

111TH CONGRESS
2D SESSION

S. 3534

To establish a Native American entrepreneurial development program in the
Small Business Administration.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2010

Ms. LANDRIEU (for herself and Mr. DORGAN) introduced the following bill;
which was read twice and referred to the Committee on Small Business
and Entrepreneurship

A BILL

To establish a Native American entrepreneurial development
program in the Small Business Administration.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native American Small
5 Business Assistance and Entrepreneurial Growth Act of
6 2010”.

7 **SEC. 2. NATIVE AMERICAN SMALL BUSINESS DEVELOP-**
8 **MENT PROGRAM.**

9 The Small Business Act (15 U.S.C. 631 et seq.) is
10 amended—

1 (1) in section 4(b)(1) (15 U.S.C. 633(b)(1))—

2 (A) in the fifth sentence, by striking “five
3 Associate Administrators” and inserting “6 As-
4 sociate Administrators”; and

5 (B) by inserting after the fifth sentence
6 the following: “1 Associate Administrator shall
7 be the Associate Administrator of the Office of
8 Native American Affairs established by section
9 44.”;

10 (2) by redesignating section 44 as section 45;

11 and

12 (3) by inserting after section 43 (15 U.S.C.
13 657o) the following:

14 **“SEC. 44. NATIVE AMERICAN SMALL BUSINESS DEVELOP-**
15 **MENT PROGRAM.**

16 “(a) DEFINITIONS.—In this section:

17 “(1) ASSOCIATE ADMINISTRATOR.—The term
18 ‘Associate Administrator’ means the Associate Ad-
19 ministrator of the Office of Native American Affairs
20 established under subsection (b).

21 “(2) CENTER; NATIVE AMERICAN BUSINESS
22 CENTER.—The terms ‘center’ and ‘Native American
23 business center’ mean a center established under
24 subsection (c).

1 “(3) ELIGIBLE APPLICANT.—The term ‘eligible
2 applicant’ means—

3 “(A) a tribal college;

4 “(B) a private, nonprofit organization—

5 “(i) that provides business and finan-
6 cial or procurement technical assistance to
7 1 or more Native American communities;
8 and

9 “(ii) that is dedicated to assisting one
10 or more Native American communities; or

11 “(C) a small business development center,
12 women’s business center, or other private orga-
13 nization participating in a joint project.

14 “(4) JOINT PROJECT.—The term ‘joint project’
15 means a project that—

16 “(A) combines the resources and expertise
17 of 2 or more distinct entities at a physical loca-
18 tion dedicated to assisting the Native American
19 community; and

20 “(B) submits to the Administration a joint
21 application that contains—

22 “(i) a certification that each partici-
23 pant of the project—

24 “(I) is an eligible applicant;

1 “(II) employs an executive direc-
2 tor or program manager to manage
3 the center; and

4 “(ii) information demonstrating a
5 record of commitment to providing assist-
6 ance to Native Americans and;

7 “(iii) information demonstrating that
8 the participants in the joint project have
9 the ability and resources to meet the
10 needs, including the cultural needs, of the
11 Native Americans to be served by the
12 project.

13 “(5) NATIVE AMERICAN SMALL BUSINESS CON-
14 CERN.—The term ‘Native American small business
15 concern’ means a small business concern that is at
16 least 51 percent owned and controlled by—

17 “(A) an Indian tribe or a Native Hawaiian
18 Organization, as the terms are described in
19 paragraphs (13) and (15) of section 8(a), re-
20 spectively; or

21 “(B) 1 or more individual members of an
22 Indian tribe or Native Hawaiian Organization.

23 “(6) NATIVE AMERICAN SMALL BUSINESS DE-
24 VELOPMENT PROGRAM.—The term ‘Native American

1 small business development program’ means the pro-
2 gram established under subsection (c).

3 “(7) SMALL BUSINESS CONCERN.—The term
4 ‘small business concern’ has the same meaning as in
5 section 3.

6 “(8) SMALL BUSINESS DEVELOPMENT CEN-
7 TER.—The term ‘small business development center’
8 means a small business development center described
9 in section 21.

10 “(9) TRIBAL COLLEGE.—The term ‘tribal col-
11 lege’ has the meaning given the term ‘tribally con-
12 trolled college or university’ in section 2(a) of the
13 Tribally Controlled Community College Assistance
14 Act of 1978 (25 U.S.C. 1801(a)).

15 “(10) TRIBAL LAND.—The term ‘tribal land’
16 has the meaning given the term ‘reservation’ in sec-
17 tion 3 of the Indian Financing Act (25 U.S.C.
18 1452).

19 “(b) OFFICE OF NATIVE AMERICAN AFFAIRS.—

20 “(1) ESTABLISHMENT.—There is established
21 within the Administration the Office of Native
22 American Affairs, which, under the direction of the
23 Associate Administrator, shall implement the pro-
24 grams of the Administration for the development of
25 business enterprises by Native Americans.

1 “(2) PURPOSE.—The purpose of the Office of
2 Native American Affairs is to help Native American
3 small business concerns—

4 “(A) to start, operate, and increase the
5 business of small business concerns;

6 “(B) to develop management and technical
7 skills;

8 “(C) to seek Federal procurement opportu-
9 nities;

10 “(D) to increase employment opportunities
11 for Native Americans through the establishment
12 and expansion of small business concerns; and

13 “(E) to increase the access of Native
14 Americans to capital markets.

15 “(3) ASSOCIATE ADMINISTRATOR.—

16 “(A) APPOINTMENT.—The Administrator
17 shall appoint a qualified individual to serve as
18 Associate Administrator of the Office of Native
19 American Affairs in accordance with this para-
20 graph.

21 “(B) QUALIFICATIONS.—The Associate
22 Administrator appointed under subparagraph
23 (A) shall have—

24 “(i) knowledge of Native American
25 culture; and

1 “(ii) experience providing culturally
2 tailored small business development assist-
3 ance to Native Americans.

4 “(C) EMPLOYMENT STATUS.—The Admin-
5 istrator shall establish the position of Associate
6 Administrator, who shall—

7 “(i) be an appointee in the Senior Ex-
8 ecutive Service (as defined in section
9 3132(a) of title 5, United States Code);
10 and

11 “(ii) shall report to and be responsible
12 directly to the Administrator.

13 “(D) RESPONSIBILITIES AND DUTIES.—
14 The Associate Administrator shall—

15 “(i) administer and manage the Na-
16 tive American small business development
17 program;

18 “(ii) formulate, execute, and promote
19 the policies and programs of the Adminis-
20 tration that provide assistance to small
21 business concerns owned and controlled by
22 Native Americans;

23 “(iii) act as an ombudsman for full
24 consideration of Native Americans in all
25 programs of the Administration;

1 “(iv) recommend the annual adminis-
2 trative and program budgets for the Office
3 of Native American Affairs;

4 “(v) consult with Native American
5 business centers in carrying out the Native
6 American small business development pro-
7 gram;

8 “(vi) recommend appropriate funding
9 levels;

10 “(vii) review the annual budgets sub-
11 mitted by each applicant for the Native
12 American small business development pro-
13 gram;

14 “(viii) select applicants to participate
15 in the Native American small business de-
16 velopment program;

17 “(ix) implement this section; and

18 “(x) maintain a clearinghouse for the
19 dissemination and exchange of information
20 between all Administration-sponsored busi-
21 ness centers.

22 “(E) CONSULTATION REQUIREMENTS.—In
23 carrying out the responsibilities and duties de-
24 scribed in this paragraph, the Associate Admin-

1 istrator shall confer with and seek the advice
2 of—

3 “(i) officials of the Administration
4 working in areas served by Native Amer-
5 ican business centers; and

6 “(ii) eligible applicants.

7 “(c) NATIVE AMERICAN SMALL BUSINESS DEVELOP-
8 MENT PROGRAM.—

9 “(1) FINANCIAL ASSISTANCE.—

10 “(A) IN GENERAL.—The Administration,
11 acting through the Associate Administrator,
12 shall provide financial assistance to eligible ap-
13 plicants to establish Native American business
14 centers in accordance with this section.

15 “(B) USE OF FUNDS.—The financial and
16 resource assistance provided under this sub-
17 section shall be used to establish a Native
18 American business center to overcome obstacles
19 impeding the establishment, development, and
20 expansion of small business concerns, in accord-
21 ance with this section.

22 “(2) 5-YEAR PROJECTS.—

23 “(A) IN GENERAL.—Each Native Amer-
24 ican business center that receives assistance
25 under paragraph (1)(A) shall conduct a 5-year

1 project that offers culturally tailored business
2 development assistance in the form of—

3 “(i) financial education, including
4 training and counseling in—

5 “(I) applying for and securing
6 business credit and investment cap-
7 ital;

8 “(II) preparing and presenting fi-
9 nancial statements; and

10 “(III) managing cash flow and
11 other financial operations of a busi-
12 ness concern;

13 “(ii) management education, including
14 training and counseling in planning, orga-
15 nizing, staffing, directing, and controlling
16 each major activity and function of a small
17 business concern; and

18 “(iii) marketing education, including
19 training and counseling in—

20 “(I) identifying and segmenting
21 domestic and international market op-
22 portunities;

23 “(II) preparing and executing
24 marketing plans;

1 “(III) developing pricing strate-
2 gies;

3 “(IV) locating contract opportu-
4 nities;

5 “(V) negotiating contracts; and

6 “(VI) using varying public rela-
7 tions and advertising techniques.

8 “(B) BUSINESS DEVELOPMENT ASSIST-
9 ANCE RECIPIENTS.—The business development
10 assistance under subparagraph (A) shall be of-
11 fered to prospective and current owners of Na-
12 tive American small business concerns.

13 “(3) FORM OF FEDERAL FINANCIAL ASSIST-
14 ANCE.—

15 “(A) DOCUMENTATION.—The financial as-
16 sistance to Native American business centers
17 authorized under this subsection may be made
18 by grant, contract, or cooperative agreement.

19 “(B) PAYMENTS.—

20 “(i) TIMING.—Payments made under
21 this subsection may be disbursed in peri-
22 odic installments, at the request of the re-
23 cipient.

24 “(ii) ADVANCE.—The Administrator
25 may disburse not more than 25 percent of

1 the annual amount of Federal financial as-
2 sistance awarded to a Native American
3 business center after notice of the award
4 has been issued.

5 “(C) NON-FEDERAL CONTRIBUTIONS.—

6 “(i) IN GENERAL.—

7 “(I) INITIAL FINANCIAL ASSIST-
8 ANCE.—Except as provided in sub-
9 clause (II), an eligible applicant that
10 receives financial assistance under this
11 subsection shall provide non-Federal
12 contributions for the operation of the
13 Native American business center es-
14 tablished by the eligible applicant in
15 an amount equal to—

16 “(aa) in each of the first
17 and second years of the project,
18 not less than 33 percent of the
19 amount of the financial assist-
20 ance received under this sub-
21 section; and

22 “(bb) in the third through
23 fifth years of the project, not less
24 than 50 percent of the amount of

1 the financial assistance received
2 under this subsection.

3 “(II) RENEWALS.—An eligible
4 applicant that receives a renewal of fi-
5 nancial assistance under this sub-
6 section shall provide non-Federal con-
7 tributions for the operation of a Na-
8 tive American business center estab-
9 lished by the eligible applicant in an
10 amount equal to not less than 50 per-
11 cent of the amount of the financial as-
12 sistance received under this sub-
13 section.

14 “(III) EXCEPTIONS.—The re-
15 quirements of this section may be
16 waived at the discretion of the Admin-
17 istrator, based on an evaluation of the
18 ability of the eligible applicant to pro-
19 vide non-Federal contributions.

20 “(4) CONTRACT AND COOPERATIVE AGREE-
21 MENT AUTHORITY.—A Native American business
22 center may enter into a contract or cooperative
23 agreement with a Federal department or agency to
24 provide specific assistance to Native American and
25 other underserved small business concerns located on

1 or near tribal land, to the extent that the contract
2 or cooperative agreement is consistent with and does
3 not duplicate the terms of any assistance received by
4 the Native American business center from the Ad-
5 ministration.

6 “(5) APPLICATION PROCESS.—

7 “(A) SUBMISSION OF A 5-YEAR PLAN.—

8 Each applicant for assistance under paragraph
9 (1) shall submit a 5-year plan to the Adminis-
10 tration on proposed assistance and training ac-
11 tivities.

12 “(B) CRITERIA.—

13 “(i) IN GENERAL.—The Administrator
14 shall evaluate applicants for financial as-
15 sistance under this subsection in accord-
16 ance with selection criteria that are—

17 “(I) established before the date
18 on which eligible applicants are re-
19 quired to submit the applications;

20 “(II) stated in terms of relative
21 importance; and

22 “(III) publicly available and stat-
23 ed in each solicitation for applications
24 for financial assistance under this
25 subsection made by the Administrator.

1 “(ii) CONSIDERATIONS.—The criteria
2 required by this subparagraph shall in-
3 clude—

4 “(I) the experience of the appli-
5 cant in conducting programs or ongo-
6 ing efforts designed to impart or up-
7 grade the business skills of current or
8 potential owners of Native American
9 small business concerns;

10 “(II) the ability of the applicant
11 to commence a project within a min-
12 imum amount of time;

13 “(III) the ability of the applicant
14 to provide quality training and serv-
15 ices to a significant number of Native
16 Americans;

17 “(IV) previous assistance from
18 the Administration to provide services
19 in Native American communities;

20 “(V) the proposed location for
21 the Native American business center,
22 with priority given based on the prox-
23 imity of the center to the population
24 being served and to achieve a broad

1 geographic dispersion of the centers;
2 and

3 “(VI) demonstrated experience in
4 providing technical assistance, includ-
5 ing financial, marketing, and manage-
6 ment assistance.

7 “(6) CONDITIONS FOR PARTICIPATION.—Each
8 eligible applicant desiring a grant under this sub-
9 section shall submit an application to the Adminis-
10 trator that contains—

11 “(A) a certification that the applicant—

12 “(i) is an eligible applicant;

13 “(ii) employs a full-time executive di-
14 rector, project director, or program man-
15 ager to manage the Native American busi-
16 ness center; and

17 “(iii) agrees—

18 “(I) to a site visit by the Admin-
19 istrator as part of the final selection
20 process;

21 “(II) to an annual programmatic
22 and financial examination; and

23 “(III) to the maximum extent
24 practicable, to remedy any problems

1 identified pursuant to that site visit or
2 examination;

3 “(B) information demonstrating that the
4 applicant has the ability and resources to meet
5 the needs, including cultural needs, of the Na-
6 tive Americans to be served by the grant;

7 “(C) information relating to proposed as-
8 sistance that the grant will provide, including—

9 “(i) the number of individuals to be
10 assisted; and

11 “(ii) the number of hours of coun-
12 seling, training, and workshops to be pro-
13 vided;

14 “(D) information demonstrating the effec-
15 tiveness and experience of the applicant in—

16 “(i) conducting financial, manage-
17 ment, and marketing assistance programs
18 designed to educate or improve the busi-
19 ness skills of current or prospective Native
20 American business owners;

21 “(ii) providing training and services to
22 a representative number of Native Ameri-
23 cans;

24 “(iii) using resource partners of the
25 Administration and other entities, includ-

ing institutions of higher education, Indian tribes, or tribal colleges; and

“(iv) the prudent management of finances and staffing;

“(E) the location at which the applicant will provide training and services to Native Americans;

“(F) a 5-year plan that describes—

“(i) the number of Native Americans and Native American small business concerns to be served by the grant;

“(ii) if the Native American business center is located in the continental United States, the number of Native Americans to be served by the grant; and

“(iii) the training and services to be provided to a representative number of Native Americans; and

“(G) if the applicant is a joint project—

“(i) a certification that each participant in the joint project is an eligible applicant;

“(ii) information demonstrating a record of commitment to providing assistance to Native Americans; and

1 “(iii) information demonstrating that
2 the participants in the joint project have
3 the ability and resources to meet the
4 needs, including the cultural needs, of the
5 Native Americans to be served by the
6 grant.

7 “(7) REVIEW OF APPLICATIONS.—The Adminis-
8 trator shall approve or disapprove each completed
9 application submitted under this subsection not later
10 than 90 days after the date on which the eligible ap-
11 plicant submits the application.

12 “(8) PROGRAM EXAMINATION.—

13 “(A) IN GENERAL.—Each Native Amer-
14 ican business center established under this sub-
15 section shall annually provide to the Adminis-
16 trator an itemized cost breakdown of actual ex-
17 penditures made during the preceding year.

18 “(B) ADMINISTRATION ACTION.—Based on
19 information received under subparagraph (A),
20 the Administration shall—

21 “(i) develop and implement an annual
22 programmatic and financial examination of
23 each Native American business center as-
24 sisted pursuant to this subsection; and

1 “(ii) analyze the results of each exam-
2 ination conducted under clause (i) to deter-
3 mine the programmatic and financial via-
4 bility of each Native American business
5 center.

6 “(C) CONDITIONS FOR CONTINUED FUND-
7 ING.—In determining whether to renew a grant,
8 contract, or cooperative agreement with a Na-
9 tive American business center, the Administra-
10 tion—

11 “(i) shall consider the results of the
12 most recent examination of the center
13 under subparagraph (B), and, to a lesser
14 extent, previous examinations; and

15 “(ii) may withhold the renewal, if the
16 Administrator determines that—

17 “(I) the center has failed to pro-
18 vide the information required to be
19 provided under subparagraph (A), or
20 the information provided by the center
21 is inadequate;

22 “(II) the center has failed to pro-
23 vide adequate information required to
24 be provided by the center for purposes

1 of the report of the Administrator
2 under subparagraph (E);

3 “(III) the center has failed to
4 comply with a requirement for partici-
5 pation in the Native American small
6 business development program, as de-
7 termined by the Administrator, in-
8 cluding—

9 “(aa) failure to acquire or
10 properly document a non-Federal
11 contribution;

12 “(bb) failure to establish an
13 appropriate partnership or pro-
14 gram for marketing and outreach
15 to reach new Native American
16 small business concerns;

17 “(cc) failure to achieve re-
18 sults described in a financial as-
19 sistance agreement; and

20 “(dd) failure to provide to
21 the Administrator a description
22 of the amount and sources of any
23 non-Federal funding received by
24 the center;

1 “(IV) the center has failed to
2 carry out the 5-year plan under in
3 paragraph (6)(F); or

4 “(V) the center cannot make the
5 certification described in paragraph
6 (6)(A).

7 “(D) CONTINUING CONTRACT AND COOP-
8 ERATIVE AGREEMENT AUTHORITY.—

9 “(i) IN GENERAL.—The authority of
10 the Administrator to enter into contracts
11 or cooperative agreements in accordance
12 with this subsection shall be in effect for
13 each fiscal year only to the extent and in
14 the amounts as are provided in advance in
15 appropriations Acts.

16 “(ii) RENEWAL.—After the Adminis-
17 trator has entered into a contract or coop-
18 erative agreement with any Native Amer-
19 ican business center under this subsection,
20 the Administrator may not suspend, termi-
21 nate, or fail to renew or extend any such
22 contract or cooperative agreement unless
23 the Administrator—

24 “(I) provides the center with
25 written notification that describes the

1 reasons for the action of the Adminis-
2 trator; and

3 “(II) affords the center an oppor-
4 tunity for a hearing, appeal, or other
5 administrative proceeding under chap-
6 ter 5 of title 5, United States Code.

7 “(E) ANNUAL MANAGEMENT REPORT.—

8 “(i) IN GENERAL.—The Administrator
9 shall prepare and submit to the Committee
10 on Small Business and Entrepreneurship
11 and the Committee on Indian Affairs of
12 the Senate and the Committee on Small
13 Business and the Committee on Natural
14 Resources of the House of Representatives
15 an annual report on the effectiveness of all
16 projects conducted by Native American
17 business centers under this subsection and
18 any pilot programs administered by the Of-
19 fice of Native American Affairs.

20 “(ii) CONTENTS.—Each report sub-
21 mitted under clause (i) shall include, with
22 respect to each Native American business
23 center receiving financial assistance under
24 this subsection—

1 “(I) the number of individuals re-
2 ceiving assistance from the Native
3 American business center;

4 “(II) the number of startup busi-
5 ness concerns established with the as-
6 sistance of the Native American busi-
7 ness center;

8 “(III) the number of existing
9 businesses in the area served by the
10 Native American business center seek-
11 ing to expand employment;

12 “(IV) the number of jobs estab-
13 lished or maintained, on an annual
14 basis, by Native American small busi-
15 ness concerns assisted by the center
16 since receiving funding under this sec-
17 tion;

18 “(V) to the maximum extent
19 practicable, the amount of the capital
20 investment and loan financing used by
21 emerging and expanding businesses
22 that were assisted by a Native Amer-
23 ican business center;

24 “(VI) any additional information
25 on the counseling and training pro-

1 gram that the Administrator deter-
2 mines to be necessary; and

3 “(VII) the most recent examina-
4 tion, as required under subparagraph
5 (B), and the determination made by
6 the Administration under that sub-
7 paragraph.

8 “(9) ANNUAL REPORTS.—Each Native Amer-
9 ican business center receiving financial assistance
10 under this subsection shall submit to the Adminis-
11 trator an annual report on the services provided with
12 the financial assistance, including—

13 “(A) the number of individuals assisted, by
14 tribal affiliation;

15 “(B) the number of hours spent providing
16 counseling and training for those individuals;

17 “(C) the number of startup small business
18 concerns established or maintained with the as-
19 sistance of the Native American business cen-
20 ter;

21 “(D) the gross receipts of small business
22 concerns assisted by the Native American busi-
23 ness center;

1 “(E) the number of jobs established or
2 maintained by small business concerns assisted
3 by the Native American business center; and

4 “(F) the number of jobs for Native Ameri-
5 cans established or maintained at small busi-
6 ness concerns assisted by the Native American
7 business center.

8 “(10) RECORD RETENTION.—

9 “(A) APPLICATIONS.—The Administrator
10 shall maintain a copy of each application sub-
11 mitted under this subsection for not less than
12 7 years.

13 “(B) ANNUAL REPORTS.—The Adminis-
14 trator shall maintain copies of the certification
15 submitted under paragraph (6)(A) indefinitely.

16 “(d) AUTHORIZATION OF APPROPRIATIONS.—

17 “(1) IN GENERAL.—There is authorized to be
18 appropriated to carry out the Native American small
19 business development program \$10,000,000 for each
20 of fiscal years 2011 through 2013.

21 “(2) ADMINISTRATION.—Not more than 10 per-
22 cent of funds appropriated for a fiscal year may be
23 used for the costs of administering the programs
24 under this section.”.

○