

Public Law 116–174
116th Congress

An Act

To establish a business incubators program within the Department of the Interior to promote economic development in Indian reservation communities.

Oct. 20, 2020

[S. 294]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Native American
Business
Incubators
Program Act.
25 USC 5801
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Native American Business Incubators Program Act”.

25 USC 5801.

SEC. 2. FINDINGS.

Congress finds that—

(1) entrepreneurs face specific challenges when transforming ideas into profitable business enterprises;

(2) entrepreneurs that want to provide products and services in reservation communities face an additional set of challenges that requires special knowledge;

(3) a business incubator is an organization that assists entrepreneurs in navigating obstacles that prevent innovative ideas from becoming viable businesses by providing services that include—

(A) workspace and facilities resources;

(B) access to capital, business education, and counseling;

(C) networking opportunities;

(D) mentorship opportunities; and

(E) an environment intended to help establish and expand business operations;

(4) the business incubator model is suited to accelerating entrepreneurship in reservation communities because the business incubator model promotes collaboration to address shared challenges and provides individually tailored services for the purpose of overcoming obstacles unique to each participating business; and

(5) business incubators will stimulate economic development by providing Native entrepreneurs with the tools necessary to grow businesses that offer products and services to reservation communities.

SEC. 3. DEFINITIONS.

25 USC 5802.

In this Act:

(1) BUSINESS INCUBATOR.—The term “business incubator” means an organization that—

(A) provides physical workspace and facilities resources to startups and established businesses; and

(B) is designed to accelerate the growth and success of businesses through a variety of business support resources and services, including—

- (i) access to capital, business education, and counseling;
- (ii) networking opportunities;
- (iii) mentorship opportunities; and
- (iv) other services intended to aid in developing a business.

(2) **ELIGIBLE APPLICANT.**—The term “eligible applicant” means an applicant eligible to apply for a grant under section 4(b).

(3) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(4) **INSTITUTION OF HIGHER EDUCATION.**—The term “institution of higher education” has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(5) **NATIVE AMERICAN; NATIVE.**—The terms “Native American” and “Native” have the meaning given the term “Indian” in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(6) **NATIVE BUSINESS.**—The term “Native business” means a business concern that is at least 51-percent owned and controlled by 1 or more Native Americans.

(7) **NATIVE ENTREPRENEUR.**—The term “Native entrepreneur” means an entrepreneur who is a Native American.

(8) **PROGRAM.**—The term “program” means the program established under section 4(a).

(9) **RESERVATION.**—The term “reservation” has the meaning given the term in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(10) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(11) **TRIBAL COLLEGE OR UNIVERSITY.**—The term “tribal college or university” has the meaning given the term “Tribal College or University” in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

Grants.
25 USC 5803.

SEC. 4. ESTABLISHMENT OF PROGRAM.

(a) **IN GENERAL.**—The Secretary shall establish a program in the Office of Indian Energy and Economic Development under which the Secretary shall provide financial assistance in the form of competitive grants to eligible applicants for the establishment and operation of business incubators that serve reservation communities by providing business incubation and other business services to Native businesses and Native entrepreneurs.

(b) **ELIGIBLE APPLICANTS.**—

(1) **IN GENERAL.**—To be eligible to receive a grant under the program, an applicant shall—

- (A) be—
 - (i) an Indian tribe;
 - (ii) a tribal college or university;
 - (iii) an institution of higher education; or
 - (iv) a private nonprofit organization or tribal nonprofit organization that—

(I) provides business and financial technical assistance; and

(II) will commit to serving 1 or more reservation communities;

(B) be able to provide the physical workspace, equipment, and connectivity necessary for Native businesses and Native entrepreneurs to collaborate and conduct business on a local, regional, national, and international level; and

(C) in the case of an entity described in clauses (i) through (iv) of subparagraph (A), have been operational for not less than 1 year before receiving a grant under the program.

Time period.

(2) JOINT PROJECT.—

(A) IN GENERAL.—Two or more entities may submit a joint application for a project that combines the resources and expertise of those entities at a physical location dedicated to assisting Native businesses and Native entrepreneurs under the program.

(B) CONTENTS.—A joint application submitted under subparagraph (A) shall—

(i) contain a certification that each participant of the joint project is one of the eligible entities described in paragraph (1)(A); and

Certification.

(ii) demonstrate that together the participants meet the requirements of subparagraphs (B) and (C) of paragraph (1).

(c) APPLICATION AND SELECTION PROCESS.—

(1) APPLICATION REQUIREMENTS.—Each eligible applicant desiring a grant under the program shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(A) a certification that the applicant—

Certification.

(i) is an eligible applicant;

(ii) will designate an executive director or program manager, if such director or manager has not been designated, to manage the business incubator; and

(iii) agrees—

(I) to a site evaluation by the Secretary as part of the final selection process;

Evaluation.

(II) to an annual programmatic and financial examination for the duration of the grant; and

(III) to the maximum extent practicable, to remedy any problems identified pursuant to the site evaluation under subclause (I) or an examination under subclause (II);

(B) a description of the 1 or more reservation communities to be served by the business incubator;

(C) a 3-year plan that describes—

Time period.
Plan.

(i) the number of Native businesses and Native entrepreneurs to be participating in the business incubator;

(ii) whether the business incubator will focus on a particular type of business or industry;

- (iii) a detailed breakdown of the services to be offered to Native businesses and Native entrepreneurs participating in the business incubator; and
- (iv) a detailed breakdown of the services, if any, to be offered to Native businesses and Native entrepreneurs not participating in the business incubator;
- (D) information demonstrating the effectiveness and experience of the eligible applicant in—
 - (i) conducting financial, management, and marketing assistance programs designed to educate or improve the business skills of current or prospective businesses;
 - (ii) working in and providing services to Native American communities;
 - (iii) providing assistance to entities conducting business in reservation communities;
 - (iv) providing technical assistance under Federal business and entrepreneurial development programs for which Native businesses and Native entrepreneurs are eligible; and
 - (v) managing finances and staff effectively; and
- (E) a site description of the location at which the eligible applicant will provide physical workspace, including a description of the technologies, equipment, and other resources that will be available to Native businesses and Native entrepreneurs participating in the business incubator.

(2) EVALUATION CONSIDERATIONS.—

(A) IN GENERAL.—In evaluating each application, the Secretary shall consider—

- (i) the ability of the eligible applicant—
 - (I) to operate a business incubator that effectively imparts entrepreneurship and business skills to Native businesses and Native entrepreneurs, as demonstrated by the experience and qualifications of the eligible applicant;
 - (II) to commence providing services within a minimum period of time, to be determined by the Secretary; and
 - (III) to provide quality incubation services to a significant number of Native businesses and Native entrepreneurs;
- (ii) the experience of the eligible applicant in providing services in Native American communities, including in the 1 or more reservation communities described in the application; and
- (iii) the proposed location of the business incubator.

(B) PRIORITY.—

(i) IN GENERAL.—In evaluating the proposed location of the business incubator under subparagraph (A)(iii), the Secretary shall—

- (I) consider the program goal of achieving broad geographic distribution of business incubators; and

(II) except as provided in clause (ii), give priority to eligible applicants that will provide business incubation services on or near the reservation of the 1 or more communities that were described in the application.

(ii) EXCEPTION.—The Secretary may give priority to an eligible applicant that is not located on or near the reservation of the 1 or more communities that were described in the application if the Secretary determines that—

(I) the location of the business incubator will not prevent the eligible applicant from providing quality business incubation services to Native businesses and Native entrepreneurs from the 1 or more reservation communities to be served; and

(II) siting the business incubator in the identified location will serve the interests of the 1 or more reservation communities to be served.

(3) SITE EVALUATION.—

(A) IN GENERAL.—Before making a grant to an eligible applicant, the Secretary shall conduct a site visit, evaluate a video submission, or evaluate a written site proposal (if the applicant is not yet in possession of the site) of the proposed site to ensure the proposed site will permit the eligible applicant to meet the requirements of the program.

(B) WRITTEN SITE PROPOSAL.—A written site proposal shall meet the requirements described in paragraph (1)(E) and contain—

(i) sufficient detail for the Secretary to ensure in the absence of a site visit or video submission that the proposed site will permit the eligible applicant to meet the requirements of the program; and

(ii) a timeline describing when the eligible applicant will be—

(I) in possession of the proposed site; and

(II) operating the business incubator at the proposed site.

(C) FOLLOWUP.—Not later than 1 year after awarding a grant to an eligible applicant that submits an application with a written site proposal, the Secretary shall conduct a site visit or evaluate a video submission of the site to ensure the site is consistent with the written site proposal.

(d) ADMINISTRATION.—

(1) DURATION.—Each grant awarded under the program shall be for a term of 3 years.

(2) PAYMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall disburse grant funds awarded to an eligible applicant in annual installments.

(B) MORE FREQUENT DISBURSEMENTS.—On request by the applicant, the Secretary may make disbursements of grant funds more frequently than annually, on the condition that disbursements shall be made not more frequently than quarterly.

(3) NON-FEDERAL CONTRIBUTIONS FOR INITIAL ASSISTANCE.—

- (A) **IN GENERAL.**—Except as provided in subparagraph (B), an eligible applicant that receives a grant under the program shall provide non-Federal contributions in an amount equal to not less than 25 percent of the grant amount disbursed each year.
- Determination. (B) **WAIVER.**—The Secretary may waive, in whole or in part, the requirements of subparagraph (A) with respect to an eligible applicant if, after considering the ability of the eligible applicant to provide non-Federal contributions, the Secretary determines that—
- (i) the proposed business incubator will provide quality business incubation services; and
 - (ii) the 1 or more reservation communities to be served are unlikely to receive similar services because of remoteness or other reasons that inhibit the provision of business and entrepreneurial development services.
- (4) **RENEWALS.**—
- Time period. (A) **IN GENERAL.**—The Secretary may renew a grant award under the program for a term not to exceed 3 years.
- Determination. (B) **CONSIDERATIONS.**—In determining whether to renew a grant award, the Secretary shall consider with respect to the eligible applicant—
- (i) the results of the annual evaluations of the eligible applicant under subsection (f)(1);
 - (ii) the performance of the business incubator of the eligible applicant, as compared to the performance of other business incubators receiving assistance under the program;
 - (iii) whether the eligible applicant continues to be eligible for the program; and
 - (iv) the evaluation considerations for initial awards under subsection (c)(2).
- (C) **NON-FEDERAL CONTRIBUTIONS FOR RENEWALS.**—An eligible applicant that receives a grant renewal under subparagraph (A) shall provide non-Federal contributions in an amount equal to not less than 33 percent of the total amount of the grant.
- (5) **NO DUPLICATIVE GRANTS.**—An eligible applicant shall not be awarded a grant under the program that is duplicative of existing Federal funding from another source.
- (e) **PROGRAM REQUIREMENTS.**—
- (1) **USE OF FUNDS.**—An eligible applicant receiving a grant under the program may use grant amounts—
 - (A) to provide physical workspace and facilities for Native businesses and Native entrepreneurs participating in the business incubator;
 - (B) to establish partnerships with other institutions and entities to provide comprehensive business incubation services to Native businesses and Native entrepreneurs participating in the business incubator; and
 - (C) for any other uses typically associated with business incubators that the Secretary determines to be appropriate and consistent with the purposes of the program.
 - (2) **MINIMUM REQUIREMENTS.**—Each eligible applicant receiving a grant under the program shall—

(A) offer culturally tailored incubation services to Native businesses and Native entrepreneurs;

(B) use a competitive process for selecting Native businesses and Native entrepreneurs to participate in the business incubator;

(C) provide physical workspace that permits Native businesses and Native entrepreneurs to conduct business and collaborate with other Native businesses and Native entrepreneurs;

(D) provide entrepreneurship and business skills training and education to Native businesses and Native entrepreneurs including—

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

(I) applying for and securing business credit and investment capital;

(II) preparing and presenting financial statements; and

(III) managing cash flow and other financial operations of a business;

(ii) management education, including training and counseling in planning, organization, staffing, directing, and controlling each major activity or function of a business or startup; and

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

(I) identifying and segmenting domestic and international market opportunities;

(II) preparing and executing marketing plans;

(III) locating contract opportunities;

(IV) negotiating contracts; and

(V) using varying public relations and advertising techniques;

(E) provide direct mentorship or assistance finding mentors in the industry in which the Native business or Native entrepreneur operates or intends to operate; and

(F) provide access to networks of potential investors, professionals in the same or similar fields, and other business owners with similar businesses.

(3) TECHNOLOGY.—Each eligible applicant shall leverage technology to the maximum extent practicable to provide Native businesses and Native entrepreneurs with access to the connectivity tools needed to compete and thrive in 21st-century markets.

(f) OVERSIGHT.—

(1) ANNUAL EVALUATIONS.—Not later than 1 year after the date on which the Secretary awards a grant to an eligible applicant under the program, and annually thereafter for the duration of the grant, the Secretary shall conduct an evaluation of, and prepare a report on, the eligible applicant, which shall—

(A) describe the performance of the eligible applicant; and

(B) be used in determining the ongoing eligibility of the eligible applicant.

(2) ANNUAL REPORT.—

(A) IN GENERAL.—Not later than 1 year after the date on which the Secretary awards a grant to an eligible

Deadline.
Reports.

applicant under the program, and annually thereafter for the duration of the grant, each eligible applicant receiving an award under the program shall submit to the Secretary a report describing the services the eligible applicant provided under the program during the preceding year.

(B) REPORT CONTENT.—The report described in subparagraph (A) shall include—

(i) a detailed breakdown of the Native businesses and Native entrepreneurs receiving services from the business incubator, including, for the year covered by the report—

(I) the number of Native businesses and Native entrepreneurs participating in or receiving services from the business incubator and the types of services provided to those Native businesses and Native entrepreneurs;

(II) the number of Native businesses and Native entrepreneurs established and jobs created or maintained; and

(III) the performance of Native businesses and Native entrepreneurs while participating in the business incubator and after graduation or departure from the business incubator; and

(ii) any other information the Secretary may require to evaluate the performance of a business incubator to ensure appropriate implementation of the program.

(C) LIMITATIONS.—To the maximum extent practicable, the Secretary shall not require an eligible applicant to report under subparagraph (A) information provided to the Secretary by the eligible applicant under other programs.

(D) COORDINATION.—The Secretary shall coordinate with the heads of other Federal agencies to ensure that, to the maximum extent practicable, the report content and form under subparagraphs (A) and (B) are consistent with other reporting requirements for Federal programs that provide business and entrepreneurial assistance.

(3) REPORT TO CONGRESS.—

(A) IN GENERAL.—Not later than 2 years after the date on which the Secretary first awards funding under the program, and biennially thereafter, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives a report on the performance and effectiveness of the program.

(B) CONTENTS.—Each report submitted under subparagraph (A) shall—

(i) account for each program year; and

(ii) include with respect to each business incubator receiving grant funds under the program—

(I) the number of Native businesses and Native entrepreneurs that received business incubation or other services;

(II) the number of businesses established with the assistance of the business incubator;

(III) the number of jobs established or maintained by Native businesses and Native entrepreneurs receiving business incubation services, including a description of where the jobs are located with respect to reservation communities;

(IV) to the maximum extent practicable, the amount of capital investment and loan financing accessed by Native businesses and Native entrepreneurs receiving business incubation services; and

(V) an evaluation of the overall performance of the business incubator.

SEC. 5. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate regulations to implement the program.

Deadline.
25 USC 5804.

SEC. 6. SCHOOLS TO BUSINESS INCUBATOR PIPELINE.

The Secretary shall facilitate the establishment of relationships between eligible applicants receiving funds through the program and educational institutions serving Native American communities, including tribal colleges and universities.

25 USC 5805.

SEC. 7. AGENCY PARTNERSHIPS.

The Secretary shall coordinate with the Secretary of Agriculture, the Secretary of Commerce, the Secretary of the Treasury, and the Administrator of the Small Business Administration to ensure, to the maximum extent practicable, that business incubators receiving grant funds under the program have the information and materials needed to provide Native businesses and Native entrepreneurs with the information and assistance necessary to apply for business and entrepreneurial development programs administered by the Department of Agriculture, the Department of Commerce, the Department of the Treasury, and the Small Business Administration.

Coordination.
25 USC 5806.

SEC. 8. AUTHORIZATIONS OF APPROPRIATIONS.

There are authorized to be appropriated to carry out the program \$5,000,000 for each of fiscal years 2020 through 2024.

25 USC 5807.

Approved October 20, 2020.

LEGISLATIVE HISTORY—S. 294:

SENATE REPORTS: No. 116–29 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD:

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