education and training before the process can be fully and successfully institutionalized.

This training can and should be provided by several entities, including Native organizations and coalitions, the CDFI Fund and other federal agencies, community and economic development trade associations, and consultants and investors within the NMTC industry. It is important that the training is culturally appropriate and competent for recipients. And while the ultimate goal is to prepare Native entities for participation in the NMTC Program, the training may be best structured by focusing first on the principles of community and economic

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<sup>21</sup> Low-Income Community: (1) In general. The term “low-income community” means any population census tract if— (A) the poverty rate for such tract is at least 20%, or (B) (i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80% of statewide median family income, or (ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80% of the greater of statewide median family income or the metropolitan area median family income. Subparagraph (B) shall be applied using possession wide median family income in the case of census tracts located within a possession of the United States. 26 USC § 45D(e)(1): [https://www.law.cornell.edu/uscode/text/26/45D#e\\_1](https://www.law.cornell.edu/uscode/text/26/45D#e_1)

development planning, access to third-party capital, project underwriting, and collaborative relationships as vehicles for capital access.

- **Recommendation 2: Provide Funding to Help Native CDEs Access Technical Assistance in Preparing for NMTC Applications.**

Several workshop attendees and interviewees reported that they and other Native CDEs have hesitated to apply for NMTC allocation authority because managing an allocation requires them to incur the cost of developing and/or obtaining expertise with no guarantee of receiving subsequent awards. Native CDEs recognize that lack of scale and experience may result in less competitive applications until they have built a track record with repeated awards. At the same time, limited staff resources often prove to be a significant obstacle in preparing a competitive application. The CDFI Fund should consider making technical assistance funding available to Native CDEs so their staff members can attend NMTC industry conferences and workshops, access consulting services, and otherwise keep up with changes to the application process.

- 2. Limited Track Record Financing NMTC-Type Projects:** Compared to other NMTC applicants, many Native CDEs often have a more limited track record financing NMTC-eligible or other community development activities. This results in part from their emphasis on consumer and small business financing. Relatively few Native CDEs (or potential CDEs) have significant experience making loans or equity investments of greater than \$100,000; the typical consumer or micro-business loan usually is for less than \$20,000. According to CDFI Fund and industry data,<sup>22</sup> many Native CDFIs have total portfolios of less than \$5 million. Their business model, while significant and appropriate for the low-income communities they serve, does not necessarily lend itself to being competitive in the NMTC allocation process. A typical NMTC QLICI tends to be \$5 million or more, and applicants generally receive allocations in amounts consistent with their recent deployment track record.

A related issue is that many tribes have a limited pipeline of NMTC-eligible transactions, given the nature of their activities. Again, this can make them less competitive relative to applicants with much larger pipelines.

- **Recommendation 1: Native CDEs Can Develop NMTC Experience by Participating in Transactions as a Secondary CDE.**

In this scenario, the Native CDE (or potential CDE) works with one or more third party CDEs to include the Native CDE as a Secondary CDE for projects on

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<sup>22</sup> According to CDFI Fund Snap Stats 2016, 87% of CDFI assets were held by banks and credit unions, 13% held by loan funds. Of the loan funds, the median size of total assets was \$7,007,023. Oweesta.org surveyed the 2020 year-end financial reports of 28 Native CDFI revolving loan funds and one Native CDFI bank and reported average asset size of \$8,061,065 and average portfolio size of \$4,393,042.

Native Lands and/or benefiting Native populations. In this role, the Native CDE receives NMTC capital from an allocatee CDE and uses that capital to invest in a Native project. Such participation builds the Native CDE's track record and experience raising and deploying NMTC capital.

The Native CDE adds value to the transaction because of its knowledge of the project and local tribal and/or community dynamics. It presumably has strong experience lending on trust lands, and it has institutionalized practices for managing leasehold security, sovereign immunity, and other issues that might be obstacles for lenders or CDEs inexperienced in Native Area lending.

Non-Native CDEs can include making investments in Secondary (Native) CDEs in future applications. Allocatees can use up to 15% of their authority in a manner that was not described in their application to implement Secondary CDE transactions while continuing to meet the conditions of their Allocation Agreement with the CDFI Fund and the NMTC Allocation Application requirements.

Native CDEs desiring to build an NMTC track record should work with tribes and other sponsors of prospective NMTC projects to let them know about the Secondary CDE option. Having a Secondary CDE conversant in Native issues may make it easier for the project in question to attract financing from non-Native CDEs and investors. Such outreach also can help the Native CDE build relationships that can lead to future pipeline transactions. Native CDEs should also seek out allocatees and investors to build relationships.

○ **Recommendation 2: Native CDEs Can Participate as a Partner/Collaborative Lender to a Native QALICB.**

Native CDFIs/CDEs can work together through loan participation arrangements to provide capital at a meaningful scale to NMTC projects as leverage, source, or direct lenders. Native CDEs may not have enough capital to meet the entire loan need of the NMTC borrower but could participate with other CDEs or interested lenders to provide the required amount. In such a scenario, the Native CDE serving a Native Area by itself or with another Native CDE could take advantage of its network of Native CDFI relationships and work with NMTC experts to develop a source-lender participation program. The resulting participation structure provides:

- The tribe or Native enterprise with better access to source loan capital because the lead Native CDE lender has the expertise to negotiate loan security and can provide security for additional non-Native capital through intercreditor agreements; and

- Increased NMTC lending opportunities for Native CDEs and prospective CDEs whose portfolio scale precludes them from making direct loans in amounts suitable for leverage debt.

Loan participation arrangements provide each Native lender with some exposure and track record, while managing the scale of its loan in the context of its portfolio. Loan participation arrangements also build relationships among Native CDEs and Investors, and they increase the expertise of non-Native CDEs, lenders, and investors in managing Native Area lending issues.

- **Recommendation 3: Native CDEs Can Provide Leverage and/or Source Loans to NMTC Project Sponsors.**

The Native CDE could provide a loan to the tribe or tribal enterprise serving as the project sponsor, either as part of the NMTC structure (as a leverage lender) or outside of the NMTC structure (as a source lender). In the latter case, the borrower would use the loan proceeds as leverage debt within the NMTC transaction. In either scenario, the Native CDE is exposed to the NMTC transaction and develops experience in the structuring of NMTC-related financing.

Each of these approaches was addressed as part of the individual technical assistance sessions following the technical workshops conducted as part of the NMTC Native Initiative.

- 3. Unrelated Entities Requirement:** The NMTC statute requires the CDFI Fund to give priority to applicant CDEs that commit to use 85% (“substantially all”) of their allocation to finance unrelated entities. The CDFI Fund awards NMTC applicants five priority points in the application if they commit to financing unrelated entities,<sup>23</sup> making it very difficult to obtain a competitive score without providing that commitment. This commitment also becomes a condition of the Allocation Agreement, and Allocatee CDEs are measured on compliance with that condition.

Some, if not most, Native CDEs and potential CDEs are created and controlled by affiliated tribes that expect to finance projects on their reservation if the CDE receives an NMTC allocation. The CDE’s financing of that tribe’s businesses or projects frequently constitutes a related party transaction, which precludes the CDE from obtaining the application’s 5-point unrelated entity bonus.

Many tribes do not find the cost and risk of an application worth it when the unrelated entity commitment prevents them from financing their own tribally sponsored projects,

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<sup>23</sup> “New Markets Tax Credit: Frequently Asked Questions,” CDFI Fund, U.S. Department of the Treasury, September 2020, <https://www.cdfifund.gov/sites/cdfi/files/documents/nmtc-compliance-monitoring-faq-16sept2020-final.pdf>

even though many of those projects would provide necessary community or commercial goods and services and would not be pursued by non-tribal businesses.

- **Recommendation: Provide More Flexibility for Native CDEs in the Definition of Related Entities.**

The CDFI Fund, Internal Revenue Service, and the US Treasury Office of Tax Policy should research and determine if there are any flexibilities within the NMTC statute and IRS regulations to allow tribally controlled CDEs to finance NMTC-eligible projects without the QALICBs and CDEs being viewed as related parties.

Tribal governments are multi-faceted organizations with discrete business units. The administrators of the NMTC Program should assess whether the CDFI Fund can treat these distinct businesses (e.g., CDE, cultural center, construction firm) as separate entities. If it is possible within the statutory framework to treat these separate functions as unrelated, then tribally controlled sponsors or QALICBs could be treated as unaffiliated third parties relative to a tribally controlled CDE. Such separation would allow the CDE to finance the QALICB without violating the related entity provision in the allocation agreement, thus enabling the CDE to claim the priority points in the application.

#### **4. Insufficient Understanding of Native Issues on the Part of NMTC Allocation**

**Application Reviewers:** Several interviewees and technical workshop attendees feel that the application reviewers are insufficiently educated about the specific nature and severity of the challenges affecting Native Areas. As a result, they may not appreciate the social and economic dynamics in Native Areas or the importance of the projects being described for the tribes and their members.

- **Recommendation: Train NMTC Application Reviewers about Community Economic Development in Native Areas.**

The CDFI Fund should provide training for application reviewers about community economic development in Native Areas and seek out more reviewers with experience in Native Areas. (This suggestion was made in some of the interviews as well as in discussions conducted by the research team for the Market Research Report.)

#### **5. Perceived Limited Consideration of Qualitative Community Need/Outcomes:**

Interviewees felt that the NMTC Allocation Application's emphasis on quantifying projected community outcomes puts many Native CDE applicants at a disadvantage. Many projects in these CDEs' pipelines do not generate easily quantifiable outcomes (a cultural or community center, for instance). The direct quantifiable outcomes also can seem small in comparison to those of projects in non-Native Areas.

These respondents indicated that in many cases, the outcomes associated with a Native project are more qualitative, indirect, or difficult to quantify. For example,

- Providing broadband to remote Alaska Native communities enables local residents to tap into remote learning opportunities, expand the market for local businesses, and generally obtain more exposure to the outside world; and
- Developing a community center provides an opportunity for tribal members to gather for the passing on of oral traditions, and the general strengthening of the tribe's social connections.
- Developing a child care center frees up parents to take on a job, work more hours, and/or pursue their own education. The center helps the children build academic and social skills while teaching them about their culture and heritage.

While the importance of remote learning and passing on oral traditions (among other outcomes) are not easily quantifiable, they are very important for the tribe's longer-term economic and social sustainability.

A common perception is that applicants must include job generation as a community outcome to be scored highly enough to receive an allocation. As illustrated in Part IV above, most of the CDEs involved in the case study projects included job figures in their project summaries, even if employment was not the project's primary focus. If job generation is selected as an outcome in an NMTC application, it must be quantified and compared to objective third-party metrics. While the CDFI Fund's guidance is clear that all community outcomes are viewed equally, this misperception by applicants means some CDEs are reluctant to invest in QALICBs that do not have or anticipate creating a significant number of high-quality, accessible jobs. Several of the CDEs interviewed commented that they likely would not include their selected case study project in a prospective NMTC application now because of the projects' lack of easily quantifiable outcomes.

- **Recommendation: Give Greater Weight to Qualitative Project Outcomes in the NMTC Allocation Application.**

Virtually all the CDEs and QALICBs interviewed for the case studies noted the challenges of relying primarily on quantitative outcomes of Native projects when preparing NMTC applications. Many projects in a CDE's pipeline do not create significant numbers of jobs; in fact, some critical infrastructure projects may ultimately result in net job losses. Tribal community facility projects may not serve large numbers of people due to the low population density of tribes in rural areas. Compared to many of the non-Native NMTC projects highlighted in allocation applications, the quantitative outcomes of Native projects may seem meager.

Incorporating more distinct opportunities for applicants to discuss the qualitative outcomes of projects in Native Areas – the importance of providing reliable broadband access or the important cultural role of a community center, for instance – would allow Native CDEs to make a stronger case for the importance of projects for their tribes and communities. There is precedent for this approach; previous allocation applications included questions that allowed applicants to discuss outcomes not otherwise listed by the CDFI Fund as well as an opportunity to talk about longer-term, “spillover” benefits of specific projects. Such questions could provide an additional opportunity for the Native CDE to educate unfamiliar reviewers about the unique challenges affecting Native Areas, including the critical importance of cultural preservation.

## **B. Regulatory/Programmatic Challenges to Financing Native Projects**

- 1. Categorization of Native Projects:** The CDFI Fund has recently encouraged more NMTC financing in Native Areas by making several changes to the NMTC application. In the 2017 Round, it identified providing financing to Native Areas as a distinct activity under the “innovative investments” section of the application. In the 2021 Round, financing Native-controlled businesses became a distinct community outcome, one that is different from financing other Minority-controlled businesses. The CDFI Fund also included Allocatees investing in a Minority or Native CDE as a new category of “innovative investment” in the NMTC Program Application to encourage the Secondary CDE strategy described above.

Ironically, some interviewees feel that the changes highlighted above may have resulted in less focus on Native projects among non-Native CDEs. When Native-owned/controlled projects were included within the “Financing Minority-Owned or Controlled Businesses” category, organizations felt comfortable selecting the outcome because of their general focus on serving disadvantaged communities of color. They did not fear the ramifications of not being able to close Native transactions because they could “replace” them with Black or Hispanic-controlled projects. By specifically calling out Native project financing, the CDFI Fund has forced CDEs to decide whether they will deliberately target projects in Native Areas (as opposed to considering those they may come across naturally). Unless they already have an infrastructure for identifying, vetting, and closing Native projects, organizations may hesitate to assume the risk associated with committing to finance Native deals. And without such a commitment, it often proves easier to focus on transactions that do not come with the built-in complications of those in Native Areas.

- **Recommendation: Do not change the categorization of projects at this time.**

While noting the potential unintended consequence of the deliberate targeting of Native projects, interviewees also noted the benefit of highlighting and separately tracking Native Area and Native Business investments. They believed that over

time the CDFI Fund's emphasis on Native projects with separate categorization likely will result in greater Native investment. If other recommendations can be implemented, such as training in best practices, more lending opportunities, and secondary CDE involvement, interviewees believed that the aforementioned changes to the application should result in a net increase in investment in Native Areas and Native-owned/controlled businesses.

2. **Timing Challenges:** To be eligible to receive a subsequent allocation, Allocatees must use a certain amount of prior allocations to issue QEIs to investors and make QLICs with the QEI proceeds by a certain date. Yet as described in more detail below, multiple factors beyond the control of the CDE can delay the closing of transactions in Native Areas. Due to unexpected delays in closing such a transaction, one of the interviewed CDEs missed the CDFI Fund's deadline for closing the required amount of prior allocation. It conceivably could have met the threshold by using its allocation for one or more non-Native projects but had committed to provide a portion of its allocation to the tribe/QALICB. As a result, the CDE was unable to obtain a new/additional allocation to finance several other high-impact Native projects in its pipeline.

- **Recommendation 1: Promote Greater Collaboration Among Federal Agencies Involved in Native Area Transactions.**

For investors and CDEs, the greatest uncertainty (and thus the greatest risk) associated with projects in Native Areas is the timing of land/lease approvals from the Bureau of Indian Affairs (BIA). The ability or willingness of the United States Department of Agriculture (USDA) and other public agencies to allow their funds to be used in NMTC transactions also can be problematic. In some cases, the delays result from insufficient understanding of the NMTC Program or incompatible regulations. The CDFI Fund could convene representatives from the various federal agencies to identify ways to streamline relevant approval processes. For example, the BIA might establish a policy for streamlining approval of leasehold mortgages for tribally sponsored NMTC projects, and the USDA might approve the use of some of its loan program funds to be used as leverage debt in NMTC transactions.

- **Recommendation 2: Tribes that have not obtained HEARTH Act authority<sup>24</sup> to issue commercial leases without BIA approval should consider doing so.**

If tribes use this authority, their policy guidelines for lease terms and conditions and the requirements of leasehold mortgage provisions should be made available to funders early in financing processes. This may help streamline the approval process.

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<sup>24</sup> The HEARTH Act is described more fully in the subsection related to land issues in Native Areas (Subsection D).

**3. Limited Timeframe to Reimburse Prior-Incurred Costs:** Starting with the 2015-2016 Application Round, Applicant CDEs have been required to commit that if Qualified Low-Income Community Investment (QLICI) proceeds are used to repay or refinance any prior expenses:

- i. The QLICI proceeds are used to repay documented reasonable expenditures that are directly attributable to the qualified business of the QALICB, and such reasonable expenditures were made no more than 24 months prior to the QLICI closing date; or
- ii. No more than 5% of the QLICI proceeds are used to repay or refinance prior investment in the QALICB.

The CDFI Fund’s decision to limit the time prior to NMTC closing during which expenditures incurred can be reimbursed, sometimes called the “lookback period,”<sup>25</sup> to 24 months has made it difficult for some otherwise eligible Native projects to benefit from the NMTC Program. Projects in Native Areas often take longer to close an NMTC investment than projects elsewhere in the country, largely due to the various external approvals the sponsor must obtain (from BIA, USDA, and/or other agencies). It is not uncommon for sponsors to allocate considerable expenditures on a project as much as five years prior to closing, simply because of approvals that can take 12 months or more to obtain. (This is especially common for projects in Hawaiian Home Lands.) Many of these costs are incurred well before the start of the 24-month NMTC “lookback” window.

Predevelopment project funding is challenging to obtain in many areas, but can prove especially nettlesome in Native Areas because of difficulty collateralizing the subject property (subsequent sections address this further). Many Native Area projects therefore rely heavily on grants to cover predevelopment costs. Yet each grant may cover only a few costs, or a single step of predevelopment. Only when that step is complete can the sponsor apply for another grant for the next step. This funding pattern draws out the time needed to get a project to a stage where it can close on third-party financing. Whereas projects in areas with greater access to predevelopment capital typically can move to closing within two years, Native projects often take 3–5-years.

The current NMTC Program regulations allow NMTC capital to finance already incurred project costs, provided they were incurred within 24 months of closing. In effect, the project sponsor/QALICB receives loan proceeds that reimburse its expenditures. Since expenses incurred prior to the start of the 24-month window cannot be

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<sup>25</sup> New Markets Tax Credit Compliance Monitoring and Evaluation Frequently Asked Questions. updated December 2022, FAQ #42: [https://www.cdfifund.gov/sites/cdfi/files/2022-12/NMTC\\_Compliance\\_Monitoring\\_FAQ\\_2022\\_Final\\_0.pdf](https://www.cdfifund.gov/sites/cdfi/files/2022-12/NMTC_Compliance_Monitoring_FAQ_2022_Final_0.pdf)

covered/reimbursed by an NMTC investment,<sup>26</sup> the benefits of NMTC financing cannot be optimized in projects with a longer predevelopment period.

- **Recommendation 1: Extend the Prior-Incurred Cost Reimbursement Period.**

Seek public comment about a) extending the cost reimbursement period for which incurred costs on Native projects can be reimbursed with a NMTC investment, and b) whether there is consensus that this can reduce difficulties for otherwise eligible projects located in Native Areas. Such an extension may be warranted given the special circumstances surrounding project approvals and the extent to which Native Area projects rely on grant funding instead of private predevelopment capital.

- **Recommendation 2: Work with Other Agencies to Make Other Sources of Capital for Native Areas More Compatible with the NMTC Program.**

To the extent possible under Agency statutory constraints, encourage lending and guarantor agencies to make their programs more compatible with NMTC financing structures, particularly with the leverage loan. For instance, a guarantor agency could recognize the Sub-CDE as an eligible lender so that a guarantee could attach to a QLICI. This would allow the guaranteed loan to remain in place after the NMTC wind-up, which tends to create a significant economic benefit for the sponsor.

Alternatively, an Agency could allow a low-cost or guaranteed loan to be used in the leverage loan position and be assumable by the sponsor at NMTC wind-up; this would allow the sponsor to benefit from the terms of that loan for its maximum possible duration.

Collaboration among lending or guaranteeing agencies to homogenize their requirements pertaining to NMTCs would improve capital efficiency and reduce complexity.

### C. Project Viability Challenges

Interviewees from both the case studies and the Market Research Report identified common obstacles and themes that might appear unrelated in a cursory review but that arise out of the similar characteristics of remote, low-population areas. They are:

- Inability to finance adequate infrastructure based on user fees or special assessments because low-income people in sparsely populated areas cannot afford the fees necessary

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<sup>26</sup> New Markets Tax Credit Compliance Monitoring and Evaluation Frequently Asked Questions. updated December 2022, FAQ #44

to amortize many of the infrastructure project's costs.<sup>27</sup> Communities in which there is a higher concentration of development can impose permit fees or systems development charges on new projects in order to be reimbursed for the cost of development, or to build a fund for anticipated future development costs, for infrastructure such as water, roads, power, and wastewater treatment. Most cities have ordinances that schedule fees to be imposed based upon a user's impact on infrastructure systems. Low concentrations of development in rural areas also means systems development charges will not accumulate quickly enough, or in high enough amounts, to support the cost of needed infrastructure.

- Projects in non-metro areas frequently have increased costs of transportation of materials, temporary location of certain skilled workers, mobilization of major equipment, and other categories.
- Projects in sparsely populated areas may not have enough patronage revenue to support the necessary cost of the facility, such as a health care facility that must have expensive imaging equipment and surgical suites but serves fewer patients than a similarly equipped urban facility.
- Some operating costs may be higher because of the need for higher wages to attract skilled professionals, temporary housing costs, and related expenses.

These issues may not all be present in all the projects, but they can combine to render projects infeasible without subsidy. This makes these projects candidates for NMTCs, but can be important obstacles to the rest of the financing needed for the project.

## **1. Infrastructure**

Interviewees from both the case studies and the Market Research Report described how many NMTC projects in Native Areas tend to focus on the development or enhancement of basic infrastructure. Tribal communities often suffer from inadequate access to so-called horizontal infrastructure, such as roads, broadband, water, and wastewater treatment. The NMTC-subsidized capital can help make the development of such infrastructure economically feasible in low-income areas where ratepayers alone cannot provide enough revenue to meet the necessary debt service. This infrastructure helps address immediate needs and has the potential for long-term social and economic benefits.

So-called vertical infrastructure includes facilities that deliver community services, including education and health care. Health care facilities often employ many full-time individuals who can be hired from within the tribe. The tribal lands typically qualify as medically under-served and are often surrounded by similarly under-served rural

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<sup>27</sup> See discussion of infrastructure in Community Economic Development in Indian Country: Market Research Report, Section 4, Essentials of Community Economic Development.

communities. A new or expanded health care facility can help address the unmet medical needs not only of the tribe's members, but also of other rural residents.

## **2. Rural Location Construction Cost Premium**

Native and other rural projects often experience higher costs than similar types of projects in more urban areas. The remoteness and relative inaccessibility of many Native Areas leads to higher construction expenses; it costs more to get machinery, labor, and materials to these areas. At the same time, even non-infrastructure projects may require the development of some infrastructure like roads, sewers, or rail spurs to be viable. The Wa She Shu Travel Plaza in Nevada, for instance, necessitated the construction of on- and off-ramps to Route 375. These higher project costs can make it more difficult to obtain necessary project financing because project revenues are derived from goods or services provided and the market price for those goods or services. Projects become unaffordable when debt service costs are added for expensive infrastructure that does not contribute directly to generating business revenue.

## **3. Rural Location Operating Cost Premium**

Remoteness can also increase operating costs, including the cost of retaining qualified professional staff. The projects' geographic remoteness can also hamper operators' ability to find and retain staff. Rural communities frequently suffer from a shortage of health care providers (and are designated as "health professional shortage areas" by the Federal Department of Health and Human Services). NMTC financing does not necessarily address the challenge of attracting and keeping medical professionals, but reduced occupancy costs created by real estate subsidies improve net operating income, making more cash available for staff.

## **4. Low-Population Census Tract Issues**

Some Native and rural infrastructure projects can struggle to meet NMTC eligibility criteria because they are located in census tracts that have enough middle- or upper-income residents to push their poverty and median income figures over the NMTC thresholds. The NMTC Program offers a solution for this problem. Projects that serve, employ, or are owned by low-income persons may qualify based on the Targeted Population provisions.<sup>28</sup> Alaska Growth Capital (AGC) BIDCO has financed multiple broadband projects to bring higher-speed internet access to Alaskan Native communities. Connecting these communities to the provider's existing network has involved laying cable across multiple geographies – both land and water. Not only has Alaska Growth Capital (AGC) BIDCO had to determine which census tracts encompass the ocean areas,

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<sup>28</sup> Final Regulations for Targeted Populations, Internal Revenue Service:  
[https://www.cdfifund.gov/sites/cdfi/files/documents/nmtc\\_irs-federal-register-120511.pdf](https://www.cdfifund.gov/sites/cdfi/files/documents/nmtc_irs-federal-register-120511.pdf)

but it also ensured that its NMTC capital went to areas that are within NMTC-eligible tracts or the project can be documented as serving Targeted Population.

- **Best Practice: Sponsors Must Use Conventional Debt Underwriting Standards to Ensure the Project Can Meet Basic Lending and NMTC Program Underwriting Principles and Criteria.**

NMTC financing is generally delivered in Qualified Low-Income Community Investment(s) (QLICIs) that are structured as debt. Since grants are not an eligible form of QLICI, they must be either debt or equity. Nonprofit QALICBs cannot accept equity because they are not owned by shareholders, and many tribal sponsors decline to have non-tribal shareholders or equity partners in their for-profit ventures. CDEs and their tax credit equity investors have the regulatory benefit of the so-called Reasonable Expectations Test if the CDE holds less than 30% equity in the QALICB.<sup>29</sup> The Reasonable Expectations Test is an important element of an NMTC closing because it may be used to protect the investor from recapture of the value of the tax credits by the IRS, in some circumstances.

For these and other business reasons, most QLICIs are structured as debt and not equity. This means the transactions must meet IRS requirements to be characterized as debt, which include conventional underwriting standards. Thus, project sponsors will be asked to provide construction, financial, property title and related information, and tenant information if applicable, just as they would for a conventional lender.

Before engaging with a lender, the sponsor should evaluate the project's operating costs and likely revenue stream to determine whether its revenue supports at least a 1.25 Debt Service Coverage Ratio.<sup>30</sup> If it does not, consider other resources that might be brought to bear for the project. Create a financing strategy that is likely to result in successful operations and creditworthiness, and gain preliminary internal approval for that strategy.

Identify assets or resources that can help secure the requested loan. These could be leasehold mortgages or pledges of revenue. Such security is essential to assure a lender that resources are available to resolve its debt if the business or activity should have a revenue shortfall. Another alternative, though usually not preferred

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<sup>29</sup> IRC Section 45D(d)(2) sets forth the tests for the borrower to be a QALICB; generally, if any of these tests is not satisfied during the compliance period, the borrower will fail to be a QALICB. Section 1.45D-1(d)(6)(i) of the Treasury Regulations (Treas. Reg.) sets forth an exception to this general rule (the reasonable expectations test) and, subject to certain control prohibitions, generally provides that if the CDE reasonably expects that the borrower will remain a QALICB during the period the QLICI remains outstanding, the borrower will be treated as a QALICB even if the borrower later fails the QALICB status tests.

<sup>30</sup> Debt Service Coverage Ratio: A measurement used to decide whether a person, company, or country can afford to pay back a loan, calculated by dividing the income that is available by the total amount of payments owed each year for the loan. <https://dictionary.cambridge.org/us/dictionary/english/debt-coverage-ratio>

or in some cases even acceptable to a tribe, is a general guarantee of the loan principal.

Avoid burdening projects with excessive off-site infrastructure costs. Consider adopting a Systems Development Charges Reimbursement methodology that apportions infrastructure costs based on a specific project's projected burdens on infrastructure, not on overall community infrastructure needs. In such cases, costs for infrastructure can be advanced by the project if possible, or if not possible by the tribe, and reimbursed from the systems development charges paid by future projects. Such a plan would likely require an ordinance or statute specifying the methodology.

Determine if the project is located in an NMTC Qualifying Census Tract, or Distressed Census Tract, or that it will serve a Targeted Population and that service can be documented.

- **Best Practice: Utilize Targeted Populations as an Alternative to Census Tract Qualification.**

Per the NMTC Program Allocation Application and as defined in 12 U.S.C. 4702(20) and 12 C.F.R. 1805.201, the term "Targeted Population," means individuals, or an identifiable group of individuals, including an Indian Tribe, who A. are Low-Income Persons; or B. otherwise lack adequate access to loans or investments.<sup>31</sup> When a census tract does not in itself qualify for use of NMTCs, the project may still qualify if it is:

- At least 50% owned by low-income persons;
- At least 40% of the projects' employees are low-income persons at the time of hire; or
- At least 50% of the projects' gross income is derived from sales, rentals, services, or other transactions to customers who are low-income persons,<sup>32</sup> as in the case of the Maniilaq Nursing Home.

## D. Land Issues

In discussions with Community Development Entities (CDEs), interviewees noted numerous land-related obstacles to obtaining financing. NMTC and other financing for tribal business creation and economic development efforts is made more complicated because the tribe is the landlord and, in many cases, cannot consent to alienation of the land, so the only mortgage-type security available is a leasehold mortgage. Bureau of Indian Affairs (BIA) regulations generally limit commercial leases to twenty-five years with extensions or renewals, whereas the Helping

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<sup>31</sup> NMTC Program 2022 Allocation Application. [https://www.cdfifund.gov/sites/cdfi/files/2022-11/CY\\_2022\\_NMTC\\_Program\\_Application.pdf](https://www.cdfifund.gov/sites/cdfi/files/2022-11/CY_2022_NMTC_Program_Application.pdf)

<sup>32</sup> Ibid.

Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act allows for 75-year terms.<sup>33, 34, 35</sup>

Sponsors of projects on Hawaiian Home Lands have to navigate a different process. An interviewee described how sponsors seeking to finance a project within these lands must submit a homestead development plan to the Department of Hawaiian Home Lands. Department officials must approve the project as benefiting Native Hawaiian organizations and communities and then approve a sub-lease to the actual project/Qualified Active Low-Income Community Business (QALICB). In effect, an entity such as the West Hawaii Community Health Center, a nonprofit whose purpose is to serve Native Hawaiians, is treated as a guest on the Hawaiian Home Lands, subject to a costly and months-long approval process.

The complexity of land ownership structures is another land-related challenge making it difficult to use reservation land as mortgage collateral, and insufficient commercial codes can create uncertain circumstances for loan defaults.<sup>36</sup> Tribes in rural areas may have difficulty establishing adequate water, wastewater, power, transportation, and other infrastructure to support industrial development.

Not all territory within Native lands is held in trust for tribes, however, as most reservations are a patchwork of trust and fee lands. Crain Manufacturing, a non-tribal entity operating in Choctaw territory, owned the land on which its facility was located. Similarly, the Makah Pier in Neah Bay, WA serves and benefits the Makah Tribe, but it is not technically located on Makah-owned land. About 90% of the students at the Minnewaukan Public School in North Dakota are members of local tribes, but the school itself is owned and operated by the Minnewaukan Public School District. Each interviewee noted that projects located on fee simple land as opposed to tribal trust land typically move forward much more quickly, simply because there is no need to obtain the approval of the public trustees of the land. In the case of the Minnewaukan Public School, the Minnewaukan Public School District already had a well-established process for borrowing money for capital improvements. It also had assets (including designated tax revenues) that it could pledge as collateral.

The requirement for Bureau of Indian Affairs (BIA) or similar agency approval injects a degree of uncertainty into the NMTC closing process that can dissuade investors and Community Development Entities (CDEs) from financing Native projects. Even when the approval is relatively smooth, the wait can add months to the closing process. Coupled with the need for the various attorneys in the transaction to review the various tribal and agency documents, the

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<sup>33</sup> “Business Leasing on Indian Lands Handbook,” Bureau of Indian Affairs, September 30, 2021, [https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/52%20IAM%2014-H Business%20Leasing%20Handbook FINAL signed w.footer 508.pdf](https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/52%20IAM%2014-H%20Business%20Leasing%20Handbook%20FINAL%20signed%20w.footer%20508.pdf).

<sup>34</sup> “Indian Affairs approves three Tribal Nations’ HEARTH Act regs,” Bureau of Indian Affairs, U.S. Department of the Interior, February 25, 2022, <https://www.bia.gov/news/indian-affairs-approves-three-tribal-nations-hearth-act-regs>.

<sup>35</sup> Community Economic Development in Indian Country: Market Research Report, p. 23.

<sup>36</sup> Community Economic Development in Indian Country: Market Research Report, p. 19.

process could, in some cases, add up to 10% to the overall project cost. CDEs providing financing to projects on tribal trust lands and Hawaiian Home Lands should add time to the closing process for these issues, or verify that they have been addressed prior to closing.

- **Best Practice: Tribe Facilitates Access to Leasehold Mortgage Security.**

Some tribes have Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act authorization.<sup>37</sup> This allows them to enter into commercial or residential leases of lands held in trust by the Bureau of Indian Affairs (BIA) without the need for the BIA’s individual review and approval. Other tribes must take each transaction to the BIA for approval. In concept, tribes with HEARTH Act authority are able to act more quickly, though internal tribal governance and decision-making may render the approval process as slow and unpredictable (or even more so) than the BIA approval process.

When obtaining HEARTH Act authorization is feasible and appropriate, tribes should do so and streamline their internal review process and develop specific policies regarding risk management, key business terms, and leasehold mortgagee protection provisions.

Tribes that elect not to pursue HEARTH Act authority should prepare guidelines for non-tribal participants that inform them of the process, timeframes, and requirements for tribal and BIA approval of a leasehold mortgage.

## **E. Project Collateral**

Case study interviewees noted that some tribes or tribally sponsored projects have difficulty meeting lenders’ requirements for collateral, such as a first position trust deed on land, because of either the trust status of land and/or the inability of tribes to offer guarantees. Since most NMTC transactions involve the financing of real estate development, lenders typically rely on the financed property as the primary source of collateral. To the extent additional security is needed, the lender will try to take a lien on other assets of the sponsor/Qualified Active Low-Income Community Business (QALICB) and/or rely on any available guarantees.

Collateralizing developments in non-metropolitan areas can be challenging simply because of the difficulty of defining rural land values. The relative paucity of transactions in sparsely populated areas makes it challenging to obtain accurate appraisals, and relatively low economic activity likely impairs the value of real estate as collateral because redeployment of the premises to another owner or occupant is less certain than it is in a more robust commercial market. CDEs and investors consequently look to augment any underlying real estate with other assets to help protect themselves against capital loss.

Tax credit investors generally determine their return on their NMTC equity investment based on the “price” they pay for the tax credits - i.e., the amount of equity they invest for the value of the

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<sup>37</sup> Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), 126 Stat 1150, Pub. L. 112–151 (July 30, 2012). <https://www.congress.gov/112/plaws/publ151/PLAW-112publ151.pdf>

credits received. Most tax credit investors ultimately sell, or “put” their equity interest to the QALICB or one of its affiliates. As a result, the collateral issue is most acute for the leverage lender(s) in the NMTC structure because its debt is unlikely to be fully amortized during the seven-year compliance period. This means the leverage lender must underwrite the project and its sponsor to be creditworthy and able to pay or refinance the leverage debt at the end of the compliance period.<sup>38</sup>

While each transaction presents different underwriting facts or sources of funds for leverage debt, the overall summary is that to obtain third-party capital, project sponsors must have a sustained revenue stream sufficient to pay off the loan, whether that revenue comes from the project, the tribe itself, or some other business venture in control of the tribe. The typical workaround has involved the tribe and/or the project sponsor providing the leverage loan and assuming the risk of repayment. Some capital available to tribes cannot be used for leverage debt. Other solutions might include a master-lease of the facility by the tribe, which sub-leases to the operating business/sponsor. In that scenario, the tribe’s capacity to make the master lease payments becomes the credit underwriting question.

One interviewee who served as an underwriter for a large bank for several years noted that, in her experience, there are few leverage lenders to tribes who require repayment. Most of the leverage debt comes from unsecured tribal capital. Project underwriting consequently involves taking a very close look at a tribe’s balance sheet and financial experience.

If the tribe cannot provide the leverage debt, the most likely source(s) of such financing tends to be CDFI or other bank loans backed by various public guarantees. One attorney who has helped close dozens of Native NMTC transactions noted the creativity with which people have secured their leverage loans. Several entities have taken advantage of U.S Department of Agriculture (USDA) guarantees.

For example, Clearinghouse CDFI took advantage of the Washoe Tribe’s standing as both a California and Nevada tribe to make a leverage loan in the Wa She Shu Travel Plaza transaction. It collateralized its \$5.4 million leverage loan with a lien against future revenues the Washoe were due from the Reserve Sharing Trust Fund, a California program that uses some of the earnings from gaming tribes to subsidize tribes not involved in the gaming industry. The Navajo Tribal Utility Authority provides utilities to most of the Navajo Nation and has an effective monopoly. This created a secure and predictable revenue stream that could be pledged as security, similar to the way in which proceeds from infrastructure fees can be pledged to bondholders in a revenue bond transaction. Both of these are innovative solutions for the leverage loan.

- **Best Practice: Tribal Sponsors Should Identify and Develop Processes for Enforceable and Adequately Secured Promissory Notes and Loan Agreements.**

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<sup>38</sup> See: GAO-10-334 New Markets Tax Credits, pp 15 - 19, January 2010

Each tribe's statutes and practices may be different. For instance, some tribes require legislative or tribal council approval for contracts or borrowings in excess of set thresholds. Tribes may have different thresholds for which approval is required. Some may vest general authority with the executive to act, provided the action is within the approved budget.

It is critical for tribal governments and their project sponsors to inform and provide guidance to the CDE, lender and investor early in the transaction negotiation process, so the capital provider team understands the steps and timing necessary for an enforceable agreement.

## **F. Uncertainty Surrounding Tribal Corporations**

There remains uncertainty within the NMTC industry regarding the eligibility of tribal corporations as Qualified Active Low-Income Community Businesses (QALICBs). While some do not see an issue, many NMTC attorneys have opted to eliminate any doubt by requiring sponsors of Native projects to create limited liability companies or other entities organized under the respective state law. Not only does the process undermine tribal sovereignty, but it also adds additional time and costs to the transaction. In addition to creating and incorporating the state law entity, attorneys may need to negotiate an agreement/structure in which the tribal entity leases from the QALICBs to achieve the desired outcomes. In the case of the Makah Tribe's commercial fishing dock project, for instance, the tribal entity leased from the special-purpose entity created to be the QALICB. The tribe used the revenues from the pier to make the lease payments, which in turn were passed through to the CDE and the leveraged investment fund.

- **Recommendation: Participants Should Work with Treasury/IRS to Prioritize Creating Greater Clarity Regarding the Eligibility of Tribal Corporations to be QALICBs.**

The IRS - and the CDFI Fund, to the extent it is willing and able - should work to clarify whether and in what circumstances tribal corporations can be eligible QALICBs. Once the IRS has ruled, the CDFI Fund should publicize that ruling in printed guidance.

## **G. Sovereign Immunity**

Tribes and tribal nations are sovereign governments subject to their own sets of laws and dispute resolution processes.<sup>39</sup> Investors and many Community Development Entities (CDEs) are uncomfortable financing projects within Native lands that are subject primarily to tribal or Native laws, requiring instead that any conflicts be resolved under existing state law and judicial systems. This typically requires the project sponsors and the supporting tribe to waive their sovereign immunity with respect to the specific transaction and agree to be subject to state law.

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<sup>39</sup> Market Research Report, p. 28

Such an outcome, while common, creates resentment among many tribal members. For example, representatives from the Navajo Nation wanted any issues associated with the Navajo Tribal Utility Authority project to be resolved in the Navajo Nation’s tribal courts, not state courts in New Mexico; the Nation finally acquiesced after extensive internal debate. One interviewee who works at a CDE that has financed several Native projects acknowledged that the limited waiver of sovereign immunity “flies immediately in the tribe’s face” and can have a negative impact on the tribe’s sense of identity. The interviewee recognized the unwillingness of lenders and investors to be subject to legal systems with which they are unfamiliar. Another interviewee similarly described the inherent sensitivity of the issue. The interviewee emphasized the importance of being respectful to the tribe while still meeting the lending thresholds of fundamentally conservative bank investors.

Negotiating the limited waiver of sovereign immunity can take time and add both costs and delays to a project in a Native Area. For many interviewees, the process underscores the importance of ensuring that the project has strong support within the tribe and clearly addresses an identified need. That helps justify the means of reaching the desired end. Interviewees also emphasized the importance of building trust and understanding with key tribal members and program staff through open and ongoing dialogue and education about the project and the NMTC process.

- **Best Practice: Tribes Consider Limited Waivers of Sovereign Immunity.**

Sovereign immunity is a critical issue for most tribes because respect for their sovereignty acknowledges their status as a governmental entity separate from that of the United States. Such sovereignty is foundational to their identity as tribes and sovereign nations. Yet, a lender needs to be able to recoup its debt, and if it is unable to bring suit to collect on a defaulted loan, it has no way of enforcing its promissory note. This can dissuade lenders from working in Native Areas and severely limit these areas’ access to outside capital.

The solution is for the tribe to select specific assets and revenues that may be subject to collection, and then to craft a limited waiver of sovereign immunity that applies only to those specified assets and revenue the tribe is willing to place at risk for purposes of the project or activity. Ideally, the tribal government will adopt policies in advance that guide its risk management, negotiation, and implementation of transactions involving outside financing.

## **H. Understanding NMTC Regulations and CDE Requirements**

Interviewees for this report and the Market Research Report noted that NMTC transactions tend to be complicated, with multiple sources of capital common in transactions. As a federal tax credit program, it carries potentially severe financial penalties if one or more of the parties violates program regulations. Even the most efficient closing processes take months to perform due diligence, obtain legal opinions, and negotiate the approvals necessary to satisfy the various parties.

The intricacies and logistics of the NMTC - and the accompanying IRS regulations - have generated an entire sub-industry of accounting, legal, and other specialists. Even the most frequent users of or participants in the program often rely on outside experts to help them negotiate specific transactions. It is not surprising, therefore, that tribes with comparatively little exposure to the program frequently take longer to understand the program's nomenclature, regulations, and compliance issues.

Staff turnover within tribes and their economic development departments can widen the knowledge gap. With smaller entities in particular, as well as those with limited engagement in the program, the loss of a key staff member or two can eliminate much of the institutional memory and knowledge about the NMTC Program. Such a scenario played out with the Washoe Tribe of Nevada and California. The new director of the Washoe Development Corporation, who had no previous experience in the NMTC Program, had to educate herself and others about not only the program's nuances, but also the particular methods employed or approaches taken in the structuring and closing of the Wa She Shu Travel Plaza. She described the recent unwinding of the transaction at the end of its 7-year compliance period as "hellacious," largely due to a lack of institutional memory or clear documentation around how the transaction had been structured by previous leadership and the reasoning for their decisions.

Similarly, there has been considerable confusion about the exit fees associated with the Maniilaq Health Center project in Alaska. These experiences are far from unique. Several other interviewees noted the wide variation in staff capacity among tribal economic development officials and NMTC Program sponsors. In many cases, projects are driven largely by outsiders, with the tribal members being relative bystanders in the process. Key tribal officials were presented with documents to sign but they did not have an in-depth understanding of the rationale and ramifications associated with some of the agreements.

- **Best Practice: Tribal Sponsors and Potential CDE Applicants Should Evaluate the Cost and Benefit of Engaging NMTC Experts.**

Because most Qualified Active Low-Income Community Businesses (QALICBs) and project sponsors are one-time users of the NMTC Program, they frequently come to the process with little (if any) experience closing NMTC transactions and face a steep learning curve.

These realities underscore the potential benefit of taking advantage of outside NMTC expertise. Several experienced project consultants, attorneys, and accountants active in the NMTC field have particular expertise in helping to shepherd Native-sponsored projects to completion. Engaging legal counsel that is familiar with both the NMTC Program and some of the nuances of tribal law proves especially helpful in negotiating issues of sovereign immunity and lender loan security. Project consultants can prove invaluable in helping sponsors structure transactions and identify CDEs and leverage lenders to finance them. It should also be noted that fees charged and scope of services provided by these experts and consultants span a wide range. Some Native CDFIs and

CDEs have experience with the NMTC Program and can be resources themselves or in making referrals.

Native CDEs and potential CDEs considering applying for their own certification and/or allocation would be well-served to interview qualified service providers to form their optimal team of advisors.

## **I. Tribal Politics**

Several of the Community Development Entity (CDE) staff members interviewed in the case studies noted the importance of face-to-face connections when working with Native communities, as well as the value of working with someone familiar with the community and Native Area. Facilitating understanding among all of the parties involved, including new leadership, is important to keep the project moving forward and meeting the various deadlines involved.

Changes in tribal leadership – through elections or other transitions – can delay the closing of NMTC transactions in Native Areas. The new leadership may not understand the NMTC Program and the steps necessary to attract investment capital. They may not be as supportive of these steps – or even the project itself – as the previous administration. The need to work through such internal politics delayed several of the case study projects. Timing is important to the NMTC process at every step, from meeting application deadlines to the seasonal nature of construction projects, and changes in governance can lead to a lack of synchronization between parties.

Tribal approval processes are not homogenous. Some have centralized project approvals, others require local community approval before the project will be considered, or approval by an entire Tribal Council or legislature.

The CDE for the Makah commercial fishing dock project has not experienced any significant local political differences in its Native and non-Native transactions. Several interviewees noted that a project's location on tribal or Native lands may actually speed up some of the permitting and other approvals required for closing because these approvals are in the control of the tribe. The authority for such approvals tends to be more centralized within a tribal sovereign nation than in a non-tribal jurisdiction.

- **Best Practice 1: Cohesive Tribal Governance and Economic Development Strategies.**

Tribal project sponsors need to address the context in which a project or activity is proposed to demonstrate the need for the proposed community outcomes. Context may include political support for a comprehensive economic and community development plan, studies or assessments that demonstrate the need to be filled by the project, or a shared vision among several agencies or departments within tribal government. Regardless of the mechanics of establishing a shared vision in support of the project, that vision is an important predicate because many tribes (and non-tribal governments) take

too much time to come to agreement about the need for, scope, design, and goals of a project if those issues are examined for the first time when project approval is requested.

In his keynote comments for the first NMTC Native Initiative Technical Workshop, Chairman John A. Barrett of the Citizen Potawatomi Nation discussed this as both a strategic-level and tactical-level issue for tribal governments looking to promote economic development. He explained the importance of reviewing projects in the context of an economic and community development strategy that has political approval, as he experienced first-hand the political dysfunction that can cause difficulty not only in making decisions but also in implementing them.

Chairman Barrett indicated that his solution 30 years ago was to create a constitutional government, with a clear separation of authority among the Legislative, Executive, and Judicial branches within the Citizen Potawatomi Nation. This structure solidified the roles and responsibilities of each branch and prevented overlapping authority that had created conflicting or unpredictable outcomes. He credits this governing structure as the fundamental step that enabled Citizen Potawatomi Nation to grow. The tribe now has more than \$2 billion in assets, employs more than 2,500 people (the most of any entity in its region), and generates more than \$600 million in economic activity each year. Citizen Potawatomi Nation owns and operates several businesses, including medical clinics, banks, grocery stores, other retailers, entertainment venues, a water treatment plant, and manufacturing facilities. It operates the largest non-depository Native-owned CDFI in the country.

This record of economic and community development results from a cohesive strategy that has been systematically implemented. Among the key components of the Citizen Potawatomi structure are:

1. Stable and reliable government decision-making processes
2. Institutionalized core financial management skills and practices, such as legislative and executive agreement about the circumstances under which limited waivers of sovereign immunity are to be granted, appropriate HEARTH Act authorizations, and risk management
3. Political agreement on the following goals and principles of a long-term economic development strategy:
  - a. A diverse economy made up of employers requiring entry-level, unskilled, skilled, and professional workers in retail, commercial, manufacturing, and service businesses;
  - b. Access to appropriate workforce training;
  - c. Adequate infrastructure;

- d. Availability of capital for business growth and individual credit needs;
- e. A concentration of qualified resident workers and consumers to support local businesses, supported by adequate housing stock and community amenities (schools, grocery, pharmacy, medical, recreation, etc.);
- f. Availability of a variety of goods and services to attract visitors; and
- g. An economy in which capital revolves twice or more locally before going outside.

This strategy combines *preparedness* for capital with *prioritization* in the use of capital.

Such governing practices must be institutionalized so that they are clear, widely understood, and replicable. Ideally, the responsible governing body (legislative or executive) should publish them in adopted economic and community development plans, third-party leasing policies or guidelines, policies regarding limited waiver of sovereign immunity, and similar related documents.

- **Best Practice 2: Determine Acceptable Practices Regarding Choice of Venue and Applicable Law; Establish These Policies Before Working with Third-Party Lenders.**

Some non-tribal capital providers (lenders, NMTC participants, or grant providers) will be unfamiliar with tribal courts or laws. Their comfort about having an enforceable contract likely will depend upon their understanding of how the contract would be interpreted and enforced. Non-tribal capital providers are typically more comfortable with transactions governed under non-tribal law, in a court with which they have experience. Tribes that are willing to consent to transactions being subject to federal jurisdiction and applicable state laws generally find it easier to attract outside capital. Some tribes require exhaustion of tribal remedies before federal jurisdiction is available. It is quite helpful to non-tribal capital providers, developers, and project sponsors for tribes to resolve these issues internally before a project or financial relationship is presented, and to be able to inform non-tribal participants of the tribe's expectations.

## **J. Lender Familiarity with Native Areas**

There are relatively few non-Native CDEs that have consistently received allocations and have deliberately focused on serving Native Areas and Indian Country at large. Clearinghouse CDFI, Dakotas America, Rural Enterprises of Oklahoma (REI), Travois, and Ecotrust were among the CDEs that interviewees mentioned in this category. Many CDEs do not have Native Areas within their market footprints, lack the experience identifying and closing transactions in these areas, and/or do not have the capacity or willingness to negotiate Native-specific issues. One longtime consultant for various tribes considers one of their missions to increase the number of CDEs willing to take on Native transactions.

Similarly, there are relatively few large national or regional banks that have a track record of actively investing in Native Areas through the NMTC Program. CDEs providing NMTCs in Native Areas identified Wells Fargo and US Bank as the two largest and most active Native NMTC investors. Wells Fargo has become comfortable with these transactions largely because it has a Native lending group within the bank. Even with that experience, the bank utilizes outside counsel to navigate tribal governance and lien issues – a requirement that adds transaction costs to the project.

Despite the additional transaction costs, neither bank prices its tax credit for higher income from Native projects. US Bank may give such projects a somewhat higher priority internally because of their ability to address needs in severely distressed communities. Wells Fargo also gives Native projects extra points in its internal selection scoring system, in large part because the projects enable the bank to meet its rural and minority business commitments. Wells Fargo has even offered slightly better pricing to Native projects as a way of building its brand in Native Areas and generating positive public relations.

Project approvals and other key decisions may not be as predictable to non-tribal lenders working in Native Areas because Native governments frequently add cultural impacts into their analysis. While tribal governments work towards economic growth, they are also focused on preserving tribal culture, identity, sovereignty, population, and land, creating a unique balance of priorities that is distinct from other rural communities. All components of community economic development in Native Areas are also considered through a cultural lens by tribal actors, helping to explain some of the economic decisions made by tribal governments. For example, many tribes might make an active choice to avoid developing or exploiting their natural resources, such as minerals, water, or forests, for economic gain. They may choose to site a project in a less favorable location because of cultural values related to an alternative site. While natural resources are a common economic resource for most rural areas, land itself, in its unspoiled state, often holds significant historical, cultural, and spiritual meaning for tribes. Therefore, the appropriate choice for a tribe might be to preserve the land rather than site a project in a particular location, or develop its resources for economic growth. Tribes might also decide to invest resources into acquiring more land, especially land of historic significance, rather than investing in other economic ventures.<sup>40</sup>

Those interested in partnering on projects in Native Areas can benefit from enhanced cultural understanding. When surveyed, Native American nonprofit leaders stressed the desire for funders and foundations to have already conducted background research before establishing relationships, so that connections are cultivated based on deepened understanding of the specific community.<sup>41</sup> Outreach to Native tribes needs to be consistent and thorough while

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<sup>40</sup> Community Economic Development in Indian Country: Market Research Report, p. 90.

<sup>41</sup> Ellie Buteau, Hannah Martin, and Katarina Malmgren, “Overlooked (Part Two): Foundation Support for Native American Leaders and Communities,” Center for Effective Philanthropy, 2021, [http://cep.org/wp-content/uploads/2021/07/CEP\\_Overlooked\\_Native\\_American.pdf](http://cep.org/wp-content/uploads/2021/07/CEP_Overlooked_Native_American.pdf). (Cited in Community Economic Development in Indian Country: Market Research Report, p. 91.)

acknowledging the wide perspectives and unique experiences and complexities of each tribe and community.

- **Recommendation: Lenders Serving Native Areas Can Take Steps to Facilitate Better Relationships with Native Entities.**

The discussion above focuses on steps tribal governments and project sponsors can take to improve their access to outside capital. Yet capital provision is a two-way street, and the findings from the Market Research Report, case studies, and the Technical Workshops completed within the scope of the NMTC Native Initiative project clearly demonstrate that lenders themselves can benefit from adjustments to their practices with improved transaction efficiency and tribal relationships. Developing such practices and relationships can help the financial institutions better address the capital needs of under-served parts of their market, generate additional business, and enhance their Community Reinvestment Act activities.

Each of the country's 574 federally recognized tribes is a distinct government. Each represents a people with its own history and culture. While many tribes may have similarities, and there are a few common characteristics and issues such as BIA relationships and sovereign immunity, the tribes are far from homogeneous.

Just as lenders develop general expertise in dealing with other groups of borrowers – there are common underwriting practices within specific asset classes such as manufacturing or multifamily housing, for instance – they can develop elements of general expertise with respect to tribes. To the extent that expertise can be institutionalized into common practices, it is likely to result in streamlined transactions. At the same time, the unique aspects of each tribe require an investment in relationship building that lenders should not ignore or undervalue.

There are a limited number of non-tribal CDEs and investors that consistently work with tribes in the NMTC Program. Expanding the number of such entities – and thus expanding the availability of NMTC capital for Native projects – requires that these currently active lenders and investors institutionalize and highlight their effective practices. They need to be able to describe their underwriting and loan security needs succinctly, with appropriate respect for the larger context of dealing with a sovereign government. The most effective CDEs and investors:

1. Recognize that there are cultural and governmental issues, not just contractual issues, which require an investment of time and respect if the lender is to work successfully with a tribe.
2. State their expectations clearly and early in a transaction to build trust and assure a smooth closing.

3. Do not assume that a method or contractual outcome that worked for one tribe will be completely transferable to another tribe. Inquire early in the relationship about approval and other processes, agree on steps and timelines.
4. Invest in tribal specialists whose expertise can support their colleagues' lending to tribes.
5. Institutionalize lending practices to streamline:
  - a. standard documents for leasehold security on trust lands,
  - b. acceptable waivers of sovereign immunity for various types of contracts,
  - c. underwriting tribal governments with their unique distribution of revenues among grants, tribal businesses, gaming, and other sources;
  - d. approvals of venue and choice-of-law provisions;
  - e. form and extent of tribal guarantees;
  - f. alternative security, such as pledges of discrete revenue streams in lieu of real property security;
  - g. travel authorization for personnel working with tribes to make site visits; and
  - h. authority for local bankers to consider creative solutions, such as master tenancy in lieu of tribal guarantees.

## **K. NMTC Native Set-Aside**

In the interviews conducted as part of the case studies and during preparation of the Market Research Report, as well as in discussions taking place during the Technical Workshops and the Individual Training Sessions, participants discussed the various challenges and barriers to increasing NMTC investments in Native Areas with allocations provided to Native-owned/controlled CDEs and Native-serving CDEs. Interviewees noted that a Native set-aside could serve as one step toward ensuring that a minimum amount of NMTC investments are directed to Native Areas each year. A set-aside refers to the statutory dedication of a specific amount of NMTC allocation to projects within Native Areas and/or involving Native organizations.

Interviewees acknowledged that a Native set-aside had been addressed and requested in the past by Native and Native-serving organizations. They noted that another example of a type of NMTC set-aside already exists with respect to non-metropolitan counties (also known as the

Rural Set-Aside).<sup>42</sup> They also recognized that the specific details of and goals for any Native set-aside would need to be discussed and resolved by tribal and non-tribal Native-serving organizations prior to consideration and adoption by Congress. This would ensure that the impacts of the changes in statutory language are appropriately targeted in terms of geography, the key tribal and non-tribal participants in projects, and other desired outcomes, such as improved access to capital for tribes, expanding relationships with third-party lenders, and improving the capacity of Native-owned/controlled CDFIs and CDEs.

Since only Congress can make changes to statutory language through the legislative process, these findings are provided to ensure that the research team serves as faithful reporters of the information and opinions shared with them by interviewees understanding that this report and other project deliverables will likely be shared with and viewed by a wider audience.

Several interviewees for this project and other Native organizations have requested that Congress create a Native set-aside within the NMTC Program, and the research team has included this recommendation to report their input. However, it would not be appropriate for the research team to opine that Congress create a set aside.

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<sup>42</sup> The language of the statute does not actually set aside a specific amount of allocation, rather it requires that “non-metropolitan counties receive a proportional allocation of qualified equity investments.” 26 U.S. Code § 45D(i): [https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def\\_id=26-USC-375442294-332392142&term\\_occur=999&term\\_src=title:26:subtitle:A:chapter:1:subchapter:A:part:IV:subpart:D:section:45D](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-375442294-332392142&term_occur=999&term_src=title:26:subtitle:A:chapter:1:subchapter:A:part:IV:subpart:D:section:45D)

## VI. Conclusion

Overall, this report uses case study analysis (along with conversations with other knowledgeable sources) to examine the use of NMTC financing in Native Area projects, while describing challenges and obstacles that were overcome in those projects. The solutions present best practices and recommendations that can be applied to other Native Area projects. Interviewees also discussed policy obstacles, and in several cases, made recommendations about how policies might be revisited to improve availability, relevance, or efficiency of NMTCs for Native-owned/controlled projects, and those in Native Areas.

The NMTC Program has provided a total of 225 Qualified Low-Income Community Investments (QLICs) and \$1.8 billion in NMTC investment across 149 unique projects from 2003 to 2020 in Native Areas. By continuing to address the identified challenges and adopting the recommended strategies, stakeholders can unlock greater opportunities for economic development and improved quality of life in Native Areas. This report serves as a valuable resource for NMTC policymakers, community leaders, and stakeholders to help increase NMTC investment in Native Areas across the United States.

## Appendix A: Case Study Survey and Interview Guide

The following pages show the questions asked in the online survey and interviews with representatives of the CDEs associated with the case studies. The bulk of survey and interview responses received were from CDE representatives as opposed to other key participants.

### a. Survey Script: CDE

1. How did your CDE become aware of this project? (Was your CDE already connected to the QALICB or project sponsor or were you connected for the first time at the beginning of this project?)
2. How easy (or challenging) was it to attract leverage debt for this project? Please describe your experience.
3. How much capital had the QALICB raised independent of the NMTC transaction? How much of a gap needed to be filled by NMTCs?
4. Did you encounter any challenges with closing the project due to its location in <NMTC Native Area>? (e.g., land ownership, mortgage, foreclosure, and land leasing laws/ordinances; sovereign immunity; Tribal Employment Rights Ordinance/Office)
5. How did closing this deal in Native Areas differ from closing an NMTC project outside of Native Areas?
6. (If applicable based on answer to survey question #3) How did closing NMTC financing with this project compare to closing non-NMTC projects in Native Areas?
7. (If applicable based on answer to survey question #3) Have there been post-closing challenges with this project that have been different from non-NMTC projects in Native areas?
8. Have there been post-closing challenges with this project that have been different from projects in non-Native areas? <If applicable, you responded that there were Tribal cultural or Tribal legal matters that had to be addressed during the NMTC process. What were the issues and how efficiently and effectively were they addressed?>
9. In your experience, have the community outcomes associated with this project differed from those associated with projects in non-Native areas? If so, please explain.
10. Based on the lessons you learned in this project, what advice would you have for tribes or other project sponsors planning to fund a similar project using NMTCs? (Lessons may include NMTC legal structure, improving financial benefits to the project or tribe, serving more tribal members, etc.)
11. Based on the lessons you learned in this project, what advice do you have for other CDEs interested in financing projects located in Native Areas?

12. Would you provide NMTC financing to projects located in Native Areas again? <Why/Why not>? What would you do differently?

#### b. Follow-Up Survey Interview Script: CDE

Thank you for joining us today! Before we get started, do we have your permission to record this Zoom call for our internal reference? The recording will not be shared with the Fund, it will just aid us as we draft the report based on these case studies.

1. How easy (or challenging) was it to attract leverage debt for this project? Please describe your experience.
2. How much capital had the QALICB raised independent of the NMTC transaction? How much of a gap needed to be filled by NMTCs?
3. Did you encounter any challenges with closing the project due to its location in <NMTC Native Area>? (e.g., land ownership, mortgage, foreclosure, and land leasing laws/ordinances; sovereign immunity; Tribal Employment Rights Ordinance/Office)
4. How did closing this deal in Native Areas differ from closing an NMTC project outside of Native Areas?
5. (If applicable based on answer to survey question #3) How did closing NMTC financing with this project compare to closing non-NMTC projects in Native Areas?
6. (If applicable based on answer to survey question #3) Have there been post-closing challenges with this project that have been different from non-NMTC projects in Native areas?
7. Have there been post-closing challenges with this project that have been different from projects in non-Native areas? <If applicable, you responded that there were Tribal cultural or Tribal legal matters that had to be addressed during the NMTC process. What were the issues and how efficiently and effectively were they addressed?>
8. In your experience, have the community outcomes associated with this project differed from those associated with projects in non-Native areas? If so, please explain.
9. Based on the lessons you learned in this project, what advice would you have for tribes or other project sponsors planning to fund a similar project using NMTCs? (Lessons may include NMTC legal structure, improving financial benefits to the project or tribe, serving more tribal members, etc.)
10. Based on the lessons you learned in this project, what advice do you have for other CDEs interested in financing projects located in Native Areas?
11. Would you provide NMTC financing to projects located in Native Areas again? <Why/Why not>? What would you do differently?

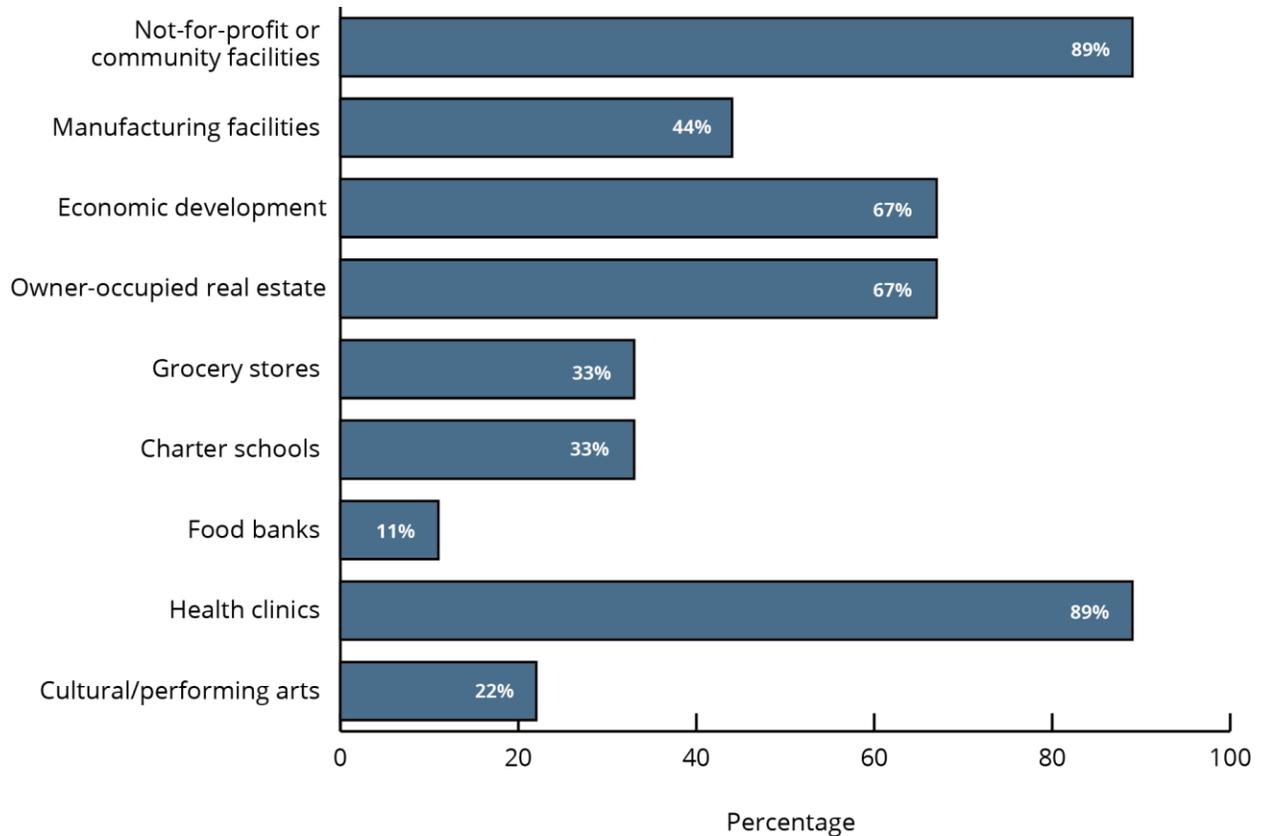
12. We also hope to reach out to the other entities that played roles or benefitted from this deal to conduct separate surveys. Are you able to provide the contact information for those other entities?

Role	Name and Title	Email Address	Phone Number
Investor			
Leverage Lender (If CDE was Leverage Lender, please write N/A)			
QALICB			
Tribal Leader			

## Appendix B: CDE Survey Results

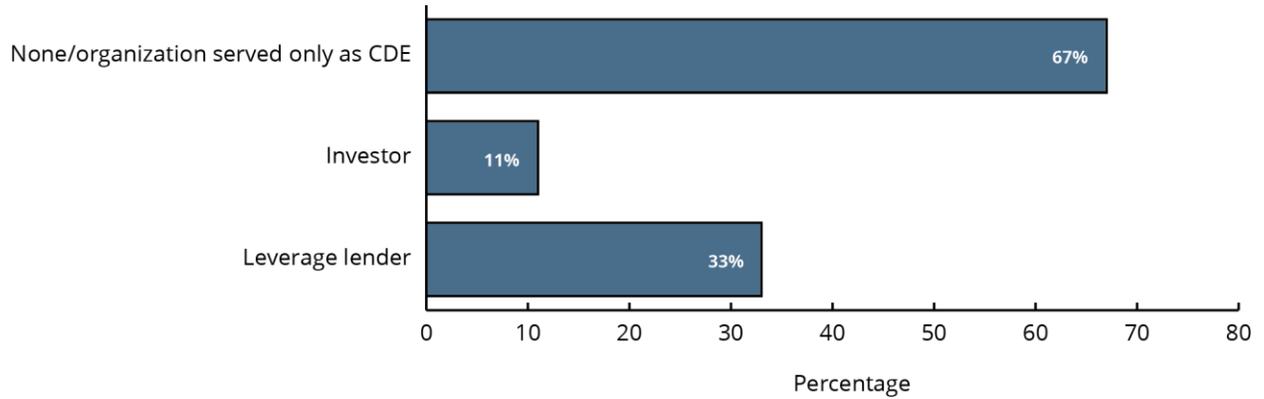
In total, nine separate CDEs responded to the survey of CDEs. Their responses are described in the following tables and graphs. Some questions allowed respondents to select multiple answers, meaning that percentages for some will add up to more than 100%.

Figure 5 | SQ (Survey Question) 1 Does your entity specialize in deploying NMTC capital in any of the following areas?



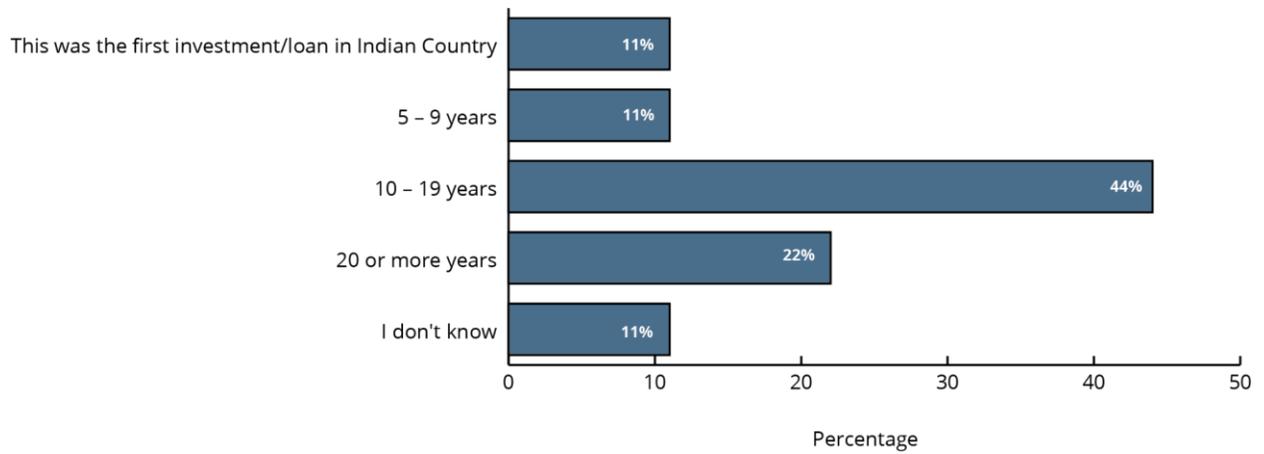
$n$  (number of responses) = 9

Figure 6 | SQ2 In addition to your role as CDE in this project, what other role(s), if any, did your organization play for this project?



*n* = 9

Figure 7 | SQ3 Prior to this transaction, how long had your institution been lending/investing in Indian Country?

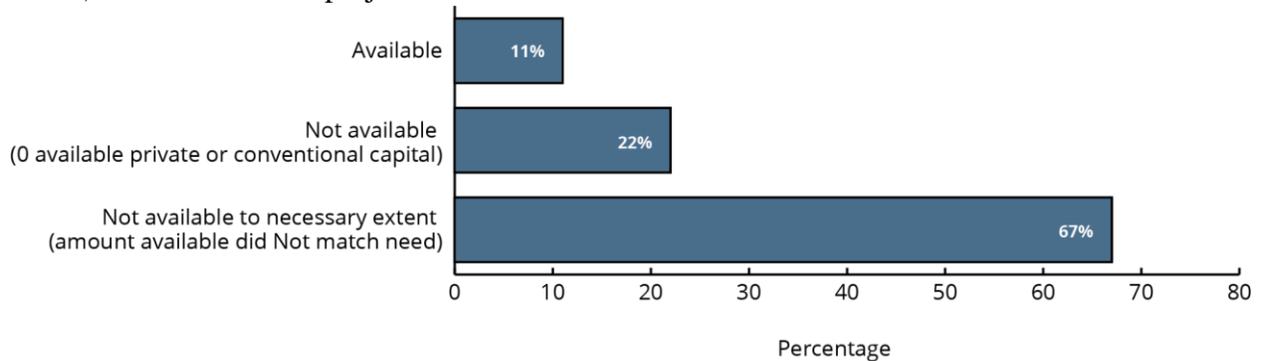


*n* = 9

Table 2 | SQ4 Does your entity retain staff members or consultants with experience lending/investing in Native Areas?

	Yes	No	I don't know
Does your entity retain staff members or consultants with experience lending/investing in Native Areas?	78%	11%	11%

Figure 8 | SQ5 To what extent was private or conventional capital (from private lenders or banks) available for this project?

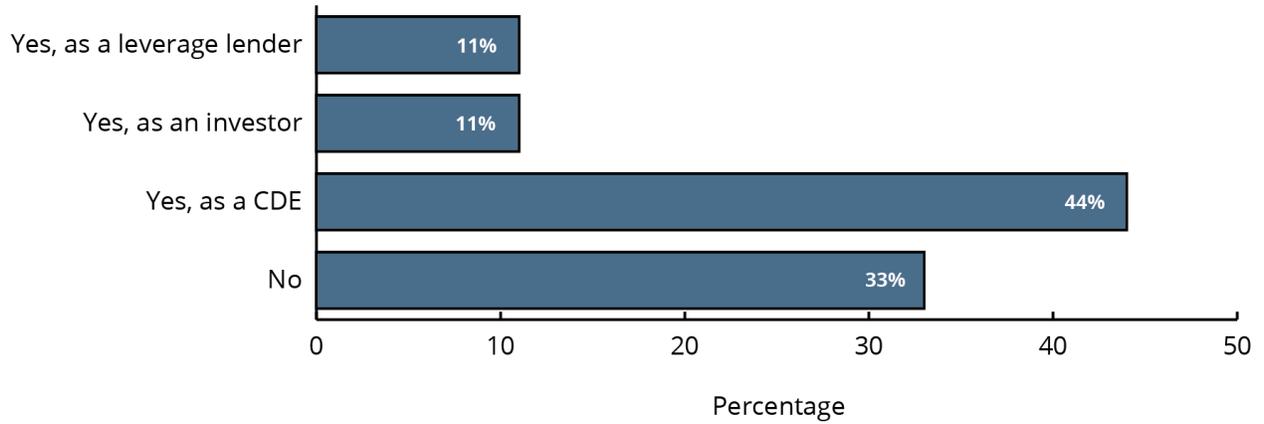


*n* = 9

Table 3 | SQ6 Did you encounter any Tribal cultural or Tribal legal matters that had to be addressed during the NMTC process?

	Yes	No	I don't know
Did you encounter any Tribal cultural or Tribal legal matters that had to be addressed during the NMTC process?	56%	33%	11%

Figure 9 | SQ7 Had your entity invested in Native Areas as a part of an NMTC transaction prior to this transaction?



*n* = 9

Table 4 | SQ8 Did your entity have any pre-existing relationship with the Tribe or the project sponsor?

	<b>Yes</b>	<b>No</b>	<b>I don't know</b>
Did your entity have any pre-existing relationship with the Tribe or the project sponsor?	22%	67%	11%

Table 5 | SQ9 Compared with other transactions you have financed outside of Native Areas, did any NMTC regulations (e.g., risk of recapture; the “substantially all” requirement; QALICB criteria) pose a concern or challenge in attracting interest from a tax credit investor or closing the transaction?

	Yes	No	I don’t know
Compared with other transactions you have financed outside of Native Areas, did any NMTC regulations (e.g., risk of recapture; the “substantially all” requirement; QALICB criteria) pose a concern or challenge in attracting interest from a tax credit investor or closing the transaction?	56%	33%	11%

The CDEs that responded “yes” to the question of whether NMTC regulations posed a concern in attracting interest or closing a transaction were subsequently asked to explain the circumstances.

*“If the project failed and resulted in foreclosure, timely redeployment created significant concerns, as the investor would naturally require prompt redeployment to avoid recapture of the tax credits. In order to comply with the Native requirements of [our] Allocation Agreement, [we] would need to redeploy back into a Native project. If one was Not readily available, [we] would be forced to choose between failing to redeploy (in hopes a Native project would surface) or redeploying in violation of the Native requirements of [our] allocation agreement.”*

*"It is always a challenge to obtain NMTC allocation. It is always a challenge to identify and close with an NMTC investor. This question seems to assume that our main line of business is to finance projects outside Native Areas. We completely specialize in financing projects that serve Indigenous communities. Is the purpose of this question to determine whether investors have a higher perception of risk of projects that serve Native communities? Because if so, then I would say the answer is 1. But when the CDE is one that is 100% focused on serving Native communities (Travois, Chickasaw Nation CDE, etc.) then we are able to help them overcome those concerns. We are able to bring our experience of working with Tribes to help overcome*

*these negative perceptions. As we have discussed in our previous conversations, the best way to overcome the barriers to using NMTCs in Native Areas is for the CDFI Fund to allocate NMTCs to CDEs whose primary mission is to serve Native communities. This is what the CDE used to do almost every year between 2006 and 2017. Then the CDFI Fund stopped allocating to CDEs with this primary mission. It shifted to a strategy of thinking about Native communities as a carve-out or sub-category of National CDEs' allocations. This strategy has Not been effective. As we have discussed before, please pass along our feedback that there are numerous CDEs that are 100% focused on Native communities. These CDEs... have the capacity to deploy NMTCs right now. I don't believe that further investigation or training is required to recognize this. Allocations need to be made to these CDEs. Then the issue of access will be addressed.”*

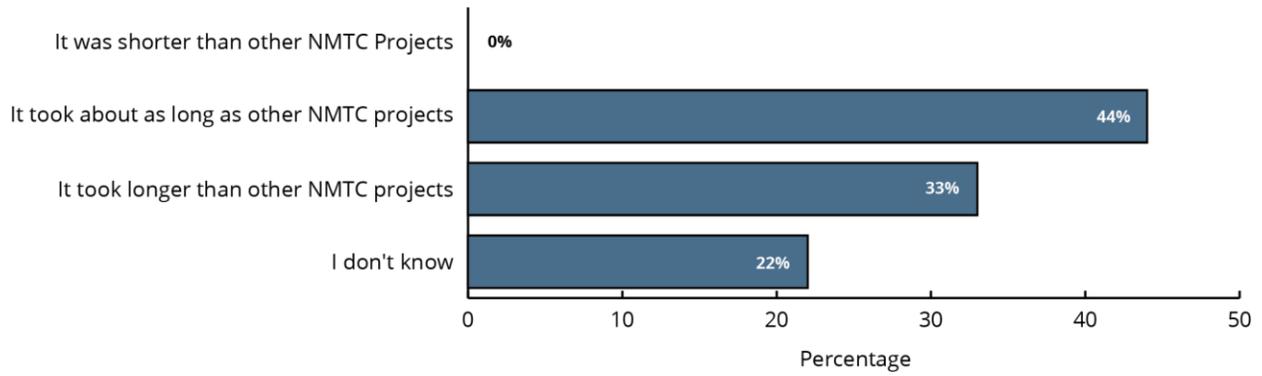
*“This was a Targeted Population transaction and as a result we collected the tax returns for the 12 LIC residents of the eldercare facility for the 7-year compliance period.”*

*“QALICB criteria is a challenge for Native deals. It leads to complicated structuring that may be out of the scope of the tribe to maintain due to staff capacity or turnover. It requires additional oversight on the part of CDEs and investor.”*

Table 6 | SQ10 Compared with other transactions you have financed outside of Native Areas, did your entity require any atypical or additional fees, guarantees, or special covenants for this project as a condition of investment due to its location within a Native Area?

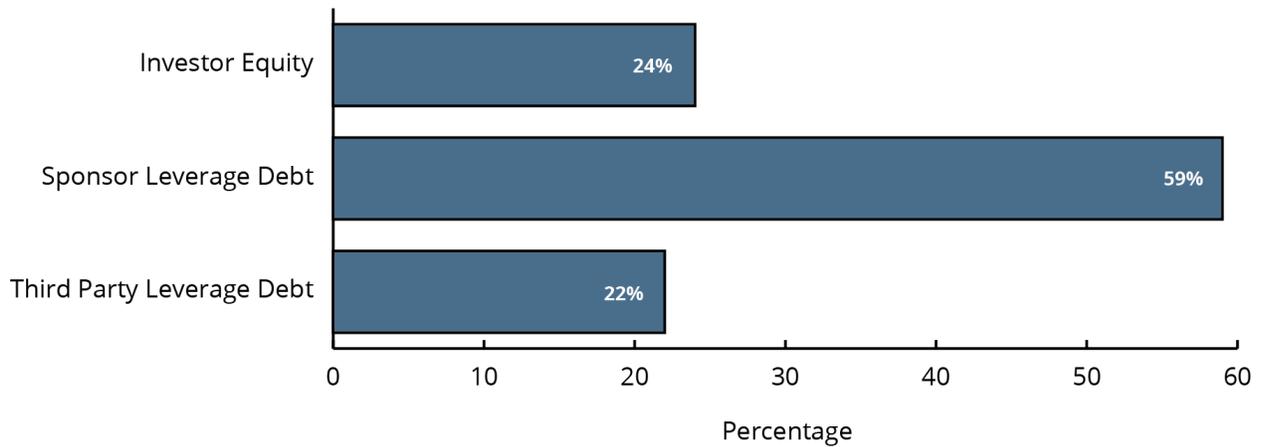
	<b>Yes</b>	<b>No</b>	<b>I don't know</b>
Compared with other transactions you have financed outside of Native Areas, did your entity require any atypical or additional fees, guarantees, or special covenants for this project as a condition of investment due to its location within a Native Area?	56%	33%	11%

Figure 10 | SQ11 Did the QEI closing process take longer, shorter, or the same amount of time as the process associated with NMTC projects outside of Native Areas?



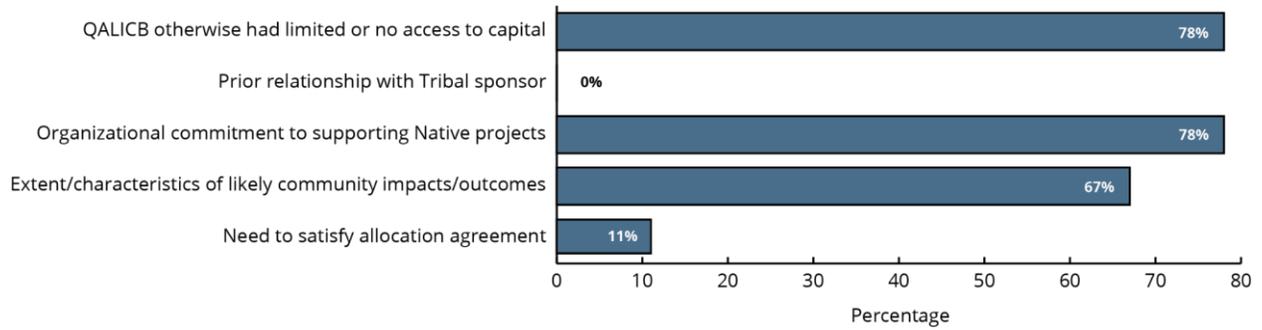
$n = 9$

Figure 11 | SQ12 Please provide the approximate proportion of capital types in the QEI that financed this transaction. *The following are averages taken across the nine CDE responses.*



$n = 8$

Figure 12 | SQ13 Why did your organization decide to provide capital to this project?



$n = 9$

Figure 13 | SQ14 To what extent did your organization use specialized expertise for this project (e.g., subject matter experts, individuals, or organizations familiar with working in Native communities)?



$n = 8$

Table 7 | SQ15 Given your experience with NMTCs in financing a project in a Native Area, would your entity request future allocations to finance other NMTC projects in Native Areas?

	<b>Yes</b>	<b>No</b>	<b>Maybe</b>
Given your experience with NMTCs in financing a project in a Native Area, would your entity request future allocations to finance other NMTC projects in Native Areas?	67%	0%	33%

## Appendix C: Glossary

**CDE:** Any domestic corporation or partnership if:

1. The primary mission of the entity is serving, or providing investment capital for, *Low-Income Communities* or *Low-Income Persons*;
2. The entity maintains accountability to residents of *Low-Income Communities* through their representation on any governing board of the entity or on any advisory board to the entity; and
3. The entity is certified by the CDFI Fund as a *CDE*. *Specialized Small Business Investment Companies (SSBICs)* and *Community Development Financial Institutions (CDFIs)* are deemed to be *CDEs* in the manner set forth in Guidance published by the CDFI Fund (66 Federal Register 65806, December 20, 2001).

**Investor:** Provider of NMTC equity into an NMTC project through a Qualified Equity Investment.

**Leverage Lender:** Provider of leverage debt through a loan to the entity that makes a Qualified Equity Investment

**NMTC:** New Markets Tax Credit. The credit provides an incentive for investment in low-income communities. The US Department of the Treasury competitively allocates tax credit authority to intermediaries that select investment projects. Investors receive a tax credit against their federal income tax.<sup>43</sup>

**NMTC Program:** The program through which NMTCs are administered. The NMTC Program incentivizes community development and economic growth through the use of tax credits that attract private investment to distressed communities.<sup>44</sup>

**QALICB:** Qualified Active Low-Income Community Business/Borrower. Any corporation (including a nonprofit corporation) or partnership if, for any taxable year:

1. At least 50% of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income community;
2. A substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income community;
3. A substantial portion of the services performed for such entity by its employees are performed in any low-income community;

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<sup>43</sup> Tax Policy Center: <https://www.taxpolicycenter.org/briefing-book/what-new-markets-tax-credit-and-how-does-it-work>

<sup>44</sup> CDFI Fund New Markets Tax Credit Program: <https://www.cdfifund.gov/programs-training/programs/new-markets-tax-credit>

4. Less than 5% of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in IRC §408 (m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business; and
5. Less than 5% of the average of the aggregate unadjusted bases of the property of such an entity (as defined in IRC §1397C(e)) is attributable to nonqualified financial property.

**Tribe/Tribal Sponsor:** The tribe or tribal corporation involved in the transaction/on whose land or property the transaction takes place.