



Understanding the Tribal Tax and Investment Reform Act of 2025

August 28, 2025

Housekeeping



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Overview Bill Sections Presented



Section 3: Treatment of Tribes as States with Respect to Bond Issuances and Excise Taxes



Section 4: Treatment of Pension and Employee Benefit Plans Maintained by Tribal Governments



Section 8: Creation of New Market Tax Credit for Tribal Statistical Areas



Section 9: Increased Effectiveness of Tribal Low-Income Housing Tax Credits (LIHTC) in Indian Country



Section 10: Clarification that Tribal General Welfare Benefits are not income related to Supplemental Security Income Eligibility



SECTION 3:

Treatment of Indian Tribes as States with Respect to Excise Taxes and Bond Issuance

Presented by:

Geoff Urbina – Managing Director, KeyBanc Capital Markets

TJ Presley – Vice President, Government Affairs, ANCSA Regional Association

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Value of Tax-Exempt Financing

How Tax-Exempt Debt Lowers Capital Costs

Tax-Exempt
Equivalent Rate

2.69%

Marginal Income
Tax Rate

=

(1-40.8%*)

*

Taxable
Interest Rate

5.00%

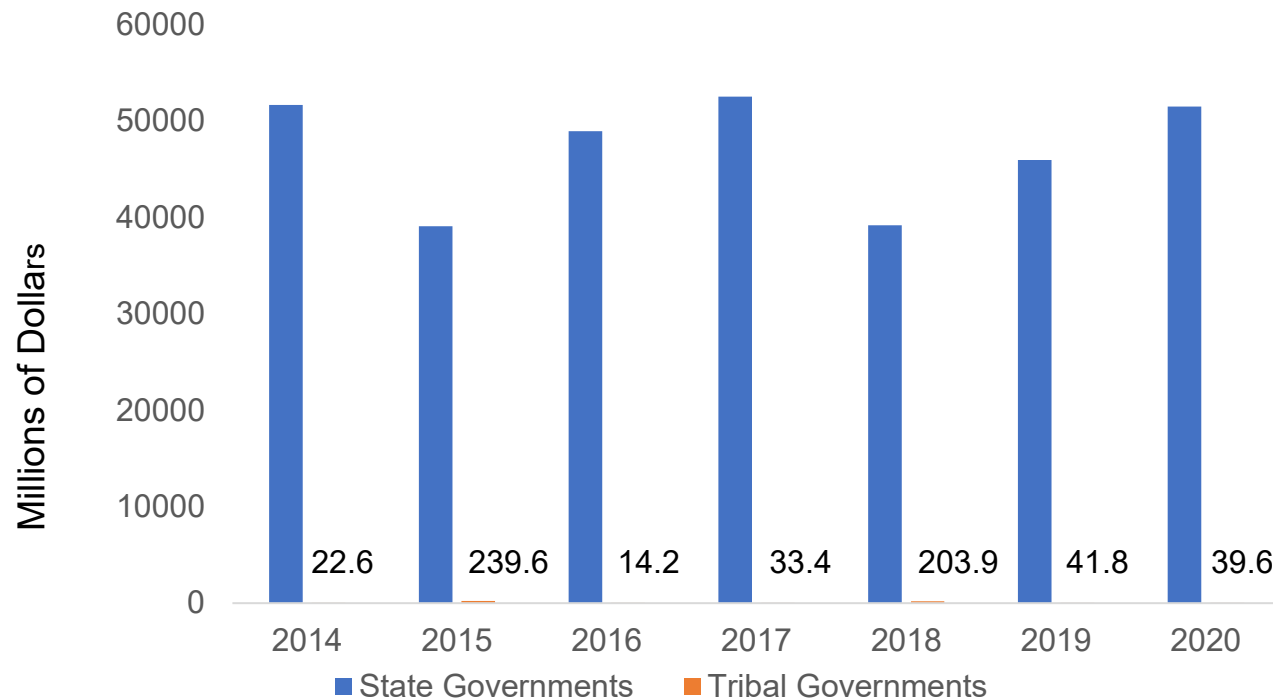
Example

- For a \$50 million bond issue, this lower cost of capital translates into an annual savings in debt service of \$1.04 million and a **gross savings of \$26.06 million** over a 25-year period.

*40.8% Marginal Income Tax Rate reflects the 37% Federal Tax Rate and 3.8% Net Investment Income Tax.

Aggregate Tax-Exempt Bond Issuance: 2014 - 2020

Amount of Tax-Exempt Government Bonds

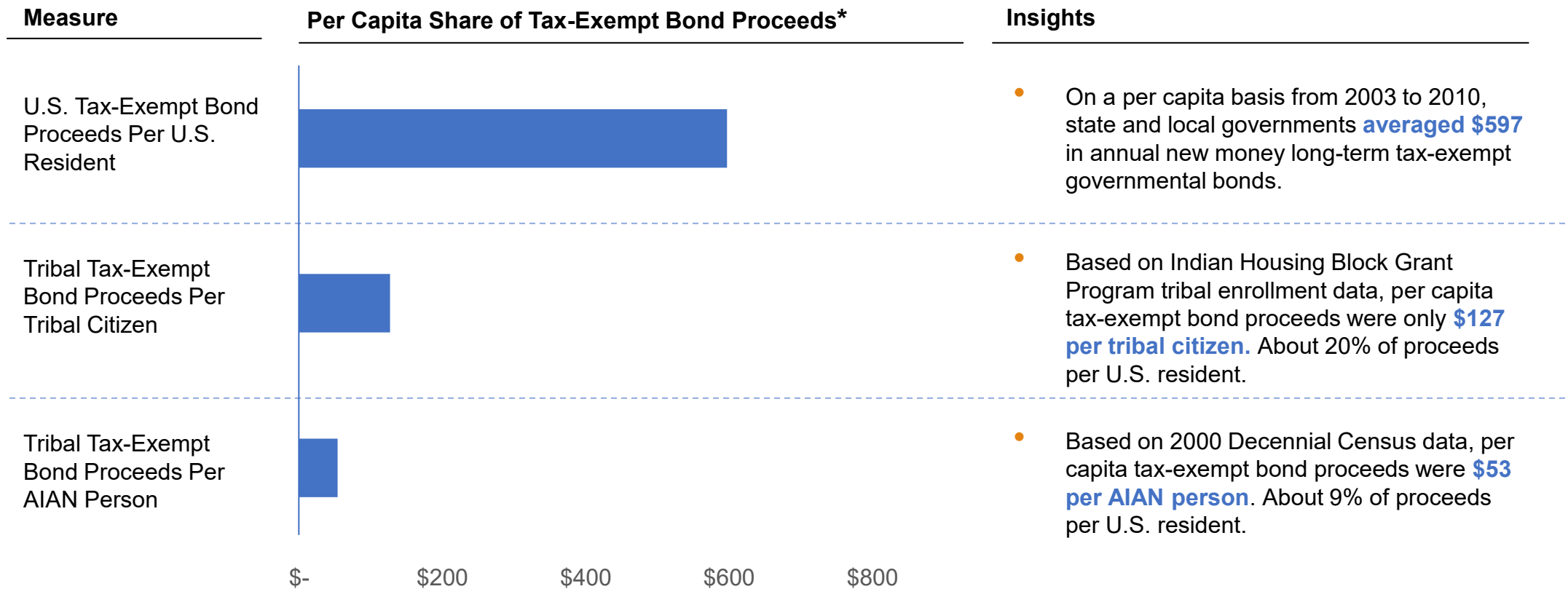


Insights

- From 2014 to 2020, state governments issued an annual average of \$47 billion in tax-exempt bonds, compared to an annual average of \$84 million by tribal governments. **This equates to a 559-fold gap** in the usage of tax-exempt government bonds.
- As of January 8, 2024, there are **574 tribes compared to 90,887 state and local governments**, including school districts and special-purpose districts according to the most recent Census in 2022.
- As such, **Tribes represent approximately 0.6% of entities** that can issue tax-exempt debt.

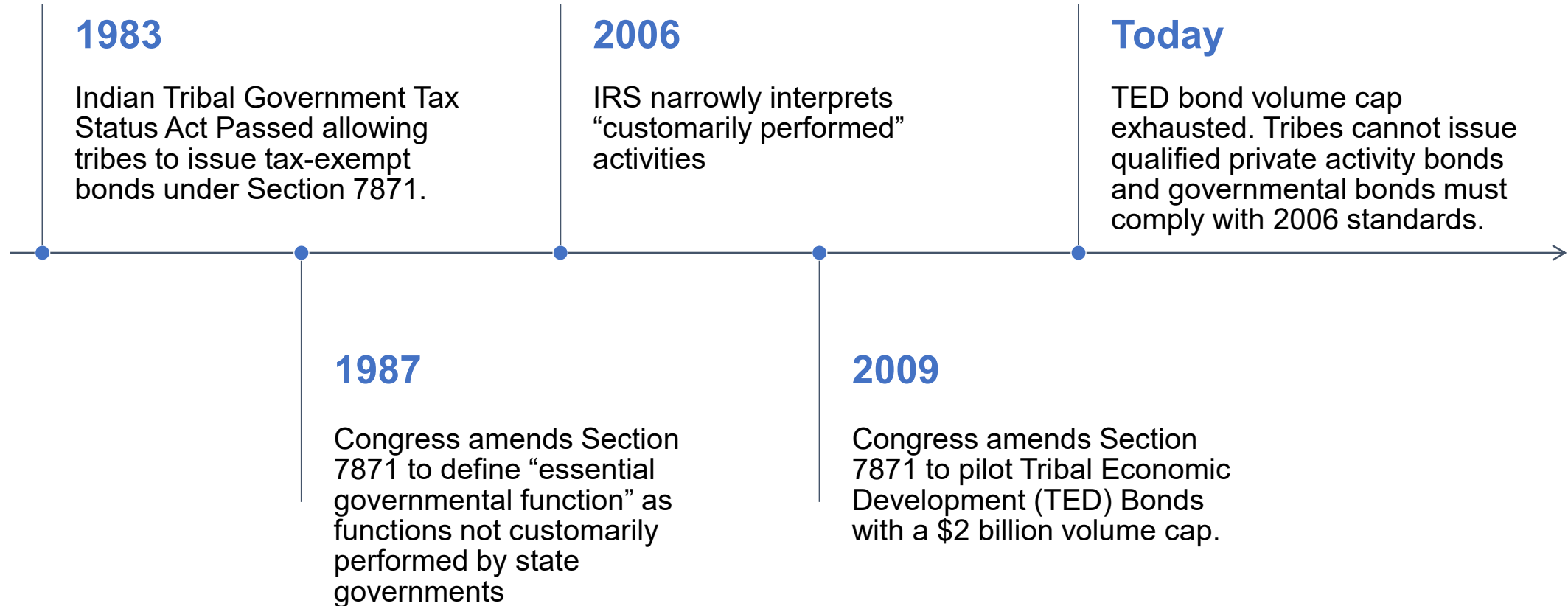
[Separate but unequal: How tribes, unlike states, face major hurdles to access the most basic public finance tools | Brookings](#)

Average Annual Governmental Tax-Exempt Bond Volume Per Capita: 2003-2010



*Source: [Tax code constraints limit tribal tax-exempt bonding](#) | [Federal Reserve Bank of Minneapolis](#)

Timeline of Tribal Tax-Exempt Bonds



Types of Tribal Tax-Exempt Bonds

Governmental Bonds		Qualified Private Activity Bonds	
General	Obligation Bonds	Generally, Yes. GO Bonds are backed by the full faith and credit of the issuer. All bond issues by tribes, states, and municipalities are considered governmental bonds unless the bonds qualify as private activity bonds. Tribal GO governmental bonds typically finance roads and government buildings.	No. Tribes are prohibited from issuing qualified private activity bonds. Sole exception is for issuances where at least 95% of proceeds are used for certain manufacturing facility project subject to strict employment requirements.
	Revenue Bonds	Generally, No. Revenue bonds are secured by specific revenue sources generated from a project. These projects are likely to be commercial or industrial in nature. However, some projects like sewage improvements that generate fees could qualify.	No. Tribes are prohibited from issuing qualified private activity bonds. Sole exception is for issuances where at least 95% of proceeds are used for certain manufacturing facility project subject to strict employment requirements.

Section 3: Achieving Tax-Exempt Financing Parity for Tribal Governments

Section 3 Changes to Section 7871

Implications



Eliminates the “Essential Governmental Function” Test

- Tribes will be able to finance on a tax-exempt basis commercial or industrial projects routinely financed by cities and counties.
- Potential projects include **health centers, hotels, convention centers, golf courses, and energy development.**



Removes Restriction on Qualified Private Activity Bond Issuances

- Pursuant to federal volume tribes will be able to issue QPABs and access the **over \$58 billion QPAB market.**
- Potential projects include **affordable housing**, exempt-facility bonds for utilities, and redevelopment bonds.



Broadens Definition of “Qualified Indian Lands”

- This change recognizes the total geographic scope of tribal need for infrastructure and economic development.

Economic Development Bonds for Alaska Native Corporations

ANCs are the Economic Engine for Alaska Natives

- Congress established Alaska Native corporations (ANCs) through the Alaska Native Claims Settlement Act (ANCSA) of 1971.
- In Alaska, ANCs – as opposed to Tribes – own the lands Alaska Natives retained through our federal negotiations.
 - Collectively, ANCs manage more than of 44 millions acres of land.
- Similar to tribal businesses, ANCs are for-profit corporations, that were created to spur economic development for Alaska Natives, with a special emphasis on rural villages and hub communities.
- Alaska has some of the most geographically isolated and infrastructure-deprived communities in the country:
 - 200 far-flung villages
 - 3,300 rural homes lack running water and sewer
 - Most rural villages are only accessible by airplane (but rivers and ice roads are used seasonally), exacerbating the cost of living
- Without land ownership, bond issuance by Alaska Tribes is rare.

ANC Economic Development Bonds

- Section 3 creates and opportunity for ANCs to issue tax-free economic development bonds, similar to as if issued by a state.
- Tax-exempt bond proceeds can be used to advance employment by investing in the community by construct housing, infrastructure and other facilities.
- However, ANCs must certify that any project undertaken with bond proceeds will promote the economic, social, or cultural well-being of the corporation's shareholders.



SECTION 4: Treatment of Pension and Employee Benefit Plans Maintained by Tribal Governments

Presented by:

Xavier Barraza – Partner, Peebles Bergin Schulte & Robinson LLP

Section 4 – Tribal pension and employee benefit plans

1. Eliminates essential government function and commercial activity tests [IRC § 414(d); ERISA § 3(32)]
2. Confirms equal treatment for Tribal public safety employees [IRC § 72(t)]
3. Confirms equal treatment for governmental deferred compensation plans [IRC § 3121(v)(3)]
4. Provides grandfather relief for Tribes improperly sold “457” plans [IRC § 457; § 401(k)] but delete the option to roll funds into a 401(k).
5. Exempts Tribal plans from “long term, part-term employee” rules that do not apply to most state plans [IRS § 401(k)]
6. Implements an enforcement moratorium until guidance is issued
7. Adds new “uniform standards” for fiduciaries and enforcement of benefit rights

“Uniform Protections and Fiduciary Standards”

1. Adopts the ERISA “prudent person” standard
2. Confirms that fiduciaries are personally liable for their own breaches of conduct
3. Prohibits discrimination to interfere with protected rights or in favor of highly compensated employees
4. Requires basic notice to employees of plan terms – “summary plan descriptions”
5. Confirms that plan participants have a legally enforceable right to receive promised benefits
 - Enforced in Tribal court unless Tribe elects to limit jurisdiction in favor of federal court
 - Confirms that nothing prevents Tribes from adopting additional Tribal laws and protections
 - Benefit claims must be asserted against the plan as an entity, not the Tribe
6. Regulations to be coordinated between Treasury and the Tribal / Treasury Advisory Committee (TTAC)
7. Small employer exception (less than 500 active participants)

Why the “essential government function” and “commercial” activity tests are bad

- Unequal status with state and local governments:
 - State lottery versus Tribal gaming
 - City convention center versus Tribal hotel
 - Municipal golf course versus Tribal golf course
 - State and local governments are not subject to ERISA
- No agreement on defining “commercial” in 19 years
 - Regulation and audits without guidance
- Raising revenue is essential to performing government functions for tribes
 - lack of tax base



SECTION 8: New Markets Tax Credit for Tribal Area Investments

Presented by:

Josh Pitre – Government Relations Director, Big Fire Law & Policy Group

Ben Fenner – Native Law Group

New Markets Tax Credits-The Figures

From inception in 2000 through the 2018 Round 15 of the program, \$57.5 billion of NMTC authority was awarded, including \$3 billion in Recovery Act awards and \$1 billion that was set aside for Hurricane Katrina redevelopment efforts. Of the \$57.5 billion awarded to 1,178 allocatees, \$49 billion has been invested in low-income communities (LICs) through 2018.

Impact in LICs:

51 million ft² manufacturing space

89 million ft² office space

65 million ft² retail space*

New Markets Tax Credits-The Figures

Of the Round 15 allocation (2018), about \$1.6 billion was targeted to major urban areas, \$938 million was available for minor urban areas, and \$682 million of investment was allocated to rural areas. The 2018 allocation was awarded to 73 allocatees in 35 states, DC, and Puerto Rico, with a wide range of focus: 24 serve a national service area, 21 serve a multi-state area, 16 serve a statewide area, and 12 serve local markets (citywide or countywide).*

That was under 2018 \$3.5 billion annual allocation authority.

The Final Reconciliation Bill makes NMTC permanent at \$5 billion in annual allocation authority (which will generate \$1.95 billion in tax credits over 7 years)

*Novogradac New Markets Tax Credit Handbook (2019)

New Markets Tax Credits Improved

- MORE CAPITAL. MORE CERTAINTY.
 - Additional allocation of \$175 million for Tribal LICs and for projects that serve or employ Tribal members.
 - Last year, 3 allocations totaling \$150 million and demand is high. Native projects need more money and more certainty. This would do both.
- GEOGRAPHIC TARGETING.
 - Builds on existing innovative uses language that prioritizes Native land. This bases qualification on these tribal geographic boundaries and not census tract boundaries which are often not the same.
- EDUCATION AND OUTREACH.
 - The lack of certainty about allocation has been a barrier to entry for more CDEs. This would bring more in. More competition (with higher allocation), better for Native communities.

Tribal NMTC Projects

The **Citizen Potawatomi Nation of Oklahoma** just held a ribbon-cutting for the new FireLake Hotel in Shawnee, OK. Travois' economic development team helped secure over \$4.5 million through the New Markets Tax Credit program for the project, which will create over 30 jobs and boost local tourism.

The **Paskenta Band of Nomlaki Indians** built a government and community services campus in Corning, California with NMTC financing providing crucial gap funding. The project included the renovation and expansion of a health clinic and the construction of new Tribal administration and community center buildings. It incorporates elements reflecting the Tribe's history and values with the administrative building being a modern interpretation of the round house. The community center includes a large multipurpose space, commercial kitchen, lounge business center, private meeting rooms, a community room and outdoor space.

The **Confederated Tribes of the Colville Reservation** built a new government administrative center with financial support from the NMTC program. By constructing the new government center, essential services were consolidated in a single, convenient location. This reduced costs and improved access to services for Tribal members. The development created high-quality construction jobs and permanent employment opportunities for Tribal employees, boosting the regional economy.



SECTION 9: Inclusion of Indian Areas as Difficult Development Areas for Purposes of Certain Buildings

Presented by:

Josh Pitre – Government Relations Director, Big Fire Law & Policy Group

Housing Needs in Tribal Communities

- A 2017 report by the Department of Housing and Urban Development (“HUD”) estimated a need for 68,000 new housing units to replace severely inadequate units and eliminate overcrowding.
- The Low-Income Housing Tax Credit (LIHTC) program has been critical in helping close this gap
- Travois’ collaborative work with Tribal Nations has resulted in:
 - 228 housing developments
 - 6,576 homes built or rehabilitated
 - \$1.5 billion in total development

LIHTC Tribal Projects

- ***The Dry Creek Rancheria Band of Pomo Indians*** developed Bi'du Khaale, a housing development with 25 single-family homes and a community building. Located in rural California, the project aims to provide affordable living options for elder members and multigenerational families in a region with some of the highest housing costs in the country.
- ***The Laguna Housing Development and Management Enterprise (LHDME)*** developed Laguna III, a project comprised of 20 townhome units and a community building, which enables families to engage in health and nutrition classes, health screenings, computer training, tutoring, youth development, and financial literacy programs.
- ***The Fallon Paiute Shoshone Tribe*** is building 22 townhomes, a community building and playground on the Fallon Paiute Shoshone Indian Colony in Fallon, Nevada. These units, ranging from one to four bedrooms, will be home to families, singles, and elders. The units will be targeted for households earning 50% of the area median income ("AMI") or below.

Section 9 Aims to Increase Effectiveness of Tribal Low-Income Housing Tax Credits (LIHTC) in Indian Country

- **Section 9** modifies the definition of “difficult development area” to include an “Indian Area”
- **“Difficult Development Areas”** means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.
- **“Indian area”** means the area within which an Indian tribe or a tribally designated housing entity, as authorized by 1 or more Indian tribes, provides assistance under this chapter for affordable housing
- This designation can increase the amount of tax credits a developer receives, incentivizing affordable housing development in these challenging locations.

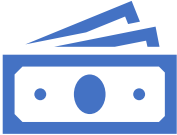



SECTION 10: Tribal General Welfare and Trust Programs Clarification

Presented by:

Ken Parsons – Holland & Knight

Overview and SSA Treatment of Tribal General Welfare Benefits and Minor Trust Accounts

Tribal Support	Overview	SSA Treatment
 <div data-bbox="440 508 843 836">Tribal General Welfare Benefits</div>	<ul style="list-style-type: none">• The Tribal General Welfare Exclusion Act of 2014 excludes from taxable income tribal general welfare benefits• Tribes often administer benefits based on community need, which is allowable under the law	<ul style="list-style-type: none">• The Social Security Administration excludes tribal general welfare benefits from income only if the benefits are based on individual financial need and these benefits are not excluded from resource calculations
 <div data-bbox="440 876 843 1220">Minor Trust Accounts</div>	<ul style="list-style-type: none">• Tribal governments often set up grantor trusts for minors to meet future needs• Tribes seed trust assets with economic development revenue from gaming and non-gaming sources	<ul style="list-style-type: none">• The Social Security Administration exempts only “IGRA” trusts funded from gaming dollars from minor resources when parents apply for federal benefits.

TTAC and Tribal Interactions with SSA



Common Real-Life Examples



Elder Benefits

- Many tribes administer social welfare programs specific to tribal elders to assist with aging-related costs such as health care and living assistance.
- Tribal elders who receive this support risk losing federal SSI and Medicaid in some instances.



Housing Assistance

- Tribes often provide housing assistance to their citizens.
- SSA may deny assistance to homeless tribal citizens with clear financial need because the tribe makes assistance available based on community need.



Minor's Trusts

- SSA considers minor trust assets funded with non-gaming revenue to be resources of the minor even though the minor cannot access the trust until adulthood.
- Foster parents of disabled tribal children cannot receive SSI benefits for these tribal minors.



General Welfare Distributions

- Tribes have many members who rely on SSI and state Medical Assistance programs living full time in care facilities.
- To prevent benefit loss, tribes have restructured benefits to comply with income rules, but the programs no longer fully meet citizen needs.

Section 10: Ensuring Tribal Benefits Should Not Prevent Access to Federal Benefits

Legal Changes to SSI Calculations

Excludes tribal general welfare benefits from countable income and resources

Exempts tribal grantor trusts from countable resources regardless of funding source

Implications

- This change allows tribes to create benefit programs to best fit tribal communities as intended by the Tribal General Welfare Exclusion Act.
- This also ensures that tribal citizens who receive aid from their own governments will not be left worse off than if they had never received the tribal benefit.
- This change ends the anomaly under which only gaming-funded minors' trusts are excluded from a minor's resources.
- Whether a minor can actually access trust assets should be the determining factor as to whether trust assets are a resource of a minor, not the asset funding source.



Poll Question

What section from S.2022 would have the biggest economic impact on your community?

- a) Section 3: Treatment of Indian Tribes as States with Respect to Bond Issuance and Excise Tax
- b) Section 4: Treatment of Pension and Employee Benefit Plans Maintained by Tribal Governments
- c) Section 8: Creation of New Market Tax Credit for Tribal Statistical Areas
- d) Section 9: Increased Effectiveness of Tribal Low-Income Housing Tax Credits (LIHTC)
- e) Section 10: Clarification that Tribal General Welfare Benefits are not Income Related to Supplemental Security Income Eligibility



Questions?

Please use **Q&A box** to submit questions.



Support The Tribal Tax And Investment Reform Act

Senators Cortez Masto (D-NV) and Murkowski (R-AK) recently introduced S.2022 the “Tribal Tax and Investment Reform Act of 2025”. The bill contains several provisions that positively impact Indian Country and support Tribal efforts to build robust economies and create parity with their state and local counterparts. This legislation is a necessary and substantial step forward for Tribal governments and businesses and builds on NAFOA’s efforts and advocacy in Congress over the past four years.

Now is the time to show your support—sign on to the support letters and help advance this important legislation for Indian Country.



go.nafoa.org/support-s2022



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