Providing advocacy and capacity to support a 21st Century tribal economy that is more effective, efficient, and supportive of economic growth has been a consistent priority for NAFOA. Strong partnerships with the Administration, Congress, and private sector entities are vital in pursuing that goal. Since the start of 2015, NAFOA has strived to keep you up-to-date on meaningful policy solutions that strengthen economic growth in Indian Country. These efforts have been organized into three policy areas critical to the economic success of our member tribes, which include: 1) Governance and Economic Opportunities; 2) Financial Management Policy; and 3) Capital and Asset Management.

Governance and Economic Opportunities

NAFOA has made important strides in its work addressing governance and economic opportunities. Our strategic approach of working through both the legislative and administrative process has enabled us to advance the Native economic agenda. NAFOA will continue to work closely with the Federal Government to protect and promote tribal interests in the development of policies related to governance. We will also continue to explore new areas of economic opportunity.

I. Tribal Employment and Jobs Act

The Tribal Employment and Jobs Act, H.R. 3080 and S. 1771, was introduced in July of 2015. The bill amends the Internal Revenue Code to exclude a tribal employer from the definition of “applicable large employer” for purposes of the employer healthcare mandate under the Affordable Care Act (ACA). The bill defines a tribal employer as: 1) any Indian tribal government or subdivision, 2) any tribal organization, or 3) any corporation or partnership if more than 50% of the equity interest is owned by an Indian tribal government or tribal organization.

Currently under the ACA, all employers with over 50 employees must offer full-time employees (and their dependents) the opportunity to enroll in affordable health insurance coverage that provides the minimum level of coverage. Additionally, there is significant information and financial reporting responsibilities that must be filed by February of 2016. Many tribal governments are not aware that tribes as employers are not exempt from the “applicable large employer” requirements and that non-compliance can bring penalties of up to $200 per return.

Member Tribes submitted comments to NAFOA urging support of the Tribal Employment and Jobs Act. NAFOA has participated in a productive discussion with H.R. 3080 sponsor Rep. Kristi Noem (R-SD) to ensure the bill shares all aspects and concerns of tribal governments.
II. Cadillac Tax

An issue of increasing concern to Indian Country is the upcoming 40-percent excise tax on high-cost employer-sponsored health plans. Under the Affordable Care Act, the so-called Cadillac tax goes into effect in the beginning of 2018 for both fully insured and self-funded employer health plans. The Cadillac tax will be assessed on the dollar amount of any premium that exceeds the annual limits of $10,200 for individual coverage and $27,500 for family coverage. The tax also includes several other costs such as contributions to flexible spending accounts or health savings plans. Tribal governments in high cost of living regions, such as Alaska, the Northeast, and the West Coast will likely be hit the hardest. In addition to the taxes, there will be a significant administrative burden on tribal government finance and HR staff to complete the mandated reporting. The costs and burdens represented by the regulations will diminish already limited resources available to support tribal government operations.

The IRS is continuing its process of developing regulatory guidance (IRS Notice 2015-52) and is requesting comments. NAFOA does not believe tribal governments and tribal entities should be subject to the Cadillac tax and has submitted comments, requesting that tribal employers be exempt from the tax.

III. Department of Labor Overtime Rule

The Department of Labor (DOL) submitted a notice of proposed rulemaking (NPRM) that will raise the salary threshold at which eligible workers qualify for overtime pay from $23,660 to $50,440. Tribal leaders across Indian Country have shared concerns that some of their exempt employees will now be eligible for overtime under the new salary threshold or will have to be switched to hourly pay. Many tribal government and enterprise employees currently qualify as exempt from overtime eligibility because their annual salary is greater than $23,660. Additionally, they are exempt because their primary duties fall under the executive, administrative and professional exemption included in the Fair Labor Standards Act of 1938. While the rule will not be finalized for months, the change is forcing tribes to reevaluate budgets as it pertains to the current workforce.

Many employees are drawn to work for tribal governments, despite being located in rural areas and having lower salaries, out of desire to work for their communities and improve the lives of their people. NAFOA has heard from numerous tribal governments expressing concerns about the significant impact of the changes proposed and the hardship it will cause.

Areas of Concern for Tribal Governments:

1. Even though the NPRM will directly and disproportionately affect tribal governments, there has been no consultation on this rule-making.
2. The use of a single national salary threshold would adversely affect already limited revenues, especially for tribes in rural areas.
3. The increased threshold sets a one-size-fits-all standard. The average salary offered by many tribal governments and enterprises is substantially lower than the national average.
4. The NPRM was created to make improvements for employees in the for-profit sector. It would "transfer income from employers to employees in the form of higher earnings." For tribes however, the threshold increase can potentially reduce tribal funding available for social services such as education and healthcare.

5. Many tribal employees currently qualify as exempt from overtime eligibility because their annual salary is greater than $23,660. Under the proposal, tribal leaders and other senior level managers would be re-classified as overtime-eligible because of their salary level. To manage payroll costs, the change will force some tribes to pay closer attention to hours worked by overtime-eligible employees, including how to handle work completed out-of-the-office, such as travel, off-hour council meetings, participating in community events under the capacity of the tribe, and responding to emails in the evening.

6. Many tribal governments allow non-exempt employees, for example tribal councilmembers, to work from home occasionally and telecommute when they are on travel. As a result of the NPRM, employees may lose the flexible work arrangements because state wage and hour laws will require employers to record the precise hours worked each day.

7. The increase in the overtime threshold was not accounted for in tribal government budgets for future years. The proposed salary level rule may result in significant negative consequences for the operations of a tribal government, including layoffs to fund the increase in wages for retained employees.

8. Currently the NPRM exempts lawyers, teachers, medical doctors, and outside sales employees only. If the DOL considers changing the duties test, it should include common job roles in governments.

NAFOA has strongly urged the DOL to review their current consultation policy and ensure it honors the directives of Executive Order 13175. This Presidential Memorandum requires that the DOL involve decision makers of tribes in the consultation process and capture tribal interests in the decision making process. NAFOA has also setup a meeting with the DOL and tribal leaders in the coming months to obtain detail on how the NPRM will impact tribal governments.

IV. Marijuana in Indian Country

NAFOA held an educational webinar and panel at the 33rd Annual Conference in Austin on the legal, economic, and political risks and opportunities of tribal participation in the marijuana industry. The webinar and panel coincided with the release of the Department of Justice's (DOJ) Memorandum on Marijuana in Indian Country. Although the DOJ Memorandum regarding marijuana in Indian Country sparked serious conversation on the potential economic and political impacts that marijuana could have for tribes, political, legal, and banking uncertainty continues to impede progress. Meanwhile, recreational sales of marijuana in states like Colorado are reporting approximately $57 million in revenue.

NAFOA will continue to gather tribal input regarding its role in the Marijuana issues and provide clarity on a strategy forward or a strategy deferred.
V. General Welfare Exclusion

The Tribal General Welfare Exclusion Act of 2014 (GWE Act) codifies the Internal Revenue Service (IRS) Revenue Procedure (Rev. Proc. 2014-35). The GWE Act firmly supports tribal self-determination, provides tribal leaders with the flexibility to determine which tax-exempt programs and services improve the welfare of their citizens, and ensures that programs and services, which seek to restore and promote tribal cultural heritage are uniformly upheld. Further, the GWE Act requires ambiguities in the statute to be resolved in favor of Indian tribes. This marks a distinct departure from the way the IRS has historically interpreted ambiguities and formed tax policy. The GWE Act directs the Secretary of the Treasury to:

- Establish a Treasury Tribal Advisory Committee (TTAC) to advise on matters relating to taxation of tribal governments;
- Require the training and education of IRS agents on federal Indian law and the implementation of the new provisions; and
- Temporarily suspend the general welfare examinations of tribal governments.

Through the enactment of the TTAC Charter, the Department of Treasury (Treasury) has announced a call for nominations for committee members and comments on selection criteria that should be considered when reviewing applicants. The TTAC will be made up of seven representatives with the Treasury selecting three members and Congress selecting the remaining four members. The TTAC members will serve four-year terms, however those appointed by Treasury will serve an initial two-year term. The TTAC is an open advisory committee that is subject to the Federal Advisory Committee Act. The committee members have a broad mandate to "advise the Secretary on matters relating to the taxation of Indians".

NAFOA will continue to work with tribal governments, the IRS, Treasury, and Congress to ensure the GWE Act is implemented as Congress intended and the guidance is used as a basis for general welfare regulations by: (1) Advising the Treasury on selection criteria that should be considered when reviewing TTAC applicants to ensure the TTAC is comprised of leaders who will strongly advocate for tribal interests and offer a substantive tribal voice on all tax policy issues affecting tribal governments; (2) Ensuring that IRS field agents are properly trained and educated on tribal sovereignty, treaty rights, and diplomacy concerning tribal governments; and (3) Ensuring audits are suspended regarding general welfare programs.

Based on the timing of the tribal leader interviews, NAFOA expects that the Department of Treasury will put forward three candidates by the end of this year. Congress will be expected to act on their respective recommendations shortly after with the hope of formalizing the advisory committee in 2016.

VI. Comprehensive Tribal Tax Reform

Congress once again considered comprehensive tax reform. However, that ambition has given way to the presidential campaigns that are including tax reform as part of their platforms. Regardless of the direction tax reform takes, NAFOA will be active in ensuring gains are protected and reforms
include tribal governments. Some of those reforms are included in comments submitted to the Senate Committee on Finance requesting that tribes are treated fairly with measures that align current federal tax laws and overall tax policy with: (1) the U.S. Constitution’s acknowledgment of Indian tribes as governments; (2) the United States’ legal treaty and trust obligations to Indian tribes; and (3) the role that Indian tribes and tribal government revenues play in serving tribal communities. With a few exceptions, current federal tax laws either ignore Indian tribes or awkwardly fit tribes into tax policies that do not fully consider these factors.

NAFOA has requested that Congress reform the tax code to include the following provisions which provide fairness and economic growth for tribal governments by promoting access to tools commonly used by other governments, fixing oversights to allow for greater tribal participation in existing incentives, and structuring tax credits that can work for tribes.

(a) Tribal Authority to Issue Tax Exempt Debt
(b) Kiddie Tax
(c) Tribal Child Support Collection and Data Access
(d) Equal Deference to Tribal Court Determinations Involving Children
(e) Excise Taxes
   - Excise taxes on luxury passenger vehicles, special fuels, and heavy trucks and trailers
   - Manufacturing excise taxes, including the gas guzzler tax
   - Communications excise taxes
   - Wagering excise taxes
   - Harbor Maintenance tax
   - Occupational taxes on persons in the business of wagering
   - Taxes on distilled spirits, wine and beer
   - Taxes on certain firearms
   - Structured Settlement Factoring Tax
(f) Federal Legislation to Facilitate Collection of Sales Taxes on Remote Sales
(g) Classification of Tribal Charities as Public Charities
(h) Equal Treatment of Employer-Sponsored Pension Plans of Indian Tribal Governments

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 and accounting rule changes and amendments, as well as developing tribal financial management capacity by providing current and relevant information on major financial regulation issues.
I. Office of Management and Budget’s Uniform Guidance

The Office of Management and Budget (OMB) issued the interim final rules for all federal award-making agencies for the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). The interim final rules includes implementation regulations for all 26 federal agencies as well as numerous technical corrections, which the OMB has made in response to received comments and concerns.

One concern regarding tribal governments and their related entities was the proposal to publish an entire single audit reporting package, which would have placed tribes and their enterprises at a competitive disadvantage when negotiating compacts. The interim final rules include a favorable language change that clarifies what entities are eligible to opt out of publishing financial statements and recognizes the Indian Self-Determination, Education and Assistance Act. This win for Indian Country ensures economic security and in turn facilitates economic development and promotes the health and welfare of tribal communities.

The interim final rules went into effect for new awards or funding increments awarded on or after December 26, 2014. This past year, NAFOA held several webinars and a panel at the 33rd Annual Conference to ensure tribal governments were prepared and in compliance.

NAFOA continues to be activity involved in the Non-Federal Stakeholder Coalition of the COFAR to engage in a positive and collaborative way. NAFOA is committed to providing ongoing information on the Uniform Guidance as it related to tribal governments. Additionally, NAFOA will continue to closely monitor federal agencies’ implementation progress for tribes and non-federal entities as the process continues.

II. Digital Accountability and Transparency Act (DATA Act)

The DATA Act (Public Law 113-101) was signed into law on May 9, 2014 and requires the Department of Treasury to standardize financial data and expand the amount of data reported to federal agencies by 2018. The goal of the DATA Act is to make federal expenditures easier to access and simpler to understand. While the DATA Act calls for three years of pilots, compliance will require tribal governments to focus on adopting new technologies and standardizing processes necessary to report quarterly on how federal funds are spent.

NAFOA has been identifying problematic areas and impactful steps tribal governments can take to prepare. NAFOA invites you to share your ideas and suggestions on how to reduce costs and burden associated with implementing the DATA Act. The National Dialogue and Pilot to Reduce Reporting Compliance Costs on Federal Contractors and Grantees includes key questions for which we need your input now.

- If you could change one thing that would ease your reporting burden associated with your awards, what would it be (e.g. time, cost, resource, other)?
- If you have reporting requirements to the Federal government, how are those met?
• If you could create a central reporting portal into which you could submit all required reports, what capabilities or functions would you include?
Tribal input will help NAFOA gain a better understanding of tribal government’s costs of compliance with Federal contracting and grant awards, as well as recommendations to standardize data, eliminate unnecessary duplication, and reduce compliance costs. In mid-October, NAFOA will review the input provided to seek out specific suggestions and ideas that can be turned into solutions. This dialogue will help in the effort to improve tribal economies and the efficiency in the management of federal funds.

III. Governmental Accounting Standards Board (GASB) Standards and Guidelines

The GASB is an independent organization that establishes and improves standards of accounting and financial reporting for tribal, state, and local governments. It is recognized by the accounting industry and the capital markets as the official source of generally accepted accounting principles (GAAP) for governments. NAFOA holds a seat on the Governmental Accounting Standards Advisory Council (GASAC), which is responsible for consulting with the GASB on technical issues on the GASB’s agenda, project priorities, matters likely to require the attention of the GASB, and concerns of tribal governments.

This past year NAFOA has provided input on several standards and guidelines, including:
• Statement No. 72, Fair Value Measurement and Application
• Statement No. 77, Tax Abatement Disclosures
• Preliminary View: Leases
• Preliminary View: Fiduciary Responsibility

NAFOA’s participation in the GASAC provides the GASB with a tribal government perspective to help make well-informed decisions and improve the standards of tribal governmental accounting and financial reporting.

Capital and Asset Management

One of the largest obstacles in building tribal economies is difficulty in accessing capital, particularly cost-effective capital programs crucial to initial and sustained economic development. As tribal assets grow, effective management can also present challenges. NAFOA is working to ensure tribal assets are well-managed for the next generation.

I. Accessing Government Capital

The capital needs for tribes are similar to other governments in the United States. However, tribal governments do not have equal access to the tax exempt market and have few options from the federal government that offer long term government funds for growth and development. NAFOA is setting out to increase allocations to programs that do work, such as the Indian Loan Guarantee
Program. NAFOA is also advocating to make sure tribes can access all capital programs that hold great promise like the New market Tax Credit Program. During the Senate Committee on Indian Affairs hearing in July, NAFOA laid out a strategy for improving capital to Indian Country. Some points raised were:

- Creating parity between tribal governments and other governments when accessing the capital markets.
- Increasing funding and support for programs that are working, including the Indian Loan Guarantee Program at the Department of Interior and the Community Development Financial Institutions Program at the Department of Treasury.
- Demanding that existing federal programs that could work for tribes change their structure to include tribal governments and provide capital that is proportionate to the level of need.
- Clearing the way for tribes to effectively participate in the multi-billion dollar tax credit markets for housing and development.
- Creating incentives for banks to lend to emerging tribal communities either directly or through partnerships.

II. New Markets Tax Credit Program

In 2000, Congress established the New Markets Tax Credit (NMTC) Program to spur investments into projects located in low-income communities. 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 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 in 2013 and 2014, no tax credit allocations were given to Native CDEs. Reasons given during a recent Senate Committee on Indian Affairs Oversight 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. To initiate change, NAFOA has encouraged individuals who meet these requirements to respond to the CDFI Fund's call for NMTC application reviewers for the 2014 and 2015 application round.

To further enhance the likelihood that tax credits will be deployed in Indian Country, NAFOA has encouraged the Administration to revise a CDE’s service area to include Indian Country. Currently, CDE’s are only permitted to invest their NMTC allocation in their prescribed service areas. These service areas are typically state based, often including states that are geographically contiguous. However, as CDE's develop expertise in investing in Indian Country there are natural economies of scale to using NMTC in other tribal areas, which may be located in other states. Furthermore, as tribes possess a government-to-government relationship with the federal government, they ought to be treated equal to states. CDE's should have an option to select a service area designated for tribes and be free to use allocations in any tribal project nationally in efforts to adequately serve their target populations and strengthen the capacity of the NMTC program. This change can be accomplished through the regulatory process and does not require legislation.
III. CDFI Bond Guarantee Program

The Community Development Financial Institution (CDFI) Bond Guarantee Program was enacted through the Small Business Jobs Act of 2010 (Public Law 111-240). The legislation directs the Department of Treasury to guarantee bonds up to $1 billion per year to Community Development Financial Institutions (CDFIs) to provide low interest, long-term capital for qualifying projects. In FY 2015 it will guarantee up to $750 million in bonds.

Although this program has been praised 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 significant disadvantage. Through conversations with individual CDFIs, NAFOA has identified a widespread misconception that Treasury has a strong emphasis on land-based collateral. This issue was raised at a Senate Committee on Indian Affairs Oversight Hearing in June of 2014 where Dennis Nolan, Acting Director of the CDFI Fund spoke to the CDFI Fund’s attempt to promote access to tribal projects through the use of a case study, which was introduced 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 been working with the Treasury and the CDFI Fund to devise solutions to the barriers currently precluding tribal applicants from participating in the Bond Guarantee Program. NAFOA has engaged with the four eligible CDFIs for the FY 2013 round of funding to gain insight on their distinctive methods of issuing Bond Guarantee Program loans to best assess how to include Native projects in their deal portfolios. NAFOA has also encouraged the CDFI Fund to amend the capital guidelines in an effort to increase lending to Native CDFIs and tribal governments.

IV. Native American CDFI Assistance Program

Through the Native American CDFI Assistance (NACA) Program, the CDFI Fund provides funding to build the capacity of Certified CDFIs, Emerging Native CDFIs, and Sponsoring Entities and increases access to capital in Native communities. The NACA program provides funding through Financial Assistance (FA) awards up to $750,000 to Certified Native CDFIs in the form of loans, grants, deposits, and equity investments. Additional Technical Assistance (TA) grants of up to $150,000 are available to Certified Native CDFIs, Emerging Native CDFIs, and Sponsoring Entities. Native awardees may use TA dollars to increase their capacity to serve Native communities and/or to create or become certified Native CDFIs.

With the enactment of the FY 2015 Omnibus Appropriations Bill, now Public Law 113-235, Congress has successfully reinstated language to waive the non-federal dollar-for-dollar match requirement for the Native American CDFI Assistance (NACA) program. The law appropriates $15 million in funding to NACA for financial and technical assistance, training, and outreach programs without the obligation of meeting the match requirement found in 12 U.S.C. 4707(e). The removal of the dollar-for-dollar match is an important win for Indian Country considering the far-reaching impact and success the CDFI program has had in the past and the difficulties Native CDFIs have encountered in
raising private capital. NAFOA and our organizational partners will continue to support increased appropriations for the NACA program and continue to request a waiver for the dollar-for-dollar match requirement.

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