

Access to Capital and Credit in Native Communities

Access to Capital and Credit in Native Communities



THE UNIVERSITY OF ARIZONA

**NATIVE NATIONS
INSTITUTE**

Founded by the Udall Foundation
& the University of Arizona

Strengthening Indigenous Governance

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1 Introduction and Methods

Well-functioning capital and credit markets help entrepreneurs and corporations replenish inventories, purchase equipment, commercialize innovation, seize new opportunities, and compete effectively. They facilitate timely government investments in roads and water systems, public housing, government buildings, and other costly but necessary public projects, which in turn create jobs and new demand for goods and services. For individuals and households, access to depository and lending services increases financial flexibility, helping them rebuild credit, purchase vehicles, pursue higher education and buy homes—activities that lay the groundwork for further asset building and income generation. In short, access to capital and credit helps fuel economic development.

In American Indian, Alaska Native, and Native Hawaiian communities (Native Communities),¹ the lack of capital has been a significant constraint on economic development. The 2001 Report of the Native American Lending Study (NALS), issued by the U.S. Department of the Treasury Community Development Financial Institutions Fund (CDFI Fund), was the first national report to document Native Communities' extremely limited access to capital and credit. The NALS also identified numerous barriers to improved capital access, including:

- inflexible bank rules and regulations;
- borrowers' poor credit histories;
- the inadmissibility of trust land² as collateral;
- a lack of financial institutions on or near Native lands³;
- Native Americans' limited experience with the financial world;
- lenders' and investors' failure to understand tribal government or legal systems;
- the historical absence of trust between tribes and banks; and
- discrimination against and stereotyping of Native Community members.

1 | The Native Nations Institute at The University of Arizona (NNI), the publisher of this report, generally refers to the Indigenous peoples of the United States as "Native nations," based on NNI's understanding that these peoples are not racial communities but legal and political entities. However, the CDFI Fund of the U.S. Department of the Treasury, which commissioned and funded this report, prefers the term "Native Community." Consequently, we have used that term here.

2 | The CDFI Fund's definition of a "Native Community" is a Native American, Alaska Native, or Native Hawaiian community. The CDFI Fund uses the Office of Management and Budget's definitions of "American Indian or Alaska Native" and "Native Hawaiian": "American Indian or Alaska Native" refers to "a person who has origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment," and "Native Hawaiian" refers to "a person having origins in the original peoples of Hawaii" (CDFI Fund 2014c, 58420; OMB 1997, 58786). Most datasets do not provide information for the "Native Community" population as defined by the CDFI Fund. As a result, most statistics in this report refer to either a broader or a narrower population group.

3 | The CDFI Fund's definition of Native Trust Lands follows the United States Code (U.S. Code 38, §3765): trust land is any land that a) is held in trust by the United States for Native Americans; b) is subject to restrictions on alienation imposed by the United States on Indian lands (including Native Hawaiian homelands); c) is owned by a regional corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively; or d) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally owned land, as determined by the Secretary. The implicit contrast in this bullet point is with "fee simple" land, which means that the landholders have complete ownership, and the land can be used to secure a mortgage and readily alienated in the case of default.

In 2013, the CDFI Fund commissioned a two-part follow-up study to the NALS. Part one is this document, the Access to Capital and Credit in Native Communities Report (ACC Report). It addresses both problems with and prospects for capital access, and considers these key questions: What is working to improve access to capital and credit for Native Community members, Native entrepreneurs, tribal enterprises, and tribal governments? What can be done to build on that success, in order to sustain and accelerate positive change? Part two is Access to Capital and Credit in Native Communities: A Data Review (Akee and Jorgensen 2006), which uses a variety of quantitative measures to assess the evolution of Native Communities' access to capital since 2001.

In other words, while the NALS focused on status and barriers, this study focuses on change and opportunity. Its research and analyses are intended to provide federal and tribal policymakers with ideas for improving capital and credit access in Native Communities. It also is intended to educate policymakers who are new to the issues and to serve as an informational baseline for activists and advocates, Native Community-serving nonprofits, and financial sector actors as they engage in more targeted projects, programming, and investments.

This report emerges from the CDFI Fund's commitment to helping Native Communities develop through increased access to capital. The ideas presented are grounded in an understanding of current economic conditions in Native Communities and in established research concerning the drivers of economic change in Native nations. They also reflect voices from the field, a key aspect of the research methodology.

PROFILE OF THE NATIVE AMERICAN POPULATION

Approximately 2.9 million single-race American Indians and Alaska Natives and 540,000 single-race Native Hawaiian people live in the United States (Humes, Jones, and Ramirez 2011); counting individuals who identify with multiple races, the estimates rise to 5.2 million American Indians and Alaska Natives and 1.2 million Native Hawaiians (ibid.). Approximately one-third of the single-race American Indian and Alaska Native population lives on Indian Lands, although another 26 percent lives in close proximity to these geographies (Pettit et al. 2014, 14). According to the 2010 decennial census, the median age among all Native Americans was 29, making the combined American Indian, Alaska Native, and Native Hawaiian population one of the fastest growing in the United States (Census Bureau 2011, 2012d). Of course, not all individuals who self-identify as Native are members of federally recognized tribes or other Native Communities.

In 2015, the 566 Native nations had full federal recognition: 337 tribes have homelands in the Lower 48 states, and 229 are Alaska Native Villages (Bureau of Indian Affairs 2015). Additionally, the U.S. Government Accountability Office has identified approximately 400 non-federally recognized tribes (GAO 2012). These include "(1) state-recognized tribes that are not also federally recognized and (2) other groups that self-identify as Indian tribes but are neither federally nor state recognized" (ibid., 7). American Indian tribes, Alaska Native villages, and the Native Hawaiian community are heterogeneous with respect to traditions, cultures, and languages. Their populations range from a dozen members on several acres of land to the Navajo Nation with more than 300,000 enrolled members and a land base of 27,000 square miles (Bureau of Indian Affairs 2014, Donovan 2011, Navajo Nation 2011). Tribal governments vary in size

and organization from traditional theocracies to multi-branch governments that include executive bodies, legislatures, and independent court systems (Harvard Project 2008a).

The federally recognized tribes in the continental United States and Alaska have been recognized as sovereign entities through peace treaties, Congressional legislation, and U.S. Supreme Court decisions. Congressional legislation—such as the Indian Reorganization Act of 1934 and the Indian Self-Determination and Educational Assistance Act of 1975—further established the principle of tribal self-government. Most American Indian tribes, with the exception of those in Oklahoma, have a land base that comprises trust and fee simple land.

In 1971, the Alaska Native Claims Settlement Act divided Alaska into 12 regions, created 12 regional for-profit corporations and more than 200 village corporations, and distributed approximately one-ninth of the state's land and nearly \$1 billion to those corporations in return for abrogating Native claims to other lands in the state. Some of the regional corporations have used business profits to establish not-for-profit corporations to deliver social services to the Native populations in their regions. Thus, both corporations and tribal governments are involved in the governance and development of Alaska Native assets and communities.

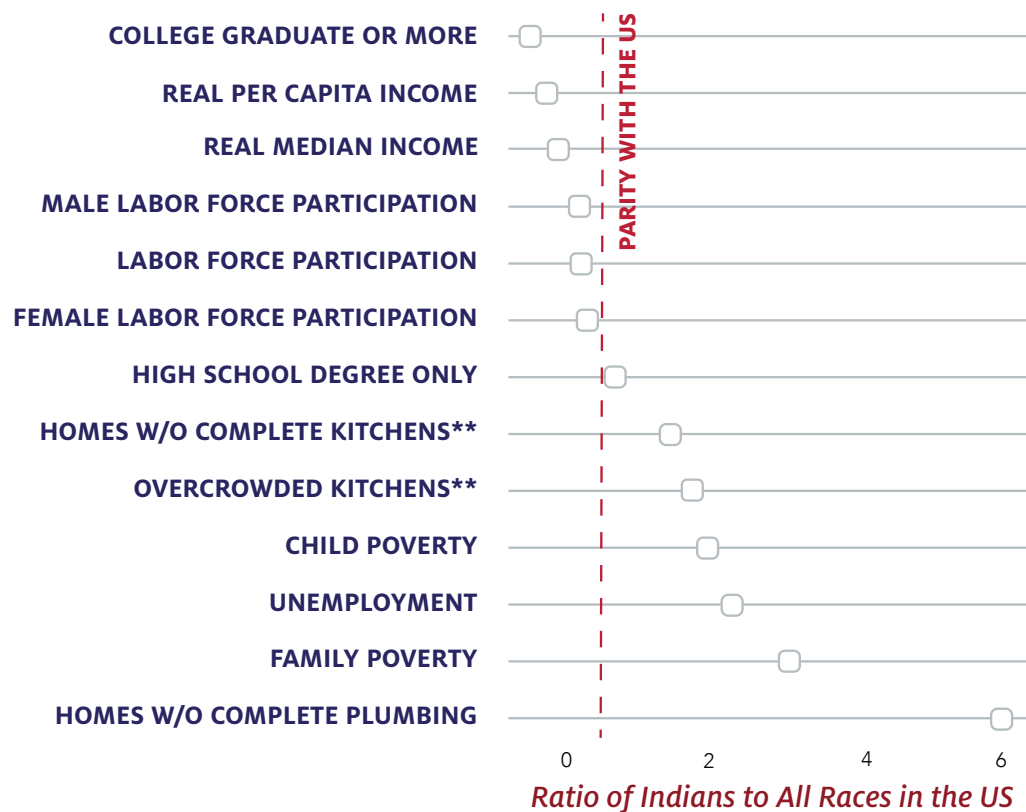
Native Hawaiians do not have a separate, federally recognized government, but do maintain a formal relationship with the state of Hawaii. Native Hawaiians lived under a monarchy until 1893. In 1920, the Hawaiian Homes Commission Act set aside 203,000 acres of land for Native Hawaiians, which is held as state trust land and administered by the Department of Hawaiian Home Lands, a state government agency. In 1970, the state created the Office of Hawaiian Affairs (OHA), both a government agency and a trust, to assist Native Hawaiians. OHA operates economic development, education, health and human services, land, and natural resource programs. In March 2014, OHA's Board of Trustees made a public commitment to help facilitate "a process for Native Hawaiians to form a governing entity" (OHA 2015, homepage).

ECONOMIC CONDITIONS IN NATIVE COMMUNITIES

The comparative status of Native Communities

For years, statistics have shown that Native Communities have lower incomes and experience higher rates of unemployment and poverty than non-Native communities. In the period 2006-2010,⁴ for example, 32 percent of the single-race⁵ American Indian and Alaska Native tribal area population lived in poverty as compared to 14 percent of non-Natives (Pettit et al. 2012). In Hawaii, 18 percent of Native Hawaiians and other Pacific Islanders lived beneath the poverty level in 2010 as compared to 9.6 percent of the Hawaiian population overall (Department of Native Hawaiian Health 2013). Exhibit 1.1 provides additional comparisons: among American Indians living on reservations, indicators of socioeconomic distress are higher than for the U.S. population as a whole, and indicators of socioeconomic success are lower.

Exhibit 1.1: Socioeconomic Standing of American Indians Living on Reservations, 2006-2010 (*reservations other than Navajo**)



Notes: *Because its on-reservation population is larger than the combined population of the next 19 largest tribes, including Navajo data would swamp the results from other tribes.

**Due to data limitations, the Indian-area figures for overcrowded homes and homes without complete kitchens are the all-races, rather than Indian, statistics. Source: Akee and Taylor (2014).

4 | U.S. Census products changed significantly in the period 2000-2010. Rather than sampling households once every 10 years, Census implemented annual surveys (the American Community Surveys) that produce one-, three-, and five-year average information for all geographies in the United States. High-population geographies have access to annual point estimates, medium-population geographies have access to three-year average point estimates, and the smallest geographies (which includes most Indian lands) have access to five-year average point estimates. In other words, data once available from the Census long form are now available with greater frequency through the ACS. Nonetheless, the method significantly limits the availability and reliability of data concerning American Indian, Alaska Native, and Native Hawaiian populations and Tribal areas. For example, the ACS's "small" annual samples generate "large" confidence intervals for point estimates of the population characteristics of Native Americans living on Native lands, and large confidence intervals make it difficult to track change. For more information, see Pettit et al. (2014), p. 76.

5 | From 2000 onward, the U.S. Census has allowed respondents to identify themselves as belonging to one or more racial categories. "Single-race" American Indians and Alaska Natives identify as belonging to that racial/ethnic group and no other.

Given that most U.S.-based Native peoples experienced a long period of asset deprivation born of colonization, these figures are not surprising. Through forced removal, war, confinement on reservations, restricted access to traditional territories and resources, expropriation of lands and natural resources, and so on, Native Americans were plunged into a near-assetless state for at least a century; many reservations today consist largely of land perceived historically as having little or no value. Such structurally induced poverty persists across generations, making it more difficult for Native Community residents to realize income equality today.

Recent economic growth and development

Starting in the 1980s, however, a few Native Communities began to make remarkable socioeconomic progress, breaking away from the patterns of the past (Cornell and Kalt 1992). By the 1990s, even more Native Communities experienced growth in real terms (Taylor and Kalt 2005). Despite the hardships imposed by the recession in 2008-2009, progress against several key indicators continued throughout the 2000s (Akee and Taylor 2014). For example, American Indians living on reservations continued to experience gains in per capita income and labor force participation and reductions in family poverty and unemployment (Exhibit 1.2).

Exhibit 1.2: Socioeconomic Change on American Indian Reservations, 1990-2010. (Data are expressed in percentage points unless otherwise noted.)

	Indians on Reservations*		US Residents (All Races)	
	1990s	2000s	Both Decades	Both Decades
REAL PER CAPITA INCOME	32.5%	10.5%	46.5%	7.8%
REAL MEDIAN HOUSEHOLD INCOME	30.4%	-2.2%	27.5%	-1.8%
CHILD POVERTY	-11.0	0.8	-10.1	0.9
FAMILY POVERTY	-10.9	-1.4	-12.3	0.1
UNEMPLOYMENT	-4.2	-0.2	-4.4	1.6
LABOR FORCE PARTICIPATION	1.0	-0.6	0.4	-0.3
MALE LABOR FORCE PARTICIPATION	-3.1	0.3	-2.8	-3.5
FEMALE LABOR FORCE PARTICIPATION	4.8	2.5	7.2	2.6

Source: Akee and Taylor (2014)

Note: *Navajo data are excluded from this table because of the reservation's large population; if included, population-weighted averages would tend to reflect the situation for the Navajo Nation rather than the situation that prevails in the majority of Native Communities.

Source: Akee and Taylor (2014).

Certainly, tribal government-owned gaming enterprises, which grossed \$28.5 billion in 2014 (National Indian Gaming Commission 2015), are part of this story. Yet gaming is not the cause of tribes' changing economic fortunes. Striking evidence comes from the 1990s, when in the wake of federal law that clarified tribes' rights to operate high-stakes games,⁶ many tribes upgraded their gaming operations or entered the market for the first time. If gaming alone was the cause of tribal economic success, these early market entrants should have experienced, on average, much greater economic gains than tribes not yet in the market—but they did not. From 1990-2000, per capita income growth was nearly as large in Native Communities without gaming operations as it was in those with gaming (Taylor and Kalt 2005). In other words, no single sector is responsible for the job and income growth in Native Communities. Instead, different Native Communities have benefited from growth in different economic sectors (ranging from gaming to natural resources, manufacturing, agriculture, back office administrative services, tourism, and others) and, increasingly, from diversification across sectors.

Research suggests that the real drivers of recent economic change in Native Communities are self-determination and self-governance, or Indigenous control over Native Community resources, programs, government infrastructure, and plans for the future (Harvard Project 2008a, Cornell and Kalt 2007). While economic factors such as high educational attainment, access to markets, and natural resource endowments also can contribute to development, they tend to pay off after a Native nation has been able to bring decisions with local impact under local control and to structure capable, culturally legitimate institutions of self-government that can make and manage those decisions. The same can be said of federal grants, preferential treatment in the government procurement process, and tax or regulatory advantages (of which tribal gaming enterprises are one example). They are helpful inputs and policies, but they are not root causes of Native Community development; such opportunities yield lasting benefits when self-determined and self-governing Native nations are able to use them strategically.

Ongoing Native Community economic growth and development needs

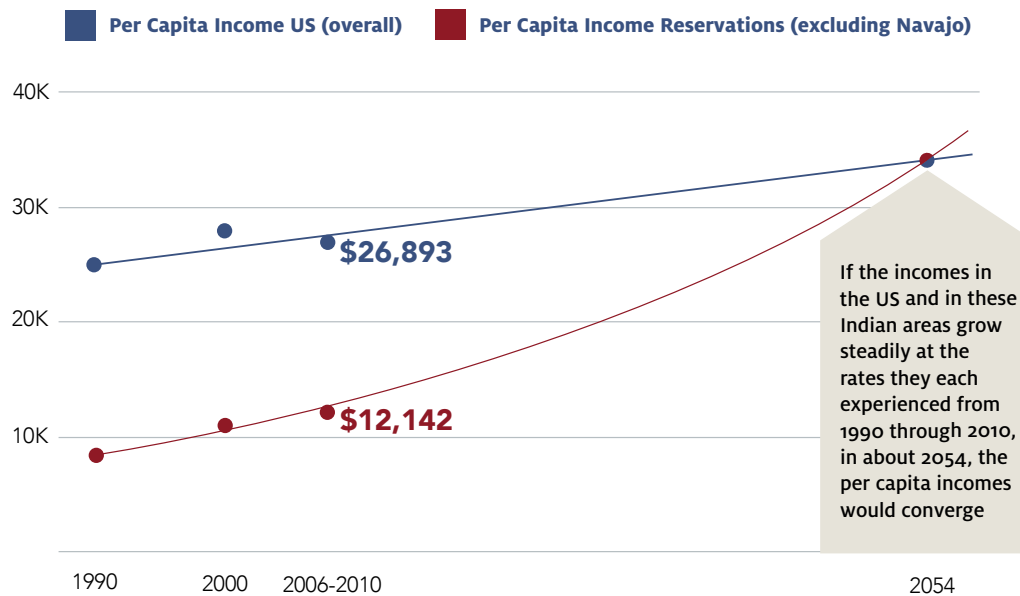
Evidence of economic growth on Indian lands is welcome news—yet efforts to improve socio-economic outcomes still are needed. Critically, the reported statistics are averages, and the members of some Native Communities are doing much better than the members of others. Considering the period since the publication of the NALS, for example, the variation in real per capita income change is substantial: “almost a fifth of the on-reservation Indian population outside Navajo lived on reservations where the income per capita shrank by more in the 2000s than it did for the U.S. as a whole” (Akee and Taylor 2014, 14-15). Moreover, economic change started from a very low base. At recent rates of economic growth, it still will take at least four decades for the per capita income of Native Community members to converge with per capita income in the rest of the United States (Exhibit 1.3).

In fact, Native Communities' efforts to increase their self-determination, expand their self-government, and strengthen their governing institutions create conditions in which additional capital can be put to good use. Because “contemporary Indian nation development efforts are shifting to strategies focused on available assets, in

6 | The U.S. Supreme Court upheld tribes' right to operate gaming enterprise in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), and Congress clarified how tribes' rights and states' rights would interact through the Indian Gaming Regulatory Act of 1988.

Exhibit 1.3: Projected Real Per Capita Income Growth

(reservations other than Navajo)



Source: Akee and Taylor (2014)

which emphasis is placed on good governance, investments, savings, and wealth creation” (Harvard Project 2008a, 113-4), improved access to capital and credit in Native Communities is more necessary than ever before.

STUDY METHODS

Four entities worked together to gather data and to produce this report: the CDFI Fund Native Initiatives; GBS, LLC, a subsidiary of Sitnasuak Native Corporation and 8(a) certified business; OSIYO Group, an American Indian, women-owned professional services firm; and the Native Nations Institute, a research and public policy unit of The University of Arizona. The CDFI Fund Native Initiatives provided primary funding for the project, engaged the prime contractor, and took primary responsibility for two processes that bookended the study—the public comment process and the report review process. GBS, LLC served as the prime contractor, with overarching responsibility for the tribal consultations and report production. The OSIYO Group, a subcontractor to GBS, LLC, was responsible for facilitating tribal consultations and focus groups and for gathering data at these meetings. The Native Nations Institute, also a subcontractor to GBS, LLC, was responsible for drafting and publishing the report.

As described below, four types of data were gathered during the study process: public comments, information from facilitated consultation and focus group meetings, interviews with key informants, and literature reviews. These data were used to determine the topical coverage of the report; as source information for success stories; as the evidence of new and ongoing concerns about access to capital; and as guidance for report recommendations.

Public comments

A request for public comment on the proposed report, as consistent with Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”), was

published in the Federal Register on November 30, 2012. The request for public comment also was available on the U.S. Treasury CDFI Fund's Native Initiatives webpage. It was publicized through the CDFI Fund's Native Initiatives' outreach mechanisms and through the partnership and outreach of peak organizations representing both Native Communities and the CDFI sector. The CDFI Fund invited written public comment through February 28, 2013, and provided opportunities for verbal feedback through interactive webcasts on January 15 and January 17, 2013. The CDFI Fund particularly sought comments that would help determine the focus, mission, and methodology of the report and asked for feedback on these specific questions:

- What should the access to capital and credit report accomplish?
- What should be the scope and focus of the report?
- What are the top three desired outcomes of the report?
- Who are the key users of the report?
- Are there emerging trends, innovations, and promising practices in Native Community capital access that the report should mention?
- How did you or your organization use the Native American Lending Study?
- What were the most significant outcomes for you or your organization from the Native American Lending Study?
- What were the best elements of how the Native American Lending Study was conducted?

At the end of the public comment period, the CDFI Fund had received written comments from 18 parties, a group that included tribes, Native organizations, and community finance professionals. Information provided in the public comments shaped the design of consultation and focus group sessions, served as raw material for a decision matrix used to identify and weigh ideas for chapter topics, and provided information for the final report.

Consultations and focus groups

Also consistent with Executive Order 13175, the CDFI Fund's approach to this study included formal consultation meetings with Indian tribes. On the CDFI Fund's behalf, GBS, LLC and the OSIYO Group convened consultation meetings across the United States from September 2013 through April 2014. To facilitate maximum participation, they selected sites and dates to coincide with major conferences and meetings attended by tribal leadership and other Native community development professionals. GBS, LLC and the OSIYO Group also hosted several focus group meetings at which selected participants engaged in conversations concerning the content of the report that were more targeted than the consultation meetings. One consultation and one focus group were hosted virtually. (See Exhibit 1.4.)

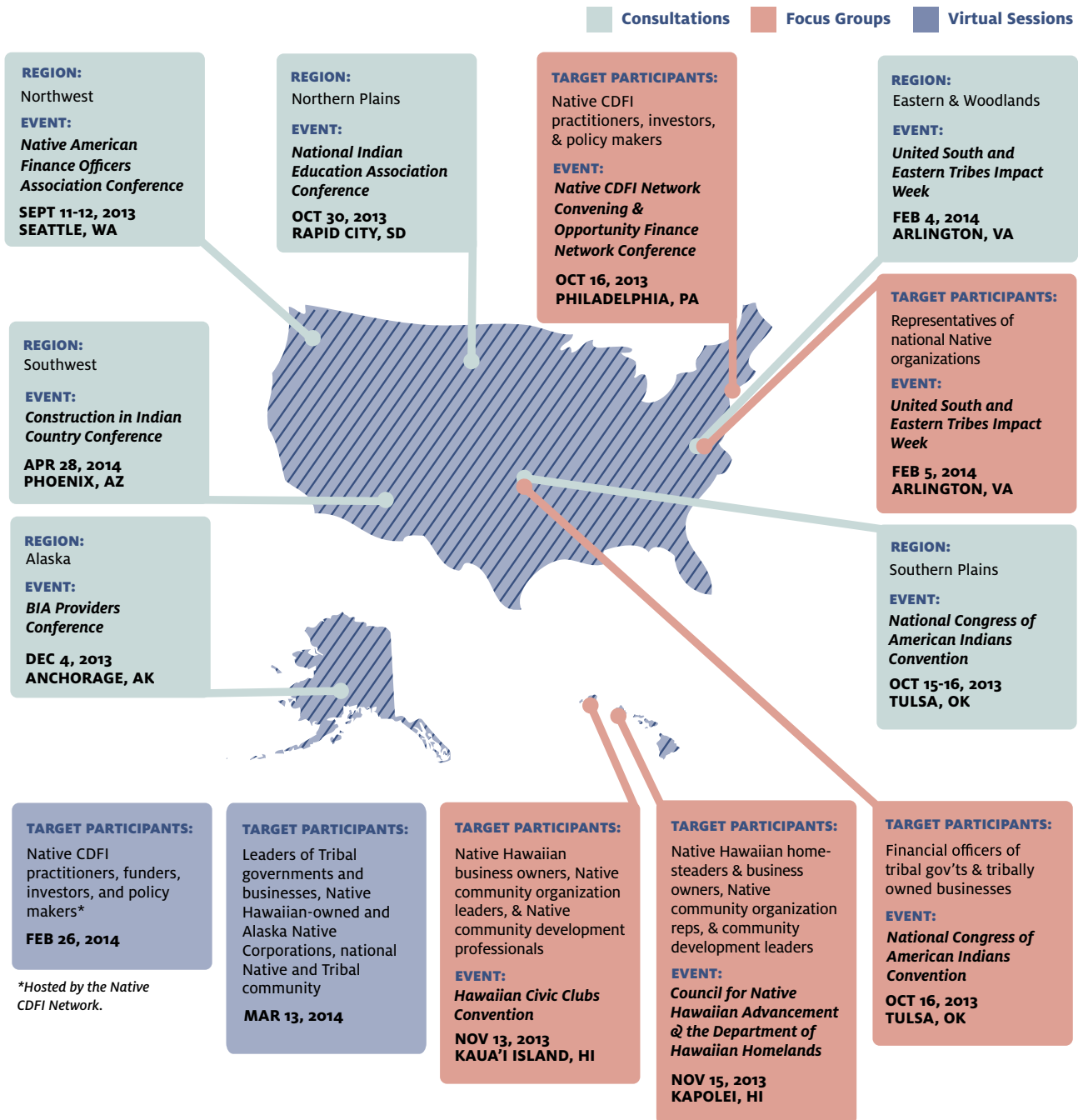
In addition to providing guidance about the topical coverage of the proposed study, the consultations and focus groups yielded research data. Comprehensive reporting from these meetings provided ideas, examples, and other qualitative material—particularly quotes from the field—that the study team reviewed for inclusion in the report itself.

The wide range of Native Community members and field practitioners engaged in the consultations and focus groups and the use of consultations as a means of gathering data may be distinctive contributions of this study design.

Interviews with key informants

The OSIYO Group and NNI staff interviewed selected individuals in the finance, banking, entrepreneurship, tribal and federal government, and CDFI sectors, among others. In some cases, interviews were conducted after consultations or focus group sessions to follow up on meeting discussions. In other cases, interviews were conducted to complement or explain data gathered from the literature review. Guiding questions included the following: What information can this person provide about particular issues of interest for the report? What examples of access to capital and credit success or barriers can this person provide? What is the outlook for the future in this area of interest?

Exhibit 1.4: Consultations and Focus Groups for the Study of Access to Capital and Credit in Native Communities



Literature reviews

Project researchers from OSIYO and NNI reviewed the literatures on CDFIs, financial education, entrepreneurship, housing, tribal finance, and development-oriented legal infrastructure to inform and advance chapter topics. The scope encompassed both Native Community-focused literatures as well as select non-Native literatures. References are included in line in each chapter rather than in a separate literature review,

and complete citations for all works referenced are listed at the end of the report.

Quantitative data caveat

This report relies on secondary quantitative data only. The scope specified by the CDFI Fund excluded the collection of any new primary (original) quantitative data. Nonetheless, the Access to Capital and Credit in Native Communities Report and Access to Capital and Credit in

Native Communities: A Data Review present a broad array of quantitative data. The goal was to mark change since publication of the NALS in 2001 and, where possible, establish a new baseline (in terms of access to capital and credit in Native Communities) against which policymakers, Native Community leaders, community development practitioners, and community members can measure progress.

This is not to say that additional data would not be useful—it would be. American Community Survey data often are too imprecise to be useful to Native Community (or even federal) policymakers. Native Americans often remain unidentified in other national data collection efforts because oversampling to account for their outcomes is expensive. And, carefully and comprehensively collected tribal-level or other Native Community-level data often remain unanalyzed and unreported for lack of funding or lack of capacity. Obtaining better data for understanding and marking the progress of Native Community development is an essential goal for the next decade.

REPORT ORGANIZATION

The views of tribal leaders, lenders, Native community advocates, and tribal citizens expressed in public comments, consultations, focus groups, and virtual listening sessions supported the selection of chapter topics for this report. The chapters are as follows:

- **Native CDFIs: Distinctive Successes, Evolving Opportunities** provides a high-level assessment of the Native CDFI sector, identifies promising practices, and calls attention to current needs.
- **From Financial Education to Financial Capability** discusses recent research findings on financial education and financial inclusion, describes leading-edge programs and policies, and underscores Native Community members' need not simply for financial education but for financial capability.
- **Expanding Native Entrepreneurship** highlights the important role of the private sector in Native Community development and identifies ways that the public, private, and nonprofit sectors can support and sustain Native entrepreneurship.

- **Housing Finance in Native Communities**

explores influences on the development of Native Community housing, core issues such as poor credit and the lack of conventional collateral, and the complexities of Indian Country housing finance.

- **Capital and Credit for Tribal Governments and Tribal Enterprises**

focuses on the broad range of activities for which tribes and tribal enterprises need access to capital and credit, with an emphasis on the magnitude of those needs and the various options open, or not open, to them for financing.

- **Business-Related Tribal Legal Infrastructure**

addresses needs and best practices relating to tribal commercial codes, land management, tribal courts, and other aspects of tribal governance, demonstrating the critical role a tribe's legal infrastructure plays in the expansion of capital and credit in Native Communities.

- **Moving Forward: Report Themes and Next Steps**

distills findings and summarizes possible future directions for practice and policy.

VISIONS OF THE FUTURE

During the consultations, focus groups, and listening sessions held to inform this report, participants were asked to look ahead to the year 2024 and imagine that their communities enjoyed full access to capital and credit. Participants shared their visions of warm and efficient houses, quality water and food, a choice of financial institutions able to assist in building community and individual wealth, and tribal governments and businesses working in concert on economic and community development. They described vibrant Native Communities that offered residents—and those who wanted to return home—opportunities to build good lives.

In total, this report tells a story of American Indians', Alaska Natives', and Native Hawaiians' determination, progress, and hope for improved financial access and economic stability—and of their desire to build Native Communities that prosper for generations to come.

“I envision a happy, productive, and self-sustaining community that promotes entrepreneurship and [has] banks involved in community development.”

– Participant, Southwest Region Consultation, April 2014

“There is nothing more important to us than our family, traditional values, and providing opportunity for our children. We need better access to capital and credit to do that.”

–Participant, Alaska Tribal Consultation, December 2013

“I see a fully capitalized Native CDFI industry providing access to capital everywhere in Indian Country.”

–Participant, Eastern/Woodlands Region Consultation, February 2014

“I can see financial security having an impact on the overall health and education of Native people and our communities for the long-term.”

–Participant, Northwest Region Consultation, October 2013



Photo credit: Four Directions Development Corporation (2016)

2 Native CDFIs: Distinctive Successes, Evolving Opportunities

In 2001, the NALS concluded,

Unlike non-Native American or non-Native Hawaiian communities, Indian Lands and Hawaiian Home Lands are not generally served by a variety of financial institutions.... This lack of basic financial services has implications for financial literacy, capacity building, and banker-customer communication. It exacerbates the capital access gap and increases the difficulty of starting new businesses and acquiring home mortgages (CDFI Fund 2001, 39).

By comparison to 2001, the year in which the NALS was published, many Native Community residents who wish to buy a home, start a business, or learn more about taking control of their financial lives have much better options now than they did then: they have access to a Native Community Development Financial Institution (Native CDFI) that can help them realize their ambitions.⁷ These transformative institutions provide financial services and loan products tailored to Native Communities' development needs, and in so doing, help create "environment[s] in which development projects are more likely to succeed and remain sustainable over the long term" (Reid 2007, 22).

Significantly, these institutions are part and parcel of the overall movement toward increased Native Community self-determination that began in the 1970s and continues today. Not only have tribal governments been exercising greater decision-making and management authority, but Native Community residents themselves have seized new tools to reshape the local environment in support of economic growth. As Elsie Meeks, founding Executive Director of First Nations Oweesta Corporation (Oweesta), has explained, Native CDFIs "are a way to make structural changes in how Native Communities can advance their own interests" (quoted in Baue 2005, 1).

THE FIELD TODAY

The universe of Native CDFIs includes loan funds, credit unions, banks, thrifts, and depository institution holding companies, all committed to the mission of supporting development in American Indian, Alaska Native, and Native Hawaiian communities. Similar to mainstream CDFIs, Native CDFIs provide a variety of services, including financial education, credit repair, homeownership training, business coaching, individual development account programs, and loans—although each organization's practices, from teaching methods to underwriting, reflect the distinctive concerns and culture of the Native Community it serves. Most Native CDFIs operate on tribal lands, and many are managed and staffed by tribal citizens.

Some Native CDFIs have long histories.⁸ The Lakota Funds, modeled in part on the success of the Grameen Bank, was founded in 1986. Established in 1952, the Hopi Credit

7 | A Community Development Financial Institution, or CDFI, provides credit and financial services to underserved markets. The U.S. Department of the Treasury defines a Native CDFI as a Community Development Financial Institution that focuses at least 50 percent of its business activities on American Indians, Alaska Natives, or Native Hawaiians.

8 | This paragraph draws, in order, on the following sources: Lakota Funds (2011), Hopi Foundation (no date), CDFI Fund (2009, 2016b, 2016c), Sarkozy and Dewees (2008), Kokodoko (2015), and Fiddler and Fleming (2013).

Association is older but operated for its initial years as a Bureau of Indian Affairs revolving loan fund⁹; it gained CDFI Fund certification in 1988. Most organizations in the field are much younger. When the NALS was released in 2001, there were only 14 Native CDFIs¹⁰; by March 2016, the U.S. Department of the Treasury counted 70 certified¹¹ Native CDFIs across the United States, including four in Alaska and seven in Hawaii. On average, four new certified Native CDFIs have entered the sector every year since 2001. While more difficult to track, still other Native Community-focused financing organizations are pre-certified or emerging.¹² In 2013, the Native CDFI Network noted that 60 additional organizations were preparing for certification.

Most Native CDFIs make relatively small loans either by choice (because they are serving a client base that is best assisted with lower dollar-value loans) or by necessity (because their capital pools are small). Analysis of lending data reported to the CDFI Fund over the period 2003-2011 by 37 Native CDFIs shows that in this sample,¹³ the average loan value (in 2011 dollars) peaked at \$32,575 in 2007, just before the recession, and fell to only \$13,654 in 2011 (Akee and Jorgensen 2016). Other CDFI Fund data point to an average Native CDFI loan size of approximately \$24,000 over the period 2004-2012 (Nolan 2014).

9 | A revolving loan fund makes loans for eligible activities, loans that in turn generate income for the fund. Theoretically, a revolving loan fund continuously expends, replenishes, and again expends its monies; it “is the administrative umbrella for the reuse of program income in the making of low interest community loans” (Montana Department of Commerce 2005, 9).

10 | There is some discrepancy in the number of Native CDFIs in 2001. The Native American Lending Study reports 16, the CDFI Fund’s 2009-2014 strategic plan for its Native programs reports 14 (CDFI Fund 2001, 2009), and the Native CDFI Network points to only nine certified Native CDFIs in 2001 (Fiddler and Fleming 2013). Regardless, there has been tremendous sector growth since 2001.

11 | CDFI certification is a designation conferred by the U.S. Department of the Treasury’s CDFI Fund. Native Community-serving organizations must show that they are a legal entity at the time of application, have a primary mission of promoting Native Community development, are a financing entity (lender), primarily serve the Native Community market, provide development services as well as financial services, and are accountable to their target market(s).

12 | Emerging Native CDFIs are CDFIs that, because they are in the early stages of development, do not yet qualify for certification by the CDFI Fund. They have aspirations of becoming lenders but, for instance, still are seeking formal incorporation, searching for a director, determining development services, or pursuing adequate startup funds.

13 | Not all Native CDFIs are represented in the CDFI Fund’s Institutional Level Report (ILR) data, and not all that are represented report loan information. CDFIs increase Native Community members’ capacity to engage with the formal banking sector but do not solve the problems of physical access or technological access (broadband availability). The latter may be particularly problematic for some rural Native Communities.

These institutions fill a critical gap. Especially for individuals with limited experience with the financial system and poor credit, Native CDFIs help provide that experience and help improve clients’ credit. Client engagement with a Native CDFI also can be an on-ramp to a relationship with a traditional bank,¹⁴ which means that the increasing number of Native CDFIs represents increasing financial access for Native Community residents in the short-term and the long-term.

THE ROLE OF THE CDFI FUND

The CDFI Fund, an office within the U.S. Department of the Treasury, was created in 1994 through the Riegle Community Development and Regulatory Improvement Act. Its mission is “to increase economic opportunity and promote community development investments for underserved populations and in distressed communities in the United States” (CDFI Fund 2016a, para 2).

The CDFI Fund’s investments in Native Communities occur primarily through the Native American CDFI Assistance Program (NACA Program), which has awarded more than \$93 million to Native CDFIs since its launch in 2001 (Nolan 2014). From 2004 to 2012, “Native CDFIs that received NACA Program awards made over 15,000 loans totaling \$365 million in Native Communities” (ibid., 3).

Critically, the CDFI Fund’s programs for Native CDFIs have focused not only on capitalization but also on technical assistance and training. In the 2000s, its contracts with several national intermediaries working with Native CDFIs supported the development of four programs aimed at expanding both the number of Native CDFIs and the demand for their services. Each had positive results:

- **The Native Community Finance Initiative** (2003-2011) supported Native CDFI startup and growth. By its conclusion, 23 additional Native CDFIs were making loans (Jorgensen 2011a).
- **The Native Financial Skills Initiative** (2007-2011) supported the development of Native CDFI financial education programs. In 2011 alone, 18 of 29 participating organizations had begun offering financial education (Jorgensen 2011b).

14 | CDFIs increase Native Community members’ capacity to engage with the formal banking sector but do not solve the problems of physical access or technological access (broadband availability). The latter may be particularly problematic for some rural Native Communities.

- The **Native IDA Initiative** (2005-2009) resulted in the creation of 19 new Native CDFI-based matched-savings programs (also called Individual Development Account programs or IDAs) and the enrollment of more than 350 new savers (Jorgensen, Haass, and Starks 2009).
- The **Native Enterprise and Entrepreneurship Development Initiative** (2008-2011) engaged 31 Native CDFIs and the Native nations they served in broad-based efforts to strengthen local environments for economic development (Starks 2011).

Building on the success of these early investments, the CDFI Fund Native Initiatives program identified ongoing Native CDFI managerial and organizational capacity development as a strategic goal for fiscal years 2009-2014 (CDFI Fund 2009) and launched three initiatives in fulfillment of this goal:

- **Leadership Journey I and Leadership Journey II** provided executive-level training, technical assistance, and peer mentoring to select participant organizations. Leadership Journey I, which culminated in June 2013, supported the efforts of 16 well-established Native CDFIs to take their operations to the next level. Leadership Journey II, which culminated in June 2015, focused on 13 Native CDFIs' continued growth and long-term sustainability. Evaluation data from Leadership Journey I show that the program helped build new peer-to-peer relationships, reinforced sustainability by training an average of 3.6 staff per participating CDFI, and enhanced leadership skills in financial management, fundraising, and performance analysis (NeighborWorks America 2013, 2015b).
- **Building Native CDFIs' Sustainability and Impact**, ongoing at the time of writing, provides capacity-building opportunities on a variety of topics and in a variety of formats and locations. Topics addressed include (among others) board governance, client and contact management, loan products, staff capacity, financial health, and impact tracking. Participation in the initiative is available to all certified Native CDFIs; emerging Native CDFIs and sponsoring entities may participate on a case-by-case basis (CDFI Fund 2014a, 2014b; NeighborWorks America 2015a).

As intended, the funding, training, and technical assistance opportunities offered through the CDFI Fund Native Initiatives programs have helped build the number and sustainability of Native CDFIs—and have been a critical factor behind the sector's growth since 2001.

OPPORTUNITIES AND CHALLENGES

Growth and change in the Native CDFI sector—and growth and change in the communities they serve—have affected both the opportunities available to Native CDFIs and the challenges they face. The development of sectoral infrastructure, increasing specialization, and the growing demand for regional and national Native CDFIs are generating valuable new opportunities. The main challenges cited by participants in focus groups and consultations were the need for stronger Native CDFI-tribal government collaboration, for improved impact and performance data, and increased access to more, and for more affordable, capital (which is, of course, a motivating factor behind this report). How Native CDFIs respond to these opportunities and challenges will shape the sector's future.

Sector infrastructure

While the CDFI Fund remains a leading provider of capital, training and technical assistance, and peer networking support for Native CDFIs, growth within the sector has led to the involvement of more partner organizations and to the development of more information-sharing networks.

Mainstream organizations provide some of this infrastructure. Working under contracts with the CDFI Fund, the Corporation for Enterprise Development (CFED) and Opportunity Finance Network (OFN) implemented early efforts to nurture Native CDFIs through training, technical assistance, and mentoring. Later, NeighborWorks America provided training and technical assistance to CDFI Fund Leadership Journey cohorts and to the Building Native CDFIs Sustainability and Impact initiative. Ultimately, these relationships created closer connections between the mainstream and Native CDFI sectors that Native CDFIs have been able to leverage for information, advocacy, and other kinds of support.

Native organizations and networks give even more structure to the sector. These include Native CDFI-serving organizations and Native CDFI-specific networks,



Photo credit: Four Winds Community Fund (2016)

as well as broader Native coalitions and organizations that focus on asset building.¹⁵ For example:

- **First Nations Oweesta Corporation**, a subsidiary of First Nations Development Institute (FNDI), was founded in 1999 to support “economic growth in Native American communities through the creation, development, and capitalization of Community Development Financial Institutions” (Oweesta 2016, para 1). Oweesta gained CDFI Fund certification in 2000, began making grants and loans to other Native CDFIs in 2001, and began offering specialized technical assistance in 2003. Essentially, Oweesta is a financial intermediary and training resource for other Native CDFIs. It also is a leader in Native CDFI sector research.¹⁶
- **The Native CDFI Network** was founded in 2009 “to be a national voice and advocate that strengthens and promotes Native Community development financial institutions, creating access to capital and

15 | Asset building refers to strategies that increase financial and tangible assets, such as savings, a home and businesses of all kinds. Asset-building policy focuses on long-term development of individuals, families and communities” (CFED 2015, 1); also see Chapter 3 of this report.

16 | For more information on Oweesta, see www.oweesta.org, accessed May 8, 2016.

resources for Native peoples” (Native CDFI Network 2012, para 1). Its webinars, listening sessions, industry meetings, and advocacy promote peer-to-peer networking, the dissemination of best practices, and a platform from which the Native CDFI voice can be heard.¹⁷

- **A variety of regional Native Community development alliances** also include Native CDFIs in their networks, meetings, advocacy, and field engagement. Among these alliances are the Oklahoma Native Assets Coalition, Northwest Native Asset Building Coalition, South Dakota Indian Business Alliance, and Montana Indian Business Alliance.¹⁸

“The Native CDFI Community is a very tight-knit family. The support is endless and someone will always be there for you.”

—Sean T. Winters, Executive Director, Chi Ishobak Inc. (personal communication, September 2014)

“Native CDFIs have always appeared to be very supportive and willing to collaborate with each other. This is evidenced through individual CDFIs being willing to share best practices, policies, or even job shadowing and mentoring. ...Many Native CDFIs are also beginning to partner with non-Native CDFIs—both sides benefit greatly from the ability to expand lending and grow their organizations’ portfolios.”

—Chasity Savage, Former Chief External Relations Officer, Oweesta (personal communication, June 2014)

The spirit of cooperation that makes these organizations and networks effective has been key to the growth of the Native CDFI sector since 2000. Opportunities for ongoing collaboration with the broader field, for now-established Native CDFIs to learn from each other, and for emerging Native CDFIs to be mentored promote sustainability and propel further sector expansion.

17 | For more information on the Native CDFI Network, see <http://nativecdfi.net/>, accessed May 8, 2016.

18 | For more information about the Oklahoma Native Assets Coalition, see <http://www.oknativeassets.org/>, about the Northwest Native Asset Building Coalition, see <https://www.facebook.com/NWNABC>, about the South Dakota Indian Business Alliance, see <http://www.sdibaonline.org/>, and about the Montana Indian Business Alliance, see <http://www.mibaonline.org/>, all websites accessed May 8, 2016. Of note, many of these coalitions were established with the assistance of non-Native, mainstream organizations such as the Federal Reserve Bank of Minneapolis, the U.S. Department of Housing and Urban Development’s Northwest Office of Native American Programs, and the Center for Social Development at Washington University in St. Louis, among others.

Community fit and specialization

CDFIs offer development services in addition to loan products. Standard options for add-on development services include financial education, credit counseling, Volunteer Income Tax Assistance (VITA) programs, homebuyer education, homeownership training, and matched savings programs. Most CDFIs offer a specialized combination of development services and lending products to uniquely fit the needs of the Native Communities they serve. For example:

- **The Lakota Funds**, which initially replicated the credit-group structure of the Grameen Bank, “ultimately decided to terminate its credit-group program in favor of small, collateralized individual loans” (Pickering and Mushinski 2001, 460). By 2013, business lines of credit had become an important product for the Lakota Funds, in part because of its success at growing businesses on the Pine Ridge Sioux Indian Reservation and in part because it was able to share the “small loans” business with a second on-reservation provider of capital and credit, the Lakota Federal Credit Union, which opened its doors in November 2012.¹⁹
- **Four Bands Community Fund** (Four Bands) offers business development classes, business success coaching, business loans, credit builder loans, free tax preparation, youth internships, financial education training—and emergency loans. When an early blizzard blew through South Dakota in fall 2013, it killed hundreds of cattle owned by citizens of the Cheyenne River Sioux Tribe. With the federal government closed due to the budget impasse in Congress, federal sources could neither provide emergency aid nor pay local employees. Four Bands stepped in and made 58 emergency assistance loans to ranching businesses and federal employees affected by the furlough. With both the tools and resources to fill this gap, Four Bands was able to respond swiftly by deploying a total of \$128,977 to assist families (Four Bands Community Fund 2013a; Lakota Mowrer, personal communication, September 2014).²⁰

The provision of community-tailored loan products and development services can increase a Native CDFI’s impact and generate broad community support. But responsive programming also can be challenging. A CDFI must have adequate organizational capacity and financial resources to meet the demands of multiple service lines and products. If a sober assessment shows that it does not, it must be able to identify and prioritize its core activities.

Regional and national Native CDFIs

Not all specialization focuses on the needs of a specific Native Community. Several Native CDFIs specialize in a particular business sector and operate at a regional or national scale. Given the untapped potential across so many business sectors in Indian Country, there may be great scope for the expansion of this model.

For example:

- **Indian Land Capital Corporation** (ILCC) offers loans to tribes across the United States that are working to buy back their homelands. Its development services include land acquisition planning, and its loan products are individually structured to recognize Native nations’ sovereignty. Loan decisions are based on a tribal government’s financial condition, borrowing history, and ability to make loan payments. Loans are then made on the full faith and credit of each Native nation: “Unlike mainstream financial institutions, ILCC does not require Indian nations to use the purchased land as collateral to back the loan. Instead, ILCC encumbers alternative streams of income, including businesses and land revenue” (Indian Land Capital Corporation 2016, para. 2). In other words, ILCC contracts with tribal governments in the same fashion that other lenders contract with non-tribal governments—and in so doing recognizes tribal sovereignty.²¹
- **First American Capital Corporation** (FACC) is a Native CDFI serving American Indian entrepreneurs in Wisconsin. As the business-financing arm of the American Indian Chamber of Commerce of Wisconsin, FACC seeks to improve Native businesses’ capacities to access, leverage, utilize, and retain financial assets. It does so by lending to qualified Native development efforts and by providing capacity-building technical assistance. Forty percent of FACC’s loans serve on-reservation businesses in Wisconsin (Gary Mejcher,

19 | For more information on the Lakota Funds, see <http://www.lakotafunds.org/>, accessed May 8, 2016.

20 | For more information on Four Bands Community Fund, see <http://www.fourbands.org/>, accessed May 8, 2016.

21 | For more information on the Indian Land Capital Corporation, see <http://www.ilcc.net/>, accessed May 8, 2016.

personal communication, May 2014). In partnership with the American Indian Chamber of Commerce of Wisconsin, FACC also has produced a statewide directory of Native-owned businesses—an effort that will both promote the businesses and complement FACC’s efforts by bringing more capital to Indian Country.²²

- **The Citizen Potawatomi Community Development Corporation (CPCDC)** offers financial education, credit counseling, short-term consumer loans, commercial loans, and a matched savings program to Citizen Potawatomi Nation members and employees across the U.S. and to Native American-owned businesses throughout Oklahoma. CPCDC also operates a National American Indian/Alaskan Native Business Opportunity and Workforce Development Center in partnership with the Federal Highway Administration. Together, the CPCDC and the Workforce Development Center are structured to improve Native Americans’ job skills and to increase their opportunities for entrepreneurial business development.²³
- **First Peoples Fund (FPF)** is a Native cultural arts support organization that serves community-based artists across the United States. It has long offered programming that helps Native artists develop entrepreneurial skills. In 2010, FPF began working with a dozen Native CDFIs across the U.S. to further strengthen the entrepreneurship support systems available to artists in Native Communities and to connect artist entrepreneurs with sources of business startup and expansion capital. Rolling Rez Arts is a 2015 product of this collaboration. The Lakota Funds, Lakota Federal Credit Union, and FPF together launched this new state-of-the-art mobile arts space, business training center, and mobile bank. It delivers art, business, retail, and banking services that previously had been inaccessible to many of the artists and culture bearers working in the Pine Ridge Reservation creative economy (First Peoples Fund 2013, The Circle 2015).²⁴

The need for increased collaboration with tribal governments

Tribal governments often have a key role in the founding of locally focused Native CDFIs. For example, Oweesta finds that while federal funds constitute the most important source of operating capital, “tribal sources constitute the single most important source of initial loan capital” (Oweesta 2012, 2-3). Tribal governments often have an even more comprehensive role: “Given the unique legal rights that tribes possess, adoption of a...CDFI is largely a process of political will.” (Deweese and Sarkozy-Banoczy 2008, 7).

Post-founding, however, Native CDFIs and tribal governments may end up working at cross-purposes. This can occur when, for example, a tribal government develops businesses that compete with entrepreneurs’ ventures; when it lags in the creation of statutes, codes, and regulations that are critical to the smooth operation of business on tribal lands; or when it fails to establish or to respect judicial political independence.²⁵

The experience of the last decade suggests that this lack of alignment does not benefit tribal community development. Native CDFIs that find ways to work with their tribal governments, to advocate with constructive criticism, and to help shape an institutional environment conducive for both citizen-led and government-led economic growth are best able to achieve their missions.

“If a Native CDFI and the tribal council aren’t seeing eye-to-eye, it’s tough to get things done.”

—Kim Pate, Chief External Relations Officer, CFED
(personal communication, May 2014)

“Earning the trust and support of our tribal government has truly magnified our efforts to serve our tribal citizens.”

—Sean T. Winters, Executive Director,
Chi Ishobak Inc.
(personal communication, September 2014)

22 | For more information First American Capital Corporation and the American Indian Chamber of Commerce of Wisconsin, see <http://www.faccloans.com/> and <http://www.aiccw.org/>, accessed May 8, 2016.

23 | For more information on the Citizen Potawatomi Community Development Corporation and the Workforce Development Center, see <http://www.cpcdc.org/> accessed May 8, 2016.

24 | For more information on First Peoples Fund, see <http://www.firstpeoples-fund.org/>, accessed May 8, 2016.

25 | While the examples may be surprising to community development professionals who work outside of Indian Country, Native Community development practitioners who participated in consultations, focus groups, and interviews repeatedly noted that these were challenges for Native CDFIs. Certainly, they also are challenges for banks, credit unions, and other community development lenders working in Native Communities. The striking point is that of all such institutions, Native CDFIs have the best credentials for working in concert with tribal governments on community development initiatives, and if even they cannot, economic progress is all the harder to achieve. Chapters 4 and 7 provide additional context and discussion regarding these concerns.

The need for improved impact and performance data

Native CDFIs must be able to tell the stories of their impact with persuasive data. Strong quantitative data and complementary qualitative data can make the difference between getting capitalization or not, getting operational funding or not, getting tribal government collaboration or not, convincing organizations like the tribal housing authority to work with the Native CDFI or not, partnering to realize capital from a New Markets Tax Credit or not, and so on.

Nonetheless, it has been difficult to generate impact data for the Native CDFI sector. A CDFI Fund-sponsored effort in 2007-2008 demonstrated that, up to that point in time, NACA recipients' required data reports to the CDFI Fund had yielded little usable impact information (Deweese and Sarkozy-Banoczy 2008). Renewed attempts for this report led to a similar conclusion. There are several reasons for this sparse data landscape. For one, only CDFIs that have received an award from the CDFI Fund in the last three years are required to report data, and only those that have received a Financial Assistance award are required to provide detailed transaction-level information (Swack, Hangen, and Northrup 2014). For another, data cleaning is a nontrivial task: the three-year rule, nonstandard variable definitions, and changing organizational names give rise to discontinuities in the data that make construction of a usable and reliable dataset quite difficult. Poor reporting is a real and understandable problem as well. If a CDFI lacks adequate organizational capacity, it is more likely to report minimally and with limited accuracy, especially if staff have not been trained on reporting standards.

To put the point in perspective, these are problems for the entire CDFI sector, not for Native CDFIs alone (Swack, Hangen, and Northrup 2014). In fact, they are one reason for recent changes in CDFI Fund procedures: the CDFI Fund is shifting toward annual data collection from all certified CDFIs according to a set of uniform definitions and standards, so that it can track the progress of a broader universe of CDFIs, not just awardees. With these changes, the quality and volume of data reported to the CDFI Fund should continue to improve and, over time, should create new options for analysis and benchmarking.

Nonetheless, no comprehensive research shows the Native CDFI field's true economic and social effects. There are studies and reports for individual organizations—Four Directions' impact study (Jorgensen

and Taylor 2015) is one example—but nothing that makes the point for the sector as a whole.

Relevant data for performance assessment also are lacking. In 2015, the Federal Reserve Bank of Minneapolis provided a sector-wide performance snapshot for more than 40 certified Native loan funds using Form 990 data reported to the Internal Revenue Service (Kokodoko 2015). This snapshot underscored the fact that, as of 2012, a high proportion of Native CDFIs operated beneath the CDFI Fund's recommended minimum prudent self-sufficiency standard.²⁶ In other words, earned income covered less than 40 percent of their expenses. But is this an appropriate measure of performance for institutions with a social mission? Arguably, a still more multi-dimensional standard may be desirable. In the past several years, a few Native CDFIs have used the Aeris performance measurement system (formerly the CDFI Assessment and Ratings System, or CARS) to better measure their organizational effectiveness (Royles 2014).²⁷ This private-sector tool purports to put “forward a peer-based analysis of a fund's risk parameters, performance and even the effectiveness of its social mission” (Fest 2012), although critics say it suffers both from context inflexibility and subjective comparability—for example, how is it truly possible to compare organizations' effectiveness in fulfilling their social missions?

Ultimately, many stakeholders have concluded that better measures of Native CDFIs' impact and a better system to assess their performance are needed—measures and ratings that must be correctly configured to account for the realities of economic development in Native Communities. Work on the issue already has begun. The CDFI Fund is developing a comprehensive set of minimum and prudent standards (MAPS) that use Native CDFI financial and performance data to formulate relevant benchmarks. Entities such as the Native CDFI Network, Oweesta, and CFED are moving an independent effort forward. These efforts provide Native CDFIs with the opportunity to identify and describe their defining work products. They also challenge Native CDFIs to communicate their specialized approaches in a standardized format.

26 | A CDFI's self-sufficiency ratio is “earned income divided by total pre-tax operating expenses. This ratio measures the extent to which an organization is covering its annual expenses through internally generated sources (for example, interest income, fees) or total earned income, rather than grants or other contributions” (CDFI Fund 2012, 17).

27 | For more information on Aeris, see <http://www.aerisinsight.com/>, accessed May 10, 2016.

Capitalization challenges

Capitalization has been and continues to be a pressing issue for Native CDFIs. The literature on Native CDFIs and feedback from consultation meetings, focus groups, and interviews conducted for this report suggest that at least five factors are driving the current demand among Native CDFIs for more capital:

- As Native CDFIs have become better known in the communities they serve and their development efforts (financial education, credit repair, homeownership training, entrepreneurship education, etc.) come to fruition, more community members and clients are seeking to become borrowers.
- As Native CDFIs' clients establish stronger credit histories, their demand for longer-term loans (for example, for mortgages) grows.
- As businesses and economies grow, there is a demand for larger loans.
- Native CDFIs that are able to make more loans can recover more in fees, improve their coverage of operating expenses, and strengthen their balance sheets.
- Larger Native CDFIs are better able to attract debt capital (to re-lend) since investors typically do not find it cost-effective to underwrite smaller loans.

Data from Oweesta's 2012 market study point to the deficiencies in Native CDFIs' capitalization. Loan capital bases ranged from \$250,000 to \$60 million, but after the "two largest Native CDFIs are eliminated from the computation, the average loan capital base is just over \$3.2 million" (Oweesta 2012, 2).

Addressing the ongoing capitalization challenge will not be easy. Research conducted for this report pointed both to problems identified in the 2001 NALS that are ongoing and to hurdles that have emerged more recently. For example:

- The CDFI Fund's statutory requirement of a one-to-one match for all Financial Assistance grants to Native CDFIs makes it hard for many Native CDFIs to qualify for the NACA Program. While Congress waived the requirement from 2009-2013 and in 2015, waivers are not automatic—as fiscal year 2014 shows—making it particularly difficult for less-established Native CDFIs to continue their forward progress.
- Some federal programs with the potential to increase Native CDFIs' capitalization, such as the New Markets Tax Credit Program (NMTC Program), have been less available to Native CDFIs than the industry hoped. While the reasons why are not known, few Native CDFIs have applied for the highly competitive NMTC Program allocations and, hence, few have received them. Additionally, while an internal Treasury Department review showed 90 NMTC Program-funded projects on or near Native Community lands from 2004-2011, it is unclear what portion, if any, of these projects affected Native CDFIs' lending resources.
- Community Reinvestment Act (CRA) funds are rarely directed to Native Communities (Fiddler and Fleming 2013)—even though Native CDFIs would meet CRA criteria (Getter 2014).

- Many mainstream foundations that could make grants to Native CDFIs or that have the capacity to make program-related investments in their work have had little engagement with Native Communities (Mukai et al. 2007)—although the Northwest Area Foundation’s recent commitment to the Native CDFI sector may herald change.
- Native CDFIs as a group tend to have relatively strong balance sheets; in other words, many Native CDFIs have net asset ratios (the ratio of net assets to total assets) above the industry standard (Kokodoko 2015). This is a signal that their asset bases could support greater leverage—yet many Native CDFIs hesitate to take on more debt. One reason is that to cover the costs of debt capital, a CDFI may need to charge a higher rate of interest than is required on loans made from equity resources (Getter 2014), which makes their loans less salable.

While this discussion has focused on loan capital, many Native CDFI leaders point to the need for operating capital as well. Especially as their markets grow, and with the imperative for improved impact and performance data, operating costs are rising. Capital that can cover these and other ongoing, “keeping the lights on” expenses also is critical to the future of the industry.

2 Chapter Recommendations

The fivefold increase in Native CDFIs since 2001 represents a remarkable achievement. Native CDFIs now provide access to capital and credit for hundreds of Native individuals and families who, prior to the development of a local CDFI, lacked a practical way to transform their dreams of, for example, owning a business or owning a home into reality. Native CDFIs have become vital to building and sustaining Native Communities' local economic momentum and represent a key private sector approach to Native nation self-sufficiency. More than that, Native CDFIs have become a channel for Native nation self-determination, helping ensure that development reflects local understandings of need and appropriateness and occurs according to Native principles and values.

These are significant changes and are worthy of support in tribal and federal policy, through increased funding, and through advocacy.

RECOMMENDATION #1

Tribal governments, the U.S. government, banks, other lenders, foundations, and socially responsible investors should redouble their efforts to capitalize Native CDFIs with grants, equity, and debt instruments. Native CDFIs should strive to improve their attractiveness to investors and to design products and processes that maximize the leverage value of their resources.

Finding ways—through partnership and creative thinking—to inject more capital into the Native CDFI industry would make it possible for these organizations to do even more to support Native America's economic transformation. Are there ways that small shifts in federal policy or the interpretation of regulations can ease capital burdens on Native CDFIs and open new points of access to federal monies? Can industry partners participate in educating lenders about the opportunities available in this emerging market sector? Can Native CDFIs create innovative lending processes that more quickly connect their clients to banks or other traditional lenders, so that their own loan funds are more quickly available for relending? Other possibilities mentioned by consultation and focus group participants include:

- **Specialized opportunities for banks and foundations.** Given that most Native CDFIs have strong balance sheets and a track record of success with clients that banks have difficulty serving, lending to Native CDFIs may represent an untapped but profitable opportunity for banks and foundations. Debt financing mechanisms designed specifically for CDFIs, including equity equivalent investments, program-related investments, and loan participation agreements, may have particular promise (see Fund Consulting 2013). Banks also may find opportunities in arrangements to take over loans from clients who have become creditworthy through their involvement with Native CDFI programming. If banks achieve greater engagement with Native CDFIs through such efforts, their increased ability to meet CRA requirements becomes an added benefit.

- **A strategic approach to NMTCs** (and other federal programs designed to increase investment in low-income communities). Native CDFIs should strategize how best to gain access to the capital flows that may be available through the NMTC Program. The program is highly competitive, with many more applicants than NMTCs to award and no legislative authority to set aside or carve out a Native-specific pool of NMTCs. A Native CDFIs should thoughtfully consider whether it is better to become certified as a Community Development Entity (CDE) and apply to the NMTC Program, or to market itself to CDEs, the organizations that receive allocations of NMTCs awarded by the CDFI Fund. Whether or not these CDEs (i.e., allocatees) are Native owned or operated, if they see investment in or partnership with a Native CDFI as a promising way to spur development in low-income Native communities, they are more likely to use their allocations to increase the flow of capital in Native lands.
- **Interagency efforts.** Interagency collaboration may be an important way to unlock new funds. One model is the Native Asset Building Initiative, which is a partnership between two offices in the U.S. Department of Health and Human Services Administration for Children and Families. Together, the Assets for Independence program, part of the Office of Community Services, and the Administration for Native Americans fund complementary aspects of tribal Individual Development Account (IDA) programs. CDFIs have utilized these funds to support their IDAs, resources that have further strengthened their balance sheets and provided key operating support. Other federal agencies may be able to pursue similar arrangements and generate still more capital for Native CDFIs.

RECOMMENDATION #2

Native CDFIs and their federal partners should expand data-gathering to showcase the impact and performance of Native CDFIs.

Native CDFIs can make a better case for more funding if they have quantitative data that succinctly tells the story of their transformative capacity in the communities they serve. Given the relatively small number of Native CDFIs, it may be possible to conduct a systematic analysis of the entire sector to analyze impact, financial risk, and social performance. Calibrating appropriate standards by which to assess Native CDFIs' impact and performance (if, for example, mainstream industry minimum standards are deemed inappropriate) should be a key goal of these efforts. Additionally, finding ways to sustain this data-gathering and reporting should become a priority for Native CDFIs, their peak organizations, and the CDFI Fund.

- **Starting points.** The experiences of several Native CDFIs that have successfully measured impact and/or performance, the new CDFI Fund MAPS, and the performance data gathered by the Federal Reserve Bank of Minneapolis from Native CDFIs' federal tax filings offer valuable starting points for sector-wide analysis. An evaluation of the broad applicability and sustainability of these efforts may move the entire process forward more quickly.

- **Technology.** Native CDFIs use a variety of methods to gather and report data. Standardizing these methods would improve data collection and report production. The primary costs to standardization involve technology and training: all CDFIs would need to gain access to the same system, have assistance in transferring their records, and receive training on how to proceed with the new system. Updates and migrations of information should be planned for specific time periods. Given the potential losses of outside investment that arise from limited data, the payoff from investments in technology and supportive technical assistance could be substantial—and the federal government should make those investments.
- **Advocacy.** Because there may be a misalignment between banks' and other mainstream lenders' perceptions of the overall risk to lending in Native Communities, Native CDFIs should immediately begin to use the impact and performance data that do exist to demonstrate the strength of individual Native CDFIs and of the sector overall. Beginning and sustaining such education is vital to realigning perceptions with reality.

RECOMMENDATION #3

Native CDFIs should work to improve their relationships with tribal governments—and vice versa.

At a minimum, when a Native CDFI engages with its local tribal government, that government is less likely to do something that impedes the work of the CDFI. Increasingly, Native CDFI professionals also find that when Native CDFIs and tribal governments are on the same page, they are able to support and leverage each other's work. For example, some tribal governments provide CDFIs with loan capital; some tribal governments work with CDFIs to provide financial education to employees and other community members; and some CDFIs partner with tribal governments to help government employees escape predatory lending by clearing the debt with a lower interest rate loan and organizing repayment through payroll deduction. Having a shared vision for the Native Community economy is one way to keep both public and private sector actors working toward complementary goals.

RECOMMENDATION #4

Public and private funders should continue to support technical assistance and training, especially programing that can help Native CDFIs advance to the next level of effectiveness and success.

The CDFI Fund, nonprofit partners, and private foundations all have been actively engaged in strengthening the field. In 2011, for example, the Northwest Area Foundation launched its Native American social entrepreneurship strategy, the goal of which "is to accelerate the learning curve of the CDFIs so they can more effectively allocate resources and services to help local Native entrepreneurs develop businesses and local economies" (Northwest Area Foundation 2016, para. 9). But more training, technical assistance, and mentoring is needed as the sector continues to expand. Current and new funders from the public and private sectors must continue to resource the development of Native CDFIs' human capital so that individual organizations and the field have the capacity they need to thrive.

3 From Financial Education to Financial Capability

“My interest is really based on my kids. What can I do to help their future, to put us in a place where we and our children have more choices? I see them in the future having financial literacy. I’m here for the education, to build my own knowledge and then be able to go and share with others. We need to learn how to access capital and be proactive [about] credit... We need to revisit and reconnect those things to our culture so our children don’t struggle.”

–Participant, Hawaii Focus Group, November 2013

Financial education helps economically vulnerable individuals and families budget, save, invest, and avoid becoming victims of predatory lending²⁸ and fraud. Along with other asset building activities, it can be a rung on the economic ladder out of poverty (Sherraden 1990, Oliver and Shapiro 2006).²⁹ Yet financial education is more than a poverty-reduction strategy. Individuals and families of all income levels need financial knowledge and skills “to manage financial resources effectively for lifetime financial security” (Jump\$tart Coalition 2007, 1). In fact, the United States’ increasingly complex financial environment makes personal financial skills more important than ever.

THE EXPANSION OF FINANCIAL EDUCATION

Policymakers, practitioners, nonprofit organizations, government agencies, and financial institutions across the United States have responded to the imperative for financial education with a growing number of financial skills programs. For example, by 2016, 45 states required personal financial skills in their standards for high school curricula, up from 21 in 1998 (Council for Economic Education 2016).

The growth of Native Community-specific programming also is impressive. In 1999–2000, NALS researchers collected convenience-sample data on the prevalence of basic financial skills training, entrepreneurship training, credit counseling and repair services, bookkeeping and accounting training, and homebuyer education in Native Communities. The most frequent response among survey participants was that there was one local provider of homebuyer education and no local provider of the other forms of financial education (Deloitte & Touche et al. 2000).

28 | Predatory loans are designed to exploit vulnerable and unsophisticated borrowers. They may have inappropriately high interest rates or fees, or terms and conditions that trap borrowers. When borrowers fall prey to these practices, they may find repayment unaffordable and suffer foreclosure, bankruptcy, or other financial hardships. These hardships decrease family economic security and drain assets from the local economy. Common vehicles for predatory lending are payday loans, pawnshop transactions, car title loans, loans against tax refunds, and mortgage loans with unreasonable fees or interest rates.

29 | “Asset building refers to strategies that increase financial and tangible assets, such as savings, a home, and businesses of all kinds. Asset-building policy focuses on long-term development of individuals, families, and communities. Whereas traditional approaches to poverty alleviation emphasized increasing income, recent research has proven that income is necessary but insufficient for solving poverty. Instead, assets—concrete and tangible resources like a home, savings, an education or a business—must accompany income to help families move up the economic ladder” (CFED 2015, para. 2-3).

Fifteen years later, Native financial education programs are broadly available. Among 226 tribal government and Native nonprofit asset building programs that participated in a 2014 First Nations Oweesta Corporation survey, 140 provided financial education services (Langholz 2014). Financial education is offered through tribal housing programs, Voluntary Income Tax Assistance (VITA) sites, tribal and public schools, U.S. Department of Agriculture extension programs, tribal youth councils, Temporary Assistance to Needy Families programs, other human services offices, business development programs, and many other partnerships (First Nations Development Institute and Northwest Area Foundation 2014). The fact that financial education is available in so many Native Communities and in so many different ways is evidence of advocates' success in generating awareness of the widespread need and in seeding the field with teaching tools.

Although there have been many players in this process, two entities have been key drivers of the significant expansion of financial education services in Native Communities from 2001 onward, First Nations Development Institute and the Native Financial Education Coalition.

First Nations Development Institute (FNDI) has been on the leading edge of asset development in Native Communities since its founding in 1980. In 2001, recognizing the key role of financial education in supporting Native asset development, FNDI and the Oweesta Corporation partnered with the Fannie Mae Foundation to produce Building Native Communities: Financial Skills for Families (BNC), a Native Community-oriented financial education curriculum. BNC quickly gained traction in Native America, a result not only of its cultural appropriateness but also of its strategic dissemination. FNDI's "train the trainers" sessions placed many more financial educators in the field than would have been possible through direct, in-community educational efforts. Now in its fifth edition, BNC remains the leading resource for financial educators in Native Communities, reaching more than 2,000 students annually (Langholz 2014) and as many as 20,000 students since 2005 (First Nations Development Institute and Northwest Area Foundation 2014). Building on Financial Skills for Families, FNDI also has expanded BNC to include an entire suite of training programs addressing

topics such as investing, VITA sites, and Individual Development Accounts.³⁰

The Native Financial Education Coalition (NFEC) works to recognize, expand, and enhance financial education and financial capability in Native Communities. First convened by the U.S. Department of the Treasury in 2000 and coordinated by Oweesta from 2001 to 2009, NFEC is now an independent entity coordinated by the National Congress of American Indians. Because its membership includes tribes, financial institutions, federal agencies, Congressional offices, and local, regional, and national Native and non-Native organizations, NFEC succeeds in linking Native Communities with new ideas and resources and in elevating Native concerns on national agendas. For example, NFEC's efforts have been instrumental in engaging national financial education and asset building advocates, researchers, and funders—including the Center for Enterprise Development (also known as CFED), Opportunity Finance Network, Center for Social Development, National Community Tax Coalition, Annie E. Casey Foundation, Internal Revenue Service, and Federal Reserve Bank system—with Native Community concerns.³¹

EXAMPLES OF SUCCESS

"If you just say you are offering financial literacy, most tribes and tribal members will not know what you are talking about. But if you have them identify either their individual goals or tribal business goals, then you can say financial literacy is the step that will take you from the idea or desire to the goal or the business endeavor you wish to achieve."

—Participant, Northern Plains Region Tribal Consultation, October 2013

Research findings emphasize that financial education has a greater effect when it is linked to a specific purpose, incorporates learning by doing, and is offered "just in time" for its use (Anderson et al. 2008; Fernandes, Lynch, and Netemeyer 2014; First Nations Development Institute and Northwest Area Foundation

30 | For more information about FNDI and the Building Native Communities Curriculum, see <http://www.firstnations.org> and www.bncweb.org, accessed May 12, 2016.

31 | For more information about NFEC, see <http://www.ncai.org/initiatives/nativefinancial-ed/nfec>, accessed May 12, 2016.

2014; Jorgensen and Mandell 2007). Examples of success bear out these findings. They also demonstrate that effective financial education helps create financially astute Native Community members who are able to participate effectively in community development, entrepreneurship, civil society, and tribal governance.

Since 2001, the Housing Department of the Confederated Tribes of the Umatilla Reservation (CTUIR), formally the Umatilla Reservation Housing Authority, has managed the tribes' Homeownership Program. The program, which is aimed at supporting a broader array of housing opportunities on or near the tribes' reservation, views financial education as the foundation of homeownership. It teaches self-sufficiency through long-term asset building and focuses on saving, budgeting, credit reports, interest rates, and predatory lending. Practically, the program helps clients assess and improve their readiness for homeownership, assists them in determining the actual costs of becoming a homeowner, and guides them through the mortgage application process from pre-approval to the loan closing. Notably, the program also teaches policy history, which helps clients understand why CTUIR homeownership rates have been so low. By 2014, more than 400 families had completed the program's "Financial Success" education series and homebuyer education class, and more than 40 tribal members had achieved the goal of becoming first-time homeowners (Bryan 2013, HUD 2010, National Association of Realtors 2007).³²

The Hawaii First Community Resource Center (HFCRC) is community outreach initiative of the Hawaii First Federal Credit Union, a certified Native CDFI. HFCRC's core services are financial education, financial counseling, and small business support. As an IRS-designated VITA site, HFCRC also offers free, in-person tax assistance and self-assistance through H&R Block's online interface. Significantly, HFCRC bolsters the impact of its core services by creating opportunities for comprehensive financial capacity building. HFCRC provides interested clients with access to fair-interest "refund express" loans as an alternative to the high-fee advances offered by private tax preparers. It helps clients open affordable savings accounts, channel their refunds to savings, and

enroll in Individual Development Account (IDA) programs. It further incentivizes savings by sponsoring a lottery that rewards consistent savers. Staff encourage every VITA client to attend free financial education workshops. Both inside and outside the classroom, they stress the importance of emergency savings funds, noting that an Earned Income Tax Credit offers a simple way to start one. At the end of April 2014 (the close of the regular 2013 tax season), HFCRC had served 397 clients in person and another 87 online. Twenty-three of these clients opened savings accounts, four avoided predatory refund anticipation loans, 34 paid down debt, nine enrolled in IDA programs, and six participated in other forms of financial education (Hawaii First Community Ventures 2014).³³

"It is our goal to ensure that our VITA program is not a one-time service and that our organization is not labeled as 'just a tax clinic.' We strive to empower our community by providing multiple products and services to promote self-sustainability."

—HRCRC staff member (Hawaii First Community Ventures 2014, 4)

The Business Development and Asset Building Department of Four Bands Community Fund, a Native CDFI located on the Cheyenne River Sioux Reservation, trains, coaches, and empowers aspiring and established entrepreneurs. Its financial education program, Credit When Credit is Due, helps clients repair their credit and set a foundation for future asset building. Its tailored business education curriculum, Cheyenne River Entrepreneurial Assistance, Training, and Education (CREATE), takes aspiring entrepreneurs through the steps necessary to start a business. Its business coaching services identify clients' particular business development needs—from customer service and marketing to financial systems and accounting—and addresses them, removing the barriers to business success one by one. The department brings entrepreneurs together through periodic talking circles, so that they can engage in peer counseling and networking. To further encourage entrepreneurial business development and growth, the department also makes selective "Business Bundle" investments, which can cover the costs of a

32 | In addition to cited sources, data for this paragraph were provided by Marcus Luke, Housing Director, CTUIR (personal communication, June 2012). For more information on the Housing Department of the Confederated Tribes of the Umatilla Indian Reservation, see <http://ctuir.org/tribal-services/housing>, accessed May 12, 2016.

33 | For more information on the Hawaii First Community Resource Center and Hawaii First Federal Credit Union, see http://www.hawaiifirstfcu.com/asp/services/service_1_4.asp and <http://www.hawaiifirstfcu.com>, respectively, accessed May 12, 2016.



Photo Credit: Native Nations Institute (2012)

marketing campaign, technology upgrade, financial management training, or other one-off operating expenses. All services are offered as a complement to Four Bands' business lending program, helping create the circumstances in which each business can succeed and each loan can be repaid. In 2014 alone, Four Bands graduated 102 clients from its credit-builder program, 28 clients from CREATE, and made 43 business loans (Four Bands Community Fund 2014).³⁴

The Commerce Services Division of the Cherokee Nation Government and the Cherokee Nation Economic Development Trust Authority (EDTA), a Native CDFI, together manage a consumer loan program for tribal government employees that offers alternatives to predatory loans. Payments are made through payroll deduction, and a preset time limit is established for loan payoff. While high-risk applicants are required to seek financial counseling to gain loan approval, all applicants are encouraged to take advantage of financial education opportunities offered by the Commerce Division and EDTA. Services provided to employees of Cherokee Nation Businesses (CNB), the holding company for all of the Cherokee Nation's for-profit entities, constitute only a fraction of program activity but underscore program impact: in 2013, CNB employees accounted for 322 of EDTA's nearly 900 program loans, the Commerce Division provided loan-related financial counseling to

156 CNB employees, and 664 CNB employees attended financial planning workshops held at worksites (Chavez 2014, Jorgensen et al. 2008).

"There's a significant amount of financial services being administered out of Tahlequah through the Commerce group that's directly benefitting our employees, and it's helping them stay strong in their personal financial stewardship and management."

—Doug Evans, Chief Financial Officer, Cherokee Nation Businesses
(quoted in Chavez 2014, para. 8)

OPPORTUNITIES AND CHALLENGES

Today, financial skills training is available in dozens (if not hundreds) of Native Communities. It has been adapted to a variety of circumstances and continues to evolve in response to Native America's changing needs. Among the issues now driving innovation in curricular content and delivery methods are Native Communities' growing wealth, the breadth of tribal government responsibilities, and the contemporary meaning of tribal citizenship. These developments present both opportunities and challenges for Native Community financial educators, to which effective responses may help individual, families, communities, and nations secure their assets and transform their futures.

The transition from saving to investment

Many Native Communities are experiencing self-determined economic growth—and where growth is occurring, a changed set of financial education needs has emerged. The change can be described as a shift from the need for saving to the need for saving and investment. Native individuals, families, and nations with more disposable income have the opportunity not only to save toward specific goals (emergencies, higher education, a new home purchase, business investment, etc.) but also to build wealth.

The need is especially evident in Native nations where tribally owned enterprises generate significant profits,³⁵ tribal management of collectively owned resources

34 | For more information on Four Bands Community Fund's services, see www.fourbands.org, accessed May 12, 2016.

35 | For example, nearly 250 tribes operate tribal casinos (National Indian Gaming Commission 2016). Many tribal gaming enterprises do not generate substantial revenues for tribal governmental or tribal citizens—"In fiscal year 2013, about 17 percent of Indian gaming operations generated more than 70 percent of the total gross gaming revenues that year" (Government Accountability Office 2015, 6)—but a significant minority do.

yields substantial revenues, or the nation has received a settlement payment.³⁶ Typically, not only the tribal government but also tribal citizens benefit from these increased cash flows, either through higher paying jobs or because the community has opted to distribute a portion of tribal government revenues on a per capita basis. In these cases, tribal governments and tribal citizens must manage a one-off or otherwise time-limited increase in income.

From a financial education standpoint, the focus on investor education requires new knowledge and new skills, including an understanding of investment principles and products and the ability to select and monitor an investment adviser. At present, however, only a few broadly available resources support these aims. For example, FNDI offers an extension of the BNC curriculum entitled, “Building Native Communities: Investing for the Future”³⁷ and hosts the InvestNative web portal.³⁸

“Many separate, long-running lawsuits brought against the federal government by Native individuals and dozens of tribes all began to disburse settlement payments in 2012....This flow of cash raised not only the personal finance questions but also issues stemming from the fact that most reservation communities have...few sources of tax and investment advice.”

—Richard Todd and Leslie Wheelock (2013, 5)

As incomes rise, individuals and tribes also have more capacity to invest in Native Communities. Individuals can invest by doing business with Native-nation owned banks and credit unions. They can purchase and develop fee land on or near their reservations, bringing more of the tribe’s homeland under Native control. They can invest in local tribal entrepreneurs by purchasing their products and services or by lending them money for business start-up or expansion (an investment most typically made in family members). Tribal governments have even more options, including lending to Native CDFIs, investing in other Native nations’ business enterprises, buying tribal bonds, and providing venture capital to Native-owned start-ups. Both individuals and tribal governments also can invest philanthropically. Many tribes do so through charitable giving programs, although there may be reasons to formalize such programming through the creation of Native foundations (Deweese and Phillips

2015). Opportunities are more limited for individuals, although targeted philanthropic investment is possible through community foundations that serve Native peoples or by making direct gifts to Native Community-serving nonprofits (see, for example, Minnesota Council on Foundations 2012).

In fact, there are ways to combine “doing good” with “doing well,” as demonstrated by the Oneida Tribe of Indians of Wisconsin’s sustainable and responsible investing (also known as socially responsible investing). The Oneida Tribe invests its financial resources in pursuit of a better future for the nation—and as the first tribe in the United States to develop a comprehensive sustainable and responsible investing program, it also invests its resources for the good of all Native Communities. One of the Oneida Nation’s strategies is to invest in companies known for their corporate responsibility. A second is to engage in shareholder activism, working to advance Native American cultures, imaging, and rights by the way it votes its shares and by convincing other shareholders to follow suit. Ultimately, the tribe’s investment division (the nation’s Trust Department) pays attention to a triple bottom line: investments must yield financial, social, and environmental returns. In traditional Oneida culture, those with wealth were expected to share with others as well as preserve resources for future generations. The nation uses modern tools to manage its assets in accordance with these longstanding beliefs. Its community investments and corporate advocacy have impact beyond its borders, supporting Native nations within the United States, Indigenous people throughout

36 | For years, tribes and tribal advocates have challenged the U.S. government, states, and corporations that have unlawfully or unfairly acquired, used, or damaged Native Community assets. When tribes win these challenges, cash payments are a typical aspect of the settlement package. The most prominent of these cases is Cobell v. Salazar, a class action suit brought against the U.S. government for mismanagement of “trust account” assets. (The U.S. government is the trustee for numerous land parcels that belong to individual American Indians, and manages those lands on their behalf.) The suit was settled for \$3.4 billion in 2009; minimum payments of \$1,000 were distributed to thousands of account holders beginning in 2012. See Ray (2012) for a useful summary. The sidebar in Todd and Wheelock (2013, 5) provides information on several other recent settlements, and the flow continues: in February 2016, for example, the federal court approved a \$940 million settlement for unpaid contract support costs in the case colloquially known as the Ramah Navajo Chapter Class Action Settlement, and tribes that are members of the class will receive significant sums in repayment for past financial harms.

37 | For more information on “Building Native Communities: Investing for the Future,” see <http://www.firstnations.org/knowledge-center/financial-education/bnc>, May 12, 2016.

38 | For more information on the “InvestNative Project,” see <http://www.investnative.org/index.html>, accessed May 12, 2016.

the world, and all those who care about promoting a healthy environment and sustaining human rights.³⁹

The point for financial education is that strategic investment by Native people for Native Communities is both desirable and possible. This is not a typical element of financial education curricula, although “invest Native” is a reasonable extension of the “buy Native” messages in support of Native businesses (Metcalf 2012).

Children’s savings accounts, “18 money,” and trust funds

Outside Indian Country, research points to the value of children’s savings accounts (CSAs). These accounts, often earmarked for college expenditures, are a way to help ensure that low- and moderate-income young people start adulthood financially less far behind their economically better-off peers. CSAs also are associated with inspiring youth to achieve greater academic success in school, higher college matriculation, and “on course” (appropriate) progress through college (Elliot 2012). Some Native nations offer a savings vehicle similar to CSAs, known as minors’ trust accounts. If a minor is a citizen of a tribe that makes revenue distribution payments to all its members, the tribal government will not make a payment to that minor directly. Instead, the monies flow to a trust account and accrue until that minor citizen satisfies the conditions for account access. Depending on a tribe’s specific policies, a young tribal citizen may gain access to the account at age 18, at some later age when he or she finishes high school or receives an equivalency degree, or when a variety of other requirements are met.

As compared to mainstream CSAs—which appear to generate a variety of positive outcomes for children and young adults—tribal minors’ accounts are more controversial. In fact, at consultations and focus groups for this study, no participants provided positive feedback about minors’ accounts. “Increasingly, Indian tribal leaders have observed that distributing a large lump sum to beneficiaries when they turn 18 years old often fails to provide long-term financial security and can undermine educational goals. Too often, the funds are spent on items that quickly depreciate, or their receipt is perceived as negating the need for higher education” (Nilles, 2011, para. 9).

Although changes might require substantial political will, reforms to minors’ account policies have the potential to harness positive outcomes and to diminish negative incentives. On the policy front, tribes might take a page from mainstream trust fund managers: many recommend staggered payouts that extend later into life, after a child has matured (Brennan 2011). At least three tribes have instituted minors’ account payout policies that spread account distribution into the recipients’ 20s and 30s, making them more like traditional trust funds (Nilles 2011). Although there is not yet any comprehensive quantitative research on this issue, anecdotal evidence suggests that longer payout timelines can have a beneficial effect on account holders’ spending behavior and long-term financial habits.⁴⁰ Some tribal governments require financial education before youth can receive their account distribution. Such requirements should be evidence-based and updated as new knowledge emerges. At present, the best evidence suggests that experiential, just-in-time financial education (delivered just before a youth gains access to the account) have promise.⁴¹ Financial education for middle school students—who are forming the attitudes and behaviors that will take them safely (or not) through their teenage years and into adulthood, may offer an even better opportunity to change attitudes and behaviors in later life (McCormick 2009, Scheinholz et al. 2011, Todd 2012, Webley 2005).

Professional development for tribal officials

As tribal economies grow, tribal government fiscal responsibilities also grow more complex. Contemporary tribal leaders may need to make decisions on everything from program budgets to natural resource royalties, bond issuance, intergovernmental transfers, tax treaties, and the appropriate investment style for their nations’ sovereign wealth funds. To do so they need the financial skills that can help them protect tribal assets and empower their nations. In focus groups and consultations for this report, tribal citizens and leaders alike emphasized that they held more respect for tribal leaders who sought training in financial decision making than those who did not.

40 | This approach also accords with the best evidence from neuroscience, which suggests that the human brain does not finish maturing until approximately age 25—and that the last parts of the brain to develop are those that affect impulse control, judgment, and risk taking (Johnson et al. 2009, Arian et al. 2013).

41 | “My Green” is one example of this type of financial education; see <http://mybigmoney.org/>, accessed May 12, 2016.

39 | For more information on Oneida Sustainable and Responsible Investing, see Harvard Project (2010) and White (2015).

In 2009, the Native American Finance Officers Association (NAFOA) and the American Indian Policy Institute (AIPI) at Arizona State University partnered to develop professional development opportunities to meet this need. Their Tribal Financial Managers Certificate Program is intended to provide Native American professionals and other interested individuals with a background in tribal government finance, fiscal management, Indian law, and economic development. Participants who complete the curriculum receive a certificate from AIPI and NAFOA as well as Continuing Professional Education (CPE) credits. By April 2016, more than 340 tribal leaders, financial officers, accountants, and other tribal professionals had participated in the AIPI-NAFOA program (American Indian Policy Institute 2016).⁴²

The Cheyenne River Sioux Tribe offers a more local example. In 2012, tribal government leaders engaged the local Native CDFI, Four Bands Community Fund, to provide financial education tribal government employees. More than 300 Cheyenne River Sioux tribal employees completed a specialized financial education training, which had a demonstrated effect on their personal financial literacy (Four Bands Community Fund 2013b).

Financial capability and economic citizenship

In both policy and practitioner circles, the term “financial capability” has begun to replace “financial education.” The reason is that financial capability focuses not only on knowledge but also on practical issues, such as access to the financial products and services that make it possible to use financial knowledge: “Financial literacy will undoubtedly make people more capable of managing their finances. It is unclear, however, whether it will reduce financial vulnerability in low-income households if institutional barriers to beneficial financial products are not also addressed” (Sherraden 2010, 2). Especially with the strong growth of Native CDFIs and reduced distances to brick-and-mortar banks and ATMs (Akee and Jorgensen 2016), greater financial capability is being developed in Indian Country. But these successes also push Native Communities to consider what challenges to financial capability remain and how they can be met.

One such challenge is the need in some Native Communities to reinvigorate the idea of economic citizenship: “Economic citizens are socially and financially engaged and understand their rights and responsibilities to self, family, and others in the larger community. Economic citizenship entails sustainable livelihoods as well as reduced income and asset poverty” (Child and Youth Finance International, 9). In the Native Community context, economic citizenship involves, for example, patronizing businesses owned by tribal members, utilizing local financial institutions and service providers, investing time and other resources in community projects, protecting the Native nation’s land and resources, and adhering to cultural principles for sharing, empowering, and respecting fellow community members. In this sense, practicing positive economic citizenship has strong convergences with asset mapping, which asks: what are our Native Community’s strengths, and how can we use them to make it an even better place to live? Financial education and financial capability that are focused on these outcomes keep the ultimate goal—economically healthy, politically sovereign Native nations—in sight.

42 | For more information see <http://www.nafoa.org/education/leadership-development> and <https://aiipi.clas.asu.edu/content/tribal-financial-manager-certification-training>, accessed May 9, 2016.

3 Chapter Recommendations

Compared to 2001, financial education in Native Communities is broadly accessible, although a substantial need remains for more. Native CDFIs have been key players in the delivery of financial skills training to Native Communities, but they cannot meet the outstanding needs alone. More organizational and financial resources are needed to address this growing need.

RECOMMENDATION #1

Native CDFIs, tribal governments, other nonprofits, and external partners such as schools, banks, foundations, and nontribal governments should work together to provide opportunities for Native Community members to increase their skills.

Specific recommendations include the following:

- Access to financial institutions and opportunities to build assets and wealth are critical to increasing not only financial education but also financial capability. Efforts to transition unbanked and underbanked individuals to an appropriate banked status should continue apace.
- Service providers (tribal, state, federal, nonprofit) should link financial education to their programming. Financial education is more likely to take root and make a difference when it is linked to a client's immediate needs. Native CDFIs, tribal governments, and other providers should develop the flexibility to respond to these moments through homebuyer education, entrepreneurship classes, employee loan program requirements, and so on.
- Tribal governments should provide incentives for their employees to pursue financial skills capacity building, such as work release time or other perquisites. Tribal elected officials also should take up opportunities to hone financial skills relevant to governing; one opportunity may be to include financial education as part of the training that newly elected leaders receive.

RECOMMENDATION #2

Financial education should begin at an early age.

Native CDFIs and other providers of financial education should work with elementary and middle schools, afterschool programs, Boys and Girls clubs, and similar organizations to develop programs and effective outreach. To the extent possible, learning should be hands-on and experiential and include a focus on economic citizenship.

RECOMMENDATION #3

Native CDFIs and other financial education providers should increase the availability of investor education and make a case for it to their clients.

In addition:

- Native CDFIs and other financial services providers should identify best practices for investor education and investment vehicles that community members may use when they are in anticipation of—and then actually receive—windfall benefits from settlements and profit sharing. Such benefits are likely to continue to flow to Native Communities and Native Community members because of legal settlements, enterprise earnings, natural resource royalties—but as the past has shown, it takes sound policies in support of financial capability to preserve individual assets for future leverage and long-term wealth building and, ultimately, to bolster community wealth.
- Tribal governments with mandated payouts to minors at age 18 should consider changing their minors account policies to spread payments over a longer time horizon and require pre-disbursement financial education. While changes may be politically challenging in the short run, such policies have greater capacity to protect young tribal citizens' financial resources and the young citizens themselves.



Photo credit: Honoring Nations (2016)

4 Expanding Native Entrepreneurship

“With full access to capital and credit, our businesses would be thriving and owned by both individual entrepreneurs and tribes—which would increase self-sufficiency and community and personal independence ...We could expand our fisheries, develop service businesses that add to the local quality of life, and develop tourism businesses that bring in outside dollars.”

—Participant, Alaska Tribal Consultation, December 2013

For years, economic growth in Native America has been highly dependent on the Native public sector: as Native Community governments expanded and tribal government-owned corporations grew, Native Community economic development followed.⁴³ This growth led to greater well-being for many Native Community residents. Yet as ongoing lags in income and employment levels attest, public sector growth alone cannot create truly flourishing Native Community economies. Native Community economies also need strong and thriving private sectors, built up by Native entrepreneurs and tribal citizen-owned enterprises. Such private sector growth has the potential to drive further economic transformation in Native Communities—although Native entrepreneurs may need support before they can catalyze change.

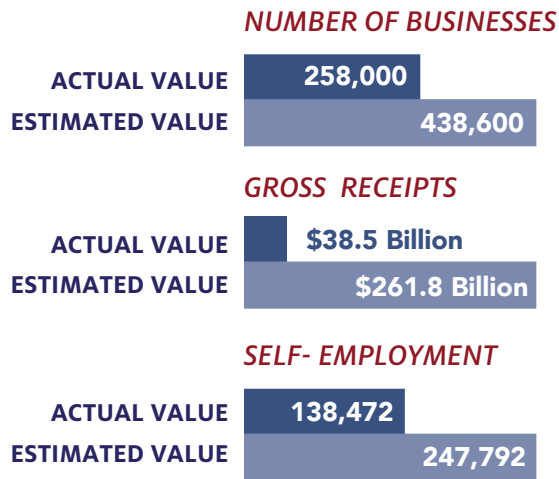
SIZING UP THE SECTOR

Data on American Indian, Alaska Native, and Native Hawaiian businesses are sparse. In 2007, the latest year for which national-level business owner race and ethnicity data were available for this report, American Indians, Alaska Natives, and Native Hawaiians owned 258,000 U.S. private sector businesses, or just under 1 percent of all nonfarm businesses. These businesses generated \$38.5 billion in gross receipts, accounting for 0.25 percent the total nonfarm business receipts (Census Bureau 2012a, 2012b). In 2011, the Census Bureau’s Non-Employer Statistics series showed that American Indians, Alaska Natives, and Native Hawaiians composed nearly 1 percent of all self-employed farm and nonfarm U.S. workers (Layne 2013).

These data highlight two facts. First, they show underrepresentation. American Indians, Alaska Natives, and Native Hawaiians constitute 1.7 percent of the U.S. population (Humes, Jones, and Ramirez 2011) but a much lower percentage of business owners, business receipts, and self-employed workers. Exhibit 3.1 illustrates this point. It shows the actual number of Native American-owned businesses, the dollar value of receipts from Native-owned businesses, and the number of self-employed Native individuals identified in Census Bureau datasets—and what each of those values would be if their relative proportions matched Native Americans’ share of the population. In short, there would be many more Native business owners, and their businesses would generate significantly higher revenues.

43 | In the 1930s, the *Indian Reorganization Act* recognized tribal governments as the entities through which federal spending would flow and clarified procedures for creating tribal government-owned corporations, laying the groundwork for tribal government-led development. Federal and state legislation recognizing Alaska Native and Native Hawaiian governments, jointly held corporate entities, and community organizations had similar effects. The War on Poverty and Great Society programs of the 1960s and the self-determination contracting and self-governance compacting opportunities created in the 1970s and 1980s caused tribal governments to grow even more, generating jobs and income for Native Communities. In the 1990s, tribal economies were bolstered through the rapid growth of tribal corporations, particularly those in the gaming and hospitality industries.

Exhibit 3.1: Native Americans' Actual Participation in the Private Sector vs. Native Americans' Estimated Proportional Participation



Notes: Proportionality is with respect to Native Americans' representation in the U.S. population. Data are for all Native Americans (rural and urban, inside and outside Native Communities). Sources: Census Bureau (2012 a, 2012b); Layne (2013); Humes, Jones, and Ramirez (2011).

Second, these data are not descriptive of private sector activity in Native Communities. The U.S. Census Survey of Business Owners collects information from self-identified Native individuals, who may or may not be affiliated with a Native Community. Their businesses may or may not be part of any given Native Community economy, and it is not possible to geocode the publicly available dataset to Native Community geographies. In the current data environment, unless a Native Community itself collects information about private sector activity, it is difficult to know much about Native business ownership on or near Native lands—and it is impossible to get an aggregate picture of the Native Community private sector.⁴⁴

NATIVE ENTREPRENEURS: CATALYSTS FOR CHANGE IN NATIVE COMMUNITIES⁴⁵

What difference can entrepreneurship make in Native Communities? As the following sections explain, entrepreneurship creates jobs, strengthens economic multipliers, increases economic resiliency, and improves the quality of life in Native Communities. Entrepreneurship and private sector development also have the potential to increase tribal government revenues and to strengthen sovereignty.

Entrepreneurship generates jobs

“There [are] generally different reasons for entrepreneurship among Native Americans. Some believe it’s that ‘entrepreneurial spirit,’ but more often it’s job creation or supporting a family.”

—Christopher James, Office of Native American Affairs, U.S. Small Business Administration

Small businesses—generally understood to arise from entrepreneurial activity—are a major source of jobs in the United States.⁴⁶ In 2010, for example, firms with fewer than 20 employees provided jobs for 20.6 million Americans, or 18 percent of jobs at firms with employees. When self-employment is included, small businesses accounted for 28 percent of all jobs in the economy. In many rural areas, the proportion is even higher: small business employment and self-employment accounted for 44 percent of jobs in Montana, 40 percent in Wyoming, 36 percent in South Dakota and Vermont, 35 percent in Maine and Oregon, 33 percent in North Dakota, and 32 percent in New Mexico. Small businesses are particularly prominent in the retail, professional and technical services, construction, and health and social services industries. They also are an important source of new job creation (Neumark, Wall, and Zhang 2011; Harrison 2013).

Evidence from Native CDFIs demonstrates the success of entrepreneurship-support strategies for job creation and retention in Native Communities. Over the period 1986-2011, the Lakota Funds helped create nearly 500 small businesses and 1,415 jobs on the Pine Ridge Indian

44 | On the plus side, the 2007 Survey of Business Owners included all businesses with \$1,000 or more in annual receipts (Census Bureau 2012c), so it at least is designed to capture information about the very small enterprises that may be more common on reservations than off.

45 | This section draws substantially on Cornell et al. (2007); also see Miller (2012).

46 | The data in this paragraph are drawn from Small Business Administration (2012), Tables A.4, A.6, A.7, and A.8.

Reservation through the provision of entrepreneurship education and business startup and expansion financing (Lakota Funds 2015). From 2000 to 2013, Four Bands Community Fund helped start at least 185 businesses and created or retained nearly 600 jobs in the Cheyenne River Sioux community using a four-pronged strategy focusing on entrepreneurship education, financing, incubation, and advocacy (Four Bands Community Fund 2011, 2012, 2014).

Entrepreneurship increases local economic multipliers and community wealth

“We see people educated in business, organization management, and marketing in our communities, and we see it benefitting us. We would like to keep the money circulating throughout the tribal system.”

—Participant, Southeast Region Focus Group, October 2013

Jobs are not the only benefits produced by small and entrepreneurial enterprises. Private sector businesses located in Native Communities also give rise to multiplier effects: as individuals spend money at local businesses, many of those business owners respond by spending at other local businesses, and so on, circulating dollars through the tribal economy and multiplying the effects of the initial expenditure. What’s more, in a community with a relatively small private sector, as the number of local businesses grows, so does the multiplier. When customers have more places to spend their money, their dollars contribute even more to local revenues and incomes, economic activity, and community wealth.⁴⁷

Retail and service sectors businesses, a core focus of entrepreneurial development in many Native Communities, are especially valuable for increasing the local-economy options available to consumers. Small businesses market everything from groceries to computer repair, automobile maintenance, and fuel oil—goods and services that local residents need in the course of daily

life. In the absence of local providers, residents have to look elsewhere for these goods and services. In other words, retail service businesses provide opportunities for Native nation citizens to spend dollars in their own communities, at Native businesses, instead of in other communities, at businesses whose owners have no thought of making future purchases in the Native Community business sector.

“My vision is of local businesses. I dream that micro-enterprises and co-ops will be formed to assist with food independence.”

—Participant, Hawaii Focus Group, November 2013

ENTREPRENEURSHIP INCREASES AN ECONOMY’S RESILIENCY

Many Native nations today rely on a narrow economic base. Some are heavily dependent on federal programs, leaving them vulnerable to federal budgets or policies over which they have little control. Others are equally dependent on gaming operations, natural resource extraction, or some other single economic activity, leaving them vulnerable to market shifts. Citizen entrepreneurship and private sector growth cannot completely overcome such dangers, but they can create a more diversified and, therefore, more resilient economy (Dissart 2003, Ormerod 2010): if tribal government-owned businesses shrink or even close, diverse economic activity in the private sector can cushion the blow. In other words, the more Native entrepreneurs develop and expand local businesses and employment at those businesses, the less reliant Native Community members will be on the tribal or federal government for jobs and income.

Entrepreneurship improves the quality of life in Native Communities

“With increased capital, jobs, and businesses, our tribal members would have choices, be financially empowered, and people who had left the village could come home. People could stay in the community and close to their families.”

—Participant, Alaska Tribal Consultation, December 2013

⁴⁷ | As one textbook explains, “The less diversified the economy, the greater the leakages, and hence, the smaller the multiplier values.... In general, the urban areas (cities) are associated with larger multiplier values than rural areas, and rural areas isolated from nearby urban areas are again subject to even greater leakages and hence have smaller multiplier values.... There will always be some exceptions to this, such as in an area that may be so isolated that it is economically attractive to be more self-sufficient...(hence the level of the leakages would diminish and the size of the multiplier would increase)” (Fletcher 2009, 178). Also see Knight and Freyer (2014) for an example of the multiplier effect from small business development.

The geographic spaces that Native Communities occupy, especially reservations, have “a physical, human, legal, and spiritual reality that embodies the history, the dreams, and the aspirations of Indian people, their communities, and their tribes” (Pommersheim 1989, 246). Yet in Native Communities with underdeveloped business sectors, this “pull of the land” (ibid., 250) may be tempered by a lack of jobs and the absence of certain quality-of-life amenities that more vibrant economies can provide.

Entrepreneurship and private sector development expand the employment opportunities available in Native Communities, making the option to remain at home or return home more viable. Moreover, by developing local retail and service sectors, entrepreneurship and private sector growth reduce the costs to Native Community members of having to shop at distant stores simply to meet basic needs for food, clothing, and durable goods. (These costs, including time, gas money, and vehicle wear and tear, can be significant.) Native entrepreneurship also can reproduce, in a culturally appropriate way, the kinds of opportunities, experiences, and choices that community members once may have thought existed only outside their communities, such as movie theatres, art galleries, and a mix of restaurants. In all of these ways, Native entrepreneurship enhances the quality of life in Native Communities and strengthens the pull of Native lands.

“Small business activity has a tremendous psychological and emotional impact on reservation people, particularly reservation youth. When they see businesses sprouting up, they see hope for the future.”

—Mark St. Pierre, Founding Director,
Pine Ridge Area Chamber of Commerce
(Cornell et al. 2007, 201)

Entrepreneurship increases tribal sovereignty

Most Native nation governments generate revenue through contract and grant arrangements with other governments (especially the U.S. government) and through enterprise ownership (in which a portion of net revenues goes to support government operations). Some Native nations generate public revenues from natural resource extraction (e.g., timber sales, oil and gas royalties), land leases, and passive investments. A small but increasing number of tribal governments also raise public revenue through taxation. Nonetheless, taxation

is an underdeveloped form of tribal government revenue generation—in large part because of the encroachment of state and local governments (reducing the value of some sales taxes) and the status of tribal lands (making property taxes unviable. Yet as the U.S. Supreme Court noted in *Washington v. Confederated Tribes of Colville Indian Reservation*, “The power to tax transactions occurring on trust lands and significantly involving a tribe or its members is a fundamental attribute of sovereignty.”⁴⁸

Native entrepreneurship and private sector development offer another option for raising tax revenue and buttressing tribal sovereignty. To the extent that businesses located on Native Community lands use community resources—roads, utilities, law enforcement, workforce training—Native nation governments could levy modest gross receipts or value-added taxes on citizen-owned businesses to help pay for those public goods and services. In fact, the opportunity for such revenue should be an incentive for tribal governments to create a Native Community environment conducive to entrepreneurial business development.⁴⁹

CHALLENGES IN ASSISTING NATIVE ENTREPRENEURS

Many aspiring and current entrepreneurs have credit problems, limited financial capability, and sparse business experience (First Nations Development Institute 2009, Table 9). Given the benefits that entrepreneurship brings to Native Communities, what can be done to support and encourage current and aspiring Native entrepreneurs?

Capital

Native business owners often begin with relatively small amounts of startup capital. Fifty-two percent of American Indian and Alaska Native respondents and 50 percent of Native Hawaiian respondents to the 2007 U.S. Census Survey of Business Owners question concerning startup capital noted that they began with less than \$5,000. By contrast, only 45 percent of White-owned businesses were started with such a small capital investment (Census Bureau 2012a). Almost all of this difference is accounted for at the top end of the investment scale: 9 percent of

48 | 447 US 134 (1980). Also see NCAI (2015).

49 | Of course, this power to tax should be used strategically: a punitive tax on business success or high fees for land leases or business permits will deter citizen entrepreneurship, costing the community locally generated products, services, jobs, and other benefits.



Photo credit: Native Nations Institute (2011)

American Indian and Alaska Native respondents and 10 percent of Native Hawaiian respondents reported a startup investment of at least \$100,000 as compared 14 percent of Whites (ibid.).

In part, these outcomes are attributable to the difficulties Native entrepreneurs face in obtaining business capital—barriers that include prohibitively high interest rates on loans, the inability to use trust land as collateral on loans, and a general unwillingness on the part of financial institutions to lend to reservation-based applicants (CDFI Fund 2001, Dewees and Sarkozy-Banoczy 2008).

In the last 15 years, Native CDFIs and other specialized lenders—for example, Native and non-Native banks and credit unions that participate in the U.S. Small Business Administration 7(a) loan program—have helped Native entrepreneurs make progress against these barriers. Their lending has made a difference by increasing the flow of capital to Native Communities for business development. While it is not possible to calculate the total value of loans made since 2001 (the release date of the NALS, which clarified the extreme lack of capital access for Native entrepreneurs), the available data tell a positive story:

- In its first year of operation alone (2006-2007), Nijjii Capital Partners Inc., a CDFI that serves the Lac du Flambeau Band of Lake Superior Chippewa, the Menominee Tribe of Wisconsin, and the Sokaogon Chippewa Community of Mole Lake, made 11 business loans that together totaled \$130,000 (Northwoods Nijjii Enterprise Community 2015).

- Over the period 1986-2011, the Lakota Funds made 900 loans totaling more than \$7 million to businesses on or near the Pine Ridge Indian Reservation (Lakota Funds 2015).
- Over the period 2003-2012, the Citizen Potawatomi Community Development Corporation made 211 commercial loans totaling \$24 million to Native American-owned businesses throughout Oklahoma (Citizen Potawatomi Community Development Corporation 2015).

Yet as Native economies continue to expand, as entrepreneurship gains greater traction across Native America as a source of jobs and income, and as demand for locally produced goods and services rises in Native Communities, much more capital will be needed for Native business development and expansion. Native CDFIs already report that the demand for their capital far outstrips its supply (Oweesta 2012).

This demand signals a real opportunity for lenders, especially those that become skilled at risk assessment in Native Community business lending and are able to value and accept alternative forms of collateral, including loan guarantees and assets such as leaseholds, vehicles, equipment, etc. Some loan officers working for Native CDFIs have become adept at these tasks, but so can other lenders. Banks and credit unions can generate needed new options for Native Community business borrowers—and make money.

“Oklahoma is Indian Country with 39 distinct Native governments with real governing boundaries. Dual citizenships abound here. These are client constituencies that have helped to shape our business model of local autonomy. It’s about business responsiveness. Our customers required us to become students of the 184 program [the U.S. Department of Housing and Urban Development program that guarantees Native American home loans], and they have required us to understand the IEED programs for small business financing [opportunities through the Bureau of Indian Affairs Office of Indian Energy and Economic Development]. It is about bringing capital access to our markets, and it just so happens that our markets are located predominantly in Indian Country. The advantage for both borrower and lender through the utilization of various federal loan programs has been risk reduction and, thus, greater capital access in markets that traditionally would not be served. We have embraced virtually every type of government-guaranteed lending—Small Business Administration, Farm Services Agency, Federal Home Loan programs, and BIA credit—because it was an opportunity for our customers and for us.”

—D. Jay Hannah, Executive Vice President, Financial Services, BancFirst
(personal communication, April 2014)

Education, training, and professional services

Several national organizations and federal government agencies already have played an important role in seeding basic business-oriented financial education and entrepreneurship education across Native Communities. They include:

- **Our Native American Business Network (ONABEN).** Founded in 1991 by four Oregon tribes, ONABEN wrote the original Native-oriented entrepreneurship curriculum, “Indianpreneurship.” Today ONABEN markets its curriculum to Native Communities throughout the United States and offers train-the-trainer programming to help bridge the gap between local business education service providers and entrepreneurs (ONABEN 2015).
- **The Small Business Administration (SBA).** Historically, the agency developed a version of its mainstream Small Business Development Centers just for Indian Country; these Tribal Business Information Centers included entrepreneurship education as a core outreach service. In 2013 SBA developed the Native American Communities Entrepreneurial Empowerment Workshops, which provide resources, information, and inspiration for starting or managing a small business and are offered across Native America. Follow-on technical assistance provides Native small businesses with tools to help grow and expand their businesses (James 2013).⁵⁰
- **First Nations Oweesta Corporation.** With funding from the CDFI Fund, Oweesta developed the Native Entrepreneurship and Enterprise Development (NEED) Initiative, which provided entrepreneurship education to Native Communities that wished to pursue a more holistic economic development strategy. Based on the notion that entrepreneurship thrives when it is part of a broader strategy and system working in support of business development, the NEED Initiative offered both

50 | For more information about the Native American Entrepreneurship Empowerment Workshops, see <http://www.nativesmallbusiness.org/>, accessed May 9, 2016.

business startup training and tools to make the local environment more conducive for entrepreneurship. The Initiative culminated in 2011, but participant Native CDFIs may still benefit from the strategic thinking it inspired.

As a result of these and other efforts, entrepreneurship education is available in most Native Communities through a tribal program, Native CDFI, tribal college, or state or federal agency. In fact, aggregate data generated from Native CDFI reports to the CDFI Fund show that from 2006-2011, more than 60 percent of reporting CDFIs offered business training services.⁵¹ But simply establishing a program is not enough. Curriculum and services must be kept current with client needs. New entrepreneurs will continue to need fundamentals, including business-oriented financial education and business startup training. More established entrepreneurs may need education and training in employee compensation, payroll management, business expansion, and workforce development. Both may need experience-appropriate coaching on topics such as business siting, pricing, marketing, business accounting, and tax planning (Malkin et al. 2004, Serapio and Tata 2010).

Business infrastructure

Native Community entrepreneurs often face physical infrastructure challenges, from limited road access to insufficient utility hook-ups to poor choices for workspace. Broadband Internet access, useful for marketing and operations management, may exist at only a few sites in the community. Realistically, it can be impractical for a tribal government to install such infrastructure and unaffordable for Native entrepreneurs to do so themselves. One useful option is for the tribal government or a Native Community-serving economic development organization to provide incubator or co-working space that makes an array of infrastructure and business support services available at an affordable cost to the Native Community and to the Native entrepreneur.

For example, the Menominee Business Center, sponsored by the Menominee Nation, was designed to support local, homegrown businesses. Its concept complemented the tribe's efforts to encourage business development, expansion, and siting in the local area. The incubator's 2,400-square-foot building, housing nine rentable office suites, was constructed in 1996 next to the Keshena town library. Originally funded by federal grants and a match from the Menominee Nation government, the Business Center also worked with the Wisconsin Department of Commerce, U.S. Department of Agriculture Rural Development, U.S. Department of Housing and Urban Development Office of Native American Programs, and the Northwoods Nijii Enterprise Community throughout its 20-year existence, demonstrating its commitment to collaboration with local, state, and federal entities engaged in Menominee community development (First Nations Development Institute 2007).

51 | Data aggregated for this report by the CDFI Fund from Native CDFI Institution Level Reports.

4 Chapter Recommendations

Native CDFIs, tribal governments, Native corporations, and partners should work together to provide the strong support necessary to encourage private sector development in Native Communities and to increase Native entrepreneurs' odds of success. For some Native nation governments, this may involve a significant shift in orientation; not all have embraced the need to develop overarching economic policies and practices that encourage and promote entrepreneurship. Nonetheless, it is as much a tribal government responsibility to create an environment in which Native entrepreneurs can succeed as it is to create an environment in which tribally owned corporations can thrive.⁵²

RECOMMENDATION #1

Native Community governments and their nongovernmental partners should participate actively in the development of local “Entrepreneurship Development Systems.”

An Economic Development System (EDS) “is a coordinated infrastructure of public and private supports that facilitate entrepreneurship” (Malkin and Aseron 2006, 43; also see Edgcomb, Klein, and Black 2008). Engaging in a conscious and intentional systems approach, the organizational and individual participants in an EDS consider collaborative goals along with individual organizational goals. They pay attention to large goals such as zoning, road repair, and procurement policy, which individual business owners might not pursue on their own but that benefit all entrepreneurs in the community. They work to connect emerging and established businesspeople in networks that can help them find mentors, colleagues, customers, and other supports and benefits. Their constant focus is on the ways entrepreneurship and entrepreneurship development can transform the community. By helping form such systems and becoming active participants in them, Native Community governments and local community development organizations are better able to create environments conducive to entrepreneurship.

In addition:

- Tribal governments should make investments and adopt policies that encourage Native entrepreneurship, including prepping sites for small business occupancy, developing entrepreneurship incubators, and buying goods and services from local, Native-owned businesses.
- Native CDFIs, tribal governments, and other entrepreneurship supporting entities should meet regularly to collaborate on entrepreneurship support and participate in regional support collaboratives, such as the Indian Business Alliances in Minnesota, Montana, North Dakota, and South Dakota.
- Native Community entrepreneurs should organize local business coalitions or Chambers of Commerce.

52 | See Ch. 7 for an extended discussion of the necessary institutional environment for economic development success.

RECOMMENDATION #2

Providers of entrepreneurship education, lending, and business development supports should adapt to Native Community-specific entrepreneurial interests and needs.

Not every Native Community has the same private sector development needs. Some may need more supports for agricultural or food-focused businesses; some may be oriented toward development of a local retail sector; some may be more focused on technology; some on construction; some on arts. Providers of entrepreneurship support services should conduct market studies to gain critical knowledge for the development of services appropriate to the interests of entrepreneurs and the needs of the Native Community. Such efforts lay the groundwork for greater success in entrepreneurship development.

For example, in the mid-1980s, there were more than 900 artists living in the eight northern New Mexico pueblos. The fact that these artists had few places to display and sell their work led to the founding of Pojoaque Pueblo's Poeh Center (Harvard Project 2000a). By 2015, the Poeh Center not only provided gallery and study space for artists but also hosted an annual art show and facilitated the participation of artists and students in regional art shows, experiences that helped launch them into self-supporting careers as artists. Such efforts demonstrate the benefits of structuring entrepreneurial systems around community interests and individual goals (Poeh Cultural Center and Museum 2015).

RECOMMENDATION #3

Providers of entrepreneurship education should expand business coaching.

Especially when entrepreneurs are isolated and relatively inexperienced, coaching and peer counseling keep them inspired and provide opportunities for continuing professional development long after their business plans have been set into motion. Studies suggest that coaching works, in the mainstream and in Native Communities (see, for example, Audet and Couteret 2012). More is needed, and it is costly, but on a dollars-for-impact scale it may be the most effective way to help an individual business owner succeed.

RECOMMENDATION #4

Tribal governments and lenders should bolster efforts to provide capital to Native entrepreneurs.

Every entity in a position to increase the flow of capital to qualified Native entrepreneurs should work to do so. Tribal governments should seek to provide capital themselves and to work with other entities—especially those federal and state agency programs to which they alone have access—to increase the capital flow. Lenders should develop expertise in working with Native community members or in lending to Native CDFIs, which may be better placed to evaluate customers seeking lower-value or first-time loans. Native CDFIs should expand their lending capacity through partnerships with Community Development Entities, foundations, and mainstream market organizations.

RECOMMENDATION #5**Providers of entrepreneurship education and business lending should support entrepreneurs' transition from small business to bigger business.**

While many small businesses serve their local economies by supplying goods and services that are traded within the local economy, other Native Community entrepreneurs conduct business across the larger U.S. (and global) economy and often become bigger businesses in the process. One path to growth is federal government contracting (the Small Business Administration's 8a Business Development Program, for example⁵³). Significantly, just because a firm largely trades its goods and services outside a Native Community does not mean it is not contributing at home. Such businesses need employees and themselves buy products and services, activities that inject new money into the local economy. Where small business development is taking off, entrepreneurship support should be provided not only for business startup but also for business expansion. Targeted education and coaching and right-sized loans may be critical to Native Communities' ongoing economic growth.

53 | See <https://www.sba.gov/category/navigation-structure/8a-business-development-program>, accessed August 30, 2015.

5 Housing Finance in Native Communities

Multiple issues affect the flow of housing finance to Native Communities, ranging from concerns about housing quality and client creditworthiness to difficulties in securing collateral and delays in administrative processing. These barriers particularly affect the expansion of home ownership, which is a costly outcome for individuals, families, and Native nations. Not only do Native Community residents increasingly prefer homeownership, but it can be a key aspect of personal or family asset building and of Native Community economic development overall. The good news is that innovations in policy and practice are changing housing markets in Native Communities and providing residents, Tribally Designated Housing Entities (TDHEs),⁵⁴ and other developers with new options for housing finance.

HOUSING CONDITIONS IN NATIVE COMMUNITIES⁵⁵

Native Americans living in tribal areas are more likely than other Americans to live in crowded homes. According to data from the 2006-2010 American Community Survey (ACS), 11 percent of all American Indian and Alaska Native (AIAN) households in “larger tribal areas”⁵⁶ met the U.S. Department of Housing and Urban Development (HUD) definition of overcrowding (more than one person per room); by comparison, only 3.1 percent of all U.S. households were overcrowded (Pettit et al. 2014). The American Indian Children’s Fund observes that on some rural and more isolated reservations, “it is not uncommon for as many as 25 people to live in a two-bedroom home” (American Indian Children’s Fund 2011).

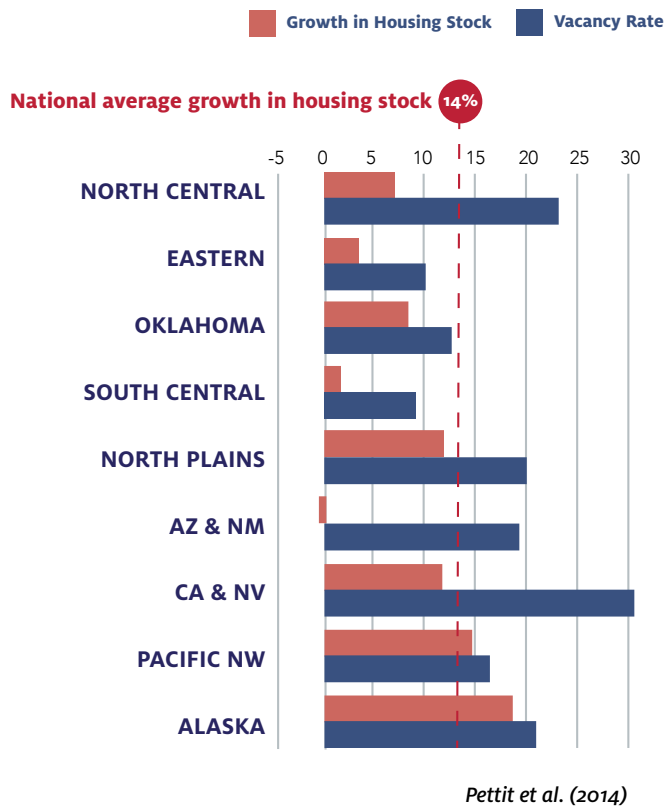
Native Americans living in tribal areas also are more likely than other Americans to live in poor quality homes. One readily available measure of housing quality is the Census count of homes that lack basic facilities, such as a full kitchen and bathroom. “Counties containing Indian reservations have astonishingly high percentages of households without plumbing—14 percent of households in Shannon County, SD, don’t have full plumbing. In Apache County, AZ, the rate is more than 17 percent” (Ingraham 2014, using 2008-2012 ACS data). In fact, overcrowding is one reason for these problems. When many people live in the same house, wear and tear on the home increases and the condition of the housing stock declines (Seltenrich 2012).

54 | A Tribally Designated Housing Entity is the organization or governmental unit identified by a tribe as the administrator of federal housing funds that the tribe receives from the U.S. Department of Housing and Urban Development.

55 | This section draws substantially from Pettit et al. (2014), the interim report for a major HUD study on housing in Indian Country. The expected release date for the final report, which includes a survey of lenders, is 2016. The report does not address the housing conditions and needs of Native Hawaiians.

56 | Here, tribal areas are “reservations and other others with concentrations of tribal population and activity as recognized by the U.S. Census Bureau” (Pettit et al. 2014, 4). While there are 617 Census-recognized tribal areas, only 230 met the Census Bureau’s threshold for data reporting in the 2006-2010 ACS (the five-year dataset must include 50 individuals from the subgroup). Pettit et al. (2014) called these 230 areas “larger tribal areas.” The report also notes that larger tribal areas account for 93 percent of AIAN households in all Tribal areas.

Exhibit 4.1: Housing Stock Growth Rates (2000-2010) and Vacancy Rates (2010) on Tribal Lands, by Region



Other data describing housing conditions in Native Communities underscore these quantity and quality concerns. In the U.S. as a whole, the housing stock increased 14 percent from 2000-2010, despite the housing-related financial slowdown of 2008-2009. Only tribal areas in the Pacific Northwest (Washington, Oregon, Idaho) and Alaska sustained housing stock growth rates at or above the national average (Exhibit 4.1). Elsewhere on tribal lands, housing stock growth was comparatively slow, and in Arizona and New Mexico, there was a 0.7 percent decrease in available tribal area housing (Pettit et al. 2014).

Low rates of housing development may not matter if housing is readily available. But the story is more complex: vacancy rates are high in some regions with limited housing stock growth (Arizona and New Mexico), but they also are high in areas where growth is more robust (Alaska, the Pacific Northwest, California and Nevada, and the Northern Plains). This high growth-high vacancy combination may be another signal of poor quality housing stock (i.e., homes are vacant because they are not habitable and the building boom is an attempt to replace them). Equally challenging, the

combination may signal a mismatch between available housing and community members' housing preferences (e.g., the homes' location, construction characteristics, and amenities are no longer what residents desire).

Homeownership rates also speak to housing availability and quality. Remarkably, rates among AIANs living on tribal lands are comparable to rates for all U.S. residents; in 2010, the rates were 67 percent⁵⁷ and 65 percent, respectively (Pettit et al. 2014). Yet these statistics are not measures of the percentage of adults, or even the percentage of households, that own homes. For a selected geography, the homeownership rate is the number of owner-occupied housing units divided by the number of occupied housing units (Census Bureau 2015a). Under this definition, homeownership rates on tribal lands may say more about limited housing options than they do about ownership per se. If there are few housing units relative to the population, a high (so-called) homeownership rate reflects the relatively low number of occupied housing units as much as it reflects a large proportion of homeowners. In other words, supply is not meeting demand. Native American homeownership in areas immediately surrounding but outside tribal lands, where housing markets are more well-developed, back up this interpretation. In these geographies, AIAN homeownership rates were only 47 percent in 2010 (Pettit et al. 2014).

Homeownership and housing quality are linked by the particular history of housing policy in Native Communities. For years, HUD supported two programs for low-income Native Community residents: the Rental Housing Program, which made rental housing available to qualified tenants, and the Mutual Help Program, which allowed qualified tenants to progress toward homeownership, in part by taking responsibility for home upkeep and repair (Kingsley et al 1996). Even after

57 | This average masks significant underlying differences across Native America: "Homeownership rates for American Indians on reservations vary widely, even within a specific region and among households with similar incomes. Homeownership rates are affected by many non-income factors, including personal factors like net worth, access to credit, age, and marital status, as well as environmental factors such as the prevalence of trust land and the relative costs of renting vs. owning. In preliminary analyses, some of these factors were found to be statistically associated with the differences in American Indian homeownership rates...Still, significant differences remain that have yet to be explained. The large variations across reservations with respect to American Indian homeownership rates are a challenge to social scientists and policymakers and appear to be an appropriate topic for further discussion and research" (Burlon and Todd 2009, 7).

passage of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), many tribal housing entities continued these programs, such that today's elevated rates of owner occupancy are, in part, a signal of significant participation in the Mutual Help Program. Unfortunately, many HUD-developed Mutual Help homes are old, energy inefficient, and deteriorating, which ultimately means that Native Community homeownership rates may correlate with poor housing conditions.

“There is a group of tribal members who got their own homes through HUD programs but have never gotten credit or built credit in order to fix their homes, so their asset is deteriorating. Grandma’s roof was always leaking and that is what they know.”

—Participant, Native CDFI Network Virtual Focus Group, February 2014

The increased prevalence of mobile/manufactured homes⁵⁸ is yet another indicator of housing quantity and quality conditions in Native Communities. In 2006–2010, 13 percent of AIAN households in the United States resided in such housing. In tribal areas, the proportion was 17 percent (Pettit et al 2014). On the one hand, mobile homes have advantages: they tend to be less expensive than permanent housing, may be financed outside the regular mortgage market, and are movable should land tenure become an issue. Mobile home owners also are benefiting from a new wave of policy advocacy.⁵⁹ On the other hand, mobile/manufactured homes are less valuable as an asset and more vulnerable to the elements than built homes (Cooper 2011). While their advantages make mobile homes a reasonable alternative when fixed-site homes are scarce, their disadvantages point to quality concerns.

58 | By definition, a manufactured home is “a movable dwelling, 8 feet or more wide and 40 feet or more long, designed to be towed on its own chassis, with transportation gear integral to the unit when it leaves the factory, and without need of a permanent foundation. These manufactured homes include multi-wides and expandable manufactured homes. Excluded are travel trailers, motor homes, and modular housing” (Census Bureau 2015b, para. 1). The terms “mobile home” and “manufactured home” are often used interchangeably.

59 | See “Program Overview,” I’M HOME (Innovations in Manufactured Homes), http://cfed.org/programs/innovations_manufactured_homes/program_overview/, and “Mission and Goals,” ROC USA (Resident Owned Communities), <http://www.rocusa.org/about-us/mission-and-goals.aspx>, both accessed May 12, 2016.

ADDRESSING HOUSING NEEDS THROUGH CAPITAL ACCESS

Limited capital access both causes and exacerbates housing problems in Native Communities. In particular, inadequate capital access limits individuals’ and families’ participation in housing markets and prevents the development of appropriate amounts and types of housing. These problems are severe—and yet there are encouraging signs of change. Policy, program, and asset building innovations are helping individuals, tribes, and Native Communities address capital access barriers and make progress against housing needs. As discussed below, these advances refine the focus of policymaking and result in a different understanding of how much and what kinds of housing it is possible to develop on Indian lands.

Collateral and credit

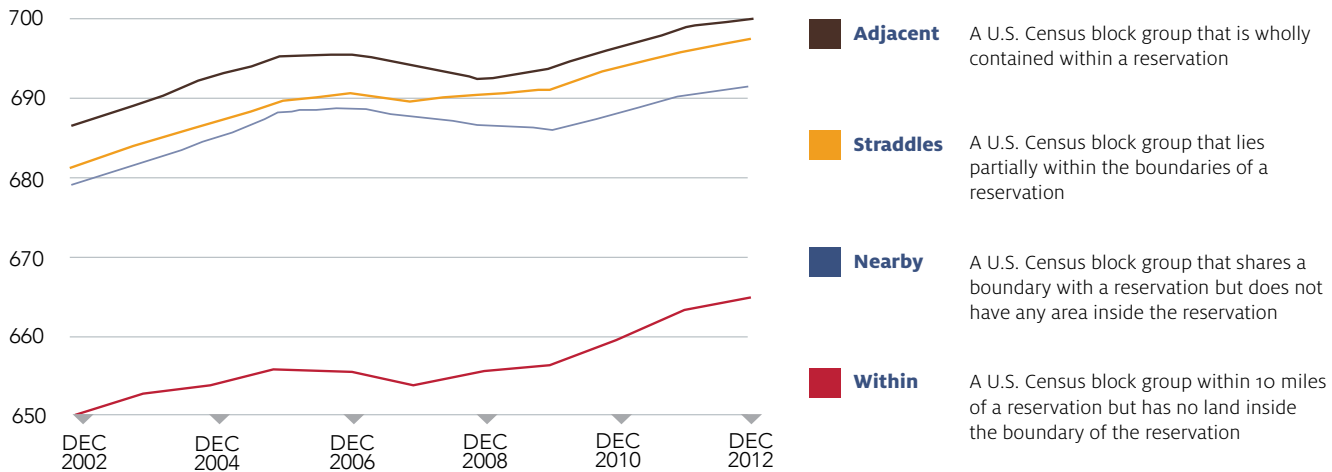
Most Indian lands—those held in trust—cannot be used as collateral for loans.⁶⁰ The federal government holds legal title to trust land, the beneficial interest lies with either an individual Indian or the tribe as a whole, and selling the land would be a violation of that beneficial interest. Yet in mainstream real estate lending, lenders use land and the structures on it as security. This routine procedure tends to shut out Indian borrowers, who cannot easily transfer an interest in trust land to lenders as collateral in the mortgage market.

In 2001, the NALS identified lenders’ inability to collateralize Indian lands as a key barrier to capital and credit access for homeownership; more recent data suggest that it remains so. A 19-state study of reservation residents’ 2012 credit files showed that 13.1 percent of credit files contained too little information to actually compute a credit score (Dimitrova-Grajzl et al. 2014). When scores could be computed, reservation residents (of all races) had credit scores 30–40 points lower than their off-reservation counterparts (Exhibit 4.2). The authors conclude that “a potential explanation for these large differences...is that mortgage credit can

60 | Trust land is defined in note 2. As discussed there, the contrast is with fee simple ownership, in which landholders have controlling ownership. Fee simple land can be used to secure a mortgage and readily alienated in the case of default. Homeownership on trust land has commonalities with homeownership on leased land, in which owners have full access their homes but don’t own the underlying land (as would be the case in many gated developments or condo associations). The key difference between home ownership on Native trust land and home ownership on leased land outside Indian Country is that the ultimate owner of trust land is the U.S. government.

Exhibit 4.2: Average Credits Scores (All Races) by Geography, 2002-2012

MEAN EQUIFAX RISK SCORE (Credit Score)



Data: Mean Equifax score by 2000 Census block group location from Dimitrova-Grajzl et al. (2014).

be especially difficult to obtain on reservations where significant amounts of land are held in trust; trust lands cannot readily be pledged as collateral” (Dimitrova-Grajzl et al. 2014, 11).

Of course, not all credit problems are due to a lack of collateral. Akee and Jorgensen (2016) examine Home Mortgage Disclosure Act of 1975 (HMDA) data from eight states with high numbers of Native residents and substantial Indian lands. They conclude that Native borrowers living on Native lands and near Native lands (where trust land issues are not a concern) are disadvantaged in comparison to non-Native borrowers in their respective states: these Native borrowers have been less able to leverage their incomes to gain loan capital, denied mortgages at higher rates, and denied mortgages at higher rates specifically because of poor credit histories. Even outside Native geographies, AIAN borrowers have been assessed as high-risk borrowers. For instance, the Urban Institute reports that in 2006, 34.4 percent of owner-occupied conventional home purchase mortgage loans to AIAN borrowers (i.e., loans using real estate as collateral that were made to Native borrowers living in any geography) had high interest rates—as compared to 18.6 percent of loans to Whites—presumably because of AIAN borrowers’ lower credit scores (Pettit et al. 2014, HMDA data). Certainly, solutions are needed to address both collateralization concerns and the more general problems of poor credit or no credit.

In fact, in an effort to increase mortgage lending in Native Communities, significant strides have been made on both fronts.

The HUD Section 184 and 184A Home Loan Guarantee Programs

The U.S. Department of Housing and Urban Development manages two programs, the Indian Home Loan Guarantee Program and the Native Hawaiian Housing Loan Guarantee Program, which are designed to increase the availability of private mortgage financing to American Indians, Alaska Natives, and Native Hawaiians. Authorized by Congress through the Housing and Community Development Act, Sections 184 (part of the original 1992 Act) and 184A (a 2000 amendment to the Act), the programs are especially noteworthy for the incentive they provide to lenders to underwrite mortgages on Indian lands and Hawaiian Home Lands.

These programs primarily attract lenders through loan guarantees.⁶¹ They attract borrowers (who may be either individual borrowers or institutional borrowers, such as a tribal housing authority or the Department of Native Hawaiian Home Lands) by offering low down payments, a fixed interest rate, no mortgage insurance requirement,

61 | A loan guarantee is a promise by a third party to assume a debt obligation if the borrower defaults. In this case, the U.S. government agrees to assume the mortgage obligation if the American Indian, Alaska Native, or Native Hawaiian homebuyer defaults.



Photo Credit: Native Nations Institute (2012)

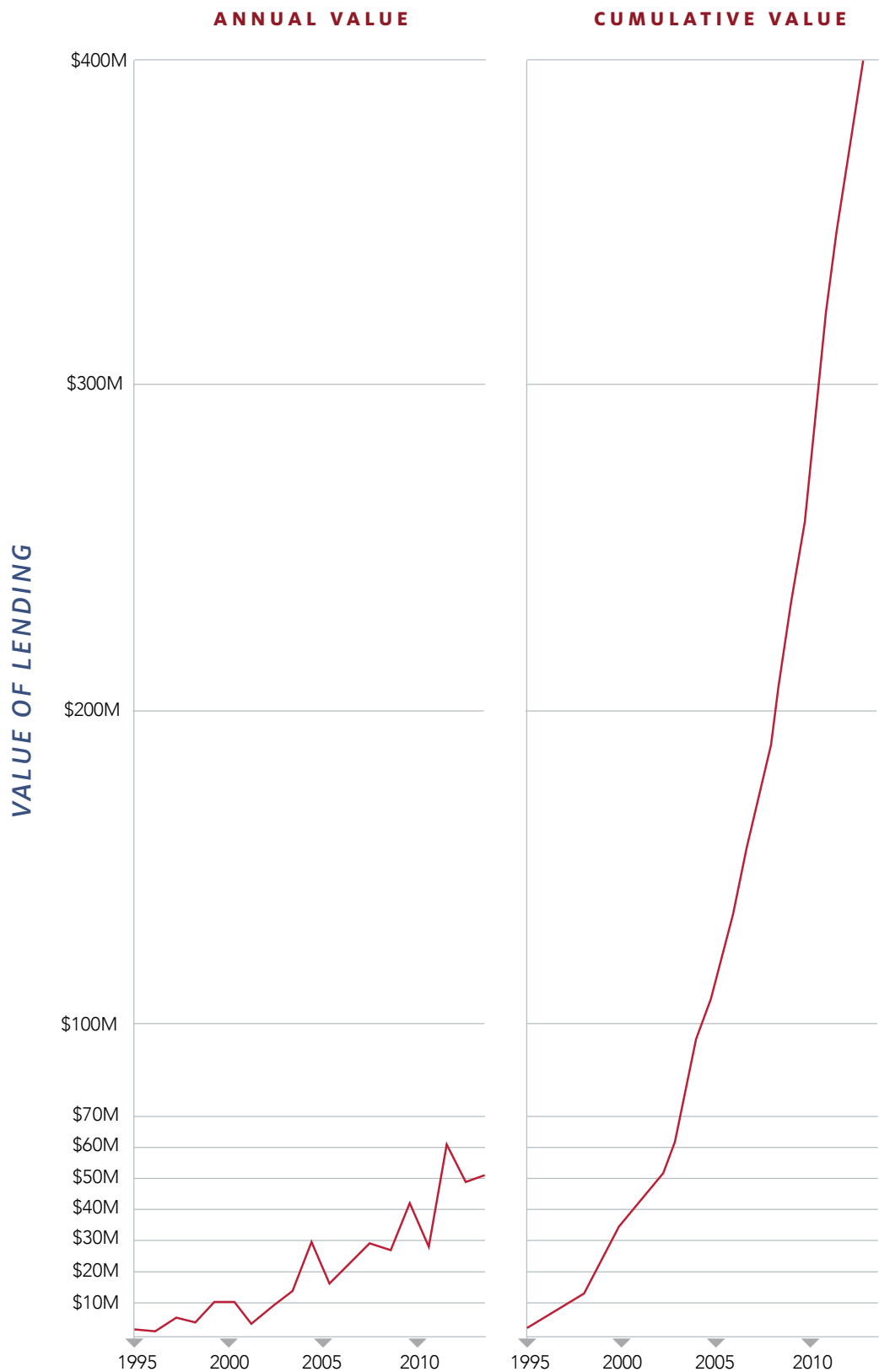
flexible use, and no income limit (OCC 2014). These advantages have led to a marked increase in mortgage lending for homes, especially since 2001 (Exhibit 4.3, next page). For example, annual Section 184-guaranteed mortgage lending on tribal and individual (allotted) trust lands has increased ten-fold since 2001, and from the program's inception through 2013, the cumulative Section 184 lending for homes on such lands totaled nearly \$420 million in inflation-adjusted 2013 dollars. (Data for Section 184A loans were not available for this report.)

Even larger numbers arise from tribal citizens' housing market participation on fee simple lands, as Section 184 guarantees mortgages on both land types (Exhibit 4.4). Through the close of fiscal year 2013, total Section 184 lending on fee simple lands topped \$3.4 billion (inflation-adjusted 2013 dollars). In geographies like Oklahoma, where most tribes lack reservations per se, Section 184 lending typically would occur on fee simple land. Yet

the practice is common outside Oklahoma too; more than half of the fee simple Section 184 lending activity shown in Exhibit 4.4 took place in other states.

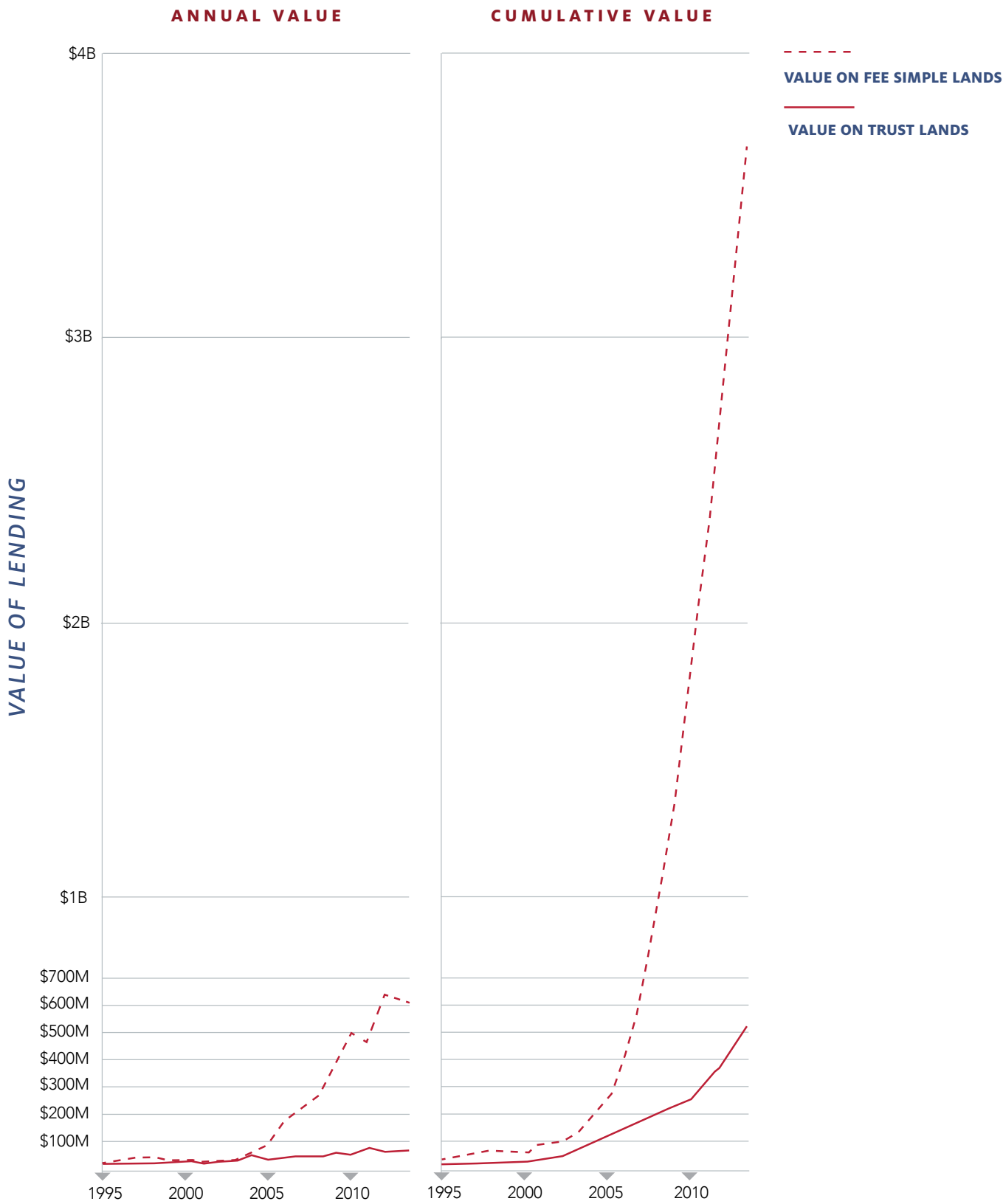
By September 2014, the Section 184 program had been used to guarantee more than 24,700 loans (across all years of program operation) and support access to \$4.2 billion dollars in mortgage financing for individuals, tribes, and TDHEs (HUD 2014). This remarkable success is evidence that the HUD Section 184 and 184A housing loan guarantee programs are an important means for addressing the housing quality, housing quantity, and capital access problems that Native Community members face. Clearly, however, challenges remain in generating activity on trust lands that is comparable to the activity on fee lands.

Exhibit 4.3: Annual and Cumulative Value of HUD Section 184- Guaranteed Mortgage Lending on Trust Lands, 1995-2013 (2013 dollars)



Office of Native American Programs, U.S. Department of Housing and Urban Development (2013).

Exhibit 4.4: Annual and Cumulative Value of HUD Section 184- Guaranteed Mortgage Lending on Trust and Fee Simple Lands, 1995-2013 (2013 dollars)



Office of Native American Programs, U.S. Department of Housing and Urban Development (2013).

Tribal policy to support title services and leasing

While the numbers appear low by comparison to the much higher volume of sales on fee simple land, Section 184 and Section 184A loan guarantee programs have facilitated significant new housing lending on trust lands. Furthermore, increased opportunities for and experience with mortgage lending on trust lands has helped tribes, tribal housing developers, and their partners—including federal government agencies—focus policy and program attention on specific issues that constrain market growth.

One of these issues is Title Status Report (TSR) management. “A TSR takes the place of a title commitment for land that is held in trust [by the Federal government]... The TSR is a necessary precursor to issuing a mortgage for a property on trust land” (Edwards, Morris, and Red Thunder 2009, 7). Unfortunately, obtaining a TSR for a particular piece of land can be time consuming. The process requires a search of records held by land title records offices maintained by the federal Bureau of Indian Affairs (BIA). These offices face daunting tasks, both in terms of demand and the complexity of the job: over time, title for many allotted parcels has passed from sole owners to multiple owners, and then still more owners, through default probate processes.⁶² As a result, obtaining a TSR can take anywhere from several weeks to more than a year, and lengthy waits have had crippling effects on home ownership as investors’ loan offers expire or the parties otherwise become discouraged by the process and the time involved.

Yet the TSR process has been dependent on BIA land title records offices only because that is where the records have been kept and no alternative process has been available. In 2000, the Saginaw Chippewa Tribe opted to view the lags in the BIA process as an opportunity rather than a challenge. It obtained all existing records pertaining to its trust lands from the BIA and established the Saginaw Chippewa Land Title and Records Office. The tribe now maintains its own trust land records and carries out the TSR process. Under BIA management, it generally had taken six months or more—in some cases, several years—to obtain land title documents. Today, Saginaw’s land records office, with a minimal staff, can produce title records within days and often within 24 hours. This has transformed the process, accelerated home ownership, and opened up new economic development opportunities

(Harvard Project 2006; Edwards, Morris, and Red Thunder 2009). Other tribes have followed suit and achieved similar results (Edwards, Morris, and Red Thunder 2009).

Another step that federal and tribal policymakers are working to streamline is the lease approval process. Tribal citizens and tribal housing development entities that want to buy or build homes on tribal trust land must first secure approval for a land lease. The BIA has long managed the lease approval process as part of its performance of the trust responsibility—an arrangement that not only is contrary to tribal self-determination but also all too often has failed to garner reasonable social and economic returns from land use. In particular, when the process moves so slowly that opportunities for a tribe’s preferred uses are lost, the trust responsibility has not been well executed.

The Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act) makes it possible for tribes to offer 25-year, renewable land leases to interested parties for business and agricultural purposes and leases of up to 75 years for residential, recreational, religious, or educational purposes without the approval of the Secretary of the Interior. “The Act requires participating tribes to develop leasing regulations, including an environmental review process, and to obtain the Secretary’s approval of those regulations prior to entering into leases” (Bureau of Indian Affairs 2013, 1). By putting their own processes in place, tribes are able to move beyond the uncertainties created by BIA approval and gain greater authority over tribal land use. By the end of March 2016, the BIA had approved 24 tribal leasing codes under the HEARTH Act, five of which provide regulations governing residential land leases (Bureau of Indian Affairs 2016).⁶³

63 | At the end of March 2016, 23 of the 24 BIA-approved leasing codes provided regulations governing Tribal land leases for business purposes. Despite its name, the HEARTH Act’s greatest impact may be on natural resource business development (Drybread 2014).

62 | The result often is referred to as the “fractionation” of Indian lands.

The critical role of Native CDFIs in housing finance

Rapid growth in the Native CDFI Sector since 2001 also has led to an increase in programming to support homeownership in Native Communities. As specialist financial services providers, Native CDFIs have the ability to generate innovative approaches to place-, community-, and market-specific barriers to capital and credit access. At the same time, these innovations are sharable, modifiable examples—for addressing everything from poor credit histories to unfamiliarity with the formal banking sector—that may spur increased participation in the housing market in still other Native Communities.

One example is the Wigamig Owners Loan Fund Inc. (Wigamig), a certified Native CDFI that operates as a revolving loan fund. Initially organized to serve the Lac du Flambeau Tribe, Wigamig today serves all tribes in Wisconsin with homeownership education and loan products for debt consolidation, credit repair, home improvement, down payment assistance, and mortgages. Realizing that the homes of a number of Mutual Help Program participants were falling into disrepair, Wigamig has become a specialist in Mutual Help home lending. Through financial and homeowner education, Wigamig first helps clients understand that their homes are a store of financial value, and then provides home rehabilitation loans that assist clients in restoring home quality and economic worth. Ultimately, homeowners develop an asset that can be used for passive savings, further leverage, or sale and investment in a property that better meets their housing needs. Wigamig's synergistic relationship with Chippewa Valley Bank (CVB) also is innovative. CVB sends unbankable clients to Wigamig, and Wigamig sends clients who are qualified for bank loans, especially Section 184-guaranteed home loans, to CVB. This relationship allows clients to maximize the advantages of the two institutions' loan products. Working with Wigamig, clients can consolidate debt, clean up their credit, and qualify for a down payment loan. CVB then can offer a home mortgage, and after closing, the client can return to Wigamig and refinance the down payment loan to include home repairs. By reporting to credit agencies at every step along the way, Wigamig and CVB also help strengthen clients' credit, reducing the cost of lending for all parties (Fern Orie, personal communication, March 2014).⁶⁴

“Wigamig levels that playing field by providing lending opportunities for housing and credit repair. Wigamig's efforts foster sustainability by providing home ownership to families and in turn, providing safer neighborhoods, economic growth, and pride in our community.”

—Wigamig Owners Loan Fund Inc. (2012, 5)

Four Directions Development Corporation is another example. This certified Native CDFI that works across the state of Maine to improve social and economic conditions for the Maliseet, Micmac, Passamaquoddy, and Penobscot Tribes. Much of Four Directions' core business is in housing, an area in which the organization has been especially innovative. In 2004, it developed a means to foreclose on mortgages on Penobscot lands while still preventing any transfer of lands to noncitizens. Under Trustee Agreement mortgages, Penobscot Trustees (Four Directions board members who also are Penobscot Nation citizens) agree that in a default, they will take title of the customer's real estate. Thus, the agreement allows the property to be transferred away from a Penobscot citizen in default without transferring the property away from Penobscot citizen ownership generally. The Penobscot Leasing Code, developed concurrently, allows these foreclosures on Penobscot land, pursuant to a proceeding in tribal court. In 2011, Four Directions became a certified lender under the HUD Section 184 Indian Home Loan Guarantee program, which means that it can work directly with clients to offer 10- to 30-year mortgage loans. Recognizing that housing costs in Maine are closely linked to a home's energy efficiency, Four Directions also developed a loan program to help Native Community residents install more efficient systems and undertake home renovations to support energy cost savings. For Four Directions' clients, the CDFI's programs deliver bottom-line payoffs: many now own their own homes, save money on upkeep and maintenance, and have substantially improved credit scores. On average, clients' credit scores rose 53 points over the course of their engagement with Four Directions, enough to move them from one credit category (negative, weak, acceptable, good, excellent) to the next on the common 850-point scale (Jorgensen and Taylor 2015).⁶⁵

64 | For more information on Wigamig Owners Loan Fund Inc., see <http://www.wigamig.org/>, accessed May 9, 2016.

65 | For more information on Four Directions Development Corporation, see <http://www.fourdirectionsmaine.org>, accessed May 9, 2016.

Native Community Finance (NCF), a certified Native CDFI located on Laguna Pueblo lands, offers a third example. NCF specializes in housing finance for Native Community members in New Mexico and has been especially successful in developing a system to fund new construction on tribal trust lands. A prospective purchaser completes a minimum of eight hours of homebuyer education and works with NCF on a trust land assignment, land survey, land lease, Cost Approach Appraisal, TSR, archeological review, and environmental review (for which the client pays all costs). When all approvals are in hand, NCF issues a short-term, interest-only loan for the duration of the construction project. Notably, some of this financing is made possible through NCF's partnership with the New Mexico Mortgage Finance Authority, a quasi-public nonprofit entity that supports low-income housing finance and provides NCF with a construction line of credit (Fogarty 2010, 2011). NCF holds the lien on the property (the lease and the structure to be built), and helps manage the construction process by approving change orders, holding the contractor to industry standards, organizing the final inspection, and regulating draws on the construction finance funds allocated by NCF to the project. In the meantime, the homebuyer seeks an approved bank mortgage with a mainstream lender. When construction is complete, the homebuyer closes on that permanent mortgage and repays NCF. NCF transfers the lien on the property to the bank, and the homeowner has a mortgage for a home on trust land that is, for all practical purposes, the same as a mortgage on fee simple land (Ginn n.d.).

CDCs and reservation "in-fill" housing

A few Community Development Corporations (CDCs) in Native Communities are taking an even more robust approach to housing finance and housing development. Both have purchased fee simple tracts within or adjacent to the boundaries of their nations' reservations and are working to develop these fee simple land bases as planned communities, complete with community centers, public spaces, business opportunities, and a variety of housing options. Because these communities are intentionally built on lands on or near reservations, they can be seen as a type of in-fill housing development—as well as a means of leveraging multiple sources of funds and developing homeownership programs within or near reservations without the hurdles presented by trust land.

Ho-Chunk Village (HCV) is located on 40 acres of fee simple land on the northern edge of the town of Winnebago, Nebraska, within the boundaries of the Winnebago Indian Reservation. This mixed-use housing, retail, workplace, and recreational space blends the ideas of new urbanism, active living, and culturally appropriate development in an intentionally created community subdivision designed by the Ho-Chunk Community Development Corporation to meet the needs of an economically developing yet steadfastly traditional Native nation. A major HCV goal is to promote asset building through homeownership. To do so, HCV planning includes discounted lots, collaboration with a manufactured home supplier wholly owned by Ho-Chunk Inc., the tribe's business arm, and substantial down payment assistance. As a result, "new homeowners are emerging at record levels.... Ho-Chunk Village has seen the growth of over 25 new homes.... Tribal families are becoming homeowners for the first time" (Indian Country Media Network 2014, para 7). HCV also boasts rental developments, including several apartment complexes and a dozen senior living units providing a significant benefit to tribal families. In fact, HCV may soon need to acquire more land in order to accommodate housing demand.⁶⁶

Beginning in 2010, Thunder Valley Community Development Corporation (TVCDC) coordinated a regional planning process that resulted in a proposal for a planned community in the heart of the Oglala Sioux Tribe's Pine Ridge Reservation. "The project is driven by the need for jobs, housing, facilities, and new opportunities that do not currently exist on the reservation, and emphasizes the need to create new systems that foster and bolster... development" (TVCDC 2015, para. 2). It is sited on 34 acres of fee simple, deeded land, which TVCDC believes will make financing easier to secure than if the development were located on tribal land. The second phase of the project involves initial construction on the first 30 homes, including the construction of public infrastructure. TVCDC serves as general contractor and developer of the site to help contain costs and keep project progress in line with community plans. TVCDC also contains costs through the active pursuit of grants and low-cost finance. Past and current funders include

66 | For more information on Ho-Chunk Community Development Corporation's work on housing development, see <http://www.hccdc.org/housing-development-3>, and for more information on Ho-Chunk Village, see http://hochunkinc.com/hci_overview.php, both accessed May 11, 2016.

both public entities at the state and federal level and a variety of foundations with interests in community development, housing, and sustainability. Ultimately the Thunder Valley site will feature single-family and multi-family residences, a youth shelter, a childcare facility, and commercial and industrial buildings.⁶⁷

New forms of finance for housing development

“It doesn’t take a math genius to figure out that if you just depend on NAHASDA money, you’re never going to get your people housed.”

–Victor Velasquez, former director, White Mountain Apache Housing Authority
(Sheline 2001, 1)

In general, the federal government’s annual trust-based housing funding allocations to tribes are too limited to address the needed scope of housing development. A critical change among Native Community housing developers has been to treat federal housing allocations not as a spending ceiling but as leverageable capital, leading to new methods of Native Community housing finance, particularly for affordable housing. In general, these methods combine mainstream housing development finance options with Native Community-specific opportunities and funding.

Tsigo bugeh Village, a project of the Ohkay Owingeh Housing Authority, shows how financial leverage can facilitate a large-scale investment in reservation-based housing and, in addition, how mainstream financial tools maybe used for culturally conscious, on-reservation housing development. In the early 2000s, Ohkay Owingeh Pueblo in New Mexico faced two problems: the need to restore historic buildings in the village core and the need to provide more affordable housing to pueblo citizens. But the Ohkay Owingeh Housing Authority (OOHA) also realized that their annual NAHASDA grant would not cover the expense of addressing these needs. Their response was to create Tsigo Bugeh Village, a combined restoration-rebuilding project that placed affordable, traditional, multifamily dwellings around two plazas in the center of the village, financed with a creative capital package that included Low Income Housing Tax Credits (LIHTCs). To craft this solution, OOHA entered into a limited partnership with the



Photo Credit: John Rae (2016)

National Development Council (NDC). The partnership applied to the New Mexico Mortgage Financing Authority (MFA) to receive LIHTCs. The OOHA-NDC partnership won the tax credits, which it then sold on the open market to generate capital for the building project. The partnership also applied tribal NAHASDA funds to the package and raised additional revenue through the HUD Home Investment Partnership block grant program, MFA mortgage risk-sharing program, and a federal Affordable Housing Program loan. Using these funds, which totaled \$3.8 million, they built 40 new housing units. Rental revenues amortize the debt. After a 15-year tax credit payback period, ownership of the Village will revert from the partnership to the Pueblo. In a separate financing arrangement, OOHA funded new infrastructure (water, sewer, electric) for the plazas with a U.S. Department of Agriculture Rural Housing and Economic Development Grant and an Indian Housing Block Grant from HUD. Critically, Tsigo Bugeh Village is not simply about providing housing; its design promotes community, restores ceremonial rhythms to the life of the pueblo, and decreases the sprawl that was threatening the pueblo’s agricultural lands. With the success of Tsigo Bugeh, OOHA has embarked on an even more ambitious project—the Owe’neh Bupingeh Preservation Plan—which focuses on rehabilitation of the pueblo’s entire historic core (Harvard Project 2009, Trujillo 2009, Sustainable Native Communities Collaborative 2013, Ohkay Owingeh Housing Authority 2015).

67 | For more information on Thunder Valley Development Corporation, see <http://www.thundervalley.org>, accessed May 12, 2016.



Photo credit: Native Nations Institute (2016)

REMAINING CHALLENGES IN HOUSING FINANCE

Change and progress are the hallmarks of the last decade and half of Indian housing finance, and inroads have been made against the housing problems experienced by many Native Communities. Looking to the future, however, at least three noteworthy challenges remain.

Transitioning to a more diverse housing market in Native Communities

“Houses being built on the rez or in the village are for low-income or poverty. Middle-income Natives cannot live on their reservations or in their villages because they don’t qualify. By restricting qualifications, we are draining our reservations and villages. For low-income tribal members residing in the new homes, they cannot improve their financial status/ income for they would no longer qualify. We are perpetuating poverty in Indian Country.”

–Participant, Tribal Consultation Webinar,
March 2014

“You can bring jobs to the reservation, you can create manufacturing plants and things, but if you don’t provide homes, and provide homes on tribal land, then you’re not able to create Indian communities and that middle class that’s so important to Indian communities.”

–Mellor Willie, Former Executive Director of
the National American Indian Housing Council
(Montag 2012, para. 13)

“A majority of the [Winnebago Tribe of Nebraska’s] housing is owned by the tribal government and has income restrictions, which ironically forced our emerging middle class to leave our community to find housing. The very people who should be natural community leaders were moving to communities where housing was readily available and...not participating fully in our growing economy.”

–Lance Morgan, CEO and President of
Ho-Chunk Inc.
(personal communication, May 2015)

Until passage of NAHASDA, housing programs in Indian Country were modeled after the United States’ public housing programs: an Indian Housing Authority (IHA) would receive an allocation from HUD to build, manage, and maintain homes for low-income Native Community members. NAHASDA ended the dominance of the IHAs and provided for true self-determination in Native Community housing programs. Nonetheless, many programs remained focused on low-income housing; needs persisted and many funding streams required it. By contrast, in many Native Communities, the 1990s and 2000s were characterized by substantial economic growth. While the need for low-income housing did not go away, demand for housing from higher-income families also was developing. Both needs must now be met.

One emerging solution is to engage the attention of a larger group of stakeholders. For example, the South Dakota Native Homeownership Coalition “works to increase Native homeownership rates by strategically leveraging knowledge and resources among stakeholders and other key entities,” and through these relationships, it aims to revitalize Native Communities “by creating an environment that supports Native Americans in achieving their dream of homeownership” (South Dakota Native Homeownership Coalition 2015, para. 2). A coalition is more likely than a lone investor to generate multiple approaches to a community’s housing concerns.

Is fee simple land best?

There is a popular perception that private property rights over land provide a better foundation for economic development than any other land ownership arrangement. An argument in Western political-economic thought since at least John Locke (1689), the idea was reinvigorated in contemporary development economics by Hernando de Soto’s *The Mystery of Capital* (2000). Both in the allotment era and today, some policymakers and academics have relied on this idea to support the privatization of Native Community land—especially given the difficulties with collateralizing trust land (see, for example, Alcantara 2005).

Yet research in Indian Country suggests that land privatization is not necessary for economic growth and development. Akee (2009) shows that, given appropriate contracts, the values of condominiums on tribal trust land are essentially the same as those on private land. In other words, economic and housing developers in Native Communities (and their funders) should not assume that fee simple land holding is the optimal land holding system, and that the primary obstacle to sustainable development on Indian lands is communal land tenure.

Nonetheless, progress with mortgage finance on trust and restricted fee lands is slow. Guarantees have been one solution, leasehold mortgages another. But interview, survey, and emerging quantitative evidence suggests that the use of these alternatives still depends on individual bankers’ personal commitments and relationships rather than on accurate market signals about risks and returns. The solution to this problem remains elusive.

Dialing up housing development

One of the biggest housing problems in Native Communities is that housing development cannot keep pace with housing demand. In part, this is due to the deterioration of older housing stock. In part, it is due to return migration, population growth, and more vibrant Native Community economies. But whatever the cause, the demand for housing often is an order of magnitude greater than the stock that regularly enters the market. This problem can be addressed only if housing developers in Native Communities are able to break away from old practices that bind them to more limited development and build many more houses each year than they have been used to building. Developments like Tsigo Bugeh and Ho-Chunk Village are promising changes that challenge the conventional wisdom about housing development in Native Communities. More outside-the-box ideas of this sort are needed.

Could the door be opened even wider to consumer-driven housing development through increased private sector and Native CDFI construction lending and significantly improved tribal leasing and titling procedures? At least one Native CDFI is interested in extending business loans to more Native Community contractors; what if more were to follow suit? A consultation participant from the Native CDFI sector suggested that what’s needed is for Native CDFIs to have sufficient loan capital to “take over the on-reservation lending market.” He noted that they already have the expertise to work in Native Communities on trust lands, and it may be a reasonable step from there to develop expertise in the full range of Indian land and mortgage options. A complementary approach (presaged by developments like HCV and TVCDC) is to emphasize economic development hand-in-hand with housing development, since as another consultation participant noted, “There’s no such thing as housing policy that doesn’t address economic development.”

5 Chapter Recommendations

As one federal interviewee observed when presented with the panoply of issues that affect housing development and home ownership in Indian Country, “Many people believe the trust issue is the primary barrier but...it’s more complicated than that” (personal communication, January 2016). Policy development at the federal, state, and tribal levels, and programming by Native CDFIs and their partners, must address this complexity in order to make inroads against the significant barriers to capital access for housing development and home ownership.

RECOMMENDATION #1

Native Community housing development entities should look for ways to leverage known income streams to maximize development capacity and make significant inroads on low-income housing demand.

These entities should:

- Reach out to possible partners, such as investors in Low Income Housing Tax Credits and New Markets Tax Credits and public sector agencies with a housing-focused mission (for example, in New Mexico, the New Mexico Mortgage Finance Authority).

RECOMMENDATION #2

Native Community housing development and housing finance entities (including CDFIs) should look to the growing Native Community middle class as partners in housing development.

These entities should:

- Provide loans for home improvement and renovation that bolster the value of conveyed and soon-to-be conveyed Mutual Help Program homes.
- Develop loan and credit programs that are on-ramps to better credit and mortgage financing for Native Community members who can afford mortgages but cannot access them at present because of poor credit, and provide access to guaranteed and other low-cost home purchase options for successful program participants.
- Work with partners such as state-level low-income housing finance agencies, foundations able to make program related investments, and tribal governments to expand the capital pool for short-term construction loans.
- Use fee simple parcels within or near reservations to jump-start new private market housing and homeownership options.

RECOMMENDATION #3

Tribes that have not already done so should take advantage of federal provisions that streamline the home purchase process.

These tribes should:

- Contract to take over title records from the Bureau of Indian Affairs and develop tribal-level systems to conduct records searches.
- Write a leasing code that allows tribal trust land to be leased for residential purposes under the tribe's authority and seek BIA approval of these regulations; develop tribal-level systems to manage leasing, in order to simplify the process of leasing for residential purchases and construction on Native Community lands.
- Work with the BIA's land buy-back program to reduce land fractionation, further increasing community members' capacity to use allotted trust land for housing development.



Photo credit: Native Nations Institute (2016)

6 Capital and Credit for Tribal Governments and Tribal Enterprises

Contemporary tribal governments typically have two kinds of needs for investment capital and credit. The first is for a type of public sector finance: tribes need capital for the large investments that make the operation of a modern tribal government possible. They, their subdivisions, and related public service entities (such as housing authorities or tribal utilities) must be able to fund the construction of government buildings, health clinics, schools, housing, roads, jails, water and sewer systems, electricity grids, telecommunications networks, recreational spaces, and more. Many tribal governments also are committed to purchasing land as a way to reclaim territory, to consolidate jurisdiction, and to reinforce nationhood.

Tribal governments' second kind of capital and credit need is more similar to private sector finance: tribes need investment capital to develop and grow tribal government-owned enterprises. From a community development standpoint, these businesses can be a valuable source of jobs, income, and community amenities for tribal citizens. Perhaps even more important are the revenues tribal enterprises can generate for tribal governments themselves. With more limited opportunities to tax than local, state, and federal governments,⁶⁸ tribes often must rely on dividend payments from their enterprises to adequately fund tribal government operations. This connection suggests that better access to capital and credit for tribal enterprises ultimately can increase tribes' capacities for self-determination and self-governance.⁶⁹

Tribal governments' aggregate demand for capital and credit can be measured in billions of dollars.⁷⁰ While there is no doubt that barriers to access to capital for meeting this demand exist, tribes and their funding partners also have developed a variety of new options for bringing capital and credit to Native Communities. What are some of these approaches? What strategies do they suggest for tribes with capital and credit needs? What challenges yet remain?

68 | Sales tax, a primary source of revenue for many states and municipalities, offers a useful example. The general rules of thumb, affirmed in case law, are as follows:

- (1) A tribal government can collect sales tax on the sale of goods and services to a Native American when the transaction takes place on tribal lands; the state cannot collect sales tax on such transactions.
- (2) The state can collect sales tax on off-reservation sales to a tribal citizen.
- (3) A state also may tax on-reservation sales to non-Native Americans. Critically, tribes that wish to tax on-reservation sales to non-Native Americans may find that a tribal sales tax plus a state sales tax makes the final price of goods and services sold too high to be competitive, leaving the tribe little choice but to forgo a sales tax. The tribal government must then look for other sources of public finance, such as revenue from tribally owned enterprises.

69 | Of course, tribal governments also need operating expenses: money to cover the basic costs of running a government. Raising revenue for this purpose is a major focus of tribal government public finance, but rarely requires a Native nation to engage the capital and credit markets. The possibilities of that engagement are the focus of this chapter.

70 | See Internal Revenue Service (2016): Tribal Economic Development Bonds demonstrated an investment demand of at least \$4.36 billion.

EXAMPLES OF SUCCESSFUL TRIBAL ACCESS TO CAPITAL AND CREDIT

This section samples some of the ways that tribes have succeeded in gaining access to capital and credit. It highlights tribal governments' and tribal enterprises' wide range of investment needs and the diversity of financing arrangements they have used. At the same time, it demonstrates how creative tribes must be to acquire the funding they need to build the communities they desire.

Hospital and clinic construction

In November 2007, the Chickasaw Nation (in Oklahoma) broke ground on a health care center and hospital aimed at easing the overcrowding at its existing facility, which was serving ten times the number of patients it was built to accommodate (Stafford 2007). Opened in July 2010, the Chickasaw Nation Medical Center (CNMC) is a combined hospital and ambulatory care facility that allows the tribe to serve its large patient population both efficiently and effectively. CNMC's facilities include a 72-bed hospital, ambulatory care clinic, diabetes clinic, pharmacy, diagnostic imaging capacity, and healing garden (Chickasaw Nation 2014, Roubideaux 2010). In 2013, the ambulatory care clinic recorded 597,392 patient visits (Roberts et al. 2014).

The nation financed construction of the nearly \$150 million facility with \$60 million in tribal business profits and a \$90 million tribal bond issue (Anoatubby 2013, Evans 2011). The bonds are secured by the Chickasaw Nation's full faith and credit and a pledge of the CNMC's third-party billing revenues (from Medicare, Medicaid, and private insurance) (Roberts et al. 2014). In part, this pledge was made possible by the nation's successful application for an Indian Health Service (IHS) Joint Venture Construction Program award. In return for the tribe's construction contribution, the award commits the IHS to covering facility-operating costs for 20 years, freeing CNMC to use a portion of its third-party reimbursement revenues for expenses other than operating costs (Evans 2011, Indian Health Service 2015, Roubideaux 2010). The pledge also was made possible by the Chickasaw Nation's technical competence in collecting third party payments. In fact, from 2012 to 2013, CNMC's third party revenues increased from \$53.2 million to \$62.8 million, giving CNMC adequate flexibility to pay annual debt service obligations (interest and principal owed to bond holders during the period) from

its own revenues and to use tribal government monies otherwise earmarked for debt service for debt repayment (Roberts et al. 2014). By 2014, the 2007 series Chickasaw Nation bonds had achieved a Fitch bond rating of BBB, an investment-grade rating that the rating agency based not only on the tribe's strong financial standing but also on its higher-than-projected third party health care revenues (Roberts et al. 2014).

The Chickasaw Nation's experience with health facility financing offers an example for other tribes seeking financing through bonds or other debt vehicles for health care facilities: If the facility has the capacity to bill third parties and financial modeling shows that not all of these dollars will be needed for cost recovery, the facility may have a stream of income that can be pledged against a debt obligation. Moreover, not only third-party revenues but also other funds a tribe knows it will regularly receive, such as Native American Housing Assistance and Self Determination Act (NAHASDA) monies, can be pledged to loan repayment.⁷¹

Basic infrastructure

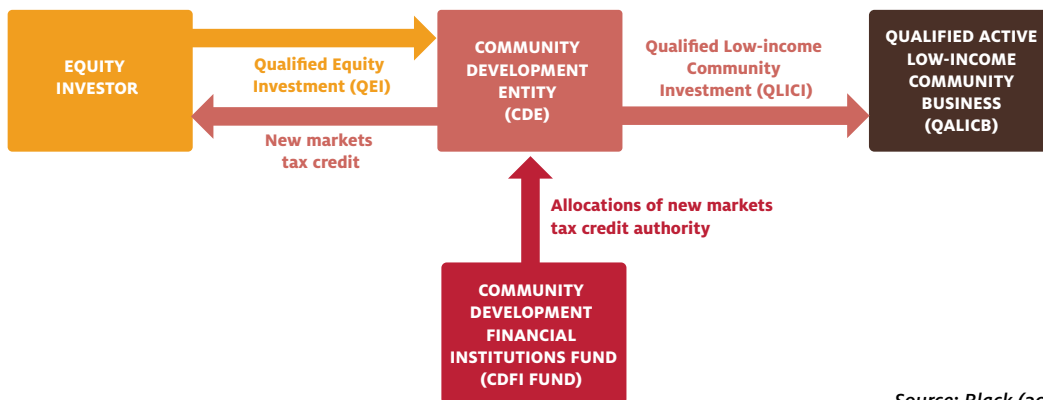
The Pueblo of Laguna (in New Mexico) began work in 2012 on a \$70 million dollar water and wastewater project for its six villages. The new system expands water availability and quality, addresses serious health concerns, provides improved fire protection, and helps the pueblo attract additional commercial development (Borino and Yost 2013, para. 13). Diversified funding was the key to project finance. To initiate the first two phases of the project, the Pueblo of Laguna Utility Authority received both a grant and a loan from the U.S. Department of Agriculture (USDA) Rural Development (RD) agency, loans from several Community Development Entities (CDEs) that raise investment capital for low-income communities through the CDFI Fund New Markets Tax Credit (NMTC) Program,⁷² and funds from the Pueblo itself (Ashbaugh 2012, Borino and Yost 2013, Kamerick 2012, Tenequer 2012, USDA 2012). Both the USDA RD funding and NMTC-based finance

71 | And still other HUD monies are available as loan security: with HUD approval, Indian Housing Block Grant (IHBG) funds can be used to securitize HUD-guaranteed loans for "model activities" that complement affordable housing development (HUD 2015).

72 | Regulated depository institutions (banks, etc.) are the most common equity investors in NMTCs (Black 2013). For example, U.S. Bank/U.S. Bancorp Community Development Corporation was one of the purchasers of New Markets Tax Credits in the Laguna water and wastewater systems deal (Borino and Yost 2013).

required special effort by the pueblo. To win the USDA RD monies, its finance team had to become educated about broadly available federal government grant and loan programs, not just programs developed for tribal entities. It then had to demonstrate why a Native Community was qualified for USDA RD program funding and why the proposed project was feasible. To obtain the NMTC financing, the tribe had to become educated about how NMTCs work (see Exhibit 5.1 for a basic model of this finance option),⁷³ package its investment need in a manner attractive to CDEs, and then market itself.⁷⁴ Here, as in other finance packages described in this chapter, the visible future income stream helped the parties come to an agreement. As one USDA staffer put it, “It’s important [to] have a modern system that bills people, so it can pay off any USDA loans” (Kamerick 2012, para. 2).

Exhibit 5.1: The Flow of New Markets Tax Credit Funds (basic model)



Source: Black (2013)

In 2007, Standing Rock Telecommunications Inc. (SRTI), a telecommunications company wholly owned by the Standing Rock Sioux Tribe, received \$10 million in NMTC loans to build 13 cellular towers (Ruiz 2010). By 2010, SRTI operated 16 towers and was able to launch mobile service across the reservation (McAllister 2013). Yet company leaders also knew that SRTI needed more towers and upgraded equipment to appropriately serve current and potential customers. Successful petitions to the Federal Communications Commission (FCC) in 2010 and 2011 for designation as an “Eligible Telecommunications Carrier” were one part of the solution (Bonner and Davis 2011). This status entitled SRTI to Universal Service Fund (USF) monies, which can help underwrite the cost of providing critical telecommunications services to hard-to-reach customers. In September 2012, SRTI notched yet another win: It was the only tribal entity to receive a grant through the FCC’s Phase 1 Mobility Fund auction for upgrades to 3G and 4G services (NCAI 2013). SRTI began deployment of 4G LTE services throughout the Standing Rock reservation in 2013 (McAllister 2013).⁷⁵

The Navajo Nation pursued a related strategy in the build-out of broadband on its vast reservation. Following passage of the American Recovery and Reinvestment Act of

73 | The flow of funds to a tribal investment may be more complicated. Jacobs (2010) and Kokodoko (2011) address some of the nuances when using NMTCs for tribal projects, including the treatment of tribally owned corporations as Qualified Active Low-Income Community Businesses (QALICBs). A complete discussion of the use of NMTCs in Native Communities is beyond the scope of this report.

74 | One of the CBEs the Pueblo of Laguna works with is Travois. It invites firms to pitch but only invests in projects that offer outcomes, stability, and a return on investment. See www.travois.com, accessed May 12, 2016.

75 | More information about SRTI is available at <http://www.standingrocktelecom.com>, accessed May 12, 2016.

2009, agencies with newly authorized funding put out a call for eligible projects. The Navajo Nation responded, and the Navajo Tribal Utility Authority (NTUA) was awarded a \$32.2 million grant from the U.S. Department of Commerce National Telecommunications Information Administration's Broadband Technology Opportunities Program. Together with Commnet Wireless, NTUA then formed Navajo Tribal Utility Authority Wireless, a majority Navajo-owned company. Under the terms of the grant, these partners were required to contribute a 30 percent funding match, resulting a total project budget of nearly \$46 million (Navajo Tribal Utility Authority 2010). Major project costs included laying 550 miles of aerial "middle mile" fiber optic cable and installing and/or upgrading 59 communications towers for "last mile" 4G LTE and microwave coverage. When complete, the project will bring broadband Internet service to 30,000 households, 1,000 businesses, and 1,100 anchor institutions, and wireless connections will be available across nearly 70 percent of the 27,000-acre reservation (Kane 2013, National Telecommunications and Information Administration 2011).

Both of these telecommunications utilities were developed with limited debt capital, minimizing the need to pledge subscriber revenue to loan repayment in their early stages of operation. This approach may help the companies hold down rates, but it also restricted their financing options to grants and self-finance. As a general matter, where an infrastructure project creates subscriber revenue, tribes can increase their credit options by allocating a portion of that revenue stream to debt service (as Laguna Pueblo did with its water project).

Community amenities

In 2001, the Citizen Potawatomi Nation sought to diversify its business enterprises and at the same time fill a gap in amenities available in the local community. The tribe's plan was to open a grocery store, and while it was prepared to provide some of the construction funds from its general revenues, it also sought project financing (Heidebrecht 2001). To the tribe, the logical source for a loan was the bank it owned, First National Bank & Trust (FNB). Yet the bank moved carefully. Given the store's planned location on trust land, FNB opted to use the equipment in the store as collateral. Because the loan was larger than FNB's other transactions, the bank also sought a loan guarantee from the Bureau of Indian

Affairs.⁷⁶ The Citizen Potawatomi Nation's limited waiver of sovereign immunity to ensure the enforceability of the promissory note helped close the deal.

"The loan was a resounding success for FNB and the CPN. In 2011, FireLake Discount Foods produced sales of \$53.8 million. The grocery store employs more than 250 people, providing economic benefits to Shawnee and its surrounding communities... Since the first note was made on the supermarket, the bank and the CPN have partnered on several more successful loan opportunities. Over the years, FNB [also] has developed relationships with other tribes, and today the bank actively seeks business from them as well as their tribal members."

—Larry Briggs, President and CEO, First National Bank & Trust

(Briggs 2013, para. 17-18)

The Pueblo of Laguna returned to financially familiar territory when it sought to rebuild a 30-year-old grocery store. Its \$5 million project was funded in part by tribal enterprise revenues and in part with a \$2.7 million NMTC equity investment from one of the same banking partners that had engaged with the Pueblo on its water project (New Mexico Finance Authority 2013, Borino and Yost 2013). The new store, which opened in 2013, offers customers a substantially improved shopping experience while retaining favorite elements of the old store. For example, the grocery store continues to share its location with a small Ace Hardware store that fills yet another retail niche (Martinez Beacon 2013). This redevelopment retained 30 full-time jobs, the majority of which are filled by Pueblo members (Borino and Yost 2013).

A broader lesson from each of these successful investments is that tribes and banks can realize benefits from relationship building and experience. Over time, relationships and trust become part of the system that safeguards lenders, and the experience that tribes and lenders gain in working together helps multiply their opportunities for mutual success.

76 | The BIA Indian Loan Guaranty Program guarantees financial institutions' loans to tribes, tribally owned businesses, and citizens of federally recognized Indian tribes. Banks set loan requirements, and the BIA provides a guaranty for the minimum amount necessary to obtain financing (up to 90 percent of the unpaid principal balance plus interest) (BIA 2008).

Land purchases

The Yakama Nation began operating a land purchase program in 1954 as a means of combatting past—and ongoing—losses of Indian land to non-Indians. Lands prioritized for purchase include allotments that already have passed from Yakama control and those that are at risk of doing so. Initially, capital for land purchases was provided from tribal timber sales and other tribal government income, but in 1983, the tribal council ended these appropriations and required the program to become self-sufficient. Today, Yakama Nation Land Enterprise (YNLE) generates its own revenue through the development of select parcels. Profits realized from YNLE-developed businesses or business arrangements are directed into a trust account that can be drawn down to purchase additional lands. This self-capitalizing system has helped return thousands of acres to tribal ownership.⁷⁷

YNLE offers a valuable example of self-capitalization, but other tribes may prefer to create external financing plans. Some turn to the Indian Land Capital Corporation (ILCC), a certified Native CDFI specializing in tribal land acquisition that does not require tribes to use their land as collateral. For example, when the Kashia Band of Pomo Indians sought to purchase 520 acres of forest land adjacent to their reservation in northern California, they possessed neither adequate capital for an outright purchase nor collateral (other than the potential acres they sought to buy). They turned to ILCC, which was able to structure a loan based on an assessment of the tribe's ability to repay. In fact, the Kashia Band's decision may provide a new option for other Native nations. In California, tribes with casinos pay into a fund that facilitates revenue sharing with nongaming tribes. The Kashia Band is in the latter category, and in "normal" circumstances, a portion of its Revenue Sharing Trust Fund monies would have been distributed to tribal citizens. Instead, "to produce the security needed to get the loan, tribal members surrendered their rights to all or part of their annual payment" (Hay 2013, para. 7). The ILCC loan officer offered this perspective: "There wasn't enough financial strength in the tribe [to get a loan], but they had a desire to grow and we thought that was really interesting that the tribal members would be willing to give up per capita payments to buy this land and strengthen their sovereignty" (ibid., para. 13). The tribe will use the land for cultural purposes, housing, and economic development, including timber harvesting and possibly a hotel or motel.⁷⁸

Land purchases, when developed and managed for income, can be profit centers that secure additional financing and result in additional land purchases. But if a Native Community doesn't wish to develop its land, or at least not yet, there still may be scope to leverage tribal assets for other land purchases. As in the hospital and water project examples above, it is crucial for a tribe seeking financing to understand where there are steady flows of revenue into tribal coffers, and whether those revenues are fully committed to other purposes or if they might be leveraged. With creativity, a tribe's access to capital may be better than it realizes.

77 | For more information about the Yakama Nation Land Enterprise, see <http://www.ynle.com>, accessed May 9, 2016, and <http://www.hpaied.org/sites/default/files/publications/Yakima%20Nation%20Land%20Enterprise.pdf>, accessed May 9, 2016.

78 | "Community Impact: Land Recovery Efforts Bring Hope," Indian Land Capital Corporation, 2014, <http://www.ilcc.net/community-impact.html>, accessed May 12, 2016. Also see Hay (2013).

Clean energy development and mining

While clean energy development and mining are quite disparate economic development activities, their investment-earnings structures make them similar from a financial point of view. Both clean energy development (wind farms or solar farms, for example) and mining (especially hard rock mining) require substantial upfront spending and financial strength to last through a buildup phase before the investment pays off. This timeline means that for a tribe to be the lead developer of a clean energy project or mine, it must have access to significant investment capital. The tribe can develop the project itself, using tribal own resources or borrowed funds, or it can work with partners. In the latter case, an external developer can take on the financing challenge and, in exchange, a share of the revenue stream. Depending on the details of the partnership agreement, the tribal government may gain fixed annual income over the life of the land or minerals lease and a share of profits from energy sales or royalties from resource extraction.

“Technically, Indian lands have enough renewable energy resource to produce one billion megawatt hours (MWh) of wind energy (about 148,200 homes), seven billion MWh of solar photovoltaics (PV) energy, and 4 trillion MWh of biomass energy. [But] there are a number of barriers constraining this potential, including: infrastructure and transmission, project development capacity, project financing options....”

—Jeffrey Bedard, National Renewable Energy Laboratory
(Bedard 2013, slide 2)

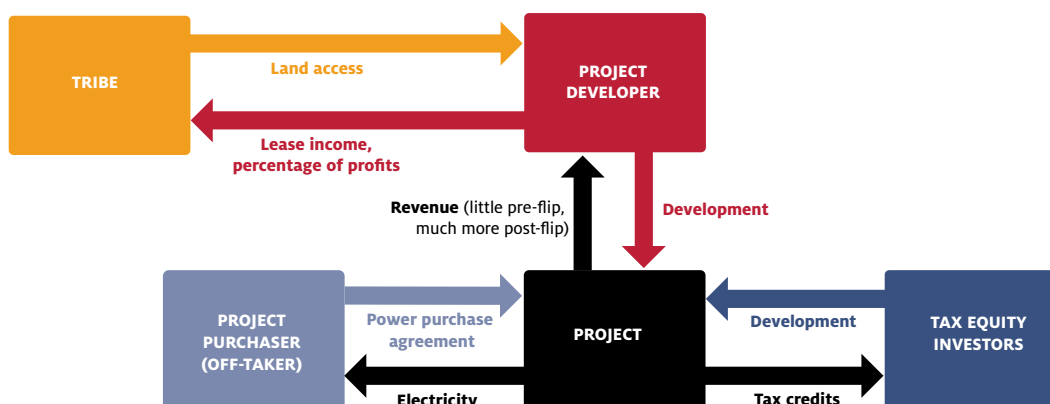
In 2013, the Moapa Band of Paiute Indians broke ground on a utility-scale solar energy project (Moapa Solar) spanning 2,000 acres of the tribe’s 72,000-acre reservation that demonstrates some of these financing issues. Its partner, First Solar Inc.,⁷⁹ is responsible for managing construction and recruiting investors. While the projected cost of the project is not public, similar solar projects have incurred development and construction costs of hundreds of millions of dollars (Montgomery 2013). One recruitment tool at First Solar’s disposal is the Federal Solar Investment Tax Credit, which helps attract capital partners by allowing a federal tax credit equal to 30 percent of a project’s costs (Carleton and Hicks 2014).⁸⁰ To receive the credit, tax equity investors must stay with the project for seven years, after which the developer (or other party) may buy the project. Another important selling point for Moapa Solar is that it struck an early deal with a power “offtaker,” or power purchaser: when the grid becomes operational, the Los Angeles Department of Water and Power will purchase 250 megawatts of power from First Solar each year for 25 years.⁸¹ This regular, guaranteed revenue helps assure lenders that their investments can be repaid. While First Solar stands to collect residual profits from Moapa Solar, the Moapa Band will earn lease income throughout the 50-year lease term and will be paid a portion of profits, although “dollar figures have not been announced” (Brean 2014, para. 12). Exhibit 5.2 summarizes these financial relationships.

79 | First Solar is actually the Tribe’s second development partner. Its initial partner, K Road Power, sold its interest in the Moapa project in 2013 (Montgomery 2013).

80 | First Solar and the Moapa Band of Paiute Indians may be in a privileged position as compared to future project partners: the Federal Solar Investment Tax Credit drops to 10 percent after December 31, 2016.

81 | The Los Angeles Department of Water and Power will have the option to purchase the solar energy farm at various stages starting in 2026 for \$339 million and \$398 million” (Rogers 2012, para. 14).

Exhibit 5.2: The Flow of Federal Solar Investment Tax Credit Funds



Note: "flip" refers to the change in ownership allowed after 7 years. Source: Bedard (2013)

Gaming developments

A financial syndicate is a professional financial services group formed to temporarily support investors in pooling resources and sharing risks. The first investor syndicate formed to finance a tribe's enterprise development led to the purchase of a cement plant in Maine (Stecklow 1990). Today, financial syndicates are more commonly used to capitalize tribal casino and related property development, rehabilitation, and expansion. The size and complexity of these investments, which may include luxury hotel space, multiple restaurants, golf courses, and spas, make syndicates attractive not only for capital access and risk mitigation but also for the expertise they can offer. Exhibit 5.3 provides examples of one bank's roles in several tribal casino developments.

While investors' experience with tribal enterprise finance opens more doors for tribes, conditions of tighter money and greater gaming competition also demand that tribes demonstrate their ability to be good partners in syndicates and other financial deals. Tribes with stable governance (especially smooth transfers of power after elections), trustworthy and transparent court systems, processes for limited waivers of sovereign immunity, and codes of ethics are more likely to gain external finance. In other words, lenders are not just looking at a prospective tribal business' raw potential but at the totality of a tribe's governing infrastructure to assess whether it creates an environment safe for investment (Allen 2014; also see Chapter 7).

CHALLENGES AND OPPORTUNITIES

Looking across the array of successes that tribal governments and tribal enterprises have experienced with capital access, the primary message is that there are no "usual approaches" to project finance in Indian Country. Tribes and lenders have addressed capital access challenges in many different ways. At the same time, significant challenges—some of them long familiar—remain. What are they, and how might they be addressed? And, are there opportunities from which tribes, through strategic action, may benefit now and well into the future?

Exhibit 5.3: Key Bank's Participation in Syndicated Loans for Tribal Casino Finance

KeyBank		
JUN 2011	 <p>JOINT LEAD ARRANGER JOINT BOOKRUNNER CO-SYNDICATION AGENT</p> <p>\$410M</p>	
MAR 2012	 <p>JOINT LEAD ARRANGER SYNDICATION AGENT</p> <p>\$385M</p>	
JAN 2012	 <p>JOINT LEAD ARRANGER JOINT BOOK MANAGER</p> <p>\$200M</p>	
JUL 2012	 <p>JOINT LEAD ARRANGER SOLE BOOKRUNNER ADMINISTRATIVE AGENT</p> <p>\$165M</p>	
JAN 2012	 <p>JOINT LEAD ARRANGER JOINT BOOKRUNNER ADMINISTRATIVE AGENT</p> <p>\$110M</p>	
TERM LOAN/ REVOLVING CREDIT FACILITY:		
NOV 2010	 <p>JOINT BOOKRUNNER</p> <p>\$225M</p>	

Source: Key Bank (2014)

JOINT LEAD ARRANGER &

JOINT BOOKRUNNER:

lead decision-makers in a syndication

SYNDICATION AGENT:

the bank that handles the syndication of the loan

ADMINISTRATIVE AGENT:

the bank that handles all interest and principal payments and monitors the loan. Large transactions may have "co-" or "joint" agents.

Making up lost ground with lenders and investors

Just before the recession of 2008-2009, one lending industry analyst wrote, "Expect a wave of renovation and expansion projects for American Indian casinos later this year...There are deals waiting in the sidelines.... More players, not fewer, will be willing to finance these expansive and expensive projects as Indian tribes are expected to tap into \$2B in financing this year" (Crittendon Research 2007, 2). A recession and several casino loan collapses later, some investors and lenders have exited, and a few have been overtly critical. One high-yield investor who participated in a tribal casino debt deal that went south said, "Puerto Rico pays its bills. Indian country doesn't....I'd never buy an Indian credit again" (Allen 2014, para. 11).

Market watchers with extensive Native Community experience take issue with this view. Joseph Kalt, co-founder of the Harvard Project on American Indian Economic Development, notes that Indian Country is not one place but many different Native Communities. In his view, there is little substantive difference between the claims "get burned once in Indian country and get out forever" (ibid., para. 58-59) and "I lost money in Greece's debt crisis, so I'm swearing off investments in Europe altogether" (Joseph Kalt, personal communication, August 2014). Both approaches over-generalize from a single case. Longtime market participant and Key Bank Executive Vice President William Lettig similarly emphasizes familiarity and knowledge: "There still remains private sector uncertainty about whether Indian country is a good investment. This uncertainty—which I believe is based on lack of information and understanding about Indian country—has a chilling effect on capital markets' appetite for investing in Native America...[but] with experience in Indian country, the private sector will come to understand that Indian country is a dynamic

place to do business, that mutually acceptable terms can be developed” (Lettig 2014, 2 and 4). Deputy Comptroller Barry Wides, from the U.S. Office of the Comptroller of the Currency, is even more positive: “Banks that consider Indian Country for business stand to reap more than profits. Loans and investments help create jobs, revitalize communities experiencing record unemployment, and open the door to local Native entrepreneurs seeking to build and grow businesses, pushing forward the wheel of growth” (Wides 2013, para. 17).

The challenge for tribes is to consistently and persuasively educate lenders about tribal capacities—and to take seriously the fact that one tribe’s actions can have a negative effect on many others. The challenge for lenders is to recognize that an entire toolbox of risk-management methods for lending to tribes and tribal enterprises exists (Allen 2014)—which includes methods developed through the successful restructuring of once-troubled Indian country loans⁸²—and to use them.

Federal programs

In the past, federal programs intended to serve American Indians, Alaska Natives, and Native Hawaiians may have been the only finance options available to tribes and tribal enterprises. Today, the emphasis has rightly shifted toward nongovernmental sources of funds. Broadly speaking, however, federal government programs intended to serve any American government, company, or nonprofit organization or that facilitate access to private sector funds also should be viewed as possible sources of finance for tribes and tribal enterprises and included in their financing strategies. For example, Standing Rock Telecommunications opened the door for greater tribal access to the Federal Communications Commission’s Universal Service Fund. Similarly, rulings sought by the Moapa Band of Paiutes have made it clear that tribal governments can pass federal tax credits through to tax equity investors (Burton and Levin-Nussbaum 2013).

82 | Both the Pueblo of Pojoaque and Mashantucket Pequot Tribe engineered new types of securities when restructuring their gaming facility loans. The Pueblo of Pojoaque created notes that paid more if casino profits were high over a fixed period of performance. Mashantucket Pequot created a contingent interest obligation with an additional toggle requiring the tribe to pay in cash when business was good and pay in kind when performance dropped beneath an established level of profitability (Allen 2014). Other tribes have added non-gaming enterprise income to secure casino debt. For example, Dry Creek Rancheria purchased a vineyard and tied vineyard revenues to bondholder repayment (ibid.). In sum, innovative debt instruments are a means of avoiding repayment problems.

To improve their options, tribes and tribal enterprises should educate themselves about Native-specific and non-specific federal program opportunities.⁸³ Additionally, more tribes and tribal enterprises may need to emulate the Moapa Band of Paiutes and Standing Rock Telecommunications Inc., and become first movers, paving the way for tribal access. With this attention, Native Communities may be able to tap significant new federal and private capital.

Tribal Economic Development Bonds (TED Bonds) are one example of a Federal program that expands access to market capital. Created by the American Recovery and Reinvestment Act of 2009 (ARRA), TED Bonds are distinct from other tribal tax-exempt bonds in that they are not fully subject to the Internal Revenue Service’s essential government function test, which specifies that capital raised through the sale of tax-exempt bonds must be spent on public works or infrastructure that supports government’s public service mission (U.S. Treasury 2014).⁸⁴ While tribes were initially slow to apply and to convert bonding authority into actual financial packages, the reasons why are well understood: some tribes were still learning about the bond, some applied for allocations for projects that were not yet “shovel-ready,” and the generally depressed state of the U.S. economy limited the attractiveness of all tax-exempt bonds overall (DePaul 2013). The U.S. Treasury Department reopened the application process for TED bonding authority in 2014; given changes in reservation economies and the American economy overall, the time may now be ripe for tribes to realize an increased flow of capital through this federally sponsored mechanism.

83 | See, for example, “Federal Loan Programs for Economic and Community Development throughout Indian Country and Alaska,” Division of Capital Investment, Office of Indian Energy and Economic Development, Bureau of Indian Affairs, U.S. Department of the Interior, Washington, DC, <http://www.bia.gov/cs/groups/xieed/documents/document/idc-022680.pdf>, accessed May 12, 2016.

84 | Tribal activities with a largely economic development purpose have typically not met the test. Off-reservation enterprises that primarily serve non-Natives also have been problematic for the IRS (Yoder and Langford 2011). By contrast, state and local governments are free to use tax-exempt bond finance for economic development purposes as long as the projects promote overall community development and wellbeing. ARRA eases the essential government functions test but does not eliminate it since TED-bonded projects cannot involve gambling and must be on tribal lands (DePaul 2013).



Photo credit: Four Directions Development Corporation (2016)

Maximizing across multiple activities and programs

Tribes face a maximization problem when seeking to expand their access to capital and credit: How can current resources (savings, retained earnings, fees, enterprise income, transfer payments, etc.) and potential new resources (loans, grants, equity investments, etc.) be allocated across capital needs to support maximum community and economic development?

One approach is to query: for which projects might our Native Community receive grants? Which might generate income that we can pledge as security in a loan? For which projects does it make sense to leverage other capital (money, equipment, future profits) to make the tribe's money stretch the farthest? In answering, financially savvy tribes borrow when they can as a means of freeing up cash for "public sector" projects (health centers, judicial chambers, electrical infrastructure, etc.), which tend to be less easy or even impossible to finance.

Ho-Chunk Inc. (HCI) and Ho-Chunk Community Development Corporation (HCCDC) are one example of a solution to the maximization problem. Because of the nature of their operations, tribal enterprises like HCI often are able to garner access to capital and credit from mainstream institutional lenders. Yet as a for-profit enterprise, HCI is ineligible to access many other sources of capital, as some government programs and most foundations only give grants to nonprofit entities. HCI's solution was innovative. It founded HCCDC as a wholly owned nonprofit subsidiary so that it could capture a full range of funding streams. It then could actively seek ways for the for-profit and nonprofit parts of its business to complement one another, building capital access (and the tangible results of that access) for the community as a whole. Ho-Chunk Village, described in Chapter 4, is an exemplar of this strategy.

6 Chapter Recommendations

RECOMMENDATION #1

Tribes should identify the various (and creative) Community-controlled income streams available to secure loans.

Such income streams might be found within tribal government or within the broader Native Community. Tribes have used third-party health care reimbursements, NAHASDA monies, gaming revenues, income from resource extraction, per capita payments, and pre-sold goods and services, among other revenues.

RECOMMENDATION #2

Tribal governments should look broadly across their goals and associated capital needs to assess where to best apply scarce resources.

Siloed financial decisions can limit the leverage value of funds. Tribes should consider the full range of government and tribal enterprise resources when assessing finance options, which include grants, loans, and equity.

RECOMMENDATION #3

Tribal governments and tribal enterprises should not confine their search for funds from other governments to those programs that are explicitly identified as for tribal purposes.

Searching in mainstream grant and funding pools extends the possible sources tribes may tap to move their commercial and community activities forward. At the same time, federal, state, and local governments should make it clear in program rules and regulations that tribal governments and tribal enterprises may apply; funding rules should be written in such a way that Native Community governments and corporations are not inadvertently shut out.

RECOMMENDATION #4

Lenders should increase their knowledge of Native Communities and strategies for lending to tribes and tribal enterprises.

Banks and other institutional lenders should learn about the tribes in the regions they serve. Advocates in Native finance and other lending affinity groups should promote greater awareness among bankers that lending to tribal governments, tribal enterprises, and tribal citizens may have a more attractive risk profile than is commonly perceived.



Photo credit: M.Vargas (2016)

7 Business-Related Tribal Legal Infrastructure

“Limited access to capital and credit may be a symptom—not a cause—of the real economic development problem in Indian Country. The root of the problem often lies in institutions that drive capital away.”

—Joseph P. Kalt, Ford Foundation Professor of
International Political Economy, Harvard Kennedy School
(personal communication, August 2014)

The limited supply of capital and credit to Native Communities constrains the growth of Native-owned businesses and restricts tribal citizens’ opportunities to make personally transformative investments (such as buying a home or going to college). In turn, it dampens economic development and growth in Native Communities. Previous chapters of this report have addressed a number of the factors that have reduced the access of Native nations to adequate capital and credit. One factor, however, has not yet received the attention it deserves: the institutional environment of tribes themselves.

To be sure, misperceptions concerning the riskiness of lending to Native borrowers, and perhaps even bias, are part of the problem. Yet the reduced flow of funding also can be understood as a *symptom* of Native nations’ limited preparedness to engage with lenders and lending institutions.⁸⁵ Capital flows to places where it is likely to be “safe”—where it will not be expropriated or mired in slow and nontransparent bureaucratic processes—and there is some reasonable expectation of a return on investment. By extension, Native Community citizens, 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.

Some tribes have made tremendous progress on this front, and it has changed their ability to access capital and credit. So what are tribes doing, and what can they yet do, to make their lands more attractive places for capital and to communicate that they are “open for business”?⁸⁶

85 | Alaska Native corporations, Native Hawaiian communities, and state-recognized tribes do not have the same legal status as federally recognized tribes, and thus, are not in a position to create tribal legal infrastructure—which is the focus of this chapter.

86 | This is how one South Central Region Focus Group participant phrased the issues (Tulsa, Oklahoma, October 2013).

KEY TRIBAL LEGAL INSTITUTIONS FOR CAPITAL AND CREDIT ACCESS

Effective and fair dispute resolution systems

Lenders, lawyers, business managers, and academics—among other experts—have emphasized the crucial connection between tribal justice system characteristics and economic outcomes. In a prepared statement to the U.S. House Appropriations Committee in 2000, for example, the National American Indian Court Judges Association stressed that tribal justice systems “are the keystone to tribal economic development and self-sufficiency” (U.S. House Appropriations Committee 2000, 469). Tribal judge Joseph Flies-Away testified that “tribal courts, in their action...contribute to economic development, [to] our economic possibility” (U.S. Senate Committee on Indian Affairs 2008, 21). Michael Roach, a scholar of business administration, observed, “The tribe sets the foundation...for greater economic development opportunity. The first critical piece is an effective legal system, including a judiciary system grounded in fairness and independence” (Roach 2008, 94).

Beyond anecdotal observations, economic research indicates that an independent judicial system is correlated with Native nation development success. Other things being equal, Cornell and Kalt (2000) show that tribes with access to politically independent dispute resolution had an average employment rate that was five percentage points higher than the employment rate of tribes without such systems. Jorgensen (2000) finds that court independence has a statistically and economically significant impact on tribal enterprise profitability.

So how does a court support economic development and growth? The answer is that an empowered and impartial tribal judicial system creates an atmosphere of fair play in the disputes that inevitably arise among those who do business in a Native Community. A fair and depoliticized court system that delivers decisions in a timely manner creates an environment in which neither tribal businesses nor tribal citizens can renege on contracts without paying damages, leases are not arbitrarily cancelled, and employee grievances are decided on the basis of cause rather than relationships. When commercial interests observe this even-handed and predictable treatment, they are more likely to invest their money, skills, and time in the Native Community economy. “A capable justice

system thus promotes the success of tribally owned businesses, encourages the establishment of citizen-owned businesses and improves their chances of success, and makes the nation a more hospitable environment for outside investors of all sizes, from tourists to vendors to major corporations” (Flies-Away, Garrow, and Jorgensen 2008, 119).

Importantly, this finding is not unique to Indian Country. Studies from around the world emphasize the relationship between judicial independence and economic outcomes for countries, states, and provinces; large-scale corporations; and smaller-scale entrepreneurs (Dove 2015, Feld and Voight 2003, World Bank 2004). The evidence shows that regardless of geography, jurisdiction, or type of business concern, economic development is more likely to occur where borrowers and lenders have access to fair and reliable dispute resolution systems that are capable of addressing business law issues in a timely and informed manner.

Native nations in the United States have been working to develop and strengthen their dispute resolution systems for at least 40 years, and today more than 275 tribes have their own court systems (Fletcher 2007, Kickingbird 2011). Court-strengthening efforts include the formalization or creation of independent tribal judicial structures via statutory or constitutional law (Exhibit 6.1); the creation of tribal bars to certify attorneys and other advocates to practice in tribal courts (Exhibit 6.2); training for tribal prosecutors, judges, and members of the bar concerning expansions in tribal court jurisdiction; training for tribal officials in the meaning and practice of political independence for tribal courts and corporate boards; and the publication of court opinions in formal “reporter” volumes or online.

These efforts have been undertaken because tribal officials and tribal citizens understand the importance of high-quality justice institutions: “tribes are fully aware that they must structure or restructure their institutions to satisfy their needs and to protect tribes’ long-term economic, social, and cultural interests....Tribes want to provide and be seen as providing a fair and impartial judiciary” (Kickingbird 2011, 20). Moreover, they are meeting this goal: “Recent case law and survey data indicate that there is in fact a sizeable and growing degree of independence within the tribal judiciary” (Jones 2006, 12).

Exhibit 6.1: Examples of Constitutionally Established Tribal Court Independence



GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

(VERSION LAST AMENDED IN 1987)

Article V: Tribal Judiciary Section 6. Judicial Independence

"The Tribal Judiciary shall be independent from the legislative and executive functions of the Tribal government and no person exercising powers of the legislative or executive functions of government shall exercise powers properly belonging to the judicial branch of government; provided that the Tribal Council shall be empowered to function as the Judiciary of the Grand Traverse Band until the judges prescribed by this Article have been appointed; provided further that the first Tribal Council elected under this Constitution shall make appointments to its courts within ninety (90) days after its members are elected."



TURTLE MOUNTAIN BAND OF CHIPPEWA

(VERSION LAST AMENDED IN 1992)

Article XIV: Separation of Powers, Judiciary Purpose Section 1.

"To provide for a separate branch of government free from political interference and conflicts of interest for the development and enhancement of the fair administration of justice."



PRAIRIE BAND POTAWATOMI NATION

(VERSION LAST AMENDED IN 2008)

Article VI: Dispute Resolution System Section 1. Establishment

"There is established a separate and independent branch of government, a Judicial Council of the Prairie Band Potawatomi Nation. The Judicial Council shall possess all judicial authority and no branch of government shall exercise the authority of another branch of government"

Source: Publicly available tribal statutes and codes, current as of August 9, 2014.

Exhibit 6.2: Communicating the Competency and Professionalization of a Tribal Judiciary

Government
Departments

Tribal Court
Annual Reports
Attorneys
Tulalip Office of Civil Legal Aid
Defense Counsel
Fee-for-Service Attorney
Bail Schedule
Court Closure Schedule
Court Forms
Court Visitors
Document Request
Domestic Violence
Elders Abuse
Elders Panel

Tulalip Tribal Bar Exam

Chapter 2.05; TRIBAL COURT

2.05.080 Tulalip Tribal Bar - Attorneys and Tribal spokespersons.

(1) Jurisdiction. Any attorney or Tribal spokesperson admitted, or permitted by rule, to practice law in the Tulalip Tribal Court, and any attorney or spokesperson specially admitted by this Court for a particular case, is subject to the rules of this chapter. Jurisdiction exists regardless of the attorney's or spokesperson's residency. Attorneys and spokespersons are considered counsel.

(2) Tulalip Tribal Court Bar. Any person practicing as counsel in Tulalip Tribal Court must be a member in good standing of the Tulalip Tribal Court Bar. In order to qualify as a member in good standing, all applicants must:

- (a) Schedule and pass the Tulalip Tribal Bar Exam;
- (b) Sign and take the Spokesperson's Oath of Admission;
- (c) Pay the Bar application fee and annual admission fee as may be established; unless such fee is waived by the Tulalip Tribal Court; and
- (d) Certify they are a member in good standing in any other jurisdiction in which the applicant is licensed

Information
Address:
6103 31st Ave NE
Tulalip, WA 98271
([Driving Directions](#))
Phone:
360-716-4773
Jury Dute Call-in Line:
360-716-4787
Links:
[Code Publishing Online](#)
[Code Publishing Downloads](#)
[Appellate Opinions](#)
[Court Rules](#)

Note: The Tulalip Tribes communicate Tribal court professionalization on a single webpage. It shows that the nation's legal code, court rules, case law are transparent and accessible, and that the Tribes have consistent standards for the practice law in their community. Source: Tulalip Tribes (2014)

Certainly, more work needs to be done, especially in terms of education and outreach, so that outsiders and Native Community members alike become more knowledgeable about the ways their investments will be protected. External lenders should learn about and take account of tribes' legal infrastructure. Tribal court judges and tribal attorneys should establish and consistently refresh their knowledge of their tribe's commercial law. Tribal politicians and tribal justices must understand that their decisions become part of a track record that affects not only a single case's outcome but also an entire future set of investment choices, and act accordingly. This does not mean that tribal judges always must decide in favor of commercial interests; rather, it suggests that they must make clear their reasons for particular decisions and maintain consistency when revisiting similar cases.

"I'm amazed by the number of attorneys who have told me they represent a bank, and they make no attempt to repossess collateral or foreclose on properties because they say they have understood that the tribal court is not available to provide a remedy to a non-member. Then they come into court and they realize that the system is actually more creditor-friendly than the state court system. So I think the number one misperception is that the tribal court is politically driven, will never make a decision contrary to a tribal member's interest; it's just simply not true."

–B. J. Jones, Director, Tribal Judicial Institute, University of North Dakota School of Law
(Jones 2009, 370-71)

Tribal commercial and secured transaction codes

“[Legal] uniformity is one of the primary objectives of economic development. For an Indian tribe, uniformity will eliminate insecurity on the part of investors, lending institutions, financial people, attorneys and anyone else who’s involved. It ensures that contracts, documents, and agreements are consistent. It’s the focal point.”

–Shawn Real Bird, Economic Development
Director, Crow/Apsaalooké Nation
(Woessner 2006, para 23)

A commercial code is a legal statute (a law) that creates consistent rules for commercial transactions within a jurisdiction. It provides guidelines and guarantees for businesses, consumers, and financial institutions in their dealings with one another, and in so doing, helps create certainty for all parties involved in a business exchange. In the United States, each state and each tribe has the right to establish its own commercial code.

Most states have opted to enact all or part of the Uniform Commercial Code (UCC), a joint model code project of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute. For businesses that operate in more than one state, this harmonization, or “reasonably consistent legal environment for commercial transactions” (Woodrow and Jewett 2011, 12), extends the certainty about rules across state boundaries and encourages even more interstate commerce.⁸⁷

Fewer tribes have adopted commercial codes. In 2006 the Federal Reserve Bank of Minneapolis observed, “tribal commercial laws—to the extent they have been adopted at all—vary in depth and breadth” (Woessner 2006, para 6). Six years later, although he offered no specific percentage, Federal Indian law scholar Robert Miller still held that “the majority of tribes have not adopted such laws” (Miller 2012, 143).

“Cultural fit” can be a concern for tribes that are deciding whether to adopt a commercial code and, if so, how much to harmonize it with other tribal and state codes:

“Adopting a mismatched law that is contrary to tribal norms and practices could result in disregard of the law. This would increase complexity and uncertainty in commercial dealings, not reduce them” (Graham 2004, 644; also Abinanti et al. 1999). Additionally, tribes have been concerned about the sheer enormity of an undertaking that “will require a commitment of a significant amount of tribal personnel or fiscal resources” (Abinanti et al. 1999, part 7, 5).

In the last decade, proponents have adopted a modified approach to UCC advocacy. Because it has been difficult to use trust land as security for loans, personal property is a key form of collateral on reservations. Appropriate tribal law can promote its use and spur the expansion of credit markets in Native Communities. This consideration has focused attention on Article 9 of the UCC, which governs secured transactions or, more simply, sets rules for the use of personal property as loan collateral. Thus, advocates have developed and refined a Model Tribal Secured Transactions Act (MTSTA) and promoted its adoption by tribes (NCCUSL 2005).

A major benefit of the MTSTA is that it minimizes the time and cost of code writing. NCCUSL’s accompanying “Implementation Guide” also helps tribes adapt the MTSTA to their specific circumstances while retaining the benefits of compatibility with the UCC.⁸⁸ Tribal governments that adopt the MTSTA or a modified version of it send a strong signal to lenders that their capital will not be at risk. With this assurance, financial institutions are more likely to increase Native Community residents’ access to capital and credit by making more loans, increasing lending periods, and reducing interest rates. Common types of secured transactions include loans for vehicles, consumer purchases of durable goods, and equipment and inventory for business startup or expansion—underscoring the claim that the MTSTA is a “flexible, culturally appropriate model law designed to facilitate a type of lending that is crucial for starting and sustaining private businesses” (Federal Reserve Bank of Minneapolis 2015, para 5).

By creating capable courts and appropriate codes, a tribe goes a long way toward developing the legal institutions

87 | The specific commercial transactions covered by the Uniform Commercial Code include sales of goods, leases of personalty (a subset of personal property), negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, investment securities, and secured transactions.

88 | In the context of the UCC, uniformity among states and tribes should not imply sameness—the essential requirement is compatibility. Tribal codes that are compatible with state codes and the codes of their main tribal trading partners are optimal for expanded business activity (Woodrow and Jewett 2011).

necessary to attract capital and credit. But implementation is critical as well, and certain aspects of implementation may be difficult and costly. For example, implementation of a secured transactions code requires an information system that keeps track of transactions and the collateral that secures them, allows lenders to easily investigate whether a borrower's collateral is already encumbered, and establishes priority positions among creditors on the same collateral. Several tribes have pursued an innovative approach to this implementation challenge. Rather than creating their own lien filing systems, they “rent” lien-filing services from state governments. On February 6, 2008, the Crow Nation and state of Montana entered into a Joint Sovereign Uniform Commercial Code Filing Compact—which both parties hailed as a modern-day treaty. At least three more tribes have entered into similar arrangements: the Oglala Sioux Tribe with the state of South Dakota on July 30, 2008, the Leech Lake Band of Ojibwe with the state of Minnesota on October 21, 2011, and the Chippewa Cree Tribe with the state of Montana on April 4, 2012 (Daugherty and Woodrow 2008; Federal Reserve Bank of Minneapolis 2008, 2012⁸⁹; Montana Secretary of State 2012). This is an active area of tribal law and policymaking, and even more tribes and states may soon join these ranks.⁹⁰

“Anecdotally, bankers generally are expressing a greater degree of confidence where tribes have a secured transactions regime in place, [regardless of] whether those transactions are occurring under tribal or state law.”

–Susan Woodrow, Assistant Vice President, Federal Reserve Bank of Minneapolis
(personal communication, September 2014)

Tribal corporations: Managing business and politics

Native Community businesses, whether tribally owned or citizen-owned, will have better access to capital and credit when they also have access to independent dispute resolution and to laws that promote commercial activity. Tribally owned businesses' capital access may additionally depend on a third type of legal infrastructure: laws and policies that limit political actors' opportunities to influence business decisions (Cornell and Kalt 1992, Jorgensen and Taylor 2000, Jorgensen 2014).

Tribes can insulate business from politics through the creation of tribal entities to manage business. Tribes have several options (Atkinson and Nilles 2008, Boldrey and Kissel 2011):

- **An economic development arm of the tribe.** This type of “unincorporated instrumentality” of a tribe may be insulated—to some extent—from political matters through the oversight of a board of directors or business committee. Nonetheless, it does not have a separate legal structure from the tribe itself.
- **Section 17 corporations.** These corporations are organized under Section 17 of the Indian Reorganization Act, and the Secretary of the Interior issues their corporate charters. The structure allows for a segregation of tribal business assets and liabilities from those of the tribal government itself, and a segregation of business decision-making through a management structure that is separate from the tribal council.

89 | For more on how these arrangements work, see Montana Secretary of State (2014).

90 | In fact, because other tribal commercial laws require an information infrastructure in order to be effective, there is scope for still more tribal-state system sharing. For example, a tribe might work with a state to create a business entity registry that allowed lenders and investment partners to conduct due diligence searches on businesses incorporated under tribal law.

Exhibit 6.3: Excerpts from the Crow Tribe-State of Montana Compact*(as renewed March 3, 2012)*

Compact between the
**Crow Tribe of Indians/Apsaalooke Nation &
Office of the Montana Secretary of State
for a Joint Sovereign Filing System**

WHEREAS, the Tribe wishes to engage the Office of the Secretary to provide a central filing system ("Central Filing System") in order to serve as the place (the "Central Filing Office") for lenders to file financing statements to perfect security interests in personal property collateral that arise under the Tribal Act, and to provide certain administrative services relating thereto; and

WHEREAS, the Office of the Secretary has agreed to serve as the location and administrator for lenders to perfect a security interest in personal property collateral that arise under the Tribal Act; and

WHEREAS the Office of the Secretary has agreed to provide the Central Filing System and serve as the Central Filing Office, and to provide certain administrative services relating thereto...

FILING AND SERVICE FEES

17. The Tribe agrees that the Office of the Secretary, as compensation for the duties performed hereunder, may collect and retain all filing and related service fees for providing Central Filing Services and serving as the Central Filing Office for filings made under the Tribal Act. The Office of the Secretary agrees that such fees shall be the same as those required under the Montana UCC Filing Provisions.

- **State-law corporations.** A tribal government may opt to form a corporation under the laws of the state whose geography it shares. Like a Section 17 corporation, a corporation formed under state law insulates business from politics through a management structure (usually a board of directors) that either excludes elected leaders or limits their decision-making power. Another advantage of state-chartered corporations is that shareholders are not personally liable for the liabilities of the corporation, only for the amount of their investment. For tribes, the disadvantages of these corporations are that they are subject to federal income tax and are unlikely to carry a tribe's sovereign immunity from suit.
- **Tribally chartered corporations.** A tribal government may itself adopt a corporate code that allows for the formation of corporations under tribal law, including tribally owned corporations. This structure allows a tribe to regulate business under its own laws. Like a Section 17 or state-charted corporation, a tribally chartered corporation insulates business from politics via its management structure; like a state-charted corporation, it also provides for a separation of corporate liabilities from the assets of the tribe.
- **Tribal limited liability corporations.** A tribal government also may adopt a limited liability company (LLC) code that sets forth rules for the formation and operation of partnership-like corporations provide owners with shared management power, limited personal liability, and the limitations on corporate taxation (the partnership is not subject to tax, although each owner's allocable share of income may be). Once the appropriate tribal laws are in place, LLCs are easy to establish and thus useful to both tribal governments and tribal-citizen entrepreneurs. Like several other corporate models, an LLC also helps protect the assets of the tribe and promotes the insulation of business from politics.

Financing, tax, sovereign immunity, liability risks, ease of formation, and the degree of tribal control (versus federal or state control) are all factors driving tribes' choices among these models. In fact, a tribe may choose different structures for the different types of businesses it operates. All but the first model offer an institutional means of managing the boundary between business and politics, although more informal management of the boundary is necessary in every case (Grant and Taylor 2007).

CREATING A SENSIBLE REGULATORY ENVIRONMENT

Tribal governments assist the flow of capital and credit to Native Communities not only by making investments safe but also by creating business-friendly settings in which commercial activities can thrive. Leading characteristics of a business-friendly tribal regulatory environment include:

- Transparent, straightforward, and timely business licensing requirements
- Clear zoning rules that set aside land for commercial purposes
- Streamlined and fair leasing procedures
- Strong rules to prevent political interference in business processes
- Policies that allow limited waivers of sovereign immunity

Business licensing

Business licenses are a way to regulate who and what type of entities may conduct business on tribal land. Tribes may wish to enact special classes of licenses for tribal members versus non-members, for small versus large corporations, for various kinds of business activity (for tribal-citizen artists or high-tech startups, for example), or other business types. A license renewal requirement keeps tribal government apprised of local business operations and provides convenient opportunities for monitoring business compliance with tribal laws and regulations. For example, renewal may be made contingent on proof of the payment of any fines incurred for code violations, proof of ongoing compliance with tribal sales tax policies, or documentation of a valid land lease, among other possibilities.

Whatever choices the tribal government makes concerning licensing requirements, however, they should not be so onerous or unwieldy as to forestall business development (which, admittedly, can be a delicate balance). A tribe even may wish to place requirements on its own actions with regard to business licenses (i.e., limit political interference) in order to help ensure that the process is transparent, straightforward, and timely.

Zoning and land use planning

Zoning is a way for tribes to think strategically about land use. Through zoning, a tribal government can create commercial and industrial zones where businesses are welcome while protecting other areas for residences, recreation, schools, subsistence activities, and sacred uses. Targeted tribal investments in infrastructure (roads, water, sewer, electricity, Internet access, etc.) that further promote community and economic development may complement zoning.

Zoning and land-use planning are a way to assert tribal jurisdiction over reservation land. Problems can arise, however, where reservation boundaries include fee simple land on which tribal law and regulations may not apply. If an individual or individuals who are not tribal citizens own the fee simple land, state law may apply (see *Brendale v. Confederated Tribes of Yakima Indians*). The situation becomes even more complicated when trust land is interspersed with fee simple land (the reservation is “checker-boarded”). In such cases, comprehensive land use planning and zoning is impossible unless the tribal government can enter into agreements with the state, county, or municipalities to determine regulatory control (Abinanti et al. 1999).

Examples of best practices include:

- **Swinomish Indian Tribal Community (SITC).** The SITC Cooperative Land Use Program, which is based on memoranda of agreement and understanding between SITC and Skagit County in Washington State, provides a framework for conducting permitting activities within the boundaries of the checker-boarded reservation and establishes a forum for resolving any conflicts that might arise. Since 1996, both governments have followed a common Comprehensive Land Use Plan and have used similar procedures to administer it, exemplifying a mutually beneficial government-to-government relationship (Harvard Project 2000b).

Exhibit 6.4: Excerpts from Tribal Business Licensing Regulations



**CONFEDERATED
TRIBES OF COOS,
LOWER UMPQUA &
SIUSLAW INDIANS**

Tribal Code, Title 6 Corporations Chapter 6-4 Business Licensing Section 6-4-15 Classes of Licenses

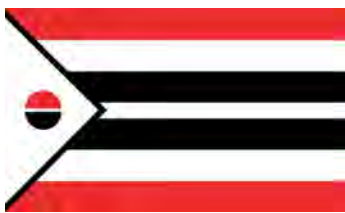
- (a) *Temporary Business License: All persons engaged in business on the Reservation for a period of seven (7) days or less shall have a temporary business license. The fee for a temporary business license is ten dollars (\$10.00).*
- (b) *Seasonal Business License: All persons engaged in business on the Reservation for a period of three (3) months or less shall have a seasonal business license. The fee for a seasonal business license is twenty-five dollars (\$25.00).*
- (c) *Permanent Business License: All persons engaged in business for a period exceeding three (3) months shall have a permanent business license. The fee for a permanent business license is fifty dollars (\$50.00)...*
- (d) *Tribal Member Business License: Tribal members who create Indian Arts or Crafts may, upon application from the Tribal member, request to have the Tribal Council issue a Tribal Member Business License. There shall be no fee for a Tribal Member Business License...*



**EASTERN BAND
OF CHEROKEE**

The Cherokee Code, Chapter 106 Business Regulation Article I Business Licenses Section 106-17 Dealing in Antiquities Prohibited

"Persons and entities required to be licensed...may not deal in objects of antiquity removed from any historic or prehistoric ruin or monument on land owned or controlled by the United States, state, or any Indian Tribe recognized by the Federal government or any state; and may not knowingly buy, sell, rent, lease or have in their possession any artifact created before 1930 that was removed from any state or Federally recognized Indian site, historic ruin or monument. ... Violation of this section may subject the violators to Federal and Tribal prosecution; in addition violators will be subject to suspension or revocation of their Tribal business license and such other action as may be necessary."



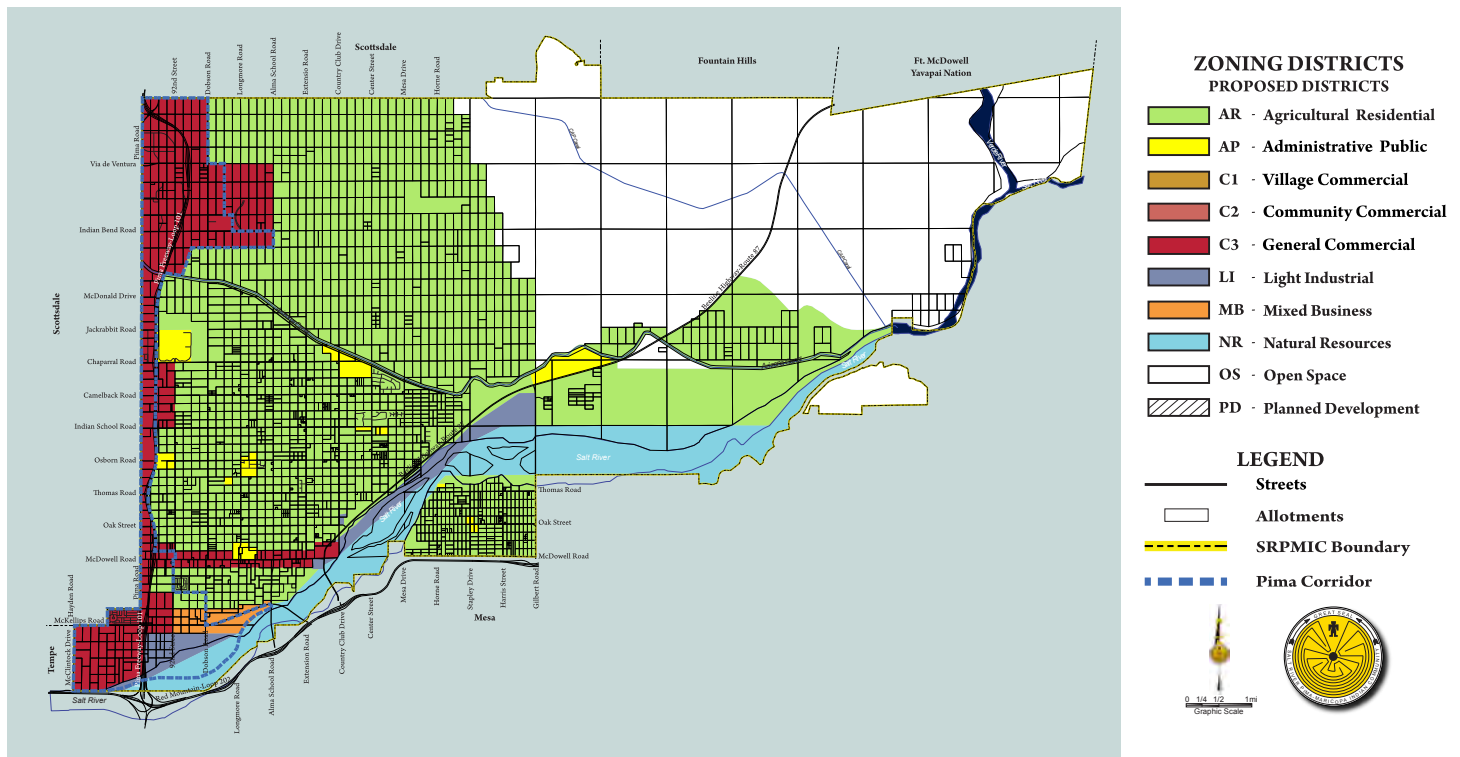
**SHOSHONE ARAPAHO
TRIBES OF THE WIND
RIVER RESERVATION**

Law and Order Codes of the Shoshone & Arapaho Tribes Title XIV Code of Civil Procedure, Ch. 17 Business License Code Section 14-17-7 Action on Application

- (1) *Within thirty (30) days after an application for a Tribal business license is submitted, the Joint Business Council shall consider the application and take action on it. The Joint Business Council may grant the application, grant it subject to certain conditions, deny it, or ask the applicant to provide more information regarding his plans. The application may be denied if it appears that the business proposed would pose a danger to the health or welfare of reservation residents, that the activities planned would be inconsistent with Tribal comprehensive plans or Tribal laws, or that the applicant has previously been found guilty of violating Tribal licensing, tax, or land use.*
- (2) *An applicant may appeal the Joint Business Council decision to the Tribal court.*

Source: Publicly available tribal statutes and codes, current as of August 9, 2014.

Exhibit 6.5: Zoning Distric Map: Salt River Pima-Maricopa Indian Community



Source: Salt River Pima-Maricopa Indian Community, Community Development Department (2016)

- **Salt River Pima-Maricopa Indian Community (SRPMIC).** SRPMIC's Zoning Ordinance and Design Update project provides much-needed revisions to the tribe's 1981 zoning ordinance. Abutting the cities of Tempe, Fountain Hills, Mesa, and Scottsdale, Arizona, SRPMIC's land is prime real estate. Improved zoning for commercial and industrial purposes will help SRPMIC take better advantage of its location. At the same time, zoning will help the nation protect the characteristics of its land and its community life as manifested in land use that it finds most valuable. While still in the draft phase in 2014, plans call for the creation of commercial corridors in specific areas along the western edge of the reservation. Other portions are set aside as residential, agricultural, governmental, open, and mountain preserve areas (Salt River Pima Maricopa Indian Community 2015).

Leasing procedures

Under provisions of the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), tribes are authorized to lease tribal trust land for business and other purposes for up to 75 years (a 25-year

base lease may be followed by two renewal terms of 25 years each). To exercise this authority, tribes must adopt tribal leasing regulations and receive Bureau of Indian Affairs (BIA) approval of tribal leasing regulations. These regulations must include an environmental review process providing for evaluation of "any significant environmental effects of the proposed action on the environment" (HEARTH Act 2012) and a reasonable public comment period.

Delays in BIA approval processes have constrained tribal trust land leasing, making the new option a welcome change for many tribes. Under the old system, "too much time, cost, and uncertainty for BIA lease approval have meant no project and no money" (Stoel Rives 2012, para. 3). Moreover, the experience of tribes that gained leasing authority independent of and ahead of the HEARTH Act (including the Navajo Nation and Tulalip Tribes) "confirms that projects on tribal land can be developed in less time and with less cost and risk when BIA lease review and approval are not required" (ibid.). With the HEARTH Act now in place, even more tribes can realize an increased flow of credit to on-reservation investment activity.

Exhibit 6.6: Excerpts from Tribal Business Licensing Regulations



**ONEIDA TRIBE OF
INDIANS OF
WISCONSIN**

Oneida Code of Laws

Chapter 3. Code of Ethics: Atwaliwáseh (matters that will be followed)

Section 3.1-1. Policy and Purposes

"It is the policy of the Oneida Tribe of Indians of Wisconsin to promote the highest ethical conduct in all of its elected and appointed officials, and employees. This Code of Ethics represents a beginning, it is the very minimum standard of conduct which is expected. This Code is intended to create a base from which all persons are expected to work upwards and strive to work toward improving the health, safety and welfare of the Oneida Nation, citizens of the Nation, employees of the Tribe, and persons living in and around the jurisdiction of the Oneida Tribe if Indians of Wisconsin.



**STANDING ROCK
SIOUX TRIBE**

Tribal Code of Justice,

Title XXVII Tribal Employee Code of Ethics

Chapter 2. Standard of Conduct

Section 27.205.3. Nepotism

"Program directors or supervisors shall not supervise a relative, Hunka relative or significant other, nor advocate for their employment or advancement. Relative means: father, mother, grandfather, grandmother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, son-in-law, daughter-in-law, father-in-law, mother-in-law, sister-in-law, brother-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister. Significant other means a domestic partner. Hunkayapi relative means those persons adopted by Dakota/Lakota custom or traditional practice.



**WYANDOTTE
NATION**

Code of Ethics Act Compliance

"Any violation of this policy will subject the official, employee, appointee or agents to Administrative disciplinary action or immediate discharge in accordance with the Wyandotte Nation Constitution or Wyandotte Nation Personnel Policy. Any Tribal associate having knowledge on any violation of the policy shall promptly report such violation to the appropriate level of management.

Source: Publicly available tribal statutes and codes, current as of August 9, 2014.

Notably, the increased flow of credit comes both from “outsiders” (external investors) and “insiders” (tribal citizens) and has affected both commercial and residential investment. Put differently, the investment flight tribes have experienced has not just been the loss of external prospects but of resources that tribal citizens would have invested had it been easier to lease land, build a home, or operate a business on tribal lands.

Business ethics

As tribal governments strive to create business-friendly environments, they will benefit from developing strong business ethics policies to govern the behavior of tribal officials and employees. Such policies help tribal governments manage the boundary between business and politics and avoid unnecessary meddling in tribal-citizen business affairs. They help prevent the use of political or positional power in government for personal gain. They also send a strong signal to investors inside and outside the tribe that the government is serious about supporting the flow of capital into the Native Community, promoting business formation, and backing long-term economic development. Critically, a tribal ethics code is a sovereign statement about the way tribal values guide business behavior. Without such a statement, tribe officials and staff may be held to non-Indian ethical standards (Smith 2014). Exhibit 6.6 provides several examples of business ethics provisions in tribal law.

Tribal sovereign immunity

Like other sovereigns (including, for example, each of the fifty U.S. states), tribes are immune from being sued unless they explicitly have waived their immunity. In its current incarnation, tribal sovereign immunity protects tribes from suit for actions both on and off their reservations.

Tribes’ immunity from suit can pose barriers to the flow of capital and credit when tribes are acting in a commercial capacity and the other parties’ normal expectations include the ability to seek legal redress for contractual breaches. Some tribes refuse to waive their sovereign immunity, choosing to forgo capital deals. For them, waiving immunity is akin to giving up their hard-fought sovereign status. Other tribes undertake considered, contractual, and limited waivers from suit for the purpose of commercial contract or lease enforcement. For them, the power to consent to being sued for engaging in high-level economic activity is not a loss of

tribal sovereignty but an exercise of it. It allows the tribe to control the terms on which it will be sued, including the choice of forum and the choice of law (tribal, state, etc.).

Not surprisingly, many tribes are uncomfortable consenting to the authority of nontribal courts in commercial disputes. At the same time, despite a tribe’s best efforts to strengthen its judicial system, lenders and developers may yet be hesitant to put their issues before a tribal court. Neutral arbitration provisions (of the “each side selects a party arbitrator, and the party arbitrators select a third neutral arbitrator” variety) provide an alternative. Increasingly, tribes and their commercial partners or counterparties employ approaches such as these:

- Limited waivers of immunity from suit in tribal court for contract disputes involving tribally owned enterprises
- Limited waivers of immunity from suit in state court for contract disputes involving tribally owned enterprises
- Waivers of immunity from suit of a tribal enterprise and/or a tribe in tribal court for the limited purpose of enforcing otherwise duly entered arbitration awards
- Waivers of immunity from suit of a tribal enterprise and/or a tribe providing for enforcement of otherwise duly entered arbitration awards by first bringing suit for enforcement in tribal court, with provision for subsequent appeal in state court

The implications for “both sides of the table” are clear. The tribe seeking to uphold its sovereignty by exercising waivers of sovereign immunity into its own courts must meet the challenge of building and sustaining its own rule of law. At the same time, the responsible nontribal commercial partner should be expected to respect such efforts and to judge each tribal nation’s court on its merits. In the process, it may well be found that a tribal court outperforms its nontribal counterparts (Cornell et al. 2008).

*Case study: The impact of business-friendly regulatory structure*⁹¹

In the early 1980s, the town of Kayenta, Arizona, on the Navajo Nation, faced high unemployment rates and little prospect of change through business development. Part of the reason that business was not thriving was that the community had poor commercial infrastructure; the other part was the community's arduous process for getting a business started. The regulations for enterprise development were made in the tribe's capital, Window Rock, and there was little chance that the community would see any change in the regulatory environment unless its leaders were able to win greater local control.

In 1985, after a petition from the village, the Navajo Nation Council granted Kayenta "township" status, which gave the community local, municipal-style decision-making powers. The township's leaders developed a comprehensive land use plan, created municipal codes and bylaws, and wrote new, simpler business development regulations. Potential entrepreneurs found that getting a land or building lease and a business license was much easier under the township's regulations.

Kayenta also raised governmental revenue through a 2.5 percent sales tax, which it used for "drainage and flood control, fire protection, street maintenance, airport management, and maintenance, improving the community's water system, and other needs" (Cornell et al. 2007). In turn, these public infrastructure investments attracted further capital and business development to the area. Today, Kayenta—a town of only 5,200—boasts a dozen restaurants, three hotels, a movie theater, grocery store, several gas stations, and numerous other business ventures.⁹²

⁹¹ | This profile is based on a case summary in Cornell et al. (2007, pp. 208-209).

⁹² | For more information, see "Kayenta, Arizona," City-Data.com, <http://www.city-data.com/city/Kayenta-Arizona.html>, and "Tourism," Kayenta Township, <http://kayentatownship-nsn.gov/Home/index.php/tourism>, both accessed May 12, 2016.

7 Chapter Recommendations

RECOMMENDATION #1

Every effort must be taken by tribes to strengthen their business-related legal infrastructure.

Those efforts include creating independent dispute resolution forums, insulating business from politics, establishing corporate and commercial law, and creating an appropriate regulatory environment.

- A tribe may specifically wish to consider the creation of a specialized commercial court if it prefers a more traditional approach to resolving other disputes in the community or if a commercial court will offer more timely and transparent decisions.
- More tribal court opinions should be made accessible and searchable.
- Tribal court judges and attorneys should develop expertise in, and consistently refresh their knowledge of, their tribes' commercial law.
- Tribal politicians' and tribal justices' behavior should reflect the understanding that their decisions become part of a track record that affects not only a single case's outcome but an entire future set of investment choices.

RECOMMENDATION #2

Non-tribal providers of capital and credit should educate themselves about the business-related legal infrastructure of the tribes with whom they work.

This is true for all for-profit companies, nonprofit organizations, and government agencies whose actions affect the flow of capital and credit (a group that includes bankers, other institutional lenders, providers of consumer finance, prospective private equity partners, prospective joint venture partners, state and federal court judges, federal government officials working in Native Community economic development, etc.). Tribes and other advocates should be leaders in this educational process.



Photo credit: IStockPhoto (2013)

8 Moving Forward: Report Themes and Next Steps

In 2001, the Report of the Native American Lending Study put a national spotlight on the limited flow of capital to Native Communities. Since then, in large part due to the NALS and to the significant and often innovative efforts it inspired, the flow of capital to Native Communities has increased, making access to capital and credit an important part of the story of economic renewal in Indian Country. This report has examined that progress through the lenses of six topics: Native CDFIs, financial education in Native Communities, Native entrepreneurship, housing in Native Communities, tribes and tribal enterprises, and business-related legal institutions. The chapters provide multiple examples of how the concerted efforts of Native Community members, Native organizations, tribal governments, the federal government, and ally organizations have increased access to capital and credit in Native Communities, and how community development success has followed.

Nonetheless, there is a long way to go and a great deal of work yet to be done. Native Communities still are significantly handicapped by limited access to capital and credit, particularly in comparison to non-Native communities, and this continues to negatively affect their development prospects. In fact, given ongoing economic development, the effective demand for capital and credit may be greater now than it was in 2001. To keep moving forward, Native Communities need to gain access to much more capital and credit from current and as-yet untapped sources.

This conclusion points toward several questions: What has worked? What can be built on? What new or continuing issues still need to be addressed? This chapter takes up these questions. It begins by focusing on successful strategies that Native Communities have used and should continue to use. It then turns to successful strategies for the federal government. It closes with a look at continuing challenges to the goal of taking access to capital and credit in Native Communities to the next level.

KEY STRATEGIES FOR NATIVE COMMUNITIES

Five strategies for improved access to capital and credit in Native Communities were evident in nearly all of the chapters of this report—and provide valuable guidance for making still more forward progress.

Seek partnerships

“The most promising models of community development going forward all include elements of integration, such as layered financing, joint development, shared accountability, or coordinated services.”

—Laura Choi, Federal Reserve Bank of San Francisco (Choi 2012/13, 1)

“Partnership” can refer to many arrangements, but the fundamental idea is that working together results in new resources and new opportunities for both parties. Partnerships may be enduring relationships, one-off options that offer a chance to learn, or intermittent agreements that reflect each party’s unique but temporarily related goals.

Seeking strategic partnerships for improving the flow of capital and credit to Native Communities means asking these kinds of questions: Which individuals, companies, organizations, or governments might this nation, organization, or business work with to better achieve the aim of increasing capital access? Which partners may be necessary to achieving this aim? Which partners might bring the most to the collaboration in terms of financial resources, organizational connections, similar goals, and opportunities for cost-savings?

- **Native Entrepreneurship** (Chapter 4). Native entrepreneurs collaborate with one another in the Wisconsin American Indian Chamber of Commerce to increase their joint visibility and stretch their advertising dollars.
- **Housing** (Chapter 5). Native Community Finance, a Native CDFI located on the Pueblo of Laguna, collaborates with the New Mexico Mortgage Finance Authority and local mortgage lenders to provide construction loans for homes on tribal trust land. Lacking adequate long-term capital to provide permanent home mortgages itself, Native Community Finance manages a prospective homeowner’s construction loan and works with the approved home mortgage lender to establish a permanent mortgage when construction is complete.
- **Legal Infrastructure** (Chapter 7). The Crow Nation compacted with the state of Montana to use its lien filing system for secured transactions involving Crow Nation citizens. The state keeps the filing fee in return for services rendered; the Crow gain enforceability for their secured transactions code and, ultimately, more debt financing for grassroots economic development.

Maximize information sharing

“As we develop champions for business development, we must share our needs and information to strengthen what is weak and bolster what is strong. If we believe in our people, they will believe in themselves.”

—Participant, Northern Plains Region Tribal Consultation, October 2013

One of the striking realizations to be gained from this report is the scope, quality, and sheer volume of innovation that has occurred over the last 20 years to increase the flow of capital to Native Communities. Native peak organizations—including First Nations Development Institute, Oweesta, National American Indian Housing Council, National Center for American Indian Enterprise Development, Native American Finance Officers Association, and Native CDFI Network, among others—have been key to spreading information about these ideas and approaches. More informal means of sharing—person to person, government to government, lender to client, and so on—also occur.

- **Native CDFIs** (Chapter 2). The Native CDFI Network website includes a “Learning Center,” a members-only resource collection including live recordings of training webinars, member profiles, communication and funding tools, and other resources that Native CDFIs have made available to their peers.
- **Financial Education** (Chapter 3). First Nations Development Institute developed, has refined, and continues to actively share its Building Native Communities financial education curriculum through the Internet, train-the-trainer, and print distribution.
- **Tribal Governments and Tribal Enterprises** (Chapter 6). The Yakama Nation has shared information about its land enterprise through its participation in and subsequent award from Harvard University’s Honoring Contributions in the Governance of American Indian Nations (Honoring Nations) program.

Nonetheless, the incorporation of these learnings is not as widespread as it might be. The responses gathered in public comments, consultation meetings, and focus groups included stories about things that entrepreneurs, community development professionals, and tribal government officials “just didn’t know.” How can these information gaps be addressed? How can even more intertribal, inter-community sharing about ways to increase the flow of capital and credit to Native Communities be accomplished? Is it possible to amplify further the voices of those who have experience with successful approaches or who can explain these innovations to others?

Leveraging technology helps, so it is no surprise that peak organizations often offer webinars, some of which are designed for lay learners and non-members of their organizations. As examples such as the popular TED⁹³ talks have proven, there is even more that technology—especially using simple, inspiring means—can do. (As is discussed below, however, to the extent that Native Community members lack access to Internet service, especially service capable of supporting video streaming, the reach of such efforts remains limited.)

Word of mouth may be the only way to close one of the biggest information gaps that affects access to credit and capital in Native Communities: mainstream lenders’ and investors’ limited knowledge of the true risks and benefits of doing business in Indian Country. In the banking sector, for instance, some bankers reflexively view all Native Community lending as high risk—without seeking to understand the efforts tribes may have undertaken to mitigate risk—and effectively shut down traditional lending for housing or small business development on tribal lands. The message that advocates must bring to this sector, and which they must express in clear business terms, is that there is money to be made in Indian Country—through a high volume of smaller, lower-risk loans as much as through a few high dollar-value ventures.

Think and plan for the long term

“The task of [a tribal] economy is different and distinct from the economy it sits within. It has a multi-generational time horizon and thus a fundamentally different requirement from its capital. It must produce wealth over the long term and not just for the generation in which it finds itself. ... When the tribe takes the decision that it actually wants to exist as a culturally identifiable, [ancestrally]-linked community... in two or three generations’ time, it has to take decisions now as to how it is going to fund, protect, and develop that culture over time. Indeed, if it’s not prepared to do that, it may as well cash up and distribute its assets now, for it has no other serious justification for having an economy at all.”

—Sir Tipene O’Regan (Ngai Tahu Tribe),
presentation at Waikato-Tainui College,
Hopuhopu, New Zealand, July 2014.

For Native Communities, economic development and growth are not simply about families having enough money to put food on the table today, or about elected tribal leaders having adequate government revenues to see them through their current term of office. Economic growth and development also help ensure that the community and nation are there for generations to come. Many participants in consultations for this study conveyed exactly this idea in their visions of Native Communities with full access to capital and credit. They called these “healthy” Native Communities, in which access to capital and credit do not just build current income and wealth; instead, full access to capital and credit supports the creation of a Native economy that sustains the community, reinforces Native Community values, and preserves the nation over the long haul. Given this understanding, access to capital and credit ultimately affects cultural continuity, family cohesion, physical and mental health, and even individual longevity. It helps move Native Communities away from a memory of poverty and toward a memory of collective efficacy. It puts “a new memory in the minds of our children” (Satsan 2007, 322).

93 | TED is a nonprofit devoted to spreading ideas, usually in the form of short, powerful talks. TED originally was an acronym for “technology, entertainment, and design” but today the talks cover topics from science to business to global issues. For more information on TED, see www.ted.com, accessed May 16, 2017.

Working toward healthy communities requires a deliberate strategy—and sometimes such a strategy necessitates a reorganization of priorities and a reallocation of assets. However, by consciously working on behalf of the seventh generation,⁹⁴ Native Communities gain an even stronger motivation for financial innovation and change.

- **Financial Education** (Chapter 3). Financial education that focuses on “economic citizenship” builds in this sensibility about the purposes of development, growth, and wealth. In the Native Community context, economic citizenship involves, for example, patronizing businesses owned by tribal members, utilizing local financial institutions and service providers, investing time and other resources in community projects, protecting the Native nation’s land and resources, and adhering to cultural principles for sharing, empowering, and respecting fellow community members.
- **Tribal Governments and Tribal Enterprises** (Chapter 6). The Kashia Band of Pomo Indians pledged money that might otherwise have gone to per capita distribution payments as security for a loan to their tribal government from the Indian Land Capital Corporation. Their reasoning was that more land would open new long-term economic development options, make space for housing so that more community members might live at home, and support cultural practices.
- **Legal Infrastructure** (Chapter 7). Some tribes have adopted codes of ethics as a transparent means of communicating their long-term development goals. When enforced, these codes of ethics send a strong signal to investors inside and outside the tribe that the tribal government is serious about supporting the flow of capital into the Native Community, promoting business formation, and preventing the use of political power for personal economic gain. A tribal ethics code is a sovereign statement about the way tribal values guide business behavior. The

Oneida Nation’s code is one example: “This Code is intended to create a base from which all persons are expected to work upwards and strive to work toward improving the health, safety and welfare of the Oneida Nation.”⁹⁵

Take control

Many of the exemplary practices in this report arose from the initiative of a tribal government, tribal enterprise manager, Native entrepreneur, or other community member. Rather than allowing others (the federal government, private investors, foundations) to sit in the driver’s seat, Native Community members, organizations, or governments took charge and successfully steered toward expanded access to capital and credit. Of course, this does not mean that external expertise is unneeded; it may in fact be to a project’s funding outcome. Yet there is a critical difference between working with appropriately contracted project partners and allowing outsiders to make a Native Community’s investment and development decisions.

- **Native CDFIs** (Chapter 2). For years, residents of the Pine Ridge Reservation had to drive off reservation, sometimes as many as 100 miles, to access a depository financial institution. Tired of waiting for an off-reservation bank or credit union to open a branch office at Pine Ridge, and determined to make their dream of locally available financial services come true, grassroots community leaders laid the organizational foundation, gained agreement from the Lakota Funds to sponsor an on-reservation credit union, and opened the Lakota Federal Credit Union’s doors in November 2012.
- **Housing** (Chapter 5). Four Directions Development Corporation, a Native CDFI, and the Penobscot Nation together engineered a method that allows tribal citizens to mortgage their on-reservation lands. The tribal government enacted the Penobscot Leasing Code, which allows foreclosures on Penobscot land pursuant to a proceeding in tribal court. Four Directions developed Trustee Agreement mortgages, which allow Penobscot Trustees (Four Directions board members who also are Penobscot Nation citizens) to take title of a customer’s real estate in the event of a default. Together, the Leasing Code and

94 | The seventh generation principle is commonly understood to derive from the Iroquois (or Haudenosaunee) Great Law of Peace, although it is a teaching in many Native American and Indigenous societies. The principle is this: in each decision undertaken, consideration must be given to how it will affect the community’s descendants seven generations into the future. The explicit statement in the Great Law of Peace (as transcribed from oral tradition) reads, “Look and listen for the welfare of the whole people and have always in view not only the present but also the coming generations, even those whose faces are yet beneath the surface of the ground—the unborn of the future Nation” (Dekanawidah no date).

95 | “Chapter 3, Code of Ethics,” [^]*twaliwáseh* (matters that will be followed), see <https://oneida-nsn.gov/government/register/laws-policies/>, accessed May 16, 2016.⁹⁶

Trustee Mortgages allow property to be transferred away from a Penobscot citizen in default without transferring the property away from Penobscot citizen ownership generally.

Strengthen tribal institutions

As detailed in Chapter 6, one reason for the improvements since the 2001 NALS is the strengthening of tribal governance. From the creation of business licensing and secured transactions codes to appropriate separations of business from politics, a growing number of tribes are providing predictability, certainty, and transparency about how business will proceed in a variety of commercial, financial, and employment transactions. For example, strengthened tribal government institutions encourage more entrepreneurs to start businesses in their Native Communities, diminish lenders' perceptions of risk and make it easier for tribal governments and tribal enterprises to borrow, and make the complex funding agreements necessary for large-scale tribal housing developments possible.

Even so, there is still work to be done. Many Native nations would benefit from a sober assessment of the ways their tribal legal infrastructure affects the flow of capital to the tribal government, tribal enterprises, Native entrepreneurs, and Native Community members. Identifying pinch points and possible solutions, and then implementing those solutions, could further increase capital and credit access.

KEY STRATEGIES FOR THE FEDERAL GOVERNMENT

The federal government also has been successful in supporting improved access to capital and credit in Native Communities, and it should not waver from the strategies that have underwritten this success. Three are noted here.

Support what works

The Indian Self Determination and Education Assistance Act of 1975 (ISDEAA) and its amendments created opportunities for the U.S. Department of the Interior and U.S. Department of Health and Human Services to transfer to a tribal government, at that tribal government's request, funds that had been used to manage a program or service on the tribe's behalf. The result has been improved program effectiveness

and expanded economic development across Native America (Harvard Project 2008). Since the early 1990s, Congress and the executive branch have worked to expand the overarching idea of the self-determination and self-governance policies—that Native Communities themselves are the ones best able to make decisions about how development should proceed—into other federal programs.

For example, the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and the CDFI Fund's Native Initiatives program are both based on the principles of tribal self-determination and sovereignty. Moreover, each of these statutes and policies supports new flows of capital and credit into Native Communities (by transferring the control of funds from federal to Native Community hands)—and they are succeeding as economic development tools where more directly administered or federally determined approaches have failed.

The federal government should continue this work: Using the lens of tribal self-determination, self-governance, and sovereignty, Congress and the executive branch should continue to transform existing programs to improve the flow of capital and credit to Native Communities. Looking across the federal government's activity in Indian Country, policy makers should ask: How can programs be adjusted to promote both self-determination and capital and credit access?

Facilitate growth

For years, the federal government operated as the “developer” of Native Communities. Its record in this regard is not noteworthy (Cornell and Kalt 2007). A more appropriate role for the federal government is as a facilitator of Native Community development: It can provide technical assistance so that tribes are better able to attract capital, create incentives that connect lenders and equity partners with tribal borrowers, guarantee loans and bonds, educate lenders, remove regulatory barriers, etc.

Certainly, the federal government already is in the process of making this transition and has developed programs in each of these areas. For example, the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 provides the means for tribes to remove the Bureau of Indian Affairs from the federal

Indian trust lands leasing process. While the title of the act specifically mentions home ownership, leases can be made for housing or business development purposes. In fact, it is through the latter that the reduction in federal bureaucracy is likely to generate the most revenue and capital for tribes.

In sum, the federal government should continue to create programs and policies and facilitate access to capital for Native Communities, without backsliding into the role of project planner and business developer.

Acknowledge Native Communities in the normal course of business

In very general terms, the federal government has two responsibilities: to do the things that only a central government can/should do, and to support the framework in which other governments in the U.S. constitutional structure carry out their responsibilities. There are opportunities to increase the flow of capital and credit to Native Communities in the course of fulfilling both of these responsibilities.

In carrying out its duties as a central government, the U.S. government must buy goods and services. By incorporating “buy Native” policies more deeply into its purchasing infrastructure, the federal government could significantly increase the flow of new capital to Native Communities without developing a new spending program. Important progress was made on this front in July 2013, when the U.S. Department of the Interior adopted final rules that require the Bureau of Indian Affairs to give preference to Indian-owned or Indian-controlled businesses in matters of procurement under the Buy Indian Act of 1910. The final rules include an estimated dollar amount of \$45 million. However, the potential economic impact could increase due to the rules authorizing the Secretary of the Interior to delegate the buy-Indian mandate to other agencies within the department, such as the National Park Service and Bureau of Land Management. Economic change in Native Communities would be accelerated if Congress would expand the Buy Indian Act to include all Indian-related offices and agencies within the Federal government (Woessner 2013).

In carrying out its duties toward other governments in the U.S. constitutional structure, the federal government

also should consistently recognize tribal governments as part of this structure. This occurs as Congress uses the phrase “state, local, and tribal governments” in legislation that develops or reauthorizes programs and funding streams and in the consultations that now are mandatory across the executive branch “in the development of Federal policies that have tribal implications” (White House 2009, para. 1). This mindfulness is likely to result in an increased flow of capital from the federal government and other sources to Indian Country, especially if attention also is paid (and it should be) to equity and intent within federal policies.

For example, the Community Reinvestment Act of 1977 (CRA) is “intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound operations” (Board of Governors of the Federal Reserve System 2014, para. 1). Nonetheless, it is possible for banks to satisfy their requirements under the CRA without working with a Native Community located on Native lands (communities which otherwise meet CRA criteria).⁹⁶ The CRA was not intended to exclude Native Communities living on tribal lands, but in practice it often does. Attention to this kind of detail concerning intent and equity should lead to policy change that further increases capital access in Indian Country.

ISSUES ON THE HORIZON

Looking to the future, several on-the-horizon concerns could endanger progress. In other words, these are challenges that tribal and federal policy and practice probably will need to address to continue the expansion of access to capital and credit in Native Communities.

Bank consolidation

“The number of U.S. commercial banks and savings institutions declined by 12 percent between December 31, 2006, and December 31, 2010, continuing a consolidation trend begun in the mid-1980s. Banking industry consolidation has been marked by sharply higher shares of deposits held by the largest banks—the 10 largest banks now hold nearly 50 percent of total U.S. deposits.”

—David Wheelock, Federal Reserve Bank of St. Louis (2011, 419).

⁹⁶ | See Native CDFI Network (2013) for discussion related to this point.

As banks consolidate, local and even regional banks are being absorbed into larger bank corporations. Native-owned banks are not immune to this trend, as transactions such as the purchase of Borrego Springs Bank (once an enterprise of the Viejas Band of Kumeyaay Indians) by Spokane, Washington-based Sterling Financial Corporation in 2013 demonstrate (Allen 2012).

This is a loss for tribes. A significant amount of their business had been conducted through these institutions, so as consolidation occurs, Native Communities and Native corporations are at risk of losing key allies within the financial system. Bank officials and loan officers may be reassigned, relocated, or let go. New administrative and client service personnel may know little about tribes or feel that tribal lending is too risky, too unknown, too out of market, etc. In other words, a smaller bank's expertise and interest in tribal lending may not transfer to the new banking entity.

As a result, tribes may see some of the capital markets for tribal public infrastructure, government buildings, and non-gaming economic development tighten—which makes the proactive information campaign aimed at lenders, proposed above, even more important.

The digital divide

In places where broadband is readily available, consumers increasingly depend on the Internet to conduct routine personal banking activities. In fact, as of 2013, approximately 51 percent of American adults banked online (Fox 2013). Yet according to the Federal Communications Commission, the best evidence indicates that the broadband deployment rate on tribal lands is less than 10 percent (Blackwell 2011).

The best evidence available also suggests that Native Communities have made strides improving their access to ATMs and bank branches (Akee and Jorgensen 2016). But if the transition to Internet banking continues and banks find they can do without some of their smaller and/or rural banks, gains achieved in brick-and-mortar banking access may be in jeopardy because the method by which financial services are delivered has shifted so dramatically. Native Community leaders in the public and private sectors should work actively with Indian-owned and non-Indian owned banks and credit unions, encouraging them to maintain a local presence. Native

Community leaders also must work actively to improve broadband access.⁹⁷

Notably, the lack of broadband penetration affects not only banking services but also Native Community members' options to pursue education via the Internet and Native businesses' ability to reach customers online. Both of these effects have the potential, in turn, to reduce effective access to capital and credit, further limiting economic development and adding to the costs of the digital divide.

The lack of data

Through the early 1990s, the federal government was a somewhat reliable source of data about tribes. The Bureau of Indian Affairs collected data on programs it managed on behalf of Native nations, and the Census Bureau (especially via the now-defunct Census "long form") collected information about socioeconomic conditions. As positive as self-determination contracts and self-government compacts have been as a means of increasing sovereignty and appropriate community development for tribes, they also have spelled the demise of centrally collected data about tribal programs and of the ability of tribes to compare their information to one another. At the same time, the Census Bureau's introduction of the American Community Survey as a replacement for the Census long form has resulted in the collection of less—and less accurate—socioeconomic data from Native Communities (DeWeaver 2013).

Without new, local means of generating the data necessary for program management, enterprise investment, and governmental and corporate relationships, Native Communities are at a disadvantage. A Native Community's decisions are only as good as its best data allow. Data that is relevant, timely, and useful for financial decision making (which may include demographic, socio-economic, and performance data) can help Native Communities attract capital and assist entrepreneurs. Native Communities that lack this capacity may be limiting their capital and credit access options.

97 | On the other hand, some key informant interviewees noted that tribal casinos may serve to guarantee the presence of ATMs on tribal lands, and per capita distributions, especially if they occur via direct deposit, may sustain Native Community residents' banking relationships regardless of bank closures.

If these future challenges can be effectively addressed, and if the kinds of innovations noted in this and previous chapters continue, then access to capital and credit in Native Communities should continue to improve. This in turn can provide—among other things—more loan capital for Native CDFIs, seed funding for more Native entrepreneurs, the wherewithal for Tribally Designated Housing Entities to transform the pace of homebuilding, and the financing tribal governments need to diversify their enterprises. The goal in all of these efforts should be accelerated progress—through economic development and the community benefits economic resources can provide—toward the futures Native Communities imagine for themselves.

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