

## White Paper on the

# NATIVE AMERICAN CHALLENGE DEMONSTRATION PROJECT ACT

July 2007

## INTRODUCTION

Despite some improvement in recent decades in terms of various measures of economic and social well-being, America's Native peoples --- American Indians, Alaska Natives and Native Hawaiians --- continue to suffer disproportionately high rates of unemployment and poverty, poor health, substandard housing, and associated social ills when compared to any other group in our nation.

This poor statistical profile plagues Native communities despite a rich cultural legacy and, in many instances, abundant natural resources on and under their lands and in their waters. Many Native communities own vast swaths of timber, huge reserves of coal, natural gas, and oil, fish and shellfish, and other natural amenities.

Nonetheless, geographic remoteness, distance from markets and population centers, poor physical infrastructure, and a lack of governmental transparency are among the reasons many Native American economies remain stagnant.

## FEDERAL INDIAN POLICY SUCCESSES

In July 1970 President Nixon issued his "Special Message to Congress on Indian Affairs" which led to significant changes in how the United States helped Native communities cope with the many economic challenges they confronted.

Rejecting both the stifling paternalism of a welfare state and the harsh consequences of simply eliminating the Federal-tribal relationship, Indian Self Determination sought to rehabilitate tribal institutions by encouraging local political decision-making and economic self-sufficiency.

Giving congressional ratification to Nixon's bold new course, Congress passed the *Menominee Restoration Act* of 1973; the *Native American Programs Act* (42 USC 2992d *et seq.*) and *Indian Financing Act* (25 USC 1451 *et seq.*) of 1974; the *Indian Education Assistance Act* (25 USC 455 *et seq.*), and the most influential --- the *Indian Self Determination and Education Assistance Act* of 1975 (25 USC 450 *et seq.*).

Of these, the *Indian Self Determination and Education Assistance Act* (ISDEAA) has been particularly effective in devolving Federal decision-making and authority to administer programs and services from the United States to tribal governments. To date, one-half of all Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) functions are operated by tribal governments. This transfer of authority and resources has resulted in more effective and efficient program administration as well as the development of an Indian civil service whose skills are transferable to tribal economic development efforts.

This trend is entirely positive and laudable but the ISDEAA is, at the end of the day, a Federal contracting program for Indian tribes and tribal consortia. It is, put simply, tribal management of Federal funds and service programs. What is still sorely needed is the kind of local job creation and revenue generation that will serve to reinvigorate Native economies and communities.

#### LEARNING THE LESSONS OF THE INTERNATIONAL DEVELOPMENT MODELS

Because Native economies are often plagued by the same challenges as the economies of the developing world, Native economies are likely to benefit from the application of proven models employed in international development efforts.

Of these, the President's Millennium Challenge Corporation is most appealing. Having undertaken a comprehensive review and analysis of post-World War Two efforts by the U.S. and other developed nations to invigorate the economies of the developing world, the Bush Administration took exception with the notion that additional financial resources was all that was needed. Instead, the President sought to identify and emphasize those traits found in successful economies and to encourage their use by other developing countries.

Created pursuant to the *Millennium Challenge Act of 2003*, the Millennium Challenge Corporation aims to create ongoing, bilateral relationships between the United States and eligible countries to pursue those policies that are known to be effective and in the process reduce poverty and promote sustainable economic growth in the host country. Typically, the activities that are funded by the Corporation are related to agriculture, irrigation, and related land practices; physical infrastructure development to facilitate marketing of goods and services; and a variety of health care programs.

In addition, because the Millennium Challenge Corporation model leaves the major decision-making in regard to economic development objectives and the selection of specific projects to achieve those objectives up to the countries seeking a development compact with the United States, we believe a domestic analog will appeal to Native leaders and their citizenry.

#### CORE CONCEPTS OF THE NATIVE AMERICAN CHALLENGE

The proponents of the *Native American Challenge Demonstration Project Act* (Native American Challenge) seek to re-invigorate Native economies by replicating the concepts and principles of the Millennium Challenge Corporation in the form of a demonstration project to be housed in the U.S. Department of Commerce.

The objectives of the Native American Challenge are simple: to enhance the long-term job creation and revenue generation potential of Native economies by creating investment-favorable climates and increasing Native productivity.

The Native American Challenge would also seek to administer Federal economic development assistance in a novel manner to promote economic growth, eliminate poverty, and strengthen good governance, entrepreneurship, and investment in Native communities.

A corollary, but equally important, objective is to improve the effectiveness of *existing* Federal economic development assistance by encouraging the integration and coordination of such assistance for the benefit of Native economies. Accordingly, the Act requires that any assistance provided must be coordinated with other Federal economic development assistance programs for Native Americans.

To avoid any ambiguities in the proposed operation of the Native American Challenge, the Act provides that economic development funds appropriated to the following agencies which eligible entities otherwise benefit from shall be transferred at the request of the eligible entity to the Secretary for purposes of inclusion in compacts to be entered with eligible entities.

- (a) Department of Agriculture;
- (b) Department of Commerce;
- (c) Department of Energy;
- (d) Department of Health and Human Services;
- (e) Department of Housing and Urban Development;
- (f) Department of the Interior;
- (g) Small Business Administration; and
- (h) Such other agencies and instrumentalities of the United States government as the Secretary determines appropriate.

Assistance may be provided in the form of grants or technical assistance but may *not* take the form of loans. Additionally, assistance under the Act may *not* be provided for any project relating to gaming or gaming-related activities conducted pursuant to the *Indian Gaming Regulatory Act*, 25 U.S.C. §2701 *et seq.*

Consistent with the philosophy of the Millennium Challenge Corporation, the rationale for the Native American Challenge is to acknowledge that communities that have made the threshold decision to improve their economic conditions and evince a “readiness for development” are precisely those that show marked signs of economic progress because of increased investment and economic activity.

A development-ready community is one that has taken steps on a number of fronts that are proven to encourage local entrepreneurship and attract outside investment such as improving schools and education, reducing legal and regulatory barriers to business and community development, and reducing violent crime within the host community.

The Native American Challenge is intended to provide Federal assistance, over and above the funding that is currently available, to those Native communities that are determined to be “eligible entities” by the Secretary of Commerce (Secretary) and are therefore poised to negotiate and enter into a bilateral compact with the United States.

The Native American Challenge would be a novel Federal initiative with the mission of reducing poverty in Native communities. It will rest on four key principles that are as relevant to Native communities as they are to the developing world.

1. Reducing poverty through vigorous private sector economic growth is a proven method of success;
2. Rewarding constructive policies that are initiated and followed by the host government is a legitimate tool of United States policy;
3. Operating as true partners with eligible entities increases the chances of success by maximizing communication and identifying and pursuing whatever mid-course corrections might be needed in tailoring an eligible entity's development plan; and
4. Focusing on clearly-articulated criteria and concrete results by funneling Corporation attention and resources on those countries that have clear objectives, are willing and able to measure progress, and can therefore ensure accountability in their development plan.

### MECHANICS OF THE NATIVE CHALLENGE

The proposed Native American Challenge would require that eligible entities negotiate and enter agreements (Native American Challenge Compacts) with the United States that in general serve to allocate the roles, responsibilities, and resources to be dedicated by each of the parties, and set out clearly defined and measurable goals to be achieved.

Because the proposed initiative is a demonstration project, the universe of entities eligible to participate is limited to the following entities: (1) the Association of Village Council Presidents, the Bristol Bay Native Association, and the Alaska Federation of Natives applying jointly; (2) in the State of Hawaii, a consortia of local community organizations to be determined by the Secretary in consultation with the Secretary of Interior and the Office of Hawaiian Affairs; and (3) in the contiguous states, three organizations to be determined by the Secretary, which organizations may be Indian tribes, consortia of Indian tribes, or nongovernmental entities authorized by one or more Indian tribes.

For those communities without the financial wherewithal, the Secretary is authorized to enter into contracts or make grants to an eligible entity to facilitate the development and implementation of a Compact between the United States and the eligible entity. The Secretary is required to develop an application process and criteria for eligible entities that encompass the purposes of the Act, the economic development strategy of the eligible entity, the remoteness of the reservation or community to be served, its general economic status, poverty rates, and the capacity of the applicant.

Through the negotiated Compacts, the Native American Challenge's strategic goal is to support long-term legal, regulatory, and investment policy reforms and facilitate technical assistance to eligible entities. Eligible entities and the United States would conduct diagnostic studies of Native economic conditions, and provide recommendations for reforms in the policy, legal, regulatory, and investment areas and general economic environment of the community.

The Compacts will establish a multi-year plan for achieving those development objectives within the Native community involved and consistent with the purposes of the Act.

Initial Compacts may not exceed five years, but an eligible entity and the United States may re-negotiate and/or extend the Compact for as many periods as the parties agree, with each period not to exceed ten years.

The Compacts are to be drafted to achieve the broad purposes of the Act and must include the following five elements:

1. An articulation of the specific objectives for sustainable economic development and the reduction of poverty that the eligible entity and the United States expect to achieve during the term of the Compact;
2. A description of the respective roles and responsibilities of the eligible entity and the United States in the achievement of such objectives;
3. A list and description of regular benchmarks to measure progress toward achieving such objectives;
4. An identification of the intended beneficiaries, disaggregated by income level, gender, and age, to the maximum extent practical; and
5. A multi-year financial plan to guide the implementation of the Compact, including the estimated level of funding and other contributions by the United States and the eligible entity; proposed mechanisms to execute the plan; and periodic assessments to determine whether the requirements of subparagraphs (1) through (4) are being met.

Assistance provided pursuant to a Compact may be suspended or terminated --- in whole or in part --- if the Secretary determines that the entity has failed to adhere to its responsibilities under the Compact, or the entity has engaged in a pattern of actions inconsistent with the purposes of the Act.

Similarly, the Secretary may reinstate assistance for an entity but only if he determines that the entity has demonstrated a commitment to correcting each condition for which assistance was previously suspended or terminated.

#### FUNDING FOR THE NATIVE AMERICAN CHALLENGE

The Act authorizes \$20 million for Fiscal Year 2008 and for each subsequent fiscal year through 2012. To ensure that a total, cumulative appropriation of \$100,000,000 is made available, the Act authorizes that any funds authorized in any one fiscal year that fails to be appropriated shall be available for appropriation in subsequent years. Because it is also likely that not all of the authorized funding will be obligated and made available in year one, the Act provides that sums appropriated are available until expended. In addition, the Act requires that Federal funding dedicated to a Compact must be made available contemporaneously with the execution of the Compact.

## DEMANDING ACCOUNTABILITY AND ANALYZING SUCCESS

A critical component of the Native American Challenge is in its demand for accountability in the performance of the Compact terms and use of financial resources. Consequently, the Act requires that not later than March 15, 2008, and annually thereafter, the eligible entities shall prepare and submit to the Secretary written reports regarding the assistance provided under this Act during the previous fiscal year. These reports, with any additional information the Secretary deems relevant, will then be transmitted to Congress by May 15 of each year.

The reports must contain information related to the amount of obligations and expenditures for assistance provided to each eligible entity during the prior fiscal year, a description of the programs and activities conducted by the eligible entity, and an assessment of the effectiveness of the assistance provided to the eligible entity and of its progress toward achieving its economic development strategy and the purposes of this Act.