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United States Senate Committee on Banking, Housing & Urban Affairs

Hearing on

"Opportunities and Challenges for Economic Development in Indian Country"

Thursday, November 10, 2011
10:00 AM - 12:00 PM
538 Dirksen Senate Office Building

The Native American Finance Officers Association (NAFOA) has been a resource for tribal leaders and finance professionals for 29 years. NAFOA has focused its efforts on building capacity, developing effective tribal economic policy, and building relationships with the investment and banking community in an effort to promote tribal economic growth. In our years of service to tribes, we recognize there is a clear role for Congress in creating laws that keep tribes from continuing to occupy the bottom of the socio-economic statistics. To that end, we are grateful the Senate Committee on Banking, Housing and Urban Affairs has focused an entire hearing on the economic challenges and opportunities of Indian Country. And, we are hopeful this hearing is the first step to addressing our concerns.

Indian Country Economic Background

Over our nearly three decades of service, NAFOA has witnessed exceptional economic growth for a number of Indian tribes. Over the same period of time, the overall economic growth for Indian Country in general has improved substantially as well. An analysis of socio-economic change between 1990 and 2000 showed that Indian Country economies grew at a faster pace than the economy as a whole. In fact, over the last 30 years the inflation adjusted per capita income of Indians on reservations grew by 83 percent compared to 64 percent for the U.S. population as a whole. While these gains are remarkable, our per capita income remains one-third of the U.S. average. If incomes were to continue to grow at their 1990s rate, the gap would not close for another 55 years.

Most Americans are familiar with the success of a relatively small percentage of gaming tribes that are located near metropolitan centers or Alaska Native Corporations that have successfully entered the mainstream economy through government contracting. However, the economic potential of too many tribes remains unfulfilled. Many tribal governments lack the ability to provide the basic infrastructure that most U.S. citizens take for granted, such as passable roadways, affordable housing, plumbing, electricity, and telephone service.

Economic development in Indian Country lags behind the rest of the nation and impacts nearly every aspect of reservation life and tribal governance. For generations our communities have faced economic conditions that are even more pronounced than those of the current economic crisis. Eight of the ten poorest counties in America are home to Indian reservations. While economists worry as the national unemployment rate settles closer to 9 percent, data shows that unemployment among Native people was 15 percent in 2003 and has not dropped below 10 percent for generations. To compare directly to the Great Depression, the 2000 Census recorded unemployment for American Indians on reservations at 22 percent compared to the unemployment rate during the Great Depression of 25 percent.

The 2000 Census reported the per capita income for American Indians and Alaska Natives living on reservations at $7,942, merely one-third the U.S. average for all races, which was $21,587. Low average income, coupled with high unemployment, means the poverty rate for Indian families on reservations is 36 percent, which is two and half times the national average.

Homes in Indian Country reflect the pronounced challenges of persistent poverty. Eleven percent of Native households lack kitchen facilities, 17 percent lack telephone service and 12 percent lack complete plumbing, while less than 1 percent of the U.S. population lack any of these facilities. Only half of reservation homes are connected to public sewer lines and our homes are almost three times more likely to be overcrowded than the national average. In addition, there is a tribal average of 3 in 10 households without basic means of communication.

These substandard economic and quality of life indicators have a social toll as well. Health disparities are prevalent and suicide rates (a symptom of lack of opportunity) are high with over 60% more incidents than the average in America. Alcoholism on reservations and diseases like Tuberculosis are both over 500% higher among Indians.

What Works?

Despite the challenging social and economic conditions on reservations, there are a number of recent economic successes resulting from tribes exercising their sovereignty and utilizing available federal tools to grow their local economies and provide their citizens with a better quality of life – the goal of every government. For example, a few tribes located near major metropolitan centers have seen startling success by creating destination gaming enterprises. Some tribes further from population centers operate economic enterprises that serve to create reservation jobs and provide revenue for government program support.

For example, in the 1960’s, rural Neshoba County in Mississippi was once one of the country's most economically-depressed areas. Neshoba County is home to the Mississippi Band of Choctaw Indians who lived under depressed economic and health conditions. Nearly all houses on the reservation were considered substandard: 90 percent had no indoor plumbing; one-third had no electricity.

In the 1980's, the Tribe worked hard to turn conditions around by building the infrastructure necessary to draw industrial jobs to the reservation. After completing an industrial park, the tribe convinced a division of General Motors and the American Greetings company to locate on the remote reservation. Soon after, the tribe diversified its economy by creating service sector enterprises. Today, the tribe is the state of Mississippi's second largest employer with over 8,000 employees on its payrolls. After generations of living in the worst economic conditions, the tribe has become a regional economic leader in the south.

Tribal governments, when given the right tools, can effectively lift their communities out of poverty and fully participate in the American economy. Not only can tribes raise their economic profile, but they have proven time and again that investing in tribes is an investment in rural America. Surrounding communities, and sometimes entire regions, are also beneficiaries when tribes succeed economically.

The researchers at the Harvard Project on American Indian Economic Development and others have found time and time again that creating an environment which supports tribal self-determination and tribally-driven economic development is the most effective strategy for confronting the persistent poverty in many Indian communities. This same conclusion was drawn in a report prepared for the Department of Health and Human Services in 2004. The report concluded that of the more than 100 federal programs available to assist tribes or tribal members with economic development, none stands out as the most beneficial for every tribe. Rather, the researchers concluded, "the federal government's ongoing commitment to Indian self-determination, tribal self-governance, and tribal sovereignty has had a positive impact on [business and economic development] in Indian country." In acknowledging this reality, it is vitally important that federal policy makers give tribal governments the tools necessary to create vibrant economies on reservations that empower tribal leaders to govern effectively.

Tools for Empowerment & Growth

The Community Development Financial Institutions (CDFI) program at the Department of Treasury has seen success in Indian Country for a few compelling reasons. First, the program is designed to not only meet locally-identified needs but be implemented locally as well. This fully supports the principal that self-determination and tribally-driven programs cited as keys to success. The CDFI program has also been successful because of the way that tribes were included in in the program. A portion of the program was set-aside for Native participation and it included technical assistance. Congress should continue to support this successful program and look to expand the participation beyond the grass roots level to include broad tribal economic needs using the same formula that has seen success.

While CDFI’s represent programs that work in Indian Country, the tax-exempt debt available to tribal governments represents a financing tool that has not worked. Tax-exempt bonding authority for tribal governments has not realized its potential because language related to its allowable use was unclear, the regulatory agency interpreted Congress’ intent too strictly, and capital markets have steered clear - equating uncertainty with risk.

Congress first authorized tribes to issue tax-exempt bonds in 1982. At that time, it limited tribes to issuing tax-exempt bonds for "essential governmental purposes," but did not define the term. In 1984, the Treasury Department issued Regulations that defined an essential governmental function very broadly for tribal purposes. Among other things, this included matters treated as essential governmental purposes for states and local governments under Section 115 of the Internal Revenue Code, in addition to the many commercial and industrial activities eligible for funding under the Snyder Act and the Indian Self-Determination Act.

In 1987, Congress modified the broad regulatory definition of an essential governmental function by amending the law so that it did "not include any function which is not customarily performed by State and local governments with general taxing powers." The 1987 amendment does not affirmatively define an essential governmental function, but simply excludes certain types of facilities from the eligibility list.

Congress' intent was simply to limit tribes to the same essential governmental functions that apply to state and local governments. However, conflicting views as to what Congress intended are paralyzing the ability of tribes to access the low-cost benefits of tax-exempt financing—the very benefit that was intended for tribes by the 1982 Act.

Even tribes that have sought financing projects that would appear by any other measure to be essential have been denied mostly because there is a commercial component that would also utilize the service. For example a tribe attempted to secure financing for a water distribution system and reservoir only to be disallowed because it would also serve the tribe’s commercial enterprise. The same held true for a tribe trying to establish a parking garage. Other state and local governments typically provide roads, water, parking to attract businesses with no challenges to their bond offerings. State and local governments routinely finance golf courses, marinas and convention centers. Even the new stadiums are built with the proposed use tax-exempt financing although some are finally questioning the public benefit.

Included in the American Recovery and Reinvestment Act (ARRA) was an allotment of $2 billion in tax-exempt bonding authority for economic development purposes. The bonding authority allocations were divided into two $1 billion tranches to be utilized by interested tribes at two separate intervals. Both tranches were heavily subscribed by tribes, however; over ninety percent of the allocations went unused. Tribes were not able to secure credit in this difficult banking environment and the tax-exempt market has simply overlooked tribes because of past uncertainty and difficulties of their own in managing the strained debt of distressed state and local governments.

As part of the ARRA, the Department of Treasury is required to submit a report on the viability of the use of the essential government function test for tribal governments. The current law, with its focus on the essential governmental function test, tends to hamstring intergovernmental efforts, as well as, public-private partnerships. Uncertainty and risk are two formidable roadblocks to raising capital. Congress should act to provide clear guidance and do away with the essential government function test for the tribal use of tax-exempt financing. Tribes need access to one of the most effective government financing tools to meet basic citizen infrastructure needs and develop a revenue stream for local tribal government programs.

There is similar confusion and uncertainty when it comes to tribes having the ability to raise capital as governments or invest in other tribal governments. To achieve parity with other government entities, it is important that Indian tribes be included and specifically listed as governments in the Securities and Exchange Commission (SEC) definition of "government body" used in Regulation D. The current definition of governmental body as proposed is extremely broad and already implicitly includes Indian tribes as it includes any "jurisdiction of any nature" and any "body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature." Indian tribal governments regularly exercise all of these forms of governmental powers, however, because they are not specifically listed as such, the financial markets are hesitant to extend the definition to tribal governments and regulatory bodies do not afford tribes the benefit of inclusion.

Congress should remove the barrier imposed on tribes by this lack of clarity. It only serves to increase administrative costs, deter investment, and serve as a barrier for economic growth.

The need for consistent laws and regulations would greatly help Native American communities. In 2000, Congress recognized this need and enacted the Indian Tribal Regulatory Reform and Business Development Act. This Act provided for regulatory reform in order to encourage investment, business, and economic development with respect to activities conducted on Indian lands. In short, Congress asked for a comprehensive review of the laws (including regulations) that affect investment and business decisions concerning activities conducted on Indian lands. The law also set out to determine the extent to which those laws unnecessarily or inappropriately impair investment and business development on Indian lands and determine the financial stability and management efficiency of Indian tribal governments. An authority was to be established in the Secretary of Commerce called the Regulatory Reform and Business Development on Indian Lands Authority that was to report its findings to the President and Congress. However, the Act was never implemented and many constricting laws and regulations remain.

Congress has agreed that tribal governments need the tools to access and attract capital and investment, but has not authorized their full use. Because of built-in uncertainty, added cost and risks, tribes have not been given the full opportunity to succeed. In addition, Congress has also recognized the need to identify and remove existing barriers, but no action has been taken.

To be successful, Congress should give tribes full use of government financing authority, include tribes as accredited investors with the SEC, and, in its oversight role, encourage the responsible agencies to identify and remove barriers to growth.

We know what works and look forward to working with the Committee to ensure these barriers are removed and programs are supported that promote self-determination and local control. These actions hold the promise of creating quality jobs on the reservation and in surrounding communities.