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National Congress of American Indians

Written Testimony

Before the Committee on Indian Affairs

United States Senate

Hearing on

"Predatory Lending in Indian Country"

June 5, 2008

The National Congress of American Indians, the nation's oldest and largest national organization representing tribal governments, sincerely hopes the hearing held this past Thursday, June 5th, 2008 serves to bring to light the important role Congress has in ensuring tribes are empowered to protect their citizens and give them every opportunity to advance themselves and their families.

This Committee knows well that American Indian Tribes continue to occupy the bottom of key indicators of prosperity: employment, asset holdings, home ownership, educational attainment and economic progress. American Indian communities, regardless of economic success, lack viable financial choices leaving them among the most under-banked in the nation. Having non-banking financial services fill the void is not an option that any community, military base or reservation should have to settle for.

The primary cause of our current economic downturn is the housing industry. The housing market run up and subsequent fall was caused by lax regulation of the mortgage intermediaries and financial service firms. Intermediaries pushed loan pools through while firms loosened standard underwriting requirements and created new and hybrid loan products to qualify a larger number of potential buyers. This lack of proper underwriting or due diligence failed to adequately qualify buyers or limit the amount approved to a reasonable value of a home's worth. In addition, loan products designed for short term needs were sold to borrowers as long term loans with the idea that housing would continue to rise and interest rates would remain low.

Now that the impact of the loan terms and adverse market conditions are being fully realized; many financial firms, homeowners, and ultimately most tax-paying Americans are paying the price with record defaults, decreased home values, tighter credit markets and possible a congressional fix that will allow the renegotiation of existing mortgages which may lead to further tightening of the credit markets. A recent article in the Washington Post (June 10, 2008) commented

> **Loans were approved with little due diligence** to qualify buyers and, of course, the creation and use of new loan products "Eager to put more low-income and minority families into their own homes, the agency [HUD] required that two government-chartered mortgage finance firms purchase far more "affordable" loans made to these borrowers. HUD stuck with an outdated policy that allowed Freddie Mac and Fannie Mae to count billions of dollars they invested in sub prime loans as a public good that would foster affordable housing.
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> Housing experts and some congressional leaders now view those decisions as mistakes that contributed to an escalation of sub prime lending that is roiling the U.S. economy.
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> Today, 3 million to 4 million families are expected to lose their homes to foreclosure because they cannot afford their high-interest sub prime loans. Lower-income and minority home buyers -- those who were supposed to benefit from HUD's actions -- are falling into default at a rate at least three times that of other borrowers.
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> "**For HUD to be indifferent as to whether these loans were hurting people or helping them is really an abject failure to regulate**," said Michael Barr, a University of Michigan law professor who is advising Congress. "**It was just irresponsible**."

The very people who were supposed to be helped by the advancement of capital through lax regulation and due diligence are now the same people who have the greatest risk of loosing their largest potential asset and a tried path to the middle class. Predatory lending in its current state offers the same risk to an entire class of citizens.

NCAI agrees that there is a need for tribal citizens to access micro loans backed by income or assets. However, we have heard from tribal leaders and those involved in financial literacy programs that they are increasingly dealing with the adverse effects of tribal citizens caught in a cycle of debt.

For example, a tribal member on a rural eastern Washington reservation obtained a pay day loan from a border town to purchase household expenses during the winter. She lives on a fixed income and raises her grandchildren. The tribal member did not realize how the loan functioned and the high costs associated with the loan. The loan came due and the tribal member paid part of the loan but continued to have an outstanding balance owned. A few days after she paid the payday loan, her rent became due to the tribal housing authority. She did not have enough money to pay the rent in full so she paid a portion of the rent under her lease. Within a few days she was provided with a notice that she had not paid her rent in full and she had a meeting with her case worker as required by the tribal housing code but there was no accommodation for her because she did not have enough money to pay her rent.

The month went on and she was unable to pay the rest of the rent and what she still owed on the pay day loan. When she received her public benefits the next month she paid a portion of the pay day loan but still could not pay it off. Again she did not make her rent payment. This time, there was no meeting with a case worker; she was given an eviction summons in tribal court.

The impact of an eviction from a tribal housing authority is serious because the tribal citizen can no longer rent a tribal housing authority unit leaving her no other options in her home community. In the end this tribal member was evicted, still had to pay her on-going debt and had the same expense obligations to buy food, clothing and provide housing for her grandchildren.

Where was the due diligence on the part of the lender? And where are the regulations that used to protect our people that need them the most?

Predatory lending has the potential to be abusive to the consumer because the practice provides so little protection to the consumer. Banks and other financial institutions have an obligation to ensure a loan in the form of a mortgage, credit card, or personal loan is suitable for the consumer. They also can determine how much debt a consumer has with other financial service firms. The predatory lending industry has taken the obligation of consumer suitability out of consideration. The only underwriting or due diligence acknowledged is to ensure the industry participants will be repaid (paycheck, bank account to write an advanced check and identification). There is no consideration of a customer's ability to repay the obligation or a process for checking to see how many other lenders the customer has pledged their paycheck.

The industry touts that most payday loans are repaid within the two-week period and that the average customer borrows from their checks about 8 times in a year (Fulmer testimony). While this may be the case, it leaves out the fact that many use multiple lenders and borrow from one lender to pay off the initial lender and so on with some customers holding up to ten loans at a time giving new meaning to borrowing from Peter to pay Paul (and all of his relatives).

The lack of due diligence is the root of the current housing crises where consumers are at risk of losing their homes. And it is the root of the abusive practices of the predatory lending industry where it has the potential to strip an already vulnerable population of the opportunity to advance by preventing them from building assets, equity and wealth. This applies to both income lending (payday loans) and to asset lending (car or other title loans).

There is no doubt that there is a need for micro lending backed by income or assets in Indian country and other parts of America; however, there is also no doubt that protections should be provided to consumers. There are no other aspects of the financial services industry – from investments to all other forms of lending – that forego the obligation of performing due diligence prior to a customer investing or borrowing money.

The issue of predatory lending in Indian country is complex because, as with most issues, there are underlying causes that make tribal populations vulnerable to disproportionately using small payday loans to fulfill fundamental financial needs including high-interest, high fee, short-term loans with minimal due diligence. These loans are used not because they offer a great competitive alternative, but because they are simply one of only a few options available.

Because of the persistent lack of economic opportunity, a sustainable financial services market, and tribal jurisdictional issues, there have only been a handful of banks or credit unions that serve tribal communities. As a result, tribal citizens continue to lack basic financial services or financial choices that most Americans have come to take for granted. Tribal members have limited access when financing a home, starting a business or purchasing necessary property like cars needed to make a living accessing a line of credit to meet short term capital needs.

The vacuum created by the lack of responsive and regulated financial institutions offering competitive consumer financial products has been quickly filled by predatory lending firms that have proliferated after usury laws were lifted a few years ago. This is especially the case in transient and under-banked communities, like military bases and reservations.

The effect of having a tribal population under-banked and subject to predatory financial firms is that it leaves limited and sometimes no viable options for responsive bank products. Tribal citizens pay higher fees and much higher interest rates. When an emergency arises such as a death in the family or medical bill, there is a greater risk of being caught in a cycle of debt, especially for tribal citizens that live check to check.

There is real concern by tribal leaders to address predatory lending practices that target a captive Native population with limited choices and leave them dealing with the social repercussions. The lack of due diligence coupled with inadequate fee and interest-rate limitations make above average loan defaults or rollovers predictable and repayments from a fixed income very difficult. Especially considering the debtors expenses increase, compelling multiple loans from the same limited income.

This lack of industry accountability is why banking laws and limitations were imposed in the first place and a core reason that our tribal population will be prevented from building equity and wealth through property ownership. While families with greater means or financial education turn to regulated financial institutions or are better able to negotiate terms; those with limited means and financial experience tend to get easily caught in a cycle of debt.

The financial problems run deep in Indian country and will take a long time to fully address. Congress, agencies and intermediaries should focus on a 3-pronged approach to help tribal communities move toward a solution. The focus should be on; developing incentives to enable tribes to attract viable financial options and develop necessary products to serve their citizens, creating culturally-appropriate financial education programs, and authorizing jurisdiction over lenders that do business with their citizens.

1. Financial Choice – Indian Country is under-banked. There is a lack of regulated banking options that are responsive to tribal community needs. This tends to be true regardless of a tribe's success in building a local economy. The Community Development Financial Institutions (CDFI's) have just started to meet the needs of some tribal communities and Indian country is appreciative of the support Congress has shown by increasing CDFI funding; however, this serves a very specific and limited role in tribal communities and falls short of providing viable and responsive banking to the Native population. Congress should work to provide an incentive for banks and credit unions to serve the tribal population and provide competitive products and services, including micro-loans, that meet the unique financial needs of the tribal community.

2. Financial Education - Tribal governments need to be able to incorporate culturally relevant financial literacy programs at a young age to; understand fundamental credit issues and alternatives, understand the value an types of savings programs available such as "individual development accounts (IDAs)" and learn to take advantage of available programs such as "Volunteer Income Tax Assistance (VITA)" to reduce the incidence of Refund Anticipation Loans. In addition there is a need to increase the presence of intermediaries in tribal communities. Tribal citizens need help when buying a car, financing a mobile home or accessing a micro-loan to start a business. Intermediaries are under-represented in Indian country. These non-profits serve a key role in guiding consumers to make better financial and life decisions.

3. Jurisdiction – Non-bank lenders tend to cluster around reservations and military bases taking full advantage of financially unsophisticated consumers. To protect our soldiers and sailors on federal military bases from the irresponsible practices

of payday lenders, car dealerships and tax preparers, Congress passed a bill that places a cap on non-bank loans to the military personnel. Congress should consider giving tribes the same capability to protect their citizens with the ability to opt into models similar to the military fix. It is very important for Congress to consider promoting responsive community banking in tribal communities by giving tribes the authority to approve banks that do business on their reservations in a manner similar to state governments.

Because we have been under-banked for so long, we may appreciate having a lender of any sort serve the needs in tribal communities. But do we really need to settle for lenders that provide little in the way of tribal citizen protections? And do we need to settle for unreasonable rates and fees with no consideration for an individual's ability to pay?

We need to identify and fix the underlying problems. We need jurisdiction, we need financial literacy and we need banks, credit unions, CDFI's and non-profits in Indian country. We need responsive institutions and products. Our tribal citizens deserve better.