

NAFOA Policy Report

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Executive Summary

This report reviews key policy issues affecting economic growth in Indian Country and details NAFOA's efforts and progress to find meaningful solutions. NAFOA has identified three dynamic policy areas, which are critical to the economic success of tribes. The areas are: **1) Tax & Finance Policy**; **2) Financial Management Policy**; and **3) Access to Capital Policy**. These areas shape NAFOA's policy approach, ensuring the organization remains focused on issues that will have the most significant impact on tribal economies.

This report is structured to reflect a three-pronged approach, with specific policy issues detailed within the key areas of focus. NAFOA, at the request of tribal leadership, has developed a policy approach focused on outcomes that uphold stated principles. NAFOA also works to leverage its success rate by working collaboratively with tribal, federal, and professional partners. These partnerships are invaluable to the organization's policy efforts.

As the 2014 year draws to a close, it is important to highlight some of the advancements that NAFOA has made. These include: carving out an unprecedented general welfare policy for tribal governments that authorizes social, cultural, and ceremonial tribal government programs to be established and distributed tax-free to tribal citizens; contributing to the Office of Management and Budget's (OMB) Final Guidance which considers tribal governments in accounting provisions; working closely with the Treasury and CDFI Fund to devise solutions to the barriers currently precluding tribal applicants from participating in the Bond Guarantee Program; addressing the lack of deployed New Market Tax Credits (NMTCs) through the promotion of three key initiatives; and remaining invested in the pursuit of increased Low Income Housing Tax Credits (LIHTC) by identifying additional avenues to encourage the deployment of LIHTCs in Indian Country.

NAFOA has also remained actively involved in building momentum concerning three Indian tax extenders' believed to be picked up by Congress during lame duck. The so-called Indian extenders include: 1) Accelerated Depreciation for Business Property and Infrastructure on Indian Reservations; 2) Indian Employment Tax Credit; and 3) Indian Coal Tax Credit.

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Tax & Finance Policy

NAFOA has made important strides in its fiscal and tax policy work. Our strategic approach of working through both the legislative and administrative process to achieve our goals has enabled us to advance the American Indian economic agenda despite gridlock in Congress. As we move towards the end of 2014, NAFOA will continue to work closely with the Department of the Treasury (Treasury) and Congress to protect and promote tribal interests in the development of tax and finance policies.

Tax Extenders

The Senate Finance Committee Chairman, Ron Wyden [D-OR] and Ranking Member Orrin Hatch [R-UT] marked a set of provisions known as ‘tax extenders,’ which have already expired or will expire at the end of this year. These provisions are called tax extenders because Congress typically extends them for a year or two at a time. All of these provisions have expired at least once before; many have been continued several times. Senator Wyden and Ranking Member Hatch’s markups are found in the Expiring Provisions Improvement Reform and Efficiency Act or EXPIRE. The Indian extenders include:

1) Accelerated Depreciation for Business Property and Infrastructure on Indian Reservations

This provision incentivizes private businesses to locate business property and infrastructure on Indian reservations. It provides qualifying property with a faster-write off than such property would otherwise receive under the regular tax code depreciation schedules. Accelerated Depreciation is a critical component of attracting energy and other capital intensive projects to reservations and can bring higher-skilled jobs to these communities. It is therefore important that the provisions remain in the initial extenders package to affirm support to those that have already invested in Indian Country and for those considering investments. A long-term extension of this provision should be considered going forward.

2) Indian Employment Tax Credit

The Indian Employment Tax Credit provides a 20% tax credit for the first \$20,000 of wages for any tribal member or spouse employed by a private business operating on an Indian reservation. The provision is not applicable to tribal government jobs, high wage jobs (jobs paying more than \$45,000 per year), or gaming jobs making it difficult to implement for many Native hires. A longer term extension of this provision is needed to reduce the extremely high rates of unemployment on Indian reservations. In addition, Congress should consider simplifying the credit so that employers will be more likely to utilize it. For example, extending the credit to tribal government jobs and allowing governmental employers to utilize it as a credit against payroll tax.

3) The Indian Coal Tax Credit

The Indian Coal Tax Credit extends credits for the production of coal on Indian reservations. A tax credit at \$1.50 per ton is available for the first four years of a seven-year credit period and a \$2.00 per ton credit is available for the last three years of the seven-year credit period. Beginning in calendar years after 2006, the credit amounts are indexed annually for inflation using 2005 as the base year. The credit amount for 2013 is \$2.308 per ton. The provision extends the credit for the production of Indian coal for two years, through December 31, 2015. The placed-in-service date for qualified facilities is not extended, but the EXPIRE proposal clarifies that qualified Indian coal

facilities that are leased or subleased after December 31, 2008, do not lose their eligibility as a result of such lease or sublease.

General Welfare Exclusion

NAFOA has continually worked on both an administrative and legislative fix for the tribal general welfare policy. This dual approach has had the effect of moving both Congress and the Administration closer to a resolution. With Administrative guidance firmly in place, legislation would add to the general welfare exclusion's certainty.

Administrative Success:

The IRS issued its final guidance on tribal General Welfare Exclusion (GWE) on June 3, 2014. The final guidance followed a prolonged period of dialogue and consultation with tribal governments to develop guidance that includes tribal government safe harbors for common services, an expanded and tribally-centered definition of need, along with cultural and ceremonial protections. For years tribal governments have been at loggerheads with the Treasury Department and IRS over the IRS' infringement of the sovereign right of tribes to provide tax-exempt governmental services that improve the general welfare of their citizens. This guidance seeks to ensure that the sovereign right of tribal nations to provide services that improve the welfare of their citizens will be uniformly upheld.

The guidance, released in the form of a Revenue Procedure (RP 2014-35), improves upon the IRS' interim guidance (Notice 2012-75) issued in December of 2012. Some of the notable changes include:

- Expanding GWE to include payment of all expenses for individuals participating in, and attending certain tribal activities (including religious, cultural, and historical tribal activities).
- Expanding GWE to include payment of expenses associated with funerals, burials, and other bereavement events.
- Expanding GWE to include payments for preschool, education, and transportation expenses.
- Clarifying that tribes can fund general welfare programs through levies, taxes, service fees, and revenues from tribally-owned enterprises.
- Expanding GWE to include individuals considered as qualified nonmembers, such as spouses and children.

This final guidance is a highly promising development, as it provides tribal governments with greater certainty, security, and scope in developing and administering general welfare programs.

NAFOA will continue to work with tribal governments to ensure that their general welfare programs are in compliance with the final guidance, while also working with Treasury and IRS to ensure that the guidance is successfully implemented and that IRS field agents are educated on tribal sovereignty, treaty rights, and diplomacy concerning tribal governments. NAFOA is also working closely with Treasury and the IRS to complete a tribal consultation policy that ensures continued dialogue and inclusion of tribal leadership on important tax and capital issues.

Legislative Success:

[Congressman Devin Nunes](#) (R-CA-22) sponsored legislation in the 113th Congress titled the General Welfare Exclusion Act (GWE Act) [[H.R. 3043](#)] which provides concrete rules and a legislative framework for tribal general welfare. On Tuesday, September 16, 2014, Democrats and Republicans came together with a strongly supported bipartisan vote on the GWE Act. The GWE Act cleared the House of Representatives by more than the two-thirds majority needed when an item is placed on the suspension calendar. The bill is currently under consideration in the Senate and must be passed by unanimous consent.

The Joint Committee on Taxation has scored H.R. 3043 to have a negligible effect on federal fiscal revenues largely due the Administration finalizing the current guidance. This is an important consideration given the restraint shown by Congress to pass any bills that may cost additional taxpayer revenue.

The GWE Act includes provisions that exempt tribal government programs, services, and benefits for tribal citizens, their spouses, and dependents from income under the Internal Revenue Code. While these programs and services are currently exempt [[Rev. Proc. 2014-35](#)], the Act also establishes a Tribal Advisory Committee and invokes a temporary suspension of audits for education and training of IRS examiners on the new provisions.

NAFOA expects the Senate to vote on the bill, which requires unanimous consent for passage, as it looks to finish business before going on recess. As of September 18, 2014, it appears as if the bill will clear the Senate. In doing so, Congress would codify the Administrative guidance from the Department of Treasury and IRS and mandate training of IRS field agents on tribal governments.

Per Capita Distribution

Per capita payments from tribal trust funds are specifically excluded from both federal and state taxes under the Per Capita Act of 1983, 25 U.S.C. 117a-117c. The Act expressly prohibits federal and state taxation of all funds distributed from trust on a per capita basis. However, in recent years the IRS has embarked on troubling effort to tax per capita payments made to tribal members from trust funds.

After this prolonged period of uncertainty and federal encroachment on tribal sovereignty, the IRS issued “Interim Guidance” on March 10, 2014, a meaningful step toward permanent clarification for Indian Country. Interim guidance was issued in order to provide tribes with a chance to review and submit comments, prior to the IRS and Treasury issuing Final Guidance.

The interim guidance provides that the IRS and Treasury will treat eligible per capita distributions, made from funds the Secretary of the Interior holds in a Trust Account for the benefit of a tribe, as generally excluded from the gross income of the members of the tribe receiving the per capita distributions. However, the interim guidance states that if a trust account is used to mischaracterize taxable income as nontaxable per capita distributions, those distributions will constitute as gross income. This includes the mischaracterization of compensation for services as per capita distributions; the mischaracterization of business profits as per capita distributions; and the mischaracterization of gaming revenues as per capita distributions.

Comments should be submitted before September 17, 2014, but will likely be accepted after this date. Comments should be submitted to Internal Revenue Service electronically at notice.comments@irs.counsel.treas.gov. Please include "Notice 2014-17" in the subject line of any electronic communications.

NAFOA is committed to working with tribes to review the Interim Guidance, thus ensuring that any amendments and comments are submitted in a timely fashion, and in turn that the Final Guidance correctly upholds the right of tribes to issue, tax-free, per capita distributions to their citizens.

Comprehensive Tax Reform

Capitalizing on widespread, bipartisan support for a complete revamp of the nation's tax code Congressman Camp (R-MI), Chairman of the House Ways and Means Committee recently released his widely anticipated Tax Reform Act of 2014, a bill which proposes a massive overhaul of the current system.

Camp's bill advocates dramatic changes to the personal and business tax codes which would have a significant impact on business and personal spending, capital flow, and the broader economy. More specific to tribal governments, the changes eliminate incentives designed to attract business and investment spending in Indian Country, while preserving the right of tribal governments to provide general welfare services to their members without taxation. This elimination of incentives in the tax code to promote economic growth in Indian country is disheartening. However, it is consistent with the overall theme of Camp's proposal – to eliminate tax incentives that reduce revenue, in order to lower the overall tax rate.

While most agree the bill has little hope of making it through Congress this year, it nevertheless sparks a national conversation on tax reform in an election year. It also serves as a benchmark for Republicans who have long called for such a proposal but have not put one forth until now. For Indian Country, the bill should spur a conversation between tribal governments regarding a pathway forward to protect significant gains that acknowledge and protect sovereignty and encourage much-needed economic development. It highlights the need for critical thinking and analysis that can demonstrate the economic value of these existing incentives, showing that for the small overall cost in lost revenue, they deliver a large benefit.

As the campaign for comprehensive tax reform gains momentum, NAFOA has continued to meet with both the Senate Finance Committee and the House Ways & Means Committee to ensure that any proposals address outstanding tribal issues, while simultaneously safeguarding previous gains made by tribes.

Housing Finance Reform: New Funds for Tribal Housing

In the ongoing debate to reform the government-sponsored enterprises (Fannie Mae and Freddie Mac), Senate Banking Chairman Tim Johnson (D-SD) and Ranking Member Mike Crapo (R-ID) put forth a new proposal to fund tribal housing. Under their proposal a new competitive grant program would be established at the Department of Housing and Urban Development (HUD) with awards being made by the Secretary to federally recognized tribes and tribally designated housing

authorities based on seven criteria. Those criteria include several directly related to housing (the condition of the housing stock, overcrowding, level of black mold) tribal economy (poverty rate, unemployment rate) and the tribe's track record of managing housing programs. The program will be funded at a minimum of \$20 million annually with the potential to grow higher, based on the total volume of mortgages originated by the successors to Fannie and Freddie. It is important to note that if this proposal were adopted, the funding would be mandatory (i.e. automatic) and not subject to appropriations because the funding source would come from the government mortgage guarantors.

In addition to this new tribally dedicated housing program, the Johnson-Crapo bill also requires the existing Capital Magnet Fund to consider tribal housing needs. That fund was established under the prior Government Sponsored Enterprise (GSE) reform bill in 2008, although has not been funded at anticipated levels because of the collapse of Fannie and Freddie.

The Johnson-Crapo proposal was to be marked-up by the Senate Banking Committee by April 29, 2014. Full prospects on the Senate floor are uncertain. GSE reform legislation that has been introduced by Chairman Hensarling (R-TX) and passed out of House Financial Services does not contain any affordable housing funds and repeals the existing funds. Alternative legislation introduced by Ranking Member Waters (D-CA) includes additional affordable housing funds but does not have anything specific for tribes.

Financial Management Policy

Tribal governments have unique funding resources and reporting requirements for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state and local governments. NAFOA serves Indian Country by ensuring tribal interests are considered in proposed grant management reforms, accounting rule changes and amendments, as well as developing tribal financial management capacity by providing current and relevant information on major financial regulation issues.

Office of Management and Budget Reforms & Guidelines

In 2012 the Office of Management and Budget (OMB) published potential grant reform ideas in response to President Obama's November 2009 Executive Order 13520 on reducing improper payments and eliminating waste in Federal programs – with the goal of improving grant management, accountability, oversight, and overall performance. On December 26, 2013 the Office of Management & Budget (OMB) and the Council on Financial Assistance Reform (COFAR) published reforms to the OMB Guidance titled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" also known as the Final Guidance. These comprehensive changes will significantly impact how all tribal governments and non-profits manage federal grant awards and contracts.

NAFOA, Indian tribes, and other organizations' ongoing engagement with the OMB has led to the publication of the new Final Guidance, which becomes effective for tribes and non-federal entities after federal agencies publish their implementing regulations on December 26, 2014. The guidance will not retroactively change the terms and conditions for funds already received, and applies to awards made after that date, as well as funding drawn down after that date.

In an effort to ensure the implementation of the Final Guidance took into consideration tribal government interests, the NAFOA Financial Management Advisory Committee met several times with the OMB and federal agencies this past year. These meetings have led to the COFAR publishing an FAQ document, which provides additional context and background on important policy changes effecting tribes. The document was published in response to stakeholder questions that needed clarification; including tribes questioning how the removal of the definition of state would affect the federal funding process.

A preliminary assessment of both the Final Guidance and the FAQ document addresses many of the recommendations from the NAFOA Financial Management Advisory Committee and others in Indian Country. Most notably, the removal of the proposal that would require tribes to publish their entire single audit reporting package containing audited financial statements. This would have placed tribes at a disadvantage when negotiating compacts and maintaining a competitive advantage for tribal enterprises. We recognize and refer to some of the positives below.

Key Items Affecting Tribes:

1. The guidance removed tribes from the definition of state. This will have no impact on the application process for funds reserved for states.
2. A Single audit will not be required for tribes or tribal organizations that expend less than \$750,000 in federal awards during the fiscal year.

3. Tribes will have the option to opt out of the report submission. Tribal entities such as housing authorities, hospitals, and tribal economic development entities may opt out if the entity is established as part of the tribe and meets the definition of 200.54, accountable to tribal governance, and included with the Indian tribe's reporting under Subpart F.
4. The guidance now includes language that permits up to 50% of the salaries and expenses of tribal leaders and governing bodies, such as tribal councils, who are directly attributable to managing and operating federal programs to be treated as allowable indirect costs without documentation.
5. The notice of funding opportunities will now be open a minimum of 60 days in advance.

With the new grant reform regulations going into effect on December 26th, 2014, grant management is a key initiative for NAFOA. The NAFOA policy team continues to be actively involved with stakeholders including the OMB, Federal Agencies, tribal governments, and the Non-Federal Stakeholder Coalition of the COFAR to engage in a positive and collaborative way. We are committed to providing ongoing information at our conferences and through a series of webinars, which covers guidance changes as it relates to tribes. We will continue to look to tribes and advocates for insight and feedback on the guidance and closely monitor federal agencies' progress for tribes and non-federal entities as the process continues.

Access to Capital Policy

One of the largest obstacles facing tribal economies is difficulty in accessing capital in Indian Country. There are a number of existing federal funding programs which tribes and tribal entities are eligible to apply for; however, tribal applicants are often unsuccessful in securing capital from these programs, as certain restrictions and regulations inhibit them from being competitive. NAFOA has been working with the Administration to find solutions, which can be implemented without Congressional legislation or additional funding. We have also been working with Congress and implementing partners to consider potential legislative changes to remedy certain problems.

CDFI Bond Guarantee Program

On June 25th, 2014 the Community Development Financial Institutions Fund (Fund) appeared before the Senate Committee on Indian Affairs testifying on the importance and effectiveness of access to capital in Indian Country. One of the programs discussed was a new federal program which authorized by the CDFI Fund within the Department of Treasury. The Bond Guarantee Program guaranteed up to \$325 million in bonds 2013, and will guarantee up to \$750 million in 2014. The bond proceeds are to be deployed by pre-selected Eligible CDFIs, for the purpose of stimulating development in economically distressed communities.

Although this program was touted as a valuable source of credit and capital to tribes, it has failed to consider many of the nuances of Indian Country, leaving tribal applicants at a disadvantage. Some have argued that this was the result of a structural flaw in the program's design given its strong regulatory emphasis on land-based collateral – a problem for tribes considering the trust status of tribal lands. In the Oversight Hearing, the CDFI Deputy Director Dennis Nolan was challenged to provide greater transparency over the issue of amending capital distribution guidelines. Amending the capital guidelines would provide the necessary assurances to current Eligible CDFIs and encourage lending to Native CDFIs and tribal governments.

To mitigate concerns, the CDFI Fund has introduced a case study into its outreach sessions to educate applicants and eligible CDFIs on alternative forms of collateral. The CDFI Fund is also exploring how leasehold mortgages might be used to mitigate the collateral impediments discussed. NAFOA has furthermore engaged with all of four Eligible CDFIs for the original 2013 round of funding, in order to gain insight into their distinctive methods of issuing Bond Guarantee Program loans, while also assessing how best to include Native projects in their deal portfolios. NAFOA has also been working closely with the Treasury and CDFI Fund to devise solutions to the barriers currently precluding tribal applicants from participating in the Bond Guarantee Program.

Resolving these issues with the Bond Guarantee Program is important for Indian Country because it represents the type of capital needed and called for by tribal governments for decades. Lower interest, longer term capital helps to build businesses, develop infrastructure and grow programs. In short, this type of capital builds communities and tribal economies.

New Markets Tax Credits (NMTC) Program

In 2000, Congress established the NMTC Program to spur new or increased investments into operating businesses and real estate projects located in low-income communities. The program is administered by the Community Development Financial Institutions Fund (CDFI Fund) and attracts

investment capital to low-income communities by permitting individual and corporate investors to receive a tax credit against their federal income tax return in exchange for making equity investments in specialized financial institutions called a Community Development Entity (CDE). Since the NMTC Program's inception, the CDFI Fund has made 836 awards allocating a total of \$40 billion in tax credit authority to CDEs through a competitive application process.

Despite the considerable amount of tax credits deployed throughout the country and the immense potential of the program to significantly increase economic growth in Indian Country; tribal communities and tribally-focused CDEs have been left behind. In fact, over the last two funding cycles of 2013 and 2014, no tax credit allocations were given to Native CDEs. Reasons given during a recent Senate Committee of Indian Affairs hearing included the competitive nature of the program and the lack of NMTC application reviewers who are well-versed in the complexities of Indian Country.

Indian Country needs to be included in a meaningful way. The department of Treasury, in its current CDFI program, already recognizes that capital issues in Indian Country deserve a set-aside. NAFOA is seeking to address this issue through three key initiatives. The first is to ensure that tribal applicants are given a fair review process. To do this, we are encouraging individuals who are well-versed in the complexities of Indian Country to respond to the CDFI Fund's call for NMTC application reviewers for the 2014 application round. The second initiative is to improve tribes' chances of receiving NMTC allocation by seeking to amend the program's definition of 'rural' to include Indian Country. This would thereby allow tribes to apply for the less competitive NMTC rural set-aside. This can be accomplished through an Administrative action. The third initiative is to have a five percent set-aside for Indian Country. Tribes have the highest poverty and unemployment rates in the nation. The legislative fix of providing a set aside should match the level of need.

To address the lack of deployed New Market Tax Credits in Indian Country, Senator Mark Begich has proposed draft legislation that would create a 10% set aside for all NMTC, for economic development projects on Indian lands, Alaska Native Claims Settlement Act lands, or Native Hawaiian lands.

Low Income Housing Tax Credits (LIHTC) Program

The Low Income Housing Tax Credits (LIHTC) Program, based on Section 42 of the Internal Revenue Code, was enacted by Congress in 1986 to provide the private market with an incentive to invest in affordable rental housing. Federal housing tax credits are awarded to developers of qualified projects who then sell these credits to investors to raise capital (or equity) for their projects. This reduces the debt that the developer would otherwise have to incur. As a result, a tax credit property can offer lower, more affordable rent. The IRS allocates housing tax credits to designated state agencies – typically state housing finance agencies – which, in turn, award the credits to developers of qualified projects. Each state is limited to a total annual housing tax credit allocation of \$1.75 per resident.

The LIHTC Program provides a viable source of economic development for tribal communities, however as allocations pass through state agencies and are based on population, there is no incentive or regulation requiring state agencies to consider tribal projects in their Revenue Allocation Plans, which are approved annually by the Internal Revenue Service. In fact, the incentive

structure is often directly contrary to serving tribes as States seek to prioritize their own state-run housing program's objective before considering tribally-run housing programs. As tribes have the highest occupancy rate of any demographic and some of the longest waiting lists for housing in the nation, it is imperative that the IRS or Congress make changes to the program in a way that compels states to, at the very least, consider the needs of tribes within their boundaries in their housing plans.

To improve the chances of tribal applicants receiving LIHTC allocations, significant changes must be made. NAFOA proposes four ways in which this can be achieved:

1. The creation of incentives for states including preferences for considering Indian housing needs in their allocation plans.
2. Rejection of Revenue Allocation Plans by the IRS for those state authorities that fail to consider Indian housing needs.
3. Creating a mandated preference for tribal applicants
4. Creating a direct Indian housing allocation without a state pass-through

The NAFOA policy team continues to actively engage the Senate Committee on Finance, in a positive and collaborative way, to overcome the barriers in which tribes are faced.

Pairing Tribal Projects with Sources of Capital

In an effort to address both the need for capital in Indian Country, as well as the significant capacity of tribes to effectively use capital to improve communities and stimulate economic growth, NAFOA is working through a new approach. We have begun to actively seek tribal projects in need of financing in order to both understand the granular challenges in accessing capital, as well as to potentially find funders or programs willing to invest in these projects.

In October 2013, NAFOA released a broadcast calling for projects in Indian Country which are seeking, and would be eligible to receive, capital from federal financing programs (in particular LIHTCs, NMTCs and the CDFI Bond Guarantee Program). The purpose of the exercise was to pair projects in Indian Country with viable sources of capital, as well as to better understand the actual barriers to accessing these programs. Despite the availability of these programs and their considerable budgets, they can be insufficiently promoted and structured for Indian Country, leaving tribes at a disadvantage.

Following the request for projects, we received considerable interest from tribes and collected an eclectic array of tribal projects from across the country. Since then we have been engaging with our federal partners and intermediary lending institutions in an effort to match project with financier. Despite launching the initiative less than three months ago we have successfully paired two projects with potential financing. We are continuing to match the remaining projects with sources of capital, and are tentatively looking to incorporate some type of project-to-financier pairing process at our conferences.

Financing and Investment Parity

Tribal governments should be on par with states in regard to the Securities and Exchange Commission (SEC) registration requirements and other rules applicable to financing and investments. Tribes are not exempt from registration requirements causing tribally-issued debt to

be more costly and cumbersome to underwrite and maintain. In addition, because tribal governments are not specifically listed as governments in the SEC definition of “government body”, used in Regulation D, they are prohibited from entering into investments in the same manner as other private investors and government pensions. This lack of flexibility also prohibits tribes investing in and with other tribes.

The solution for existing and future issues is for the SEC to provide clarification that tribal governments are included under the definition of “governments” in the Securities and Exchange Act of 1933 [Section 3(a)(2) of (15 U.S.C. 77c(a)(2)]. This would make amending regulations [17 CFR 230.15] qualifying accredited investors reasonable, as the current definition of governments is extremely broad. But, because tribes are not specifically listed, the financial markets are hesitant to extend the definition to tribal governments and regulatory language does not afford tribes the benefit of specific inclusion.