

Chairman Rodney Butler (Mashantucket Pequot Tribal Nation)
President, NAFOA Board of Directors
Testimony before the Senate Committee on Indian Affairs
February 12th, 2:30pm EST
Examine Native Communities' Priorities for the 119th Congress

Introduction

Greetings Chairwoman Murkowski, Vice Chair Schatz, and Members of the Senate Committee on Indian Affairs. Thank you for the opportunity to testify today on behalf of NAFOA, founded as the Native American Finance Officers Association, on our organization's priorities for 2025 and the 119th Congress. This hearing on the needs of tribal communities is crucial now, with a new Administration, a new Congress, and new opportunities and challenges. For over 40 years, NAFOA has worked to grow tribal economies and strengthen tribal finance through advocacy, education, and policy development. Our member tribes and tribal enterprises represent the diversity of Indian Country's economic landscape, including tribal gaming, energy projects, agricultural ventures, federal contracting, and more.

Trust and Treaty Obligations

First, we will continue to emphasize that the relationship between the Federal Government of the United States and the Tribal Nations is rooted in a political relationship, not a racial or any other classification. The Supreme Court unanimously affirmed this in *Morton v. Mancari* and has consistently upheld his tenet. This *political relationship*, recognized within the U.S. Constitution, forms the foundation for modernizing the federal treatment of tribal governments and their enterprises.

The recent issuance of executive orders and subsequent funding pause raised significant concern among Tribal Nations. Tribes across the country reported challenges with access to critical systems, a lack of information from federal agencies, and considerable uncertainty about the potential impact of such actions. We recognize there are varying degrees of effect on Tribal Nations regarding federal funding - where a substantial portion of some tribes' budgets are federal funds, and others have limited federal funding. Regardless of the percentage of the total budget, a pause in federal funding, whether temporary, prolonged, or permanent, impacts the ability of tribes to offer crucial programs and services to tribal citizens. At NAFOA, we remain committed to collecting and sharing stories of impact and helping our member tribes with tools and resources to navigate future federal funding issues.

We recognize the challenges that lie ahead for the federal budget. We urge Congress and the Administration to ensure all tribal programs and federal offices serving Tribal Nations remain fully operational and adequately staffed. This includes recognition that tribal program funding fulfills

legal obligations, protection of funding streams supporting tribal economic development, and maintenance of federal staffing levels needed for program delivery. The continuation of vital technical assistance programs, preservation of agency expertise in tribal matters, and protection of tribal-specific program offices are essential for supporting tribal economic growth.

Tax Parity

In addition to protecting Trust and Treaty obligations, we urge Congress to advance Tribal Tax Parity legislation. During the 117th Congress, Senator Cortez Masto introduced S. 5048, the Native American Tax Parity and Relief Act, and last year NAFOA worked with her office and Congresswoman Gwen Moore to introduce H.R. 8318, the Tribal Tax Investment and Reform Act. I want to express our support for the proposed legislation that would create vital tax parity between tribal governments and state governments while strengthening tribal economic development opportunities. I would like to highlight three of H.R. 8318's critical changes.

First, Section 3 of 8318 addresses longstanding disparities by treating tribal governments under the same provisions as states for key tax purposes, including excise taxes, bond issuance, pension plans, general welfare benefits, and charitable organizations. As the Treasury Tribal Advisory Committee aptly states in its 2020 Subcommittee on Dual Taxation Report, Tribal Nations “pre-date the formation of the United States and possess inherent and treaty-recognized sovereignty. As a fundamental aspect of that sovereignty, Tribal Nations possess immunity from being taxed by the United States federal and state governments. Moreover, Tribal lands subject to the jurisdiction of Tribal governments are not subject to direct taxation by outside governments.”

Unfortunately, in recent years, the disparity between states and tribes has only increased. According to the Brookings Institution, from 2014 to 2020, “state governments issued \$47 billion annually in non-taxable municipal bonds, compared to a total of \$84 million by tribal governments. This equates to a 559-fold gap in using tax-exempt government bonds.”

Finally, ending this discriminatory treatment of tribal governments by providing them full parity with state and local governments in accessing tax-exempt bond financing will enhance job creation, generate sorely needed governmental revenue for social services, stimulate infrastructure and business development on tribal lands, and accelerate the diversification and resiliency of tribal economies, particularly in their private sectors. In addition, restoring parity would “create spillover benefits for non-tribal citizens in those areas.”

The cost to the federal government would be low. According to the Congressional Budget Office, “increasing tax-exempt bond access for tribes would reduce federal tax revenue by an estimated

\$77 million over 10 years. In comparison, the estimated total cost of the federal tax exemption for municipal bonds was \$27 billion in fiscal year 2022.”

Another critical change 8318 makes is creating an annual \$175m New Market Tax Credit (NMTC) for low-income Tribal Communities. NMTC Program attracts private capital to economically distressed communities by providing tax credits to investors. Unfortunately, tribes are too often unable to access these credits. Since the NMTC program’s inception, Native CDEs have had to compete against non-Native CDEs in what has proven to be an unlevel playing field for NMTC allocations. This section addresses the low rate of NMTC availability in Indian Country by creating a credit set aside. Establishing this set aside will enable more Tribal Nations and communities to grow the proven benefits that those who have already leveraged this important financing tool have generated.

Finally, Section 9 of this legislation increases the effectiveness of Tribal Low-Income Housing Tax Credits (LIHTC). The LIHTC program provides tax incentives to developers to create affordable housing, but credits are often unavailable to tribes. This section modifies the definition of a difficult development area to include an Indian area to determine eligible basis, thereby explicitly including Tribes in the LIHTC program criteria. A good example of the success of this program is the Knik Homes #1 project in Wasilla, Alaska. Developed by the Knik Tribe the project includes the construction of 32 new elder townhome units. The total project costs are \$18.7 million – almost \$7 million of which was covered by LIHTC equity and an AHP grant.

Congress should pass this legislation to fulfill its trust and treaty obligations and support tribal economic sovereignty. The legislation recognizes tribal governments face unique challenges in accessing capital and developing sustainable economies due to historical disadvantages and statutory restrictions. By modernizing the tax code's treatment of tribal governments and providing targeted economic development incentives, this legislation would help tribes generate governmental revenue, deliver essential services, and build stronger reservation economies. The provisions are carefully crafted to respect tribal sovereignty while creating practical tools for tribal governments to meet their citizens' needs. With strong bipartisan support from Indian Country, this legislation represents an important step toward tax fairness and tribal self-determination.

NAFOA's staff has been collecting and recording examples of the practical, on-the-ground impact that the Tribal Tax Parity bill would make. I would be happy to share those examples with Members of the Committee, as NAFOA understands it is essential to demonstrate why these changes matter, how they impact our communities, and the potential impact of inaction.

Treasury Matters

NAFOA strongly urges Congress to make the Treasury Department's Office of Tribal and Native Affairs permanent and to continue the Tribal Treasury Advisory Committee (TTAC). These entities are essential for providing technical assistance and guidance, supporting tribes in accessing tax incentives and economic development tools, and developing guidance on general welfare programs and tribal enterprises. They also play a crucial role in ensuring appropriate tribal consultation on tax and economic policies and facilitating government-to-government engagement. Additionally, authorizing changes need to be made that would allow the IRS to give in-depth information and technical assistance to tribes, similar to the types of technical assistance available with many other tribal programs, as well as a place where tribes can receive guidance and clarification on tax, particularly tax credit, issues.

NAFOA strongly encourages the Treasury to complete regulations on tribal entities with the abovementioned improvements and asks the Treasury to finalize general welfare benefit regulations with enhanced guidance on trust arrangements and program interactions. We also ask the Committee to protect funding and staffing for programs supporting tribal economic development, support the modernization of tax provisions affecting tribal governments and enterprises, and ensure tribal consultation requirements are maintained and strengthened.

To help ensure that tribal voices are heard at the Treasury, NAFOA urges this Committee to advance legislation making the Office of Tribal and Native Affairs (OTNA) permanent with dedicated funding and staffing, as the OTNA is one of the best examples of federal outreach and assistance. Established in 2022, the OTNA's mission is (1) to advise on Tribal policy and program implementation, (2) to coordinate Tribal consultations, and (3) to manage the Treasury Tribal Advisory Committee (TTAC). Currently, the office has a budget of \$2 million and employs 8 staffers, and even in a short time, it has already had a positive impact that far exceeds its cost.

General Welfare Exclusion Rulemaking

The proposed regulations implementing the Tribal General Welfare Exclusion Act require finalization with several critical improvements. We need supplemental guidance on trust arrangements and deferred benefits to help tribes develop sophisticated benefit structures. Clear standards for using trusts to provide general welfare benefits and guidance on the interaction between tribal general welfare benefits and other federal program eligibility are essential. The development of detailed training plans in consultation with tribes and TTAC, the establishment of formal transition periods when lifting audit suspensions, and the focus on prospective enforcement rather than challenging past tribal programs will ensure smooth implementation.

Tribally Chartered Corps Rulemaking

The proposed Treasury regulations regarding wholly-owned tribal entities represent significant progress but require completion with several key provisions. We need explicit confirmation that tax treatment extends to all subsidiary entities wholly owned through tribal parent entities and clear

guidance that tribally chartered entities can assert the same excise tax benefits as their owning tribes. Additionally, the Treasury must provide guidance on entities owned in part by persons other than tribes and recognize diverse tribal corporate structures beyond Section 17 corporations.

Appropriations Reclassification

Unfortunately, the federal funding and appropriations cycles have lacked consistency in recent years. With the current challenges facing federally funded programs, NAFOA recommends changing tribally funded programs under the discretionary classification to the mandatory classification. Reclassifying programs would help tribes with financial planning and make budget forecasting far more accurate, something that is very important to the business development of tribes that have an oversized reliance on federal programs and funds. One of the programs that NAFOA strongly supports for reclassification is the Contract Support Costs and Payments for Tribal Leases. For the last two years, the President's Budgets has called for reclassification of these programs and Congress's S. Rept. 118-83.

Tribal Energy Development

Tribal Nations are poised to contribute significantly to energy development in the United States. It is critical that tribes can fully participate in the clean energy transition through their tribally chartered entities and have access to the Inflation Reduction Act (IRA) Elect/Direct Pay energy credits as Congress intended. This requires addressing administrative burdens in current elective pay systems for clean energy tax credits and creating clear pathways for tribal-private partnerships in renewable projects. The economic potential for tribes in this sector is substantial, but we need proper structures to access these opportunities.

Access to capital remains a fundamental challenge for tribal economic development. Implementing set-asides within the New Markets Tax Credit program for tribal projects, recognizing tribal areas as difficult development areas for housing credit purposes, and modernizing the Indian Employment Tax Credit would significantly enhance tribes' ability to finance crucial projects and create sustainable economies.

Indian Loan Guarantee Program

NAFOA encourages Congress to increase the amount available to tribes through the Department of Interior's Indian Loan Guarantee Program (ILGP) and an authorizing fix that would allow it to work with the NMTC. NAFOA knows the issues and challenges Tribal Nations encounter when accessing capital for economic development projects. As currently written, tribes cannot take advantage of the NMTC if going through the Indian Loan Guarantee Program. This is a major oversight with a simple fix that would cost almost nothing to remedy and would have a significant impact on the ability of Tribal Nations to access capital.

Carcieri

Lastly, NAFOA supports bipartisan legislation that addresses and fixes the Carcieri decision. To quote the recent intertribal organization letter, “It must be acknowledged and understood that at its core, the Carcieri decision is an attack on the Indian Reorganization Act (IRA) of 1934, which Congress enacted to stop the massive loss of Tribal homelands inflicted by the General Allotment Act of 1887 (Allotment Act).” It is our hope that this Congress will enact the fix.

Closing

The federal government's trust and treaty obligations must be upheld through concrete action to support tribal economic development and financial sovereignty. These recommendations represent an important step toward fulfilling these obligations and creating sustainable tribal economies.

Thank you for your attention to these vital matters affecting tribal economies and sovereignty. I am happy to answer any questions.