



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

Final Report:

***Evaluation of the
Implementation of the First
Nations Fiscal and Statistical
Management Act
(Project Number: 10014)***

April 2011

Evaluation, Performance Measurement
and Review Branch
Audit and Evaluation Sector



Canada 

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List of Acronyms

CEO	Chief Executive Officer
DWV	District of West Vancouver
EPMRB	Evaluation, Performance Measurement and Review Branch
EPMRC	Evaluation, Performance Measurement and Review Committee
FMB	First Nations Financial Management Board
FNCIDA	<i>First Nations Commercial and Industrial Management Act</i>
FNFA	First Nations Finance Authority
FNLMA	<i>First Nations Land Management Act</i>
FNOGMMMA	<i>First Nations Oil and Gas and Money Management Act</i>
FNSI	First Nations Statistical Institute
FNTC	First Nations Tax Commission
FSMA	<i>First Nations Fiscal and Statistical Management Act</i>
GIC	Governor in Council
INAC	Indian and Northern Affairs Canada
MoU	Memorandum of Understanding
PIDD	Professional and Institutional Development Directorate
RMAF	Results-based Management and Accountability Framework

Executive Summary

This is the final report of the evaluation of the implementation of the *First Nations Fiscal and Statistical Management Act* (FSMA or the Act). In line with Treasury Board requirements, this evaluation assesses the relevance and performance of the implementation of FSMA and provides a review of the provisions and operations of FSMA. It was conducted to inform the renewal of authorities and to support a legislative review of the Act, which is scheduled to be conducted by Indian and Northern Affairs Canada's (INAC) Governance Branch in fiscal year 2011-12. This evaluation includes the following authorities:

- *Grant to the First Nations Finance Authority pursuant to the FSMA;*
- *Contributions to First Nations Institutions for the Purpose of Enhancing Good Governance;*
- *Grant to support the establishment of a \$10M credit enhancement fund for the enhancement of the First Nations Finance Authority's credit rating; and*
- *Payment to the First Nations Statistical Institution for operating expenditures.*

FSMA affirms First Nations powers to raise local revenues through property taxation and to access more favourable interest rates through pooled investment and borrowing. To access these powers, a First Nation must request, through Order in Council, to be scheduled under the Act and develop the required laws and management systems. The Act creates four institutions to oversee the regime and to support First Nations who are exercising powers under the Act: the First Nations Tax Commission (FNTC), the First Nations Financial Management Board (FMB), the First Nations Finance Authority (FNFA), and the First Nations Statistical Institute (FNSI).

The Institutions Unit of the Professional and Institutional Development Directorate, Governance Branch, Regional Operations, is responsible for managing INAC's support of the implementation of FSMA, which includes:

- Managing grants and contributions in support of the implementation of the Act;
- Managing Governor in Council processes for the purpose of appointing FNSI, FMB and FNTC Commission/Board members and adding First Nations to the schedule;
- Managing regulatory processes;
- Conducting the legislative review and facilitating amendments to the Act; and
- Facilitating interaction between the institutions for matters such as regulation development.

The evaluation focuses on the period from the date the Act came into force (April 2006) to March 2011, and includes a case study on each of the four institutions, key informant interviews with departmental officials, a review of program files and documents, and a review of published literature. Two notable limitations of the methodology were that INAC's expectations in terms of operationalization and achievement of outcomes were not well defined and limited participation by First Nation communities in the evaluation. To address the first issue, the evaluation team adopted a working definition of operational that included: the establishment of required governance structures, the use of financial resources, and the extent to which each institution is delivering services in its mandated areas.

The evidence supports the conclusion that the FSMA addresses a continued need by providing a choice to First Nations wishing to improve capacity and to have access to financing tools used by local governments to advance economic development. It also addresses longstanding issues related to the timeliness and completeness of Aboriginal statistics. This is relevant and aligns with federal government priorities, particularly those related to Aboriginal governance capacity and economic development in Aboriginal communities. Moreover, the provisions and operations of the FSMA, including the mandates of its four institutions, continue to be relevant to INAC's strategic outcomes for the Government.

The design of the FSMA is appropriate and is largely being delivered as intended. However, each institution has shown varying degrees of implementation:

- FNTC's mandate under the FSMA is relevant to facilitating third-party investment in reserve property by increasing the transparency and fairness of the tax regime. FNTC is essential to property tax regimes on reserve as it is responsible for administering Section 83 of the *Indian Act* as well as FSMA part 2. The evaluation found that the FNTC is fully operational and is implementing its responsibilities under FSMA as intended. First Nations have generated, through FNTC, over \$170M in local revenue (\$70M of which is under FSMA and \$100M under s.83).
- FMB's mandate under the FSMA is essential for the issuance of a bond by the FNFA as the FMB is responsible for certifying the financial health of First Nation. FMB also addresses the need for intervention to remedy situations where a First Nation is improperly or unfairly applying local revenue laws (upon request by FNTC) or has not met payment obligations to FNFA (upon request by FNFA). FMB has experienced some delays in implementation, but is now implementing its responsibilities under the FSMA as intended. Twenty-six First Nations are developing the required financial administration law and management systems to become FMB certified.
- FNFA's mandate under the FSMA is relevant in that it provides First Nations with access to affordable financing for infrastructure and economic development. Demand for the FNFA's services is expected to increase once the first bond has been issued. FNFA is implementing its responsibilities under the FSMA as intended, however, the establishment of the governance structure required under the Act and the achievements of intended outcomes related to financing depend on the issuance of the first bond. FNFA is currently offering investment advice and services, which have resulted in roughly \$1.5M earnings for the 38 First Nations investment members.
- There continues to be a need for reliable and current financial statistics to support the FSMA pooled financing model and First Nations' policy and planning needs. However, delays in implementation may have impacted the relevancy of the FNSI mandate under the FSMA as other organizations are beginning to address these needs. FNSI is now becoming operational and is currently undertaking an environmental scan to identify specific areas where FNSI can provide statistical services and has developed an 'Ethical Policy on the Protection of Data and Information', an essential industry best practice for collecting First Nations statistics. The evaluation also found evidence that FNSI recently began delivering products to clients by updating a data inventory and nine community profiles.

The evidence also concludes that the institutions have formalized their relationships and are working together to support First Nations who choose to access the Act.

As identified at the onset of the evaluation, it was difficult to assess the overall impacts of FSMA due to the status of implementation of each institution as well as the lack of performance measurement in place for FSMA. However, as discussed above, there are signs of progress for all four institutions and evidence of community level impacts for FNTC, FMB and FNFA. Areas for improvements in efficiency were identified and include: the development of a performance measurement strategy; a review of the structure of the authorities supporting the implementation of the Act; the coordination of institutions; and the alignment with other INAC initiatives such as economic development and infrastructure programming, self-government activities, as well as other optional legislation.

Based on the findings of the evaluation, it is recommended that:

1. INAC's Chief Financial Officer reviews and recommends any potential changes necessary to rationalize the dedicated FSMA spending authorities (and other related authorities) and to reinforce linkages with other relevant initiatives, including, for example, economic development.
2. Given the current operational status of the FSMA institutions, INAC re-examines the expected results of INAC's support and the funding required to achieve those expected results. Also, INAC works with First Nations institutions to develop performance measurement strategies and reporting regimes in line with Treasury Board and INAC standards, particularly with respect to roles and responsibilities, risks, targets, time lines, reporting burden and a strategy for measuring impacts on First Nation communities.
3. As part of the legislative review, INAC ensures that an assessment of the mandate of the FNSI is undertaken that considers the results of the environmental scan and the corporate plan vis-à-vis respecting its activities. The review should also include an assessment of progress being made towards the issuance of a bond.
4. INAC strengthens coordination with other related INAC initiatives, including other "opt-in" initiatives, self-government (including the British Columbia Treaty process), economic development and infrastructure programming, to ensure that the FSMA regime is being utilized to its maximum potential.

Management Response and Action Plan

Project Title: Evaluation of the Implementation of the First Nations Fiscal and Statistical Management Act (FSMA)

Project #: 10014

1. Management Response

The Evaluation of the Implementation of the *First Nations Fiscal and Statistical Management Act* (the Evaluation) is the first of a series of projects aimed at the review and/or evaluation of the FSMA and the four Institutions created by it. The work completed in this Evaluation will feed into the seven-year legislative review of the *First Nations Fiscal and Statistical Management Act* (FSMA) and Institutions, which will be tabled in both Houses of Parliament before March 23, 2012.

The Regional Operations Sector has had the opportunity to review the findings of the Evaluation in consultation with the partner FSMA Institutions. Because each Institution has shown varying degrees of implementation since the coming into force of the Act, assessing the overall impacts of the initiative proved to be difficult. Nevertheless, several areas shone through in the Evaluation and recommendations which will shape the Regional Operations Sector and Institutions' way forward, including the finalization of Performance Measurement and Risk Management strategies. Action items listed in the attached chart are the result of discussions both internally and with the FSMA Institutions, and are seen as appropriate measures to take in light of the four specific recommendations resulting from the Evaluation.

2. Action Plan

Recommendations	Actions	Responsible Manager (Title / Sector)	Planned Start and Completion Dates
<p>1. That the Chief Financial Officer review the potential, and recommend any changes necessary, to rationalize the dedicated FSMA spending authorities (and other related authorities) and to reinforce linkages with other relevant initiatives including, for example, economic development.</p>	We concur.	Chief Financial Officer / Chief Financial Officer Sector	Start Date:
	<p>The potential for rationalizing the spending authorities that support the implementation of the <i>First Nations Fiscal and Statistical Management Act</i> will be undertaken in the larger context of INAC authority rationalization. This review will also examine the potential to reinforce linkages with other initiatives and include collaboration with other sectors.</p>		Completion:
<p>2. Given the current operational status of the FSMA institutions that INAC re-examine the expected results of INAC's support and the funding required to achieve those expected results. Also work with First Nations Institutions to develop performance measurement strategies and reporting regimes in line with Treasury Board and INAC standards, particularly with respect to roles and responsibilities, risks, targets, time lines, reporting burden and a strategy for measuring impacts on First Nation communities.</p>	We concur	Director General /Regional Operations Sector	Start Date: 2006 and ongoing
	<p>Work has begun on a mandated legislative review and the re-examination of expectations for INAC support and funding requirements will be included in this review before being tabled to each house of Parliament.</p>		Completion: March 23, 2012
	<p>A Performance Measurement Strategy is being developed for the FSMA with its' institutions. The Strategy will consider reporting burden on recipients and include measuring impacts of the FSMA on First Nations communities. Although it was initially scheduled to be complete in 2011-12, Regional Operations Sector will postpone its completion until 2012-2013 to ensure the inclusion of any regulatory and/or legislative changes resulting from the Legislative Review.</p>		March 31, 2013
	<p>A Risk Assessment was initiated in 2011-2012 and is currently being conducted with the Institutions, with the support and advice of Audit and Evaluation Sector, to assess the risks associated with the FSMA and its Institutions.</p>		September 30, 2012
	<p>The FSMA Institutions currently report against the requirements of the legislation, Treasury Board authorities and respective funding agreements.</p> <p>Reporting Burdens will be assessed according to the Reducing Reporting Burden exercise being led by the Deputy Minister's Special Representative on Reduced Reporting.</p>		Ongoing March 31, 2012
<p>3. As part of the legislative review, that INAC ensure that</p>	We concur.	Director General /Regional	Start Date: In progress

Recommendations	Actions	Responsible Manager (Title / Sector)	Planned Start and Completion Dates
<p>an assessment of the mandate of the FNSI is undertaken that considers the results of the environmental scan and the corporate plan vis-à-vis respecting its activities. The review should also include an assessment of progress being made towards the issuance of a bond.</p>	<p>As part of the Legislative Review, the Regional Operations Sector and the First Nations Statistical Institute (FNSI) will ensure that an assessment of its mandate is undertaken that takes into account the plans and priorities identified as a result of the 2010 Environmental Scan and its Corporate Plan for the period 2011-2014.</p> <p>The Terms of Reference for the Legislative Review will include a process for the assessment of progress being made towards the issuance of a bond under the FSMA.</p>	<p>Operations Sector</p>	<p>Completion: March 23, 2012</p>
<p>4. That INAC strengthen coordination with other related INAC initiatives, including other "opt-in" initiatives, self-government, economic development and infrastructure programming, to ensure the FSMA regime is being utilized to its maximum potential.</p>	<p>We concur</p> <p>The Regional Operations Sector will use existing government structures such as Director General Implementation and Operations Committee and Director General Policy Committee to promote synergies between departmental stakeholders.</p> <p>The Regional Operations Sector is exploring the possibility of drafting a Framework for the inclusion of self-governing First Nations in the FSMA with the FSMA Institutions.</p> <p>The Lands and Economic Development Sector regularly participates in FSMA meetings and information sharing with the Community Infrastructure Branch will further enhance coordination of infrastructure programming.</p> <p>The Regional Operations Sector is currently conducting an analysis of overlapping requirements in opt-in legislation within INAC.</p>	<p>Director General/Regional Operations Sector</p>	<p>Start Date: September 2011</p> <p>Completion: Ongoing</p> <p>December 31, 2011</p> <p>Ongoing</p> <p>September 30, 2011</p>

I recommend this Management Response and Action Plan for approval by the Evaluation, Performance Measurement and Review Committee

Original signed on April 18, 2011 by:

Name: Judith Moe

Position: A/ Director, Evaluation, Performance Measurement and Review Branch

I approve the above Management Response and Action Plan

Original signed on April 18, 2011 by:

Name: Gina Wilson

Position: Sr. Assistant Deputy Minister, Regional Operations Sector

I approve the above Management Response and Action Plan

Original signed on April 18, 2011 by:

Name: Susan MacGowan

Position: Chief Financial Officer

The Management Response / Action Plan for the Evaluation of the Implementation of the First Nations Fiscal and Statistical Management Act were approved by the Evaluation, Performance Measurement and Review Committee on April 19, 2011.



FIRST NATIONS STATISTICAL INSTITUTE INSTITUT DE LA STATISTIQUE DES PREMIÈRES NATIONS

November 9, 2011

Head Office:

289 Ted Commanda Dr.
Garden Village, ON
P2B 3K2
Tel: (705) 493-8311
Fax: (705) 243-0122

Satellite Office:

75 Albert Street,
Suite 603
Ottawa, ON
K1P 5E7
Tel: (613) 562-9994
Fax: (613) 562-9995

Adresse postale:

289, rue Ted Commanda
Garden Village, ON
P2B 3K2
Tél : (705) 493-8311
Télé : (705) 243-0122

Bureau satellite:

75, rue Albert,
bureau 603
Ottawa, ON
K1P 5E7
Tél : (613) 562-9994
Télé : (613) 562-9995

info@fnsi-ispn.com

www.fnsi-ispn.com

Anne Scotton
Chief Audit and Evaluation Executive
Aboriginal Affairs and Northern Development Canada
AUDIT AND EVALUATION SECTOR
10 Wellington St
Gatineau, QC
K1A 0H4

Dear Ms. Scotton,

On behalf of my colleagues at the First Nations Statistical Institute (FNSI) I am writing to present our views on the Draft Final Report titled *Evaluation of the Implementation of the First Nations Fiscal and Statistical Management Act (FSMA)*. While more detailed comments were made on earlier drafts of the report, we felt it important to provide an overall response to the evaluation's main findings and conclusions.

As the report states, the evaluation was conducted to support the legislative review of the *Act*. It must, therefore, provide a fair and accurate picture of the *Act's* implementation.

Let me start by saying that we agree with the evaluation's main conclusions.

- The FSMA addresses a continued need by providing a choice to First Nations wishing to improve capacity and access to financing tools to advance economic development, and responds to longstanding issues related to the timeliness and completeness of Aboriginal statistics.
- The provisions and operations of the FSMA, including the mandates of its four institutions, continue to be relevant to Indian and Northern Affairs Canada's (INAC, now Aboriginal Affairs and Northern Development Canada) strategic outcomes for the Government.
- The design of FSMA is appropriate and is largely being delivered as intended.
- The four institutions have formalized their relationships and are working together to support First Nations who choose to access the *Act*.

We also accept the evaluation's finding that FNSI has experienced a protracted start-up phase. As the evaluation notes:

- It was created without the benefit of an existing organization on which to build.
- Delays in the Governor in Council appointment process – while common in Crown corporations – were particularly significant for FNSI. It took 32 months to establish the FNSI Board. Without a Board, key operational decisions and directions could not be made.
- While some interim funding was provided by INAC, Ministerial and Treasury Board approval of the Corporate Plan was required before FNSI could access its full appropriation.

However, we believe that the evaluation understates the progress that has been made in making FNSI operational.

- During 2010-11, FNSI consolidated its organizational capacity by developing and implementing a wide range of, financial and informational management, technology and human resources policies and procedures. Office space was secured and recruitment began for key staff. A performance measurement strategy and associated evaluation plan were developed.
- FNSI established a data stewardship policy that forms the basis for future partnerships with First Nations on data collection, use and reporting.
- FNSI completed a comprehensive assessment of client needs that included federal departments and agencies, provincial and territorial bureaus of statistics, First Nations and Aboriginal communities, governments and organizations, to understand the role that statistics play in their work, data needs and gaps, and expectations regarding how FNSI can assist. This Environmental Scan was a key input to the development of FNSI's program agenda.
- FNSI delivered statistical products in the form of an updated data inventory and nine community assessments of the impacts of resource development. A Memorandum of Understanding with Statistics Canada was in the final stages of approval to formalize working relationships and areas of collaboration. Discussions were also underway with INAC and the Assembly of First Nations on the development of similar MOUs.
- The 2011-12 to 2015-16 Corporate Plan was approved by the FNSI Board and was being finalized in consultation with INAC, Treasury Board Secretariat and the Office of the Auditor General.



We disagree with the assertion that delays in implementation may have impacted the relevancy of the FNSI mandate under the FSMA as other organizations are beginning to address these needs.

- There is little direct evidence presented in the evaluation to support this assertion.
- To date, discussions that the First Nations Financial Management Board and the First Nations Finance Authority have had with credit agencies have not required data or analysis from FNSI. FNSI is prepared to support its sister organizations as and when required.
- While FNSI has a broad mandate, it is not intended to be the sole provider of statistical information on First Nations. Other organizations have their own resources, priorities and work plans. FNSI works with them to identify gaps and areas of collaboration and to avoid duplication. For example, FNSI has an agreement in place with INAC to launch, host and maintain the Community Well-Being Index on the FNSI website.

We appreciate the difficulty of evaluating what might best be described as a moving target. The evaluation was undertaken over January to March 2011 at a time when FNSI was making the transition to becoming fully operational. And as the report recognizes, the evaluators were limited by the lack of a clear definition of what was required for an institution to be considered operational, and by the small number of documents and interviews that served as the basis for the FNSI case study.

We believe that FNSI is now well-positioned to work with its partners to deliver the statistical products and services to support its clients and stakeholders.

I would be pleased to discuss these comments with you should you wish. I am also taking the liberty of forwarding a copy of this document to Brenda Kustra, Director General, Governance Branch, Aboriginal Affairs and Northern Development Canada as input to the report on the legislative review.

Sincerely,



Keith Conn
Chief Operating Officer



Cc:

**Brenda Kustra, Director General, Governance Branch, Aboriginal Affairs and Northern
Development Canada**

Deanna Hamilton, President, First Nations Finance Authority

Harold Calla, Chair, First Nations Financial Management Board

Ken Scopick, Chief Operating Officer, First Nations Tax Commission



1. Introduction

1.1 Overview

This is the final report of the Evaluation of the Implementation of the *First Nations Fiscal and Statistical Management Act* (FSMA or the Act). The evaluation was conducted to meet Treasury Board requirements, to inform the renewal of authorities, and to support a legislative review of the Act, which is scheduled to be conducted by Indian and Northern Affairs Canada's (INAC) Governance Branch in fiscal year 2011-12. This legislative review, including the findings of this evaluation, is to be submitted by the Minister, via INAC Regional Operations, to both Houses of Parliament by March 23, 2012, along with any proposed changes recommended by the Minister.

The evaluation includes a review of the provisions and operations of the Act and covers the time period from when the Act came into force on April 1, 2006, to March 2011. In line with Treasury Board's Policy on Evaluation, the study focuses on relevance and performance (effectiveness, efficiency and economy), and it also examines questions related to design and delivery.

The evaluation was undertaken by the Evaluation, Performance Measurement and Review Branch (EPMRB) of INAC with the assistance of three consulting firms. T.K. Gussman Associates Inc., along with EPMRB officials, conducted the majority of research, analysis and report preparation. BBMD Consulting Inc. provided additional support for a comparative analysis of First Nation communities, and Delsys Research Inc. provided an external peer review and advice on creating linkages between the evaluation and the upcoming legislative review. The evaluation was also supported by an Advisory Committee comprised of INAC officials and representatives of the four FSMA institutions.

The remainder of this introductory section provides an overview of FSMA and its four institutions, as well as an overview of INAC's support for the implementation of the Act. Section 2 of this report presents the evaluation methodology, including an overview of roles and responsibilities for the study. Findings on the relevance and performance of the Act as a whole can be found in Section 3. Sections 4 to 7 present findings for each institution. In Section 8, the report returns to the overall implementation of the Act by presenting the findings on issues related to efficiency and economy. Conclusions and recommendations can be found in Section 9.

Appendices to this report include a crosswalk between the evaluation's questions and conclusions (Appendix A), profiles of the four FSMA institutions (Appendix B), and the overarching logic model for FSMA (Appendix C).

1.2 Profile of the FSMA

1.2.1 *The First Nations Fiscal and Statistical Management Act*

Governments use their infrastructure and services to stimulate their economy through industrial, commercial, and residential development in their jurisdictions. First Nation communities have faced sizeable challenges in meeting similar local community needs in large part because there is no formal framework under the *Indian Act* to support the functions of comptrollership, compliance, taxation, standard setting, and access to reliable and relevant information and data that would facilitate First Nation governments in gaining affordable access to capital markets.

Beginning in the late 1980s, First Nations have led a number of initiatives to address these challenges, including:

- In 1988, Bill C-115 amended the *Indian Act* to provide First Nations with the ability to exercise their jurisdiction over real property taxation on reserve.¹ The Indian Taxation Advisory Board was created to assist in the exercise of that jurisdiction. The amendment to the *Indian Act* envisaged a statute-based successor to this Board.
- In 1995, the First Nations Finance Authority (FNFA) was incorporated as a limited company for the purposes of issuing debentures using real property tax revenues and providing investment opportunities.
- In 1999, First Nations and the Government of Canada agreed to jointly pursue the benefits of establishing statutory institutions as part of a comprehensive fiscal and statistical management system.² At this point, a Memorandum of Understanding (MoU) was signed between INAC and the Assembly of First Nations to work on this legislative project through a National Table on Fiscal Relations. However, according to evaluation participants, by 2001, the Assembly of First Nations' began to distance itself from the legislation and did not support it when it was introduced in the House of Commons.
- In January 2002, two First Nation advisory panels were established to provide expert advice, along with the existing Indian Taxation Advisory Board and FNFA, on the development of fiscal legislation.
- In December 2002, the FSMA was introduced in the House of Commons.
- On March 23, 2005, the legislation received Royal Assent following restatements or reintroductions with amendments over two successive parliaments
- On April 1, 2006, FSMA came into force.

FSMA affirms First Nations fiscal powers to raise local revenues through property taxation and to access more favourable interest rates through pooled investment and borrowing. To access these powers, a First Nation must request, through Order in Council, to be scheduled under the Act and develop the required laws and management systems. The Act creates four institutions to oversee the regime and to support First Nations who are exercising powers under the Act: the

¹ The s.83 amendment, also known as the Kamloops Amendment, allows First Nations, with Ministerial approval, to tax for local purposes lands on reserve, licence businesses operating on reserve and charge interest for arrears. Local property tax revenues may be used for local purposes. The FSMA's regulatory framework for First Nation real property taxation differs from s.83 taxation in six fundamental ways: clarity of laws; institutional support and protection of local revenues; enforcement provisions; approval authority; improved taxpayer relations provisions; and, access to debenture financing system.

² Canada. *First Nations Fiscal and Statistical Management Act*, Current to December 31, 2010, *Preamble*.

First Nations Tax Commission (FNTC), the First Nations Financial Management Board (FMB), the FNFA and the First Nations Statistical Institute (FNSI).

1.2.2 The FSMA Institutions

First Nations Tax Commission: FNTC's purpose is to assist First Nations in building and maintaining efficient property tax regimes and to ensure communities and taxpayers receive the maximum benefit from those systems. FNTC regulates the property tax system by reviewing and approving a First Nation's local revenue laws. It also acts as an administrative tribunal that can review First Nations compliance with the Act and Regulations and interpret the application of those laws and order a remedy if they have been improperly or unfairly applied.

First Nations Financial Management Board: The purpose of FMB is to provide tools and services to support First Nations' fiscal stewardship and accountability and develop capacity to meet their expanding fiscal and financial management requirements. Such capacity is needed to support First Nation economic and community development. FMB provides four key functions in the FSMA borrowing process: Financial Administration Law Standards and approval, Financial Management System Standards and Certification, Financial Performance Standards and Certification, and oversight and intervention services. It also provides intervention services to support the FSMA property tax regime.

First Nations Finance Authority: FNFA's purpose is to help Aboriginal communities build their own infrastructure and economies on their own terms through access to financing and investment services. FNFA assists First Nations in accessing capital markets by creating and managing a pooled investment fund and issuing securities to capital markets to raise revenue for the purpose of lending to borrowing members. To become a borrowing member, a First Nation must have a FMB certificate and unutilized borrowing room.

First Nations Statistical Institute: FNSI's purpose is to provide relevant and reliable statistics, support the promotion of First Nations' economic development and strengthen their statistical capacity. FNSI assists First Nations and the other FSMA institutions by providing statistical information on, and analysis of, the fiscal, economic and social conditions of Aboriginal people and non-Aboriginal people who reside on reserve lands. It is worth noting that FNSI's mandate is broader than supporting FSMA and, therefore, a First Nation does not need to be scheduled under the Act to access its services.

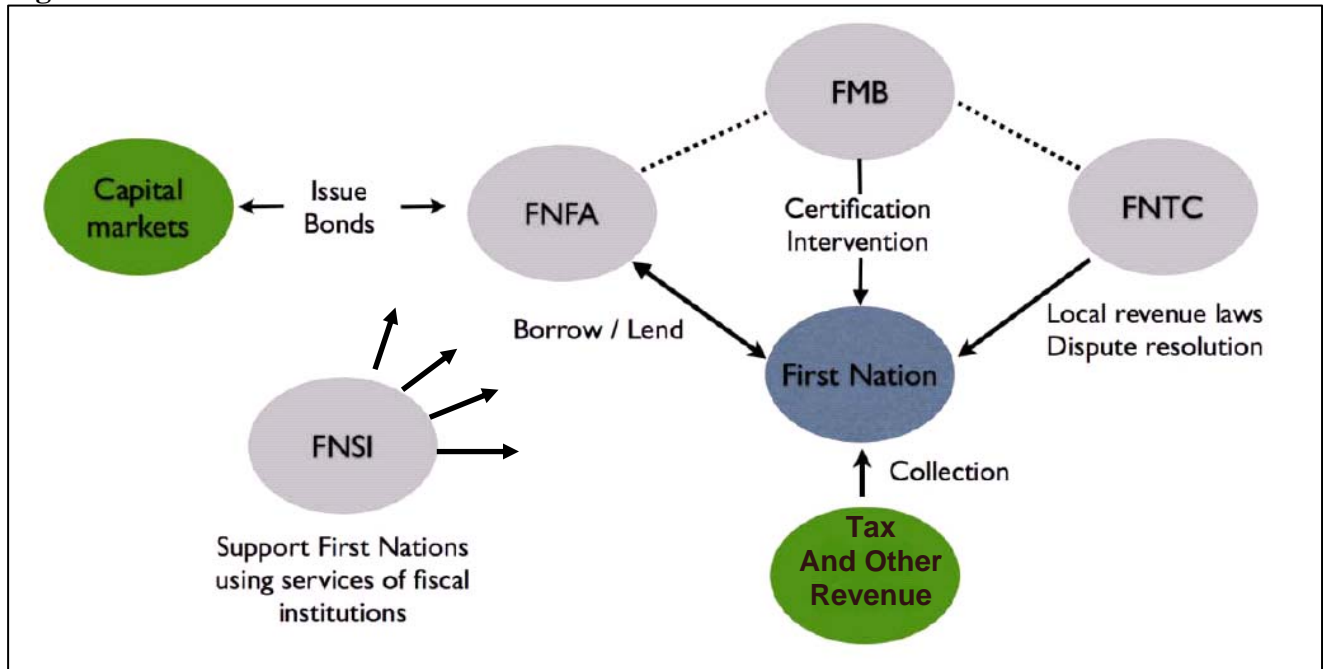
1.2.3 Relations between the Institutions and with First Nations

The Act not only affirms First Nations fiscal powers to collect property tax and access pooled borrowing, but it also creates an integrated system of oversight whereby, the institutions mutually re-enforce each others mandates to ensure the integrity of the system. For example, Section 76 (2) requires a First Nation to possess a FMB certificate to become a borrowing member. Similarly, for the FNFA to issue a long-term loan, a First Nation must have a FNTC approved borrowing law and the loan is to be paid out of property tax revenues (Section 79 (a)(b)). In the event that a First Nation does not meet its payment obligations or improperly/unfairly applies its property tax laws, FMB may require the First Nation to enter into a co-management arrangement (under Section 52 (1)) or a third-party management arrangement (under Section 53 (1)). While collecting First Nation data on a one-time basis satisfies the FMB's

criteria to certify a community for lending, credit agencies require regular updates of community-specific information on an ongoing basis, a role which FNSI assumes.

The relationship among participating First Nations, taxpayers on reserve lands, other revenue sources, the fiscal institutions established by the FSMA and capital markets is depicted below:

Figure 1: Relations between the FSMA Institutions and Stakeholders



Source: Adapted from the 2010/11 FMB Corporate Plan.

1.3 INAC's Support for Implementation

1.3.1 Objectives and Expected Outcomes

The FSMA is one of a number of recent optional initiatives supported by INAC, which transfer control of various portions of the *Indian Act* to First Nations through legislative means.³ The goal of INAC's support for the implementation of FSMA is to enhance First Nation governance capacity in support of improved economic development and well-being in First Nation communities. As such, INAC recognizes the FSMA institutions as components of a comprehensive and coordinated strategy to strengthen economic development and First Nation accountability to their members and others.

The intermediate outcomes of FSMA are identified in funding documents as:

- greater confidence by First Nation members, taxpayers, investors and other interested parties in First Nation financial management systems;
- increased transparency in property taxation processes;
- increased First Nation capacity in fiscal practices;
- improved data and information sources; and

³ These include the: *First Nations Land Management Act*; *First Nations Oil and Gas and Moneys Management Act*; *First Nations Jurisdiction over Education in British Columbia Act*; *First Nations Goods and Services Tax*; and *First Nations Commercial and Industrial Development Act*.

- increased economic activity on reserve.

1.3.2 Key INAC Actors: Minister, Governance Branch and Legal Services

The relationship between Canada and the governing boards of the FMB, FNTC and FNSI is at the ministerial level and is prescribed in the Act. The relationship between Canada and these three institutions is apparent by virtue of two considerations: their governance structures are appointed through his Excellency the Governor in Council and their corporate plans must be approved by the Minister. As such, the protocols for dealing with the institutions are through the Minister or the Minister's office, with the Department having more direct interaction with the institutions' administrations. FNFA's governing board is elected by its borrowing members; however, much like FMB and FNTC, it receives funding support from INAC and as such, it also has a working relationship between the Department and its administration.

The Institutions Unit of the Professional and Institutional Development Directorate (PIDD), Governance Branch, Regional Operations, is responsible for managing the Department's support of the implementation of the FSMA, as follows:

- Managing grants and contributions in support of implementing the Act.
 - Execution of due diligence on work plans and funding agreements
 - Negotiation of funding levels for contributions to project-based activities
 - Developing a Performance Measurement Strategy to monitor the achievement of the intended outcomes (To date, this includes a draft Results-based Management and Accountability Framework (RMAF) (2006) and a component Performance Measurement Strategy for the Credit Enhancement Fund (2011))
 - Reporting on progress through INAC's Quarterly Reports and the Departmental Performance Report
- Managing Governor in Council (GIC) processes for the purpose of appointing FNSI, FMB and FNTC Commission/Board members and adding First Nations to the schedule.
- Managing regulatory processes, which to date has involved:
 - *Financing Secured by Other Revenues Regulations* (anticipated to be in force by summer 2011); and
 - Adaptation regulations for self-governing First Nations.
- Conducting the legislative review and facilitating amendments to the Act.
- Facilitating interaction between the institutions for matters such as regulation development.

1.3.3 Financial Resources and Authorities

Planned expenditures for the period 2006/07 to 2010/11 were estimated by INAC to be at \$74.7M (see Table 1), not including INAC salaries, operation and maintenance. Supporting authorities⁴ included:

- *Grant to the First Nations Finance Authority pursuant to the First Nations Fiscal and Statistical Management Act;*
- *Grant to the First Nation Finance Authority for the purpose of enhancing the Authority's credit rating;*
- *Contribution to First Nations Institutions for the purpose of enhancing good governance; and*

⁴ In addition to these authorities, the *Contribution to support building of strong governance, administration and accountability systems* was used to support FNFA. Further details on expenditures under this authority can be found in section 4.1.

- *Payment to the First Nations Statistical Institution for operating expenditures.*

Table 1: Planned Expenditures, 2006/07 - 2010/11 (\$000)

Expenditures	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Five Year Total
INAC O&M/salary	unknown	unknown	unknown	unknown	unknown	unknown
FNTC	\$2,975	\$5,343	\$5,343	\$4,500	\$4,510	\$21,818
FMB	\$2,147	\$4,238	\$3,660	\$3,760	\$3,890	\$17,695
FNFA	\$1,150	\$850	\$500	\$500	\$500	\$3,500
Credit Enhancement Fund - FNFA*	-	-	-	-	\$10,000	\$10,000
FNSI	\$2,841	\$4,888	\$4,300	\$4,700	\$5,000	\$21,729
Total	\$9,113	\$15,319	\$12,950	\$13,460	\$13,900	\$74,742*

Source: Abridged detailed costing from funding documents, including the Credit Enhancement Fund.

*note: the Credit Enhancement Fund is a one-time transfer of \$10M to enhance FNFA's credit rating. The capital of the Credit Enhancement Fund may be used to temporally offset any shortfalls in the debt reserve fund (i.e., it will not be spent on FNFA operations).

1.3.4 Performance Measurement and Reporting

A draft RMAF was developed to support INAC's support for the FSMA's implementation in 2006.

FMB and FNTC are required to submit annual corporate plans and annual reports (including performance data) to the Minister for approval (s.118 and s.130, respectively). FNFA is required under s.88 to submit an annual report on operations and a financial statement to the Minister each year. INAC's funding agreements with FNTC, FMB and FNFA also require each institution to implement their corporate plan and submit the required annual report.

Under Section 134 of the *Financial Administration Act*, the Auditor General of Canada is responsible for auditing FNSI's financial statements. FNSI must publish its audited financial statements 90 days after fiscal year end and present these statements as part of an Annual Report tabled at the organization's Annual General Meeting.

2. The Evaluation

2.1 Purpose and Scope

In line with Treasury Board requirements, this evaluation assesses the relevance and performance of the implementation of FSMA and provides a review of the provisions and operations of FSMA.

This evaluation includes the following authorities:

- *Grant to the First Nations Finance Authority pursuant to the FSMA.*
- *Contributions to First Nations Institutions for the Purpose of Enhancing Good Governance.*
- *Grant to support the establishment of a \$10M credit enhancement fund for the enhancement of the First Nations Finance Authority's credit rating (hereafter 'Credit Enhancement Grant').*
- *Payment to the First Nations Statistical Institution for operating expenditures.*

The evaluation focuses on the period from the date the Act came into force (April 2006) to March 2011. Evaluation field work was conducted between November 2010 and January 2011.

2.2 Issues and Questions

Relevance

1. Do the provisions and operations of the FSMA, including its four institutions and supporting authorities, continue to be relevant to federal government priorities and to INAC's strategic outcomes?
2. Is there an ongoing need / anticipated future demand for the FSMA, including its institutions, as currently designed and delivered?
3. Are the legislated mandates and functions of the institutions involved in administering the FSMA still relevant?

Design and Delivery

4. To what extent has the FSMA been implemented within the expected time frame?
5. Has the FSMA established a successful governance framework, overall, and with respect to each institution?
6. Are the institutions' business plans consistent with expected results and how effectively are results/outcomes measured (see Question 9)? Are the plans being implemented as intended?
7. To what extent are First Nations engaged and participating as expected in the implementation of the FSMA and its institutions?
8. Overall, are the activities of the FSMA institutions consistent with the Act's provisions⁵ such as the functions and powers for each institution?

⁵ Note that this question has been slightly modified from the evaluation's Terms of Reference for precision and clarity. The original question was: Overall, are the activities of the FSMA institutions consistent with the Act's expected outcomes?

Performance/Success

9. To what extent are the institutions progressing towards the achievement of expected outcomes?
10. To what extent are the overall outcomes of the FSMA being achieved?
11. What factors are facilitating or challenging the achievement of results?
12. Has the FSMA had any unexpected impacts, positive or negative?

Performance / Demonstration of Economy and Efficiency

13. Are the institutions, their operations/mandates and expected outcomes in line with industry standards and best practices?
14. Does the FSMA unnecessarily⁶ duplicate or overlap with other programs, policies or initiatives?
15. What modifications or alternatives, if any, might improve the efficiency and effectiveness in the implementation of the FSMA?
16. What best practices and lessons learned have emerged from the FSMA, within INAC and elsewhere that could contribute to improved delivery, performance measurement, and outcomes?

2.3 Methodology

The evaluation design took into account the need to inform the legislative review as well as recognized delays in implementation⁷. Specifically:

- A greater focus was placed on identifying progress towards the achievement of results than on impacts.
- In addition to addressing Treasury Board's core evaluation issues (relevance and effectiveness), the study included questions related to design and delivery.
- Wherever possible, findings identified as affecting the implementation of the Act and its results were analyzed to determine whether they stem from factors internal or external to the Act.
- An external peer reviewer was engaged to enhance the evaluation's support for the upcoming legislative review.

2.3.1 Data Collection Strategy

The findings, conclusions and recommendations for this evaluation are based on the collection, analysis and triangulation of information derived from the following multiple lines of evidence:

Literature Review: The literature review was conducted through October and December 2010 and focussed on academic literature and other initiatives of a similar nature to address relevance, best or promising practices and lessons learned. The literature selected included peer-reviewed published literature on bond financing mechanisms, such as banks / pooled municipal bonds, the impact of economic development and improvements to quality of life, principles of good governance, change management literature and industry standards and/or principles of commercial lending. It included publications, documents published on the internet, legislation,

⁶ This question was modified from the evaluation's Terms of Reference by adding 'unnecessarily' for precision and clarity. The original question was: Does the FSMA duplicate or overlap with other programs, policies or initiatives?

⁷ INAC. Rationale for the extension of the authority "Contribution to First Nations Institutions for the Purpose of Enhancing Good Governance." Prepared by Governance Branch, January 2009.

evaluation reports of INAC programs related to economic development and other relevant program literature published by the Government of Canada. As well, the evaluation considered peer-reviewed and grey literature from the United States, Australia, New Zealand, South Africa, Peru, China, Central and Eastern European transitional economies on the topics noted above. A total of 44 documents were reviewed.

Document and File Review: This line of evidence drew on documents and files related to the overall Act, its provisions and implementation, with a specific focus on the relations between the four institutions and with INAC. A total of 42 departmental documents were reviewed between October and December 2010. These documents covered issues related to government priorities, program design, administrative data and performance. INAC's expected and actual expenditure data related to its support for the overall implementation of the Act were also included in this review. Documents and files related to the individual institutions were examined in the evaluation's case studies.

Key Informant Interviews: Interviews were conducted with 15 INAC officials between December 2010 and January 2011. These interviews focussed on the FSMA, its provisions and implementation, as well as the relations between the institutions and with INAC. Interviews were held with representatives from regional operations (7), including senior management and program officials, and other department areas (8), including Lands and Economic Development, Policy Coordination, Infrastructure, Treaties and Aboriginal Government and Strategic Policy Research.

The evaluation team employed the following scale in its analysis of this line of evidence:

- very high degree of consensus – all but one or two key informants agreed on a point;
- high degree of consensus – all but three or four of the respondents were in agreement;
- most – more than half of the respondents;
- half or roughly half – about half the respondents held a common view on an issue; and
- non-consensus comments were identified as such.

Institutional Case Studies: Four case studies were conducted to provide an in-depth review of implementation and results within each institution created under the FSMA. Site visits were made to the FNTC, FMB and FNFA offices during the first week of November 2010. Follow-up telephone interviews took place with officials during November and December. Officials from FNSI participated in telephone interviews in January 2011.

Institutional documentation was reviewed and 44 interviews were conducted with representatives from the four First Nations institutions and stakeholders associated with the FNTC (15), FMB (16), FNFA (10), and FNSI (3). Officials participating in the case studies included: Board/Commission members; institutional staff; representatives of affiliated institutions (Native Law Centre of Canada, Tulo Centre of Indigenous Economics, First Nations Tax Administrators Association, and the Aboriginal Financial Officers Association); institutional legal counsel and management consultants; representatives of the Canadian Property Tax Association, British Columbia municipal agencies, regional development corporations; and the Banking syndicate, and other subject matter experts.

2.4 Roles, Responsibilities and Quality Assurance

The analysis in this report is based largely on the work carried out by T.K. Gussman Associates Inc. and EPMRB officials. This work included document and literature reviews, key informant interviews and institutional case studies.

An Evaluation Advisory Committee was established in line with EPMRB's Engagement Policy. Committee members include representatives of INAC's Governance Branch and the four FSMA institutions. The Advisory Committee was tasked with reviewing the evaluation's draft detailed methodology report, preliminary findings and draft final report. The evaluation was able to draw upon an existing working group of INAC (PIDD) officials and FSMA institutions to form its Advisory Committee. For the most part, this allowed the evaluation to use regularly scheduled meetings of the Working Group to meet with the Committee.

In line with INAC's Quality Assurance Strategy, key deliverables were subjected to internal and external peer reviews. To enhance the evaluation's support for the upcoming legislative review, the consulting firm, Delsys Research Inc., was engaged for the external reviews.

2.5 Limitations

Limitations identified during the evaluation's design

- Performance measures, as captured by the existing RMAF, provide only limited guidance and support to the evaluation.
- A clear definition of what was required for the institutions to be considered operational as well as the expected costs and time frames for becoming operational were not well defined. Funding documents specifically identified two years of start up costs but did not clarify what activities constituted 'start-up activities'.

As such, the evaluation has adopted a working definition of 'operational' that includes whether each institution has a board of directors or commission in place, a comparison of the actual expenditures versus the planned expenditures and the extent to which each institution is delivering services in its mandated areas.

Changes to the original evaluation design and rationale

- The evaluation questions were revised slightly during the development of the study's detailed methodology report, but are consistent with the preliminary set of questions identified in the evaluation's Terms of Reference, approved by INAC's Evaluation, Performance Measurement and Review Committee (EPMRC) on June 29, 2010 (see Section 2.2, above, and Appendix A for further information).
- The evaluation's preliminary findings were reviewed by EPMRC on February 22, 2011. In response to the Committee's comments, additional research and analysis were undertaken to examine the authorities supporting implementation as well as issues related to institutional

capacity building. The Committee also requested that the final report clearly present findings specific to each institution.

Challenges encountered during the implementation of the evaluation

The following limitations are noted with respect to the individual lines of evidence:

- Major limitations were encountered with the study's comparative analysis and as a result, this line of evidence was not incorporated into the final report. Research was led by BBMD Consulting and included an analysis of an INAC community level dataset for differences between FSMA scheduled communities and First Nation communities in general and interviews with two First Nation communities. Due to issues raised around the reliability and completeness of INAC's dataset and the limited number of interviewees, the evaluation team determined that the information generated by the research was not reliable / representative.

It is worth noting that the evaluation team contacted representatives from 35 communities, 33 of which either declined or chose not to respond. Similarly, First Nations declined in the past to participate in an evaluation of the implementation of the *First Nations Oil and Gas and Moneys Management Act*, which is also optional legislation.

- The FNSI case study was limited by the relatively small number of available written documents and the small number of key informant interviewees (i.e., three) available to participate. Written documents provided by FNSI officials were supplemented with information published by FNSI on its website and other sources.
- Findings are limited with respect to the Credit Enhancement Fund Grant, which Treasury Board Secretariat required to be considered in this evaluation. This is largely the result of the evaluation's timing and the status of the Grant (The Grant was approved under the condition that it was distributed within a one year period beginning March 28, 2010; as of February 22, 2011, a component performance measurement strategy had been approved but the funds had not yet been disbursed).

3. Findings – Relevance and Performance

3.1 Relevance

3.1.1 Addressing a Continuing Need and Role of the Federal Government

Summary of Key Findings: FSMA addresses barriers to economic development on reserve by affirming First Nations fiscal powers that are similar to local governments in areas related to the collecting of property tax revenues and accessing favourable interest rates through pooled investments and pooled borrowing regimes. FSMA also addresses longstanding issues related to the timeliness and completeness of Aboriginal statistics.

The literature and document reviews found evidence of a need for improvements in the quality of life in most First Nations and a need to reduce barriers to economic development to allow First Nations to achieve a level of well-being on a par with that of the general Canadian population. The literature showed that the lack of adequate infrastructure is one of many factors influencing the pace and success of economic development ventures.⁸

A 2007 Special Study by the Standing Senate Committee on Aboriginal Peoples⁹ identified key barriers to Aboriginal community economic and business development as: access to capital; legislative and regulatory barriers, particularly those posed by the *Indian Act* making it difficult to secure loans using land and other assets as collateral; lack of governance capacity; infrastructure deficits, limited access to lands and resources; building human capital; and a fragmented federal approach to and limited funding for economic development.¹⁰

With respect to governance capacity, the Committee commented that the ability to make good decisions requires capable governance and governing institutions. As Aboriginal people acquire increased decision-making authority over their lands and resources, there is a need to invest in governance (or institution) building.¹¹ The report cites the FSMA along with the *First Nations Land Management Act* (FNLMA), the *First Nations Oil and Gas and Money Management Act* (FNOGMA) and the *First Nations Commercial and Industrial Development Act* (FNCIDA) as recent developments in institution building in this area.¹²

This evidence of relevance is further echoed in research conducted by the Institute on Governance, which has identified key elements of the First Nation governance system that, when combined, produce a degree of dysfunction in governance that is unmatched in any other jurisdiction in Canada. These elements include a lack of checks and balances, a startling number

⁸ Gordon Shanks, “Economic Development in First Nations: An Overview of Current Issues,” *Public Policy Forum*, January, 2005, p. 4.

⁹ Standing Senate Committee on Aboriginal Peoples, *Sharing Canada’s Prosperity – A Hand Up, Not a Handout*, Final Report, Ottawa, March 2007, pp. 7-8.

¹⁰ The report notes that approximately 11 federal departments and agencies deliver 27 different economic development programs targeted to Aboriginal people resulting “in a lack of coordination and duplication among federal programs, lost economic opportunities due to bureaucratic delays and fragmentation of program delivery.”

¹¹ Standing Senate Committee on Aboriginal Peoples, p.8.

¹² *Ibid.*, p.49.

of regulatory gaps and dependence on federal government transfers (due to a lack of locally generated revenue through user fees and taxation).¹³ Moreover, in a roundtable discussion on how First Nations can manage their wide ranging complex government functions, John Graham argues that aggregation is a compelling option because it can increase a community's economy of scale, help separate regulator functions from service delivery and increase the pool from which core competencies and skills can be drawn.¹⁴

FSMA can be seen as an informed response to the above needs by creating four institutions (FNFC, FMB, FNFA and FNFI) to help develop financial management capacity, and to provide regulatory oversight over First Nations that are exercising jurisdiction over the collection of property tax and accessing loans through a pooled borrowing regime. As indicated by key informants, FSMA set in motion powers (the capacity to collect taxes and ensure accountability to taxpayers), which are consistent with the kind of powers utilized by other governments, including local governments and provinces.

FSMA is also designed to address data gaps related to Aboriginal statistics in general. According to Statistics Canada, access to trusted information is fundamental in an open, democratic society to support decision making by citizens and their elected representatives. Despite the importance of statistical information to governance, Statistics Canada acknowledges that the data available for Aboriginal peoples are not timely and are incomplete compared with the data available for the general population. While the Census of Population paints a broad picture, more in-depth data from on-reserve Aboriginal surveys are needed to understand determinants and consequences of changes in areas such as early childhood development, work, education, health and housing.¹⁵ For example, the population from 22 First Nation reserves was not included in the 2006 Census due to lack of participation by communities.¹⁶

It was widely believed by key informants that Aboriginal people are hesitant to participate in Government of Canada surveys due to a wide variety of historical and political beliefs. As a result, it is essential for there to be a First Nation-led Institution to support First Nation governments with statistical information.

3.1.2 Alignment with Government Priorities

Summary of Key Findings: FSMA aligns with federal government priorities related to the Federal Framework for Aboriginal Economic Development and INAC's Governance and Economic Development Strategic Outcomes.

FSMA aligns with the strategic priorities of the *Federal Framework for Aboriginal Economic Development*, a \$200-million investment announced on June 29, 2009, by the Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians

¹³ John Graham. (April 2010) *The First Nation Governance System: A brake on closing the Community Well-being Gap*. Institute on Governance.

¹⁴ John Graham. (December 2004) *Roundtable on Aggregation and First Nation Governance*. Institute on Governance.

¹⁵ Statistics Canada 2010-11 Report on Plans and Priorities. Section 2.3 - Census, Demography and Aboriginal Statistics.

¹⁶ Statistics Canada. 2006 Census Technical Report: Coverage. Section 12.2 - Aboriginal People.

and the Chairperson of the National Aboriginal Economic Development Board¹⁷. This Framework was seen as building on the 2006 *Advantage Canada* long-term economic plan for Canada's overall prosperity, benefitting from the Standing Committee's 2007 report, and fulfilling the Budget 2008 commitment to launch a new approach to Aboriginal economic development.¹⁸

The *Federal Framework for Aboriginal Economic Development* strategic priorities are:

- Strengthening Aboriginal entrepreneurship;
- Developing Aboriginal human capital;
- Enhancing the value of Aboriginal assets;
- Forging new and effective partnerships; and
- Focusing the role of the federal government.

The implementation of the Framework was to include investments in new measures to support these priorities by:

- Leveraging greater access to commercial capital;
- Investing in efforts to promote Aboriginal procurement;
- Supporting Aboriginal participation in resource development opportunities; and
- Accelerating the economic use of lands set aside through specific claims settlements.

FSMA aligns with *enhancing the value of Aboriginal assets* by enabling First Nations to collect property taxes on reserve and use those revenues to access affordable loans through a pooled borrowing regime. It also aligns with *developing Aboriginal human capital* by helping First Nations to improve financial management through the FMB and through the First Nation Certificate Programs in Tax Administration and Applied Economics, which are delivered through a partnership between the Tulo Centre of Indigenous Economics, Thompson Rivers University and FNTC.¹⁹

Under INAC's Program Activity Architecture, support for the implementation of the FSMA and its institutions falls within the Governance and Institutions of Governance Program Activity, which supports INAC's Strategic Outcome: The Government – Good governance, effective institutions and co-operative relationships for First Nations, Inuit and Northerners. This program activity supports legislative initiatives, programs and policies, and administrative mechanisms that foster and support legitimate, stable, effective, efficient, publicly accountable, and culturally relevant First Nation and Inuit governments.

There is a clear link between INAC's Strategic Outcome, *The Government* and the objectives and results as stated in the Terms and Conditions for *Contribution to First Nation Institutions for the purpose of enhancing good governance*, and the Program Overview for the Contribution. Moreover, they position effective governance as laying the foundation for economic development and growth, which underpin the long-term objectives and activities of the FNTC,

¹⁷ The National Aboriginal Economic Development Board is the only national, non-political organization of its kind working to promote the growth of Aboriginal business in Canada. The Board acts as a vital link between policy makers, legislators, government departments, and Aboriginal and non-Aboriginal business and community leaders, providing counsel on all matters pertaining to Aboriginal economic development.

<http://www.appointments.gc.ca/prflOrg.asp?OrgID=AEEDB&lang=eng>

¹⁸ INAC, Press Release and Backgrounder, June 29, 2009, "Minister Strahl Unveils Federal Framework for Aboriginal Economic Development." <http://www.aadnc-aandc.gc.ca/aiarch/mr/nr/m-a2009/nr000000371-eng.asp>.

¹⁹ TULO Centre of Indigenous Economics. <http://www.tulo.ca/>

FMB and FNFA as reported in the institutions' annual reports and corporate plans. Similarly, a clear link was found between the FSMA and the strategic outcomes of 'economic development' and 'prosperity' reported in INAC's Report on Plans and Priorities.

3.2 Performance: Progress and Unexpected Impacts

As noted earlier in the report, it is difficult to assess the overall impact of FSMA due to the timing of the evaluation as well as with challenges with performance measurement. This section highlights evidence found respecting the overall implementation and results of FSMA as well as promising developments, not envisioned during the planning stages.

3.2.1 First Nations Participation

When the FSMA was enacted, 103 First Nations had Property Tax By-laws under s.83 of the *Indian Act*. As of January 1, 2008, 25 of these First Nations passed Band Council Resolutions in order to be added to the FSMA schedule. Eight other non-taxing First Nations were also added to the FSMA schedule at that time.²⁰ As of February 2011, 60 First Nations were scheduled. Table 2 summarizes the participation levels each year since the original 33 First Nations were scheduled under the Act.

Table 2: Number of First Nations on the FSMA Schedule

	2007/08	2008/09	2009/10	2010/11
First Nations	33	45	55	60

Source: Canada Gazette

Table 3 presents the FSMA-scheduled First Nations by province. The majority of the FSMA-scheduled First Nations (45) are located in British Columbia and the remaining 15 are spread throughout Canada. Respondents noted that the reason for the distribution of scheduled First Nations is because most First Nations who historically collected property tax are located in British Columbia. They also noted that participation from other regions is expected to increase once FSMA is expanded to include other revenues. The total registered First Nation population currently under FSMA is approximately 46,000 individuals (six percent of the total registered population).²¹

Table 3: First Nations on the FSMA Schedule by Province (February, 2011)

	BC	AB	SK	MB	ON	QC	NB	NS	PEI	NFL	YK	NWT	NUN	Total
FSMA	45	1	6	1	3	0	4	0	0	0	0	0	0	60
Total # of FNs	198	47	70	63	140	39	15	13	2	3	18	26	0	634
FSMA FNs as % of all FNs	23%	2%	7%	2%	2%	0%	27%	0%	0%	0%	0%	0%	0%	9%

Sources: Canada Gazette

It should also be noted that treaty and self-governing First Nations require adaptation regulations in order to be scheduled under the Act. Currently, two First Nations, Tsawwassen (treaty) and

²⁰ FNTC, *s.83 and FSMA First Nation Tax Authorities – Trend Analysis*, prepared for meeting, November 1, 2010.

²¹ INAC population data for registered Indians, 2006

Westbank (self-governing), are working with INAC on adaptation regulations. Tsawwassen was originally added to the FSMA schedule in December 2007, but when the Tsawwassen First Nation treaty took effect on April 3, 2009, the First Nation was no longer defined as a ‘band’ under the *Indian Act* and, consequently, was no longer eligible to be scheduled under the FSMA.²²

First Nations in the Yukon and Northwest Territories who have not settled self-government or land claim agreements and do not have reserve lands cannot access the FSMA.

The following additional positive unexpected impacts were identified by evaluation participants:

- There is continued growth in the number of First Nations collecting property tax under s.83 or the FSMA. Eighty-four percent of First Nations (21 out of 25) that have started collecting property tax since 2007 chose the FSMA over s.83.
- Local governments are reported to be more willing to partner with First Nations on economic development. For example, Shuswap First Nation is fully integrated with regional governments in the delivery of services and in capitalizing on economic potential. Specifically, the First Nation operates the regional airport and water infrastructure that serves the whole region and the Regional District provides fire services to the whole region.²³ Interviewees claimed that these sorts of arrangements are possible because the Regional District has confidence in that the First Nation can uphold its obligations in such service agreements.

This can also be seen in the District of West Vancouver (DWV) strategic plan, which identifies the following priority: “Attention to intergovernmental relations, especially working with our Member of the Legislative Assembly and Member of Parliament, the Squamish Nation, and North Vancouver City and District. We have been served well by our proactive approach and if we are to manage properly, we need to be ready for legislative change and prepared to coordinate and perhaps amalgamate services.”²⁴ During an interview for the evaluation, the Mayor of the DWV corroborated observations by FMB officials that FSMA is facilitating partnerships between Squamish Nation and the DWV by granting them fiscal powers that are similar to other levels of government.

- The FMB reported that one First Nation community is using FMB products to get favourable rates from private lenders.
- An agreement in principle to use FMB Certification process as a proxy in the INAC General Assessment.

The following four sections present the evaluation’s findings related to implementation and performance (success) in each of the four FSMA institutions. Findings with respect to efficiency and economy are examined in Section 8.

²² Canada, Canada Gazette Part II, Vol. 144, no. 24, November 24, 2010. <http://www.gazette.gc.ca/rp-pr/p2/2010/2010-11-24/pdf/g2-14424.pdf>.

²³ FNTC, 2009-10 Annual Report.

²⁴ District of West Vancouver, Community Strategic Plan. [http://westvancouver.ca/uploadedFiles/Publications/Strategic_Plan/DWV_StrategicPlan_May2010\[1\].pdf](http://westvancouver.ca/uploadedFiles/Publications/Strategic_Plan/DWV_StrategicPlan_May2010[1].pdf) (accessed February 2011).

4. Findings – First Nations Tax Commission

4.1 Ongoing Need and Relevance of the Institutional Mandates

Summary of Key Findings: The FNTC’s mandate under the FSMA is relevant to facilitating third-party investment in reserve property by increasing the transparency and fairness of the tax regime. FNTC is essential to property tax regimes on reserve as it is responsible for administering Section 83 of the Indian Act as well as FSMA part 2.

Under Section 29 of FSMA, the purposes of FNTC are to:

- ensure the integrity of the system of First Nations real property taxation and promote a common approach to First Nations real property taxation nationwide, having regard to variations in provincial real property taxation systems;
- ensure that the real property taxation systems of First Nations reconcile the interests of taxpayers with the responsibilities of chiefs and councils to govern the affairs of First Nations;
- prevent, or provide for the timely resolution of, disputes in relation to the application of local revenue laws;
- assist First Nations in the exercise of their jurisdiction over real property taxation on reserve lands and build capacity in First Nations to administer their taxation systems;
- develop training programs for First Nation real property tax administrators;
- assist First Nations to achieve sustainable economic development through the generation of stable local revenues;
- promote a transparent First Nations real property taxation regime that provides certainty to taxpayers;
- promote understanding of the real property taxation systems of First Nations; and
- provide advice to the Minister regarding future development of the framework within which local revenue laws are made.

The FNTC’s mandate was found to be critical to the implementation of FSMA as a whole because it creates certainty and transparency in how tax systems operate on reserves. First Nations can collect taxes under Section 83 of the *Indian Act*, but there is very limited regulation and limited mechanisms to ensure representation of taxpayers who are not band members (thereby acting as a disincentive to non-member investments in reserve land). This is a significant point because most taxpayers are not band members. FSMA addresses this issue by requiring First Nations to ensure taxpayer representation, including an opportunity for taxpayers to make representation to the Commission prior to approval of local revenue laws. Furthermore,

FSMA has granted FNTC administrative tribunal powers “to prevent, or provide for the timely resolution of disputes in relation to the application of local revenue laws.”

In addition to its responsibilities under FSMA, FNTC is responsible for advising the Minister on property tax by-laws under Section 83 of the *Indian Act* and therefore, all First Nations who collect property tax are regulated and supported by the FNTC.

4.2 Implementation

Summary of Key Findings: Based on an analysis of FNTC’s governance framework, use of resources, and the extent to which each institution is delivering services in its mandated areas, the evaluation found that the FNTC is fully operational and implementing its responsibilities under FSMA as intended. Additionally, through FNTC, First Nations have generated over \$170M in local revenue (\$70M of which is under FSMA and \$100M under s.83).

4.2.1 Governance Framework

The FNTC has established an appropriate governance framework in line with Part 2 of the FSMA. The institution is a shared-governance corporation²⁵; the Minister is responsible for appointing nine commissioners, including the Chief Commissioner and Deputy Chief Commissioner, through the GIC process and the Native Law Centre of the University of Saskatchewan is responsible for appointing one commissioner. Of the ten commissioners, one must be a taxpayer using reserve lands for commercial, one for residential and one for utility purposes.

The Commission has been in place since July 2007 when the last appointment occurred. It is currently comprised of ten representatives from all regions of the country, except for the territories.

Rules of Procedure and Governance have been established for the Commission that cover areas related to the purposes and service areas, proceedings, panels and committees, the Chief Executive Officer and Secretariat, law review, statutory requirements, financial management and reporting. The evidence suggests that decision-making processes established by the Commission consider both the interests of First Nation governments and those of property taxpayers. For example, under the policy development service area, the Rules of Procedure and Governance state that the objective is to develop and implement effective Policies and Standards that support sound administrative practices and increase First Nation and taxpayer confidence and certainty in the integrity of the First Nation local revenue system.²⁶

Interviewees reported that this governance structure allows for appropriate independence in decision making as well as appropriate oversight from the Government of Canada.

²⁵ Shared-Governance Corporations include corporate entities without share capital for which Canada, either directly or through a Crown corporation, has a right, pursuant to statute, articles of incorporation, letters patent, by-law or any contractual agreement (including funding or contribution agreements) to appoint or nominate one or more voting members to the governing body (Annex B, Policy on Reporting of Federal Institutions and Corporate Interests to Treasury Board Secretariat (2007)).

²⁶ First Nation Tax Commission. Rules of Procedure and Governance.

The literature review concludes that the Commission meets the governance principles of leadership and stewardship²⁷/ legitimacy and voice²⁸. As well, the review concluded that the committees established by the Chief Commissioner to support the Commission’s work meets the governance principle of accomplishment or performance. The committees that have been established are:

- Executive Management Committee;
- Management Committee;
- Audit Committee;
- Section 83 Rates Committee;
- Education and First Nation Tax Administrators Association Committee;
- International Relations Committee; and
- First Nations Gazette Editorial Board.

4.2.2 Expenditures

As shown in Table 4, FNTC’s total expenditures were \$26.1M and expenditures in each year closely parallel planned expenditures.

Table 4: INAC’s Planned Expenditures for FNTC vs. Actual Expenditures (000s)

Expenditures	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Total
Planned	2,975	5,343	4,490	4,500	4,510	21,818
Actual	3,530	5,492	5,775	5,477	5,918	26,192
Difference	(555)	(149)	(1,285)	(977)	(1,408)	(4,374)

Source: Planned expenditures are abridged from funding documents. Actual expenditures are from FNTC financial records.

Note: 2006/07 and 2007/08 include money transferred to the Indian Taxation Advisory Board (FNTC’s predecessor) as part of transitioning to FNTC

4.2.3 Activities

The FNTC is delivering all services for which it was mandated. The FNTC’s move to becoming fully operational was supported by the existing foundation of the Indian Taxation Advisory Board that had been in operation for 15 years. Additionally, a number of First Nations were committed to being scheduled well before the FSMA’s enactment.

The FNTC maintains a head office on the reserve lands of the Kamloops Indian Band and an office in the National Capital Region in accordance with s.26 of the Act. Both offices provide Commission services to FSMA and s.83 First Nations with a regional focus on service delivery. The FMSA registry is located at the head office and the s.83 registry is in the National Capital Region Office. The Commission is supported by 22 full time equivalents and structured around six business lines that report to the Chief Executive Officer. To support its operations, FNTC has established policies and procedures for information management access to information and privacy. It has also developed a Public Input Policy for greater stakeholder involvement in the development and improvement of FNTC policies, procedures, standards, and services.

²⁷ Concept developed in Brown, Debra L. and Brown, David, “Governance Gone Global: the Principles behind good governance practices,” *The Conference Board of Canada*, March, 1999, page 4.

²⁸ Concept developed in Graham, John, Amos, Bruce and Plumtpe, Tim, “Principles for Good governance in the 21st Century,” *Institute on Governance, Policy Brief*, No. 15, 2003, page 1.

FNTC has created and implemented a corporate plan for each year of operations and annual reports on the achievement of the objectives defined by the corporate plans. It also continues to maintain a registry of every approved FSMA law, a registry of s.83 by-laws and, through the Native Law Center of Canada, it publishes the *First Nations Gazette*²⁹ two times per year. The Gazette includes all s.83 by-laws and FSMA laws. Furthermore, FNTC created and maintains a website and publishes newsletters.

FNTC has completed ten standards pursuant to s.35 of the FSMA (including expenditure, property assessment, property taxation, service tax, annual tax rates, development cost charges, borrowing, borrowing approval criteria, taxpayer representation to council, and submission of information for Section 8 requirements). The completed policy framework includes the following policies concerning: FSMA Registry, *First Nations Gazette* publication, public input, and dispute prevention/resolution. It has also developed a work plan for law development and sample representation plans, notices, letters respecting submission of property tax laws, letters respecting submittal of amending laws.

FNTC has also developed 23 sample laws, including: taxation, assessment, rates, expenditure, tax for the provision of services, development cost charges, taxpayer representation to council, long term borrowing law, and long term borrowing agreement law. This includes region-specific property tax law samples that have also been developed for First Nations in eight provinces. FNTC has developed and is implementing procedures for reviewing and approving FSMA laws (after the initial local revenue law is approved, First Nations require the annual approval of assessment and rates laws).

As a part of the regulatory framework supporting property taxation under Section 83, the FNTC developed new policies related to by-laws for property tax, assessment, annual rates, and annual expenditures as well as sample by-laws for property tax, assessment, annual rates, expenditures, financial management, telephone company by-laws, and business licensing by-laws.

Thirty-nine First Nations are currently collecting tax under FSMA and 102 First Nations have enacted by-laws under s.83.

FNTC has also worked with the Tulo Centre of Indigenous Economics³⁰ and in partnership with Thompson Rivers University to develop and deliver certification programs in applied First Nation economics and First Nation Tax Administration.

Table 5 summarizes some of the activities that the FNTC has undertaken since it became operational. It is indicative of the level of effort invested by FNTC in order to support First Nation decision making around becoming scheduled under the Act.

²⁹ The *First Nations Gazette* is available on-line at www.fng.ca.

³⁰ The Tulo Centre of Indigenous Economics is a not-for-profit institution dedicated to delivering certificate and diploma programs in First Nations Tax Administration, First Nations Economics and eventually First Nations Public Finance. It was established by the Indian Taxation Advisory Board in 2007 and incorporated on January 31, 2008. Tulo strives to create capacity to build the legal, administrative and technical frameworks for markets to work on indigenous lands. Refer to <http://www.tulo.ca/tulohistory.htm>.

Table 5: FNTC Activities, 2007 to 2010

	2007	2008	2009	2010
National Meeting – First Nation Tax Authorities	1	0	0	1
FSMA Presentations / Meetings	38	49	61	48
Property Tax Presentations to First Nations New to Taxation	5	9	9	14
FSMA Band Council Resolutions Received Subsequent to a Property Tax Presentation	1	3	3	2
FSMA Band Council Resolutions Received for First Nations New to Taxation	9	6	4	9
FSMA Laws Approved	0	81	90	69
s.83 By-laws Recommended for Approval	104	64	61	40

Source: FNTC, November 2010 (update March 2011).

Note: FNTC reports on a calendar year cycle and as such the information in this table is presented under calendar years.

Alignment with Best Practices: First Nation property tax systems and laws under the FSMA were found to be consistent with provincial and local government property tax best practices. One objective of the tax system is to harmonize on a regional basis and the FNTC sample laws are drafted to reflect regional variation.

Respondents also noted that each First Nation has unique needs and reasons for being scheduled under the FSMA, working with the FNTC sample laws is a cost-effective approach because it provides framework that can be adapted to respect First Nation specific requirements.

4.3 Results

Expected results for the FNTC, as established in INAC’s funding documents, were:

- Increased confidence in First Nation property tax regimes.
- Increased transparency in law review process with more timely approval of First Nation local revenue laws.
- Increased number of trained administrators, and increased knowledge development, greater public awareness of First Nation property tax regimes.
- Greater access to and transparency in dispute resolution in respect of property taxation.

The evaluation found evidence that FNTC has demonstrated positive results in each of the four expected results areas:

Tax Revenues and Investor Confidence

Since 2007, First Nation communities have generated over \$184M of local revenue by collecting property tax under either s.83 or FSMA. Table 6 summarizes annual tax revenues:

Table 6: Tax Revenues Collected under FSMA and s.83 (millions)

	2007-08	2008-09	2009-10	2010-11	Total
Estimated Tax Revenue FSMA	-	\$16.1	\$26.3	\$27.1	\$69.5
Estimated Tax Revenue s.83	\$34.6	\$27.2	\$27.0	\$26.4	\$115.2
Total	\$34.6	\$43.3	\$53.3	\$53.5	\$184.7

Source: FNTC, Document provided to evaluators during visit to FNTC offices, November 2010.

Note: Under s.83, First Nations are not compelled to submit expenditure by-laws and therefore the tax revenue collect under s.83 is likely under reported.

Respondents noted that the tax regime under FSMA encourages investment in First Nation communities because it provides an opportunity for taxpayer representation that doesn't exist under s.83. Under s.83, taxpayers do not have regulation supported opportunity to voice their concerns to the Band Council. FSMA addresses this issue by granting administrative tribunal powers to the Commission to review the application of local revenue laws and order remedies if it determines that those laws were unfairly or improperly applied (FSMA, s.33). The application of this power has created greater transparency in the tax system. Additionally, as demonstrated in Table 7 taxpayers investing in real property are becoming increasingly confident in reserve land (note that the assessment of property values as a proxy measure for confidence of non-members investing in reserve lands). Note, however, that the degree to which the property values are attributable to FSMA remain unclear.

Table 7: Total Assessed Values, FSMA and s.83 (millions)

	2007-08	2008-09	2009-10	2010-11
Assessed Property Values FSMA	-	\$1,417.1	\$2,458.8	\$2,459.1
Assessed Property Values s.83	\$1,500.7	\$516.9	\$2,354.0	\$2,193.7

Source: FNTC, Document provided to evaluators during visit to FNTC offices, November 2010.

Note: Under s.83, First Nations are not compelled to submit assessment information and therefore the assessed property values under s.83 are likely under reported.

Clarity and Consistency of First Nation Laws

The consistency and quality of local revenue laws were found to have improved post-2007 as a result of FNTC's standards and the *First Nation Gazette*, which allows First Nations to view and adopt relevant existing laws.

The FNTC has developed sample laws and standards that are available to First Nations on its website. The sample laws assist First Nations new to taxation to prepare laws that conform to their needs. Respondents noted that each First Nation has unique needs and reasons for being scheduled under the FSMA, but it would be counter-productive to reinvent the wheel each time.

Respondents saw the *First Nations Gazette* as a key achievement. Access to the law is fundamental, and the *First Nations Gazette* has been instrumental in providing this information to all First Nations. Respondents remarked that on-line accessibility makes it easier to do the research. At the same time, having a physical document is important for some institutions such as libraries and courts.

First Nation Tax Administration Capacity

Respondents suggested that the number of trained tax administrators is growing and credited the Commission's partnership with the Tulo Centre of Indigenous Economics and Thompson Rivers University with this result. The FNTC's vision was to have an accredited learning institution dedicated to providing tools to students that will help them to create the legal framework and provide the administrative systems to support effective markets on First Nation lands. Tulo is currently the only training centre for certification, and its accredited certificate programs are the first of their kind in Canada. There has been great interest in the Tulo courses (i.e., over 150 students have registered to date) and respondents noted that a Tulo graduate becomes very marketable to other First Nations considering property taxation. The Tulo Centre also partners with the First Nations Tax Administrators Association (FNTAA), the Consensus Building Institute³¹ and the Institute for Liberty and Democracy^{32,33}.

The FNTC, in consultation with the FNTAA, developed the Tax Administration Software, which ensures that First Nations have access to an affordable system for processing assessment information and collecting tax revenues. The software is a tool to assist tax administrators working for First Nation governments through the complete annual tax cycle: assessments, budgeting, rate approval, tax notices, collection and enforcement. It addresses the administrative rules and requirements of s.83, the FSMA and FNTC Standards. Overall, the Tax Administration Software has been well-received and is used by approximately 40 First Nations. Respondents considered it to be very well organized and easy to use.

Dispute Resolution

The evaluation found that FNTC is resolving situations before they turned into complaints and reviews that require ordered remedies.

To support its mandate concerning the dispute resolution, the FNTC developed a Section 33 review manual for commissioners and staff. Moreover, the FNTC developed a dispute resolution policy, which provides a framework for supporting and encouraging the use of dispute prevention and resolution methods to resolve disputes at the earliest possible stage and encourage mutually beneficial solutions. A key component of this policy is the roster of mediators, which can be accessed by parties at any time. The dispute resolution policy applies to both Section 83 and FSMA tax systems.

³¹ The Consensus Building Institute is a not-for-profit organization created by leading practitioners and theory builders in the fields of negotiation and dispute resolution. The institute works with leaders, advocates, experts, and communities to promote effective negotiations, build consensus, and resolve conflicts. It was founded by Lawrence Susskind, Professor at MIT's Department of Urban Studies and Planning.

³² The Institute for Liberty and Democracy (or ILD) is a Lima-based think tank devoted to the promotion of property rights in developing countries. It was established in 1979 by Peruvian economist Hernando de Soto.

³³Tulo Centre of Indigenous Economics. Slideshow prepared for FNTC on-site visit, November 1, 2010.

5. Findings – First Nations Financial Management Board

5.1 Ongoing Need and Relevance of the Institutional Mandates

Summary of Key Findings: The FMB mandate under the FSMA is essential for the issuance of a bond by the FNFA as the FMB is responsible for certifying the financial health of First Nation. The FMB also addresses the need for intervening to remedy situations where a First Nation is improperly or unfairly applying local revenue laws or has not met payment obligations to FNFA.

The purposes of FMB are to:

- assist First Nations in developing the capacity to meet their financial management requirements;
- assist First Nations in their dealings with other governments respecting financial management, including matters of accountability and shared fiscal responsibility;
- assist First Nations in the development, implementation and improvement of financial relationships with financial institutions, business partners and other governments, to enable the economic and social development of First Nations;
- develop and support the application of general credit rating criteria to First Nations;
- provide review and audit services respecting First Nations financial management;
- provide assessment and certification services respecting First Nations financial management and financial performance;
- provide financial monitoring services respecting First Nations financial management and financial performance;
- provide co-management and third-party management services; and
- provide advice, policy research and review and evaluative services on the development of fiscal arrangements between First Nations' governments and other governments.

This mandate was seen to be critical for the implementation of FSMA as a whole because FMB provides regulatory oversight over financial management. In order for a First Nation to become a borrowing member of FNFA, it must be certified by FMB. The intention is for FMB to provide a signal of the First Nations financial management health to potential investors. Furthermore, FMB has authority to enter into co-management or third-party management over a First Nations revenue account if there is a serious risk that the First Nation will default on an obligation to the First Nations Finance Authority. As such, the role of FMB is a critical component of the financing system established under FSMA.

FMB is also critical for the tax system under FSMA because it has authority to enter into co-management or third-party management over a First Nation's revenue account to remedy a situation where local revenue laws are being improperly or unfairly applied.

Case study participants also observed that although the main concern is with FSMA-scheduled First Nations, the FMB offers its tools and services to all First Nations, whether they are scheduled or not. First Nations have an incentive to use FMB tools, if only to improve their relations with banking institutions, including FNFA, by improving confidence in their financial systems and governance. FMB's broader mandate is seen to support the development of First

Nation capacity for managing wealth accumulation and accompanying linkages between asset and liability management. First Nations that create and seek FMB approval of a Financial Administration Law and follow FMB standards will help to ensure that the “affairs of the Nation are conducted using proper processes, controls, accountability, and transparency”. Furthermore, FMB reports that the FSMA financial administration standards establish a framework for financial management and reporting that can accommodate the financial requirements of other optional legislation such as FNLMA, FNOGMMA, and FNCIDA.

5.2 Implementation

Summary of Key Findings: FMB experienced some delays in implementation, but is now implementing its responsibilities under the FSMA as intended.

5.2.1 Governance Framework

The FMB has established an effective governance framework. Part 3 of the FSMA lays out the governance structure for the FMB, specifically as an independent institution. The institution is a shared-governance corporation; the Minister is responsible for appointing between six and twelve directors (including the Chairman) through the GIC process and the Aboriginal Financial Officers Association is responsible for appointing up to three directors.

The current Board of Directors has nine directors, including a Chairman, and has been in place since August 2007 when the final appointment was made.

The evaluation found that the FMB governance structure meets several principles of good governance. There is evidence of leadership/stewardship or legitimacy/voice in the structure of the Board, particularly with respect to the inclusion and number of Board seats given to the Aboriginal Finance Officers Association. To date, the Board of Directors has formed four committees to cover all of the responsibilities of the Board:

- Audit and Risk Management Committee;
- Governance and Human Resources Committee;
- Standards, Approvals and Certification Committee; and
- Capacity Development Committee.

The existence of working committees suggests that the Board is committed to service, performance and accountability, and evidence confirmed that the governance structure is working.

However, a number of respondents did not support the shared-governance model for the FMB Board; saw a general lack of planning associated with Board membership; and would like to see more careful succession planning. For example, the Chair's term expired in October 2010 and was not reappointed until January 20, 2011.³⁴ Some interviewees felt that there would be advantages to the Chair being elected by the Board rather than appointed by the Government - this would increase the degree of independence of the FMB. Section 40 of the Act would have to be amended to implement such a change. Some respondents suggested that there would have been an advantage to setting up a temporary, transitional organization that could become the

³⁴ FMB News Webpage. http://www.fnfmb.com/index.php?option=com_content&view=article&id=40%3Aharold-calla-reappointed-chair&catid=7%3Anews&Itemid=10&lang=en . Accessed March 1, 2011

FMB when the Act took force. This would have given FMB a head start in terms of building some initial capacity.

5.2.2 Expenditures

FMB’s total expenditures between 2006-07 and 2010-11 were \$16.5M. Table 8 presents FMB’s planned vs. actual expenditure for this time period. As seen in the table, FMB’s actual expenditures were slightly lower than expected expenditure in 2006-07 and 2007-08 (before the board was appointed); however, overall actual expenditures closely parallel planned expenditures.

Table 8: INAC’s Planned Expenditures for FMB vs. Actual Expenditures (\$000s)

Expenditures	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Total
Planned	2,147	4,238	3,660	3,760	3,890	17,695
Actual	1,919	2,790	4,059	3,963	3,799	16,530
Difference	228	1,448	(399)	(203)	91	1,165

Source: Planned expenditures are abridged from program funding documents. Actual Expenditures are from INAC financial records accessed January 2011.

Note: 2006-07 and 2007-08 include money transferred through the First Nations Summit to the FMB

5.2.3 Activities

The FMB is delivering on its mandate services by offering capacity development funding to First Nations, Financial Administration Law review and approval services, financial performance certificate services and financial management systems review services. Since becoming operational, according to the 2010-2011 Corporate Plan, the FMB has met requirements of Part 6 of the FSMA and completed the development of the key client documents.

The FMB maintains a head office on the reserve lands of the Squamish Nation in West Vancouver, British Columbia. The Board is supported by 13 employees³⁵ and is structured around three business lines: Supporting First Nation Governments; Supporting Other Governments; and Corporate Services.

The intended result of FMB operations categorized as “Supporting First Nation Governments” is to bring First Nations into a continuum of capacity development leading to full FMB certification. The FMB’s initial focus was to create the tools to enable First Nations to implement an effective financial administration system. To this end, the Board has reviewed and approved: Financial Administration Law Standards; a Sample Financial Administration Law; Financial Administration System Standards; Sample Policies and Procedures Templates; an Intervention Policy³⁶; Financial Reporting Standards; and a Capacity Development Course.³⁷ The FMB distributes these materials to participating First Nations and makes them available on the FMB website. Table 9 shows how FMB activities have transitioned over the first three years.

³⁵ FMB, Corporate Plan, 2010/2011, p.29.

³⁶ Section 51 of FSMA grants FMB powers to require First Nations to enter into co-management or third-party management of their local revenues (i.e., moneys raised under a local revenue law made under FSMA section 5(1)).

³⁷ *Ibid.*, p.24.

Table 9: FMB Activities, 2007 to 2010

	2007/08	2008/09	2009/10
FSMA/FMB Presentations / Meetings	15	29	32
Course Curriculum Development (# of modules/ # of focus groups)	Inventory of Training Opportunities Course outline development	13/2	N/A
Financial Administration Law Development	Sample Law Law Standards	N/A	N/A
Certification	System Standards Policy/Procedures Templates	N/A	N/A
Local Revenue Account Reporting	Reporting Standards	N/A	N/A
Intervention	Policy /Procedures Templates	N/A	N/A
Outreach	FMB Website Newsletter	N/A	N/A

Source: FMB, Annual Reports.

Respondents reported that, during the current fiscal year, much of the Board’s activity has been tied to ensuring all the pieces are in place so that the first debenture will receive the best possible rating from Moody’s. This has meant that some standards, policies and procedures have been modified or updated. Respondents indicated that as a result of this “recalibration”, the FMB is confident that every reference to an action has a template.

In particular, much work has focussed on the FMB’s Intervention Policy and associated procedures and templates. Work was still being conducted on this during the site visit, and respondents reported that FNTC has been and will be working with the FMB to ensure that policies and procedures relating to s.33³⁸ are appropriate, consistent and understood. To this end, documents (including a mock intervention) were ready to be finalized.

Finally, the FMB has also developed courses that they hope will be adopted by the Aboriginal Financial Officers Association and the Tulo Centre of Indigenous Economics as part of their training and certification curricula. The purpose of these courses is to increase awareness of effective financial management and according to FMB officials, 16 universities and colleges have expressed interest.

Alignment with Industry Standards: The FMB has established a suite of financial management standards to align with industry best practices. In his Message from the Chair, Harold Calla writes, “A First Nation member deserves to know that the affairs of their Nation are conducted using proper processes, controls, accountability and transparency... FMB standards will give membership confidence to know that the affairs of their Nation are being conducted in such a way.”³⁹ The Chief Executive Officer’s (CEO) message elaborates, “The FMB standard and certification process parallels the Committee of Sponsoring Organizations (COSO)⁴⁰ and ISO 9000⁴¹ frameworks such that all three frameworks identify that effective financial administration systems and controls must be present and function in a consistent manner across

³⁸ This section deals with actions that may be taken if a complaint by a taxpayer has not been resolved satisfactorily.

³⁹ FMB, *2009/10 Annual Report*, p. 4.

⁴⁰ COSO, a private-sector organization, guides executive management and governance entities in establishing more effective, efficient, and ethical business operations. COSO is recognized globally for providing guidance on governance, business ethics, internal control, enterprise risk management, fraud, and financial reporting.

⁴¹ The *International Organization for Standardization* (ISO) 9000 family of standards relate to quality management systems and are designed to help organizations ensure they meet the needs of customers and other stakeholders.

any organization, however, FMB standards specifically respond to the characteristics of First Nations.”⁴²

5.3 Results

Expected results were summarized in the program funding documents:

- Increased First Nation awareness of effective financial management;
- Greater First Nation capacity for effective financial management practices and processes;
- Increased number of First Nations certified by the FNFMB;
- Increased number of First Nations that are in a better position to enter into fiscal arrangements with other governments and the private sector;
- Increased stability through co-management and third-party management support of the local revenue account; and
- Improved credit ratings for First Nations.

FMB records show that 11 First Nations are developing financial management systems, 26 First Nations are in the process of developing the Financial Administration Laws, nine of which have completed drafting the law. An additional two First Nations have approved Financial Administration Laws and are in the certification process. Furthermore, officials reported that an additional First Nation is using FMB products to design their systems (without direct FMB support) to get favourable rates from private lenders.

These achievements were seen as significant, especially given that FMB had to develop the appropriate policies and standards (as described in Section 4) before First Nations could begin developing their laws and systems.

Furthermore, officials noted that developing a Financial Administration Law can be seen as extremely difficult by a band council, and it usually takes a maturing of the governance structure for communities to start the process. Communities are learning how long it takes to achieve this level of maturation. In order to assist First Nations, the FMB provides some INAC funding to First Nations to assist them in the development of the Financial Administration Law. A total of \$1,106,485 in funding was provided to 33 eligible First Nations (roughly \$33K per First Nation on average). Respondents indicated that the real costs for a First Nation to become certified are more than double that amount.

⁴² FMB, *Op. Cit.*, p.5.

6. Findings – First Nations Finance Authority

6.1 Ongoing Need and Relevance of the Institutional Mandates

Summary of Key Findings: The FNFA mandate under the FSMA is relevant in that it provides First Nations with access to affordable financing for infrastructure and economic development, and demand for the FNFA's services is expected to increase once the first bond has been issued.

The purpose of FNFA is to:

- secure for its borrowing members, through the use of property tax revenues:
 - long-term financing of capital infrastructure for the provision of local services on reserve lands,
 - lease financing of capital assets for the provision of local services on reserve lands, or
 - short-term financing to meet cash-flow requirements for operating or capital purposes, or to refinance a short-term debt incurred for capital purposes;
- secure for its borrowing members, through the use of other revenues prescribed by regulation, financing for any purpose prescribed by regulation;
- secure the best possible credit terms for its borrowing members;
- provide investment services to its members and First Nations organizations; and
- provide advice regarding the development of long-term financing mechanisms for First Nations.

First Nations require capital to establish infrastructure on reserves and enable economic activity (such as purchasing equity in independent power projects). However, in a special study on institution arrangements for economic development on reserves, the Office of the Auditor General found that First Nations have problems securing loans because of uncertainty about legal status of First Nations organizations. For example, one First Nation noted that both a major chartered bank and a local financial co-operative questioned whether the First Nation's economic development organizations could legally borrow money.⁴³ Furthermore, evaluation participations reported that once a loan is secured through a commercial lender, First Nations typically pay very high interest rates due to their legal status.

The essence of the work of the FNFA is to secure pooled financing to meet the capital needs of First Nations related to infrastructure and economic development. The pooled debt obligations issued by FNFA are expected to reduce the borrowing costs, extend loan repayment terms up to 30 years and eliminate the need for the community to put up collateral to support the loans of First Nations who are members of the pool. Furthermore, the pooled borrowing will allow First Nations to refinance current high rate, short term bank loans. The value of this reduced cost of financing and improved access to financing for First Nations is expected to be quite significant. For example, by the end of the first 10 years of debentures, the FNFA expects that other revenues-based financing demand will meet or exceed \$116M annually among 58 interested

⁴³ 2003 November Report of the Auditor General of Canada. Chapter 9 Economic Development of First Nations Communities: Institutional Arrangements. Paragraphs 9.34 – 9.38.

First Nations. This would result in an estimated 10-year interest rate savings of \$77.7M for First Nations in Canada.⁴⁴

Additionally, First Nations will have faster access to funds given the long waiting list to receive capital support from INAC and be better positioned to plan and match financing to the life cycle of infrastructure through the possibility for longer repayment terms.

The evaluation found that the issuance and success of the first bond is critical to the ongoing and future demand for FNFA services. The FNFA coordinates with the FMB as it encourages First Nations to apply to become borrowing members. First Nations must receive certification from the FMB before they can become borrowing members. Issuance of the first bond will be an important milestone for the Authority and all those involved in this initiative.⁴⁵

6.2 Implementation

Summary of Key Findings: The FNFA is implementing its responsibilities under the FSMA as intended, however, the establishment of the governance structure required under the Act and the achievements of intended outcomes related to financing are dependent on the issuance of the first bond, which involves all the FSMA institutions. FNFA is currently offering investment advice and services, which have resulted in roughly \$1.5M earnings for the 38 First Nations investment members.

6.2.1 Governance Framework

The establishment of the FNFA governance structure is dependent on the issuance of the first bond. Currently, the FNFA is a not-for-profit corporation that is governed by five to eleven directors, including a Chairperson and a Deputy Chairperson. Directors are to be elected by borrowing members and the Chairperson and Deputy Chairperson are to be elected by the directors. However, transitional measures are provided for the existing Board of Directors from its predecessor First Nations Finance Authority Inc., a corporation incorporated under the *Canada Business Corporations Act*, to continue as directors of the FNFA until new directors are elected.

Once First Nations become borrowing members, regardless of revenue source or legal status (*Indian Act* or self-governing), they will elect from amongst themselves a new Board of Directors in accordance with the FSMA regulatory framework.⁴⁶ The FNFA Directors will be elected by the borrowing members of the participating First Nation representatives. The directors will then appoint the officers. The Board of Directors exercises the executive and administrative powers and duties of the FNFA.⁴⁷

The evaluation found that the FNFA governance structure established under the Act will be empowering. The Board will be a peer group of members who borrow. Decision making will impact each of the Board members as well as members of the larger borrowing pool. Borrowing members are in effect agreeing to lend to other borrowing members. The structure ensures that

⁴⁴ Financing Secured by Other Revenue Regulations, Regulatory Impact Assessment Statement. <http://canadagazette.gc.ca/rp-pr/p1/2010/2010-11-27/html/reg2-eng.html> (accessed March 2011).

⁴⁵ FNFA, 2009-2010 Annual Report, 2-3.

⁴⁶ FNFA, 2009-2010 Annual Report, 2-3.

⁴⁷ FNFA website, www.fnfa.ca.

those who have the most to gain or lose are at the table. The way in which risk is proposed to be managed is a good example of adherence to the governance principle of accountability, cultural appropriateness and fairness, as described in the evaluation’s literature review.⁴⁸

6.2.2 Expenditures

As shown in Table 10, FNFA’s actual expenditures were \$6.4M between 2006-07 and 2010-11. The table does not include the planned transfer of the \$10M Credit Enhancement Fund from INAC to FNFA in 2010-11. At the time of this draft was developed, this transfer had not occurred but was expected to be complete by March 31, 2011. When the transfer does take effect, these funds will be set aside in a separate reserve account and will not be accessed for FNFA’s operational expenditures.

Table 10: INAC’s Planned Expenditures for FNFA vs. Actual Expenditures (\$000s)

Expenditures	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Total
Planned	1,150	850	500	500	500	3,500
Actual	765	850	1,660	1,554	1,632	6,461
Difference	385	0	(1,160)	(1,054)	(1,132)	(2,961)

Source: Planned expenditures are abridged from program funding documents. Actual Expenditures are FNFA financial statements.

According to FNFA, the annual grant amount of \$500K was determined in discussion between FNFA and INAC in 1996-97 and was intended to support administrative costs (such as rent, a receptionist, an accountant, Board cost etc) associated with the development of the legislation.

Even before FSMA was enacted, FNFA requested an amendment to this amount to help support its mandated areas that were not covered by the original grant (such as developing financial programs, software and marketing materials; consulting and legal fees; and meeting reporting requirements). Furthermore, in 1997, FNFA had anticipated that Municipal Finance Authority of British Columbia would provide the debenture services thereby reducing FNFA’s requirements to hiring capital market expertise. In 2005, the Municipal Finance Authority of British Columbia cancelled their agreement to provide these services.

To accommodate these additional requirements, INAC supported FNFA through the *Contribution to support the building of strong governance, administration and accountability systems* with additional \$1.1M, \$1.0M, \$1.2M in funding for fiscal years 2008-09, 2009-10 and 2010-11, respectively.

⁴⁸ Governance principles were developed in articles by Brown, Debra L. and Brown, David, *op.cit.* and Graham, John, Amos, Bruce and Plumtre, Tim, *op.cit.*

6.2.3 Activities

The FNFA continues to provide the services of its predecessor organization to its First Nation clientele. This includes managing investment accounts and providing advice on capital financing. The FNFA maintains a head office on the reserve lands of the Westbank First Nation in British Columbia. The Authority is supported by five staff members and other external consultants.⁴⁹

FNFA has been working with INAC and FMB to develop *Financing Secured by Other Revenues Regulations*. The Regulations will allow First Nations to use other stable sources of revenues, such as oil and gas royalties, to secure financing. The Regulations were found to be essential for building the critical mass of 20 to 25 First Nations required to issue the bond for two reasons: (1) It broadens FSMA's reach beyond First Nations who collect property tax to all First Nations with reserve land who have a stable source of revenues; and (2) According to FNFA, other revenues for all First Nations were estimated to be over \$4B in 2010-11. Incorporating these revenues into the FSMA regime significantly increases the revenue base to support the FSMA financing regime. For example, it was estimated that was a \$3M in property tax revenues based borrowing demand and \$82M in other revenues based borrowing demand exist for the fiscal year 2010–2011.⁵⁰

Alignment with Industry Standards: Based on the interviews and documents reviewed, including copies of letters of support for the FNFA's operations and systems from various banking institutions (among which are most of Canada's chartered banks), the FNFA's operations appear to be in line with industry standards and best practices. The FNFA is modelled on the Municipal Finance Authority of British Columbia, which has used a pooled bond financing mechanism since the mid-1970s to borrow the funding its member municipalities require in order to pay for their infrastructure requirements. The approach has allowed municipalities to move away from cash flow financing to a securitization approach based on borrowing from the private sector.⁵¹

In order to become a borrowing member of the FNFA, a First Nation must receive certification from the FMB prior to requesting "Borrowing Member" status. Such certification is intended to provide some assurance to other members in the borrowing pool that the First Nation has implemented appropriate elements of a financial administration system.⁵² Oversight for property tax revenues incorporates the FNTC approval process, and the FNFA will provide oversight for other revenues in conjunction with FMB certification processes.

The test of FNFA's operations and systems and the adequacy of FSMA's design for accessing capital markets will be the rating that is awarded to FNFA by Moody's and Standard & Poors. The FNFA is seeking an A rating.⁵³ This is an investment-grade rating, which would allow

⁴⁹ FNFA, Annual Report, 2009/2010, p.28.

⁵⁰ Financing Secured by Other Revenue Regulations, Regulatory Impact Assessment Statement. <http://canadagazette.gc.ca/tp-pr/p1/2010/2010-11-27/html/reg2-eng.html> (accessed March 2011).

⁵¹ FMB, *Financing First Nations Infrastructure through the FSMA*, Presentation to the National Economic Development Board, July 28, 2010, p.3.

⁵² FNFA, *2009/10 Annual Report*, p.7.

⁵³ This is the same rating that the MFABC received initially. The Municipal Finance Authority of British Columbia's credit rating went from "A" to "AAA" during its first nine years and stayed at that level. This Municipal Finance Authority of British Columbia shares the same rating as the Government of Canada.

capital market participants (including pension funds, life insurance companies, mutual funds, financial institutions etc) funds to purchase these debt obligations. FNFA could then deliver an attractive interest rate to the members of the pool, and thereby, achieve significant savings as, compared to retail rates, for members.

Moreover, the FNFA has developed its interim loan program, which will be available to borrowing members once they receive a FMB certificate. This program is seen to be critical because it takes time to assemble the critical mass required to issue a bond and the interim loans would allow First Nations to access time-sensitive infrastructure and economic development opportunities without having to wait for the bond issuance. Once the bond is issued, the interim loans will role into the long-term loans. The interim loan program is seen to be aligned with existing industry practices for pooled borrowing.

6.3 Results

Expected results for the FNFA were summarized in funding documents as:

- Increased First Nation awareness of FNFA’s financial products and services.
- Greater First Nation access to affordable capital through pooled borrowing.
- Improved First Nation financing terms.
- Reduced cost of borrowing.
- Increased fiscal responsibility by borrowing First Nations.
- Greater First Nation access to short term and long term borrowing, and lease financing for approved borrowers.

The evaluation found that the FNFA has been successful in managing the investment side of its mandate. The Authority provided services to 38 investing members. In 2009, it managed a total of \$17M in pooled investments and between 2006 and 2009, roughly \$1.5M in earnings have been distributed to FNFA members (refer to Table 11).

Table 11: Summary of FNFA Investment Funds (\$000s)

	2006	2007	2008	2009	2010
Net assets and unitholders’ equity	\$9,428	\$10,222	\$10,419	\$16,835	\$20,000
Net earnings distributed	\$354	\$406	\$456	\$257	\$168

Sources: FNFA Annual Reports

Notes: The financial figures presented in this table are structured on the calendar year (ending December 31st).

At this time, no community level financing results can be attributed to the FSMA - such results are dependent upon the issuance of the first bond. Although the bond has not yet been issued, progress has been made in preparing for a credit rating and preparing to issue a debenture. Once the debenture has been issued, it will be possible to measure the achievement of expected long term outcomes in terms of the amount of financing for infrastructure and the savings accruing to First Nation members of the borrowing pool. In the mean time, according to FNFA, the following steps are required before the bond can be issued:

- A critical mass 20 to 25 First Nations must become borrowing members, which requires a certification by FMB.
- The *Financing Secured by Other Revenues Regulations* must be in force (anticipated to be approved by late spring/early summer).

- FNFA must apply to amend its Securities Exemption; however, it cannot formally apply for this amendment until the Securities Commission sees a final version of the Regulations.
- Moody's and Standard & Poors must complete their FNFA credit rating; this too cannot be completed until the Regulations are finalized and in force, and the agencies are able to review the economics of the FMB-certified First Nations.
- Once the Securities Exemption is in place and the two rating agencies have concluded their analysis, FNFA can work with its banking syndicate to promote to Investors.

7. Findings – First Nations Statistical Institute

7.1 Ongoing Need and Relevance of the Institutional Mandates

Summary of Key Findings: There continues to be a need for reliable and current financial statistics to support the FSMA pooled financing model and First Nations' policy and planning needs. However, delays in implementation may have impacted the relevancy of the FNSI mandate in relation to policy and planning needs as other organizations are beginning to address these.

The purpose of FNSI is to:

- provide statistical information on, and analysis of, the fiscal, economic and social conditions of:
 - Indians and other members of First Nations,
 - members of other Aboriginal groups, and
 - other persons who reside on reserve lands or lands of other Aboriginal groups;
- promote the quality, coherence and compatibility of First Nations statistics and their production in accordance with generally accepted standards and practices through collaboration with First Nations, federal departments and agencies, provincial departments and agencies, and other organizations;
- work with, and provide advice to, federal departments and agencies and provincial departments and agencies on First Nations statistics;
- work in cooperation with Statistics Canada to ensure that the national statistical system meets the needs of First Nations and Canada; and
- build statistical capacity within First Nation governments.

The legislated mandate for FNSI is broader than providing its sister organizations with the needed First Nation financial data. The institute is also mandated to support the data and statistical needs of First Nations so they can better meet their own policy and planning needs. This work will involve outreach to increase the knowledge of the importance of statistics in First Nations communities as well as supporting First Nation capacity to gather, analyze and apply statistics in evidence-based decision-making processes. Evaluation participants claimed that FNSI was important for filling this need for two reasons:

- Historically, Statistics Canada has had challenges collecting reliable statistics from First Nation communities. Whereas, FNSI is First Nation led and at arms length from the Government of Canada, which could help to build trust with First Nations; and
- Despite being quasi-independent from the Government of Canada, FNSI is a Crown corporation, which provides sufficient powers to collect and adequately protect statistical information. Other organizations collecting statistics are not bound to the same privacy provisions (for example, exemption from giving a testimony with respect to personal or sensitive information before a court).

Concern was expressed that INAC is developing a centre of excellence for statistics within the Department (namely the Research and Analysis Directorate) and is supporting other First Nation organizations to conduct work that could be within FNSI's mandate (such as the on reserve Aboriginal Peoples Survey). The extent to which these other initiatives will impact FNSI's

relevancy has yet to be seen due to the limited evidence provided by FNSI and the status of its implementation.

The evaluation also found that there continues to be a need for reliable and current financial statistics to support the FSMA pooled financing model. Case study respondents noted that this need will be ongoing and, without the FNSI, other mechanisms would be necessary to ensure the quality of these data. To date, FNSI has not been involved in collecting the required statistics because of status of issuing the bond and, as such, it is not in a position to assess the degree to which FNSI is required for the pooled financing model.

Case study respondents also reported that the Institute's ongoing environmental scan indicates that there is a demand for a range of FNSI services from First Nation people and organizations. The scan, which is expected to be completed in April 2011, is intended to support the Institute's decision making regarding the specific products and services that will be developed to meet continuing needs and expectations of the FSMA institutions and of First Nations across Canada.

7.2 Implementation

Summary of Key Findings: The FNSI experienced delays in implementation and is now becoming operational.

7.2.1 Governance Framework

To date, FNSI has established the required governance structure. FNSI is a Crown corporation that is governed by 10 to 13 directors, including a Chairperson, a Vice-Chairperson and a Chief Statistician. Each member of the Board is appointed through the GIC process. The Board currently has 13 directors and has been in operations since August 2008.

The evidence suggests that the Board is logical, consistent with other Crown corporations and the other institutions created under FSMA, and allows for appropriate independence in decision making. With regard to a clear process for communication with INAC, FNSI interviewees noted that they were working with INAC officials to continue to develop a protocol in order to build effective links with INAC at the level of the Minister, Deputy Minister and officials. The accountability reporting of Crown corporations, including audit responsibilities of the Office of the Auditor General, was seen by interviewees as appropriate oversight from the Government of Canada. It was felt by FNSI interviewees, however, that a protocol was needed to ensure that FNSI was dealt with according to the governance framework of a Crown corporation.

7.2.2 Expenditures

Table 12 presents a summary of FNSI expenditures. There is clearly a significant difference between the total planned (\$22M) and actual expenditures (\$4.6M). The difference is particularly pronounced in 2006-07 and 2007-08 where FNSI spent 176K and 146K, respectively (compared with the planned expenditures of \$2.8M and \$4.9M, respectively).

Table 12: FNSI Planned vs. Actual Expenditures (\$000s)

Expenditures	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Total
Planned	2,841	4,888	4,300	4,700	5,000	21,729
Actual	176	146	1,269	1,567	1,445	4,604
Difference	2,665	4,742	3,031	3,133	3,555	17,125

Source: Planned expenditures are abridged from program funding documents. Actual expenditures are from INAC financial records accessed January 2011.

According to FNSI, it could not access the direct appropriation in 2006-07 and 2007-08 because Governor in Council appointments had not been made and thus, FNSI was informed it did not have the number of directors required to form the Institute. To support FNSI becoming operational, INAC re-reimbursed costs associated with developing the Board, travel and administration expenses. Once the Board was appointed and the interim corporate plan was approved, FNSI started receiving its direct appropriation and expenditures have been between \$1M and \$1.5M for the remaining years (2008-09 to 2010-11). While higher, they still much lower than expected at roughly one third of planned expenditures.

7.2.3 Activities

Over 2009-10 and 2010-11, FNSI completed its start-up phase and began delivering products and services. The FNSI is conducting an environmental scan to identify specific products and services it can offer to meet continuing needs, developing an Aboriginal data inventory and developing community profiles.

As in the case of the FMB, evaluation respondents noted that the FNSI was created without the benefit of an existing organization on which to build. During the start-up phase, key positions have been staffed, including the Chief Operating Officer and interim CEO and the Institute put into place its administrative infrastructure (such as policies governing the Board of Directors and a Human Resource Policy). The Institute's current corporate plan is awaiting Treasury Board approval.

Alignment with Industry Standards: The FNSI has developed an 'Ethical Policy on the Protection of Data and Information', an essential industry best practice for collecting First Nations statistics. In the past, First Nations have been hesitant to participate in statistical surveys because of real or perceived issues regarding the misuse of data. The ethical framework created by the FNSI was seen to be critical to encouraging future First Nation participation.

7.3 Results

INAC's expected results for FNSI were set out in funding documents as:

- Greater relevant, current and accurate First Nation statistical information and analysis.
- Increased First Nation statistical awareness and capacity.
- Improved collaboration with First Nations, federal departments and agencies, provincial departments and agencies, and other organizations to promote the quality, coherence and compatibility of First Nations statistics.
- Improved collaboration with Statistics Canada to ensure that the national statistical system meets the needs of First Nations and Canada.

The evaluation did not find sufficient evidence to assess measurable progress towards the achievement of these outcomes. Moreover, FNSI's annual reports (as required by s.130 of the FSMA and s. 150 of the *Financial Administration Act*) were not available to the evaluation as FNSI officials indicated that the Office of the Auditor General has not completed the audit work required before they can be made public.

The FNSI has completed the first phase of an environmental scan consulting with 70 to 80 First Nations and First Nation organizations across Canada, and is in process of developing a number of short term projects, including an update of an Aboriginal data inventory and developing nine community profiles.

8. Findings – Efficiency and Economy

8.1 Planned versus Actual Expenditures

Table 13 presents a summary of expenditures by institution between 2006-07 and 2010-11.

Table 13: INAC Expenditures on the Implementation of FSMA by Institution (\$000s)

	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Total
INAC O&M*	20	20	20	20	300	380
INAC Salary**	300	300	300	300	300	1,500
FNTC	3,733	6,136	5,775	5,193	5,918	26,756
FMB	1,919	2,790	4,059	3,963	3,799	16,530
FNFA	765	850	1,660	1,875	1,681	6,832
FNSI	176	146	1,269	1,567	1,445	4,604
Total	6,913	9,392	13,083	12,918	13,443	55,749

Source: INAC financial records accessed January 2011.

*Note: Figures represent approximate travel costs for PIDD staff as well as the contracting costs for this Evaluation and a FSMA risk assessment.

**Note: Figures represents annual staffing of Full Time Equivalent directly relating to the implementation of the FSMA within the Institutions Unit of the Governance Branch.

As noted in Section 1.3, INAC's planned expenditures for the implementation of FSMA between 2006-07 and 2010-11 were \$74,742M. Based on INAC's financial records, actual expenditures were \$55,749M, which represents a difference of roughly \$19M. The majority of this difference is attributable to delays in implementing FNSI, whose actual expenditures were roughly \$17M lower than planned expenditures.

However, it is also worth noting that the funding documents do not identify the planned expenditures for INAC staff through salaries and operations and maintenance. As such, it is difficult to draw any inference on whether its implementation activities are in line with expectations.

8.2 Factors Internal to the Act

Duplication with s.83 of the Indian Act

The decision to maintain s. 83 has created two distinct systems for collecting property taxes on reserve (see also Section 7.2.1). Both systems are optional, but tax revenues collected under s. 83 cannot be used to secure financing from FNFA.

Respondents believed that prior to the enactment of the FSMA, the vision had been that the new legislation would replace s.83 entirely, and the FNTC would be the only body with authority over the collection of property taxes by First Nations. Under s.83, the Minister continues to be the authority, acting on FNTC recommendations for approval of taxing by-laws. Officials said that the FNTC wanted a seamless transfer of s.83 by-laws to FSMA property tax laws. By keeping the door open for First Nations to tax under the *Indian Act*, fewer First Nations made the

transition than originally expected, which has affected the number of First Nations involved with the other institutions.

Specific issues with FSMA: communications, liabilities, definitions and timeframes

Respondents commented that INAC has been slow to respond to unforeseen consequences of the structure of the legislation. As a group, the FSMA institutions have identified and put forward 31 potential amendments to be considered for improving the implementation of the Act. These sections can be broadly categorized as:

▪ **Liabilities**

FMB case study respondents raised the issue of s.136 and the associated risks to Board members in obtaining indemnity insurance. This was a major concern that was brought up numerous times during the site visit and follow-up interviews. According to officials, Board members may be liable if errors or omissions are made by an agent acting as an intervener on the Board's behalf. While s.136 protects Board members and FMB staff, consultants/agents have no such protection, which exposes the Board to potential lawsuits. Respondents said that the FMB has an obligation to secure insurance, however, this has not been possible and Board members are putting their personal assets at risk. Officials said that it is not part of the FMB business model to use staff to perform certifications or act as third-party managers in the event that intervention is needed because the client base does not yet warrant such hiring. The business model calls for engaging qualified firms or individuals to perform such functions as needed, and this will be challenged if they cannot be insured.

▪ **Clarifying definitions**

Respondents felt that the current definition of a First Nation under the Act has created confusion about the degree to which FMB has authority to provide services to a band that is not scheduled.

▪ **Notification, communications, law approval processes and timeframes**

Officials reported that the regulatory process is extremely cumbersome and legislation is time sensitive. Currently, FSMA requires a First Nation to provide a notice, by mail or electronic means, 60 days in advance of making a law. Respondents felt that the long timeframe was creating unnecessary delays, particularly in cases where there is already a tax system in place.

Furthermore, the Act currently allows for a panel of one or more to approve property tax laws and rates laws but not expenditure laws. Because the rate laws are typically approved at the same time as expenditure laws, this effectively means that both the rates and expenditure laws are being approved by the entire Commission. This was reported to be inefficient by FNTC officials.

Finally, FSMA set a timeframe of 30 days for notice of hearing and 90 days to begin the hearing for appeals. These timeframes are inconsistent with provincial appeal timeframes and as a result, could impact the certainty of a First Nation's revenues.

- **First Nation powers to borrow**

Another area seen to be unclear in the legislation is whether a borrowing member of the FNFA can access financing from commercial lenders (e.g., the Royal Bank of Canada). Respondents suggested that First Nations borrowing from the Authority would be prevented from borrowing from another institution for the same infrastructure project only, but the Act does not make this clear.

8.3 Coordination Between the Four Institutions

While FSMA's provisions define an integrated system of oversight, whereby the institutions mutually re-enforce each others mandates to ensure the integrity of the system, the institutions have taken steps to further reinforce the provisions in the Act. FNFA, FNTC, FMB and FNSI signed a MoU on September 16, 2008, to create working groups and to facilitate a collegial exchange of information in areas of common interest. A number of bilateral agreements have also been established for specific issues, such as the FNTC/FMB and FNFA/FMB protocol agreements for intervention or the FMB/FNFA bilateral MoU, which was developed in conjunction with developing *Financing Secured by Other Revenues Regulations*.

In addition to the MoUs between the institutions, INAC has helped facilitate interaction by bringing the institutions together to discuss issues of mutual concern. However, the evaluation found that the scope and purpose of these meetings have not been documented (for example, through a MoU between INAC and the institutions or Terms of Reference for a working group) and that stakeholders had differing opinions on what the purpose of such meetings is or should be. For example, INAC representatives viewed these meetings as a means to coordinate and manage implementation issues as a whole (such as developing business agendas) and other stakeholders felt that the meetings were or should be limited to INAC's responsibility to develop regulations.

Evaluation participants reported that inter-institutional coordination was challenged initially as institutional implementation took an inward focus. The four institutions were well coordinated in bringing the Act into being, but this coordination ended shortly after enactment, according to respondents. The evaluation found no consensus as to whether an overarching secretariat would have helped to bolster communication or simply added to the bureaucracy.

Respondents stated that the need for greater inter-institutional coordination was evident when INAC engaged directly with the FNFA in the discussion on other revenues regulations. Consultations commenced when the first draft of the *Financing Secured by Other Revenues Regulations* was prepared in 2009. Consultations were necessary as there was a need to ensure that the regulations had the same safeguards built in for other revenues as were already in the Act for local tax revenues. Collaboration efforts are now focussed on maximizing the bond rating. For example, FNFA has developed a detailed timeline for process of obtaining a debenture that identifies responsibilities of each institution, including INAC.

8.4 External Factors: Overlap, Duplication and Gaps

The evaluation examined the potential for overlap, duplication or gaps at the level of the individual institutions and at the level of FSMA in general.

8.4.1 Issues related to the mandates or Activities of the Individual Institutions

No duplication was found between the FMB's work and that of any other jurisdiction or organization. Officials believed FMB's products to be innovative work, which complements other programs, policies and initiatives such as Lands or Education that have separate governance structures. The FMB specifically targets the governance of financial management.

Pooled borrowing services are currently available for municipal governments through organizations such as the Municipal Finance Authority of British Columbia. However, these existing organizations do not lend to First Nations. In fact, FNFA was found to be the only example of a pooled borrowing regime for First Nation communities and the only long term financing option for First Nations.

The extent to which there may be overlap between the activities of the FNSI and the activities of Statistics Canada, the First Nations Information Governance Centre, and INAC's Strategic Research and Analysis Directive was difficult to assess as FNSI has not yet delivered statistical products or services. The FNSI is currently conducting an environmental scan to document the roles of various organizations to avoid potential duplication of efforts.

While there is no evidence of overlap between the FNTC and any outside agency, the evaluation noted challenges with the duality of property tax systems under both FSMA and s.83 of the *Indian Act*.⁵⁴ By maintaining s.83 as an option, the FNTC must do everything in two ways, which raises the cost of doing business. There was some optimism that once all aspects of the FSMA are implemented, more s.83 First Nations could see the benefits of the FSMA approach to property taxation.

Secondly, under the Inherent Rights Policy, First Nations may negotiate a comprehensive self-government agreement that includes 'taxation in respect of direct taxes and property taxes of members'.⁵⁵ This has created a situation where it is possible to have different tax regimes in each self-governing First Nation and, as such, interviewees reported that INAC encourages self-governing First Nations to adopt a provincial based property tax regime. This has made it necessary for adaptation regulations to be developed to allow treaty First Nations such as Tsawwassen and self-governing First Nations such as Westbank to be scheduled under FSMA.

Furthermore, interviewees reported that if a self-governing First Nation collects property tax, that tax money is considered to be own source revenue under the Own Source Revenue Policy, which means that their Fiscal Transfers would be reduced accordingly. This not only creates a

⁵⁴ Section 83 of the *Indian Act* states that the council of a band may, subject to the approval of the Minister, make by-laws for the collection of property taxes, including the enforcement of payments, the establishment of an appeal process respecting assessments, and the expenditure of monies collected.

⁵⁵ The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government. <http://www.aadnc-aandc.gc.ca/eng/1100100031843#scopn> (accessed February 2011).

disincentive for self-governing First Nations to collect property taxes, but also will serve to limit the capital available for FNFA borrowing (i.e., the reduction in the Fiscal Transfer would force a First Nation to pay for government programs such as education and social programs using tax revenue collected from individuals who don't necessarily access such programs).

8.4.2 Issues related to FSMA in general

Economic Development: As discussed in Section 3.1.2, FSMA aligns with the strategic priorities of the *Federal Framework for Aboriginal Economic Development*. Specifically, FSMA directly aligns with *enhancing the value of Aboriginal assets* by allowing First Nations to collect property taxes on their reserves and use those revenues to access affordable loans through a pooled borrowing regime, as well as *developing Aboriginal human capital* by helping First Nations to improve financial management through the FMB and through the First Nation Certificate Programs in Tax Administration and Applied Economics. Despite the obvious parallels in priorities of the Framework and the objectives of the FSMA, no specific reference is made to the Act or its institutions.

Other Optional Legislation: The evaluation found evidence that greater coordination with related initiatives (i.e., infrastructure spending, self-government, and other optional legislation such as FNCIDA, FNLMA and FNOGMMA), would ensure complementarity and appropriate incentives for First Nations to take advantage of the Act. For example, the current proposed *Financing Secured by Other Revenues Regulations* include revenues generated through FNLMA and FNOGMMA, which could help provide incentives for First Nations to opt into these initiatives. Interviewees also highlighted the potential involvement of the FMB in helping First Nations to develop the financial management capacity requirements under these initiatives.

Infrastructure Funding: Currently, INAC spends roughly \$1.3B per year on infrastructure programs.⁵⁶ Despite the parallels between INAC direct spending on infrastructure and FSMA infrastructure financing, interviewees noted that there was no formal relationship between the two initiatives and that there may be disincentives to First Nations taking out loans if the Department is willing to finance infrastructure through grants.

8.5 External Factors: INAC's Support for Implementation

Analysis of INAC's current support for the implementation of FSMA provides evidence of both promising or best practices and inefficiencies.

On the positive side, INAC has instituted steps to ensure institutions have flexibility to develop and deliver their mandates, remain responsive to changes and directions from their boards. The authority *Contribution to First Nations Institutions for the purpose of enhancing good governance* allows for both core funding and project based funding.

INAC's support has also encouraged an enviable reporting process with the potential to benefit both the organizations and INAC's performance measurement objectives.

⁵⁶2009-10 INAC and Canadian Polar Commission Report on Plans and Priorities. Community Infrastructure Program Activity.

However, lapses in addressing some of the requirements of the authority and challenges with design (multiple authorities) are evident and having a negative impact for INAC (inefficiencies in the management and measurement of INAC's investments) and on the Act's implementation (greater attention to risks to implementation is needed).

8.5.1 Performance Measurement

A draft RMAF was developed to support the Contribution authorities by establishing a framework for measuring the performance of INAC's support for the implementation of FSMA in relation to the above outcomes. The original program documentation suggests that the Governance Branch would be working with each of the four institutions "...to fully develop detailed and appropriate performance indicators and measures in relation to ...expected results and to assist them" in mapping out data collection processes and reporting requirements. No evidence exists to prove that this work took place.

A review of INAC's 2009 *Audit of Capacity Development*⁵⁷ indicates that challenges with the performance measurement of the FSMA institutions were identified some time ago. The objectives of this audit, which included the four FSMA institutions, were to provide assurance that Capacity Development programs and authorities are being implemented: i) in a well controlled and coordinated manner in order to achieve effectiveness; and (ii) in accordance with approved authorities and Terms and Conditions. The audit noted that the then most recent Departmental Performance Report for all of the programs covered were limited to outputs rather than outcomes, if there was any information reported at all. In the case of the FSMA institutions⁵⁸, the data referred only to the number of institutions identified by INAC as being operational.⁵⁹

The evaluation did not encounter evidence to the effect that the draft RMAF was finalized and implemented or that a performance measurement strategy had been approved (i.e., specific performance indicators were not established and performance data have not been collected in accordance with the draft RMAF). As such, the evaluation could not determine the degree to which the intended outcomes have been achieved through supporting FSMA. More recently, INAC completed a performance measurement strategy for the Credit Enhancement Fund (February 2011). This strategy is to be integrated into a performance measurement strategy for FSMA as a whole, which is scheduled for completion in 2011-12.⁶⁰

⁵⁷ Indian and Northern Affairs, *Audit of Capacity Development*, June, 2009 (<http://www.aadnc-aandc.gc.ca/aiarch/arp/aev/pubs/au/acd/acd-eng.asp>).

⁵⁸ The audit examined six programs, including a program named 'Fiscal institutions' which included the four FSMA institutes. This was the only reference to the institutions found by the evaluation which referenced the evaluations in this way.

⁵⁹ The evaluation's analysis of the Terms and Conditions (T&Cs) for *Contribution to First Nations Institutions for the purpose of enhancing good governance* concluded that weaknesses in terms of performance reporting; reporting requirements focus on how past funding was spent in achieving objectives, not, that is, on whether objectives are being or have been achieved. The T&Cs are stronger and state that core funding (aka funding for ongoing operations) must be supported by annual plans. These plans are expected to document the objective(s) and expected outcome(s) of the year's activities with linkages to the objective(s) and expected outcome(s) of the authority. An analysis of FSMA's plans, however, do not demonstrate such linkages

⁶⁰ INAC Five Year Plan for Evaluation and Performance Measurement. 2011-12 to 2015-16.

Expectations for Operationalization

The clearest information respecting INAC's expectations for start-up appear in the financial data. As shown below in Table 14, start-up funding was pegged at two years for each institution. An analysis of the estimated start-up costs align with those of another institution launched at approximately the same time (e.g., two year start-up, approximately 18 percent and 13 percent of its budget for the first and second years, respectively).

However, when the start-up financial data is examined on an institution by institution basis, the both start-up and operating costs vary considerably, both across institutions and across the two years. No INAC documentation was found to explain the variances, nor what the start-up costs were expected to cover, as there is in the other case (e.g., funding information for this case includes notes indicating that start-up costs included allowance for more committee meetings than would be expected, up-front communication and legal fees, purchase of equipment, leasehold improvements, and an implementation task force, among others).

Table 14: Planned expenditures for start-up, 2006/08 – 2007/08 (\$000s)

Institution	Expenditures	2006-2007		2007-2008	
		\$ (000s)	%	\$ (000s)	%
FNTC	Start-up	\$438	15%	\$983	18%
	Total	\$2,975		\$5,343	
FMB	Start-up	\$292	14%	\$688	16%
	Total	\$2,147		\$4,238	
FNFA	Start-up	\$650	57%	\$350	41%
	Total	\$1,150		\$850	
FNSI	Start-up	\$263	9%	\$338	7%
	Total	\$2,841		\$4,888	
Summary	Start-up	\$1,643	18%	\$2,359	15%
	Total	\$9,113		\$15,319	

Source: Abridged from INAC's funding documents

* Institution totals include both start-up and regular or ongoing expenditures.

Outside financial data indicating a two-year start-up phase, there is little information available on INAC's expectations respecting timelines for the establishment of the four institutions, milestones, which were to be monitored towards this end. Also unclear is the degree to which risks to the overall implementation of FSMA were assessed - such as the time required for GIC processes, capacities for take-up, should delays in the start-up of one or more institutions be encountered, or targets set for take-up (through which progress could be monitored or assessed).

The following external issues were identified as affecting implementation:

- ***The Governor in Council Appointment Process***

Unanticipated delays in establishing the Boards of the FMB and FNSI and the Commission of FNTC were associated by INAC with the GIC appointment process. GIC appointments are used to ensure a transparent and merit-based selection process for such positions. The steps in this process include:

- Departmental preparation of an appointment package (Ministerial Briefing Note, letter of transmittal to the Clerk of the Privy Council, draft Order in Council, etc.);
- Ministerial approval of the appointment package;
- Privy Council Office review;
- Treasury Board approval (required for Orders in Council);
- Cabinet approval (Cabinet recommend the appointment to his Excellency the Governor in Council);
- Governor in Council approval; and
- Announcement of the appointment.

Each step is important and the process cannot begin until the legislation has received Royal Assent. It took 16 months to establish the FNTC Commission, 17 months to establish FMB's Board and 32 months to establish FNSI's Board. Interviewees reported that these delays continue to impact the institutions as the terms for directors and commissioners expire. For example, FNTC officials noted there was a lapse of roughly 90 days before the Deputy Commissioner of the FNTC was re-appointed. Although this may be an isolated case, Officials from all the institutions expressed concern with the late timing of decisions to re-appoint.

Such delays in the Governor in Council appointment process are a long standing issue and common across Crown corporations and agencies. In 2009, the Office of the Auditor General found that communication regarding appointments and reappointments is insufficient; there was no standard for communication of appointment and reappointment decisions; and notification of appointment and reappointment decisions was late and often after the expiration of the term.⁶¹

- ***Scheduling First Nations***

Case study respondents stated that it takes a long time to convince a community to sign a Band Council Resolution and an inefficient process that delays a First Nation from using the legislation can act as a deterrent. Respondents believed that early on there was too much red tape and INAC had assumed the role of gatekeeper in scheduling communities. At first, INAC wanted to "batch" First Nation requests to be scheduled so that the amendment process would be limited to four times a year. The delays in being scheduled made it appear to some First Nations getting into taxation that it would be easier to use the *Indian Act*. Respondents believed that this issue has been resolved but that it should never have been an issue at all. Respondents suggested that such delays made the Act's implementation less smooth than anticipated.

- ***Pre-existing Organizational Structures***

The evaluation evidence suggests that institutional start-up has been at least somewhat influenced by the degree to which the institutions had previous experience and capacities to draw upon or whether they had to start from scratch:

- Before becoming operational, FNTC had to develop new policies, standards and procedures to implement FSMA. It was able to do this in a very short time. First Nations were able to start taxing under FSMA in 2008. Respondents believed this was facilitated by the foundation built by the Indian Taxation Advisory Board and the continuity in capable personnel who supported the transition.

⁶¹ 2009 March Status Report of the Auditor General of Canada. Chapter 2 – The Governor in Council Appointment Process.

- FNFA was incorporated in 1995 and has been managing pooled investments since 1997.⁶² Having the existing organizational base allowed it to demonstrate community level impacts during the first year of operation, however, the issuance of the bond is dependant on First Nations developing the required laws and management systems under FMB's and FNTC's mandates.
- FMB had no organizational base when FSMA was passed. This meant that it had to go through all the steps required to get an organization up and running, including finding office space, hiring the appropriate staff and developing the policies, procedures and standards to implement the Act. Respondents noted that it takes time to recruit a CEO and knowledgeable staff. Furthermore, there were no pre-existing standards that could be adopted.
- FNSI board appointments were noticeably delayed until August 2008 and case study participants noted challenges in staffing senior leadership positions. An interim CEO was not appointed until late 2009.

- ***First Nations Financial Management Capacity***

Evaluation participants noted that the FMB certification requires a high standard of financial management and that most First Nations are not yet capable of meeting the standard. Developing the required capacity will take time and dedication from the communities.

8.5.2 Multitude of Authorities: Continuing need?

As noted earlier in this paper, several new authorities - grants, contributions and direct allocations - have been used to support the establishment and operations of the four institutions. In support of implementing FSMA, INAC created the following four authorities:

- *Grant to the First Nations Finance Authority pursuant to the First Nations Fiscal and Statistical Management Act;*
- *Grant to the First Nation Finance Authority for the purpose of enhancing the Authority's credit rating;*
- *Contribution to First Nations Institutions for the purpose of enhancing good governance;* and
- *Payment to the First Nations Statistical Institution for operating expenditures.*

In addition, at least one organization has also drawn upon the *Contributions to Support the Building of Strong Governance Administrative and Accountability Systems*. This authority also provides support to other institutions supported by the Governance Branch, including National Centre for First Nations Governance and the Aboriginal Financial Officers Association.

The evaluation found no clear rationale for why this structure of authorities should continue to exist and instead, found evidence that this practice creates inefficiencies for the Department, including lost opportunities for capturing lessons learned in the development and continuing operations of institutions, and performance measurement.

⁶² 1998 FNFA Annual Report.

Supportive of this were recommendations from a 2009 INAC Audit, which recommended measures to consolidate the Department's capacity building initiatives to amalgamate capacity building initiatives, and included the four FSMA institutions in its study.⁶³

8.5.3 Other Issues Raised

Evaluators were told that the chairs of the FNTC and FMB personally financed “keeping the lights on” in these institutions until funding arrived. Respondents noted that stability in funding is important to allow the FSMA institutions to be solid, ongoing organizations and that in some years, all of the funds were not received until the fall. This is evidenced by the fact that INAC made a number of urgent payments to support the FNTC, FMB and FNFA during 2008, 2009 and 2010.

The FNFA is charged with creating the Credit Enhancement Fund under s.85, in order to enhance the organization's credit rating. FNFA officials had anticipated that they would be positioned to issue the first debenture during 2010-2011. Accordingly, INAC secured \$10M in funding to help establish the fund, but limited its purpose to helping secure long-term private capital financing. The FNFA reports that the lack of short term financing is inconsistent with other pooled borrowing organizations and detracting from building a critical mass of long-term borrowers.

⁶³ INAC (2009). Audit of Capacity Development.

9. Conclusions and Recommendations

9.1 Conclusions

This report presents the findings of *the Evaluation of the Implementation of the First Nations Fiscal and Statistical Management Act*. The evidence supports the conclusion that the FSMA addresses a continued need by providing a choice to First Nations wishing to improve capacity and to have access to financing tools used by local governments to advance economic development. This is relevant and aligned to federal government priorities, particularly those related to Aboriginal governance capacity and economic development in Aboriginal communities. Moreover, the provisions and operations of the FSMA, including the mandates of its four institutions, continue to be relevant to INAC's strategic outcomes for the Government.

The design of the FSMA is appropriate and is largely being delivered as intended. However, each institution has shown varying degrees of implementation: FNTC is fully operational and demonstrating community level impacts through the generation of local revenues; FMB and FNFA are operational and beginning to demonstrate some community level impacts, and FNSI is now becoming operational. The evidence also demonstrates that the institutions have formalized their relationships and are working together to support First Nations who choose to access the Act.

As identified at the onset of the evaluation, it was difficult to assess the overall impacts of FSMA due to the status of implementation of each institution as well as the lack of performance measurement in place for FSMA. However, as discussed above, there are signs of progress for all four institutions and evidence of community level impacts for FNTC, FMB and FNFA. Areas for improvements in efficiency were identified and include: the development of performance measurement strategy; a review of the structure of the authorities supporting the implementation of the Act; the coordination of Institutions; and, the alignment with other INAC initiatives such as economic development and infrastructure programming, self-government activities, as well as other optional legislation.

9.2 Recommendations

It is recommended that:

1. INAC's Chief Financial Officer reviews the potential, and recommend any changes necessary, to rationalize the dedicated FSMA spending authorities (and other related authorities) and to reinforce linkages with other relevant initiatives, including, for example, economic development.
2. Given the current operational status of the FSMA institutions, INAC re-examines the expected results of INAC's support and the funding required to achieve those expected results. Also, INAC works with First Nations institutions to develop performance measurement strategies and reporting regimes in line with Treasury Board and INAC standards, particularly with respect to roles and responsibilities, risks, targets, time lines, reporting burden and a strategy for measuring impacts on First Nation communities.

3. As part of the legislative review, INAC ensures that an assessment of the mandate of the FNSI is undertaken that considers the results of the environmental scan and the corporate plan vis-à-vis respecting its activities. The review should also include an assessment of progress being made towards the issuance of a bond.
4. INAC strengthens coordination with other related INAC initiatives, including other “opt-in” initiatives, self-government (including the British Columbia Treaty process), economic development and infrastructure programming, to ensure that the FSMA regime is being utilized to its maximum potential.

Appendix A – Key Findings by Evaluation Question

Relevance

- 1. Do the provisions and operations of the FSMA, including its four institutions and supporting authorities, continue to be relevant to federal government priorities and to INAC's strategic outcomes?***

FSMA is in line with federal government priorities related to the *Federal Framework for Aboriginal Economic Development* in general and *enhancing the value of Aboriginal assets and developing Aboriginal human capital* specifically.

Under INAC's Program Activity Architecture, support for the implementation of the FSMA and its institutions falls within the Governance and Institutions of Governance Program Activity, which supports INAC's Strategic Outcome: The Government – Good governance, effective institutions and co-operative relationships for First Nations, Inuit and Northerners. Moreover, FSMA is intended to position effective governance as laying the foundation for economic development and growth, which underpin the long-term objectives and activities of the FNTC, FMB and FNFA and as such FSMA is linked to the strategic outcomes 'economic development' and 'prosperity' reported on in INAC's Report on Plans and Priorities.

- 2. Is there an ongoing need / anticipated future demand for the FSMA, including its institutions, as currently designed and delivered?***
- 3. Are the legislated mandates and functions of the institutions involved in administering the FSMA still relevant?***

FSMA is relevant to addressing barriers to economic development on reserve by affirming First Nations fiscal powers that are similar to local governments in areas related to the collection of property tax revenues and accessing favourable interest rates through pooled investments and pooled borrowing regimes. It is anticipated that demand for these tools will grow in the future, particularly once the first bond has been issued and First Nation communities are able to see the outcomes of pooled borrowing.

FNTC's mandate is critical to the implementation of FSMA because it is creating the transparency required to encourage third-party investment in reserve lands. Furthermore, FNTC is responsible for recommending the approval of section 83 by-laws to the Minister. This effectively means that the FNTC is responsible for all property taxation on First Nation reserves.

FMB is critical to FSMA's implementation because, through approval of Financial Administration Laws and certification, it provides an indication of the financial health of a First Nation to capital markets. This certification of financial health is necessary for the FNFA to gain a favourable credit rating. Furthermore, the FMB is responsible for intervening in First Nation financial management to remedy situations when property tax laws are improperly or unfairly applied or when a First Nation does not meet its payment obligations to FNFA.

FNFA is responsible for creating a long-term financing regime for First Nations. This regime was found to be essential for allowing First Nations to access capital markets at affordable rates, thereby providing financing for infrastructure and economic development.

First Nation statistics are essential for the FSMA institutions to operate and for First Nation community level planning. FNSI has a unique mandate in that it is quasi-independent from the Government of Canada and yet has the ability to build trust with First Nation communities and the authority to protect sensitive statistics. However, delays in implementation have meant that other organizations are addressing these needs, be it the FSMA institutions collecting the information they require without FNSI or other First Nations statistical organizations collecting community level information.

Design and Delivery

- 4. To what extent has the FSMA been implemented within the expected time frame?***
- 5. Has the FSMA established a successful governance framework, overall, and with respect to each institution?***
- 6. Are the institutions' corporate plans consistent with expected results and how effectively are results/outcomes measured (see Question 9)? Are the plans being implemented as intended?***
- 7. Overall, are the activities of the FSMA institutions consistent with the Act's provisions such as the functions and powers for each institution?***

The design of the FSMA is appropriate and is largely being delivered as intended. However, each institution has shown varying degrees of implementation. The evidence also concludes that the Institutions have formalized their relationships and are working together to support First Nations who choose to access the Act. Implementation for each institution is summarized as follows:

- FNTC is fully operational and implementing its responsibilities under FSMA as intended. It has established the appropriate governance framework and is delivering services in its mandate areas. Annual performance objectives are established by business line and progress against those objectives is reported on in the annual reports.
- FMB experienced some delays in implementation, but is now on track and being implemented as intended. It has established an effective governance framework and a suite of financial management standards that align with industry best practices. It is delivering on its mandate services by offering capacity development funding to First Nations, Financial Administration Law review and approval services, financial performance certificate services and financial management systems review services. Annual performance objectives are established by business line and progress against those objectives is reported on in the annual reports.
- FNFA is currently offering investment advice and services; however, the establishment of the governance structure required under the Act and the achievements of intended outcomes

related to financing are dependent on the issuance of the first bond. Key activities are established, by business line, in the corporate plans and annual are structured around financial statements (i.e. financial auditor's report and pooled investment – statement of assets).

- To date, FNSI has established the required governance structure and begun conducting an environmental scan to identify specific products and services FNSI can offer to meet continuing needs. Annual reports were not available to the evaluation team and as such this evaluation could not assess the effectiveness of performance monitoring.

8. *To what extent are First Nations engaged and participating as expected in the implementation of the FSMA and its institutions?*

FSMA is optional legislation for First Nations and, as such, the Act and the funding documents do not clearly identify expectations for participation. To date, sixty (60) First Nations are scheduled on the Act, which includes First Nations from every region in the country except the Territories and Quebec.

Performance/Success

9. *To what extent are the institutions progressing towards the achievement of expected outcomes?*

10. *To what extent are the overall expected outcomes being achieved?*

As identified at the onset of the evaluation, it was difficult to assess the overall impacts of FSMA due to the status of implementation of each institution as well as the lack of performance measurement in place for FSMA. However, as discussed above, there are signs of progress and evidence of results being achieved for all the Institutions. A summary of the results achieved by each Institution is as follows:

FNTC has made significant progress towards achieving its intended outcomes, as stated in INAC's funding documents. There are early indications of increased investor confidence as evidenced by: an increase in assessed property values; over \$170M in local revenue (\$70M of which is under FSMA and \$100M under s.83) that has been generated; disputes between taxpayers and First Nations being resolved by FNTC; and, the development of tax administration capacity through a formal certificate program delivered in cooperation with the Tulo Center of Indigenous Economics and the Thompson River University.

FMB is beginning to have an impact on First Nation communities. To date, 11 First Nations are developing financial management systems, 26 First Nations are in the process of developing the Financial Administration Laws, and two First Nations have approved Financial Administration Laws and are in the certification process.

FNFA is currently offering investment advice and services, which have resulted in roughly \$1.5M earnings for the 38 First Nations investment members. However, the evaluation found that there are a number of steps required to establish a financing regime under FSMA, including:

- Twenty (20) to twenty-five (25) First Nations must be certified by FMB.
- The Financing Secured by Other Revenue Regulations must be finalized and in force.

- FNFA must apply for a Securities Exemption once the Regulations are finalized.
- FNFA must under go two credit ratings (through Moody's and Standard & Poors)
- Once these steps are completed, FNFA can work with its banking syndicate to promote the bond to investors.

FNSI has only recently completed its start-up phase, and the evaluation found that it is now beginning to deliver statistical products and services. The evaluation did not find sufficient evidence to measure progress towards the achievement of expected outcomes.

11. What factors are facilitating or challenging the implementation of the Act and the achievement of expected results?

This report has identified a number of factors that are internal and external to the Act. These include issues related to the appointment of Directors and Commissioners, maintaining section 83 of the *Indian Act*, specific amendments that have been requested by the Institutions, the structure of the authorities supporting the implementation of the Act; the coordination of Institution; and, the alignment with other INAC initiatives such as economic development and infrastructure programming, self-government activities, as well as other optional legislation.

12. Has the FSMA had any unexpected impacts, positive or negative?

Implementation of FSMA has resulted in a number of positive unintended impacts. These include the fact that First Nations are willingly choosing FMSA over Section 83 of the *Indian Act*, partnerships with local governments on economic development and the potential to use FSMA products to secure favourable financing through commercial lenders.

Economy, Effectiveness and Alternatives

13. Are the institutions, their operations / mandates and expected outcomes in line with industry standards and best practices?

The FSMA institutions are actively working to ensure that they align with industry standards and best practices:

- FNTC standards and sample property tax laws reflect provincial and local government best practices.
- FMB standards and certification processes are consistent with recognized control frameworks while specifically responding to the characteristics of First Nations.
- The FNFA closely follows Municipal Financing Authority of BC standards for pooled capital financing of infrastructure.
- FNSI has developed an *Ethical Policy on the Protection of Data and Information*, which is seen as critical for engaging and building trust with First Nation communities.

14. Does the FSMA unnecessarily duplicate or overlap with other programs, policies or initiatives?

FSMA as a whole is complementary to and supportive of First Nation economic development programming and generally does not unnecessarily overlap with other programs, policies or initiatives. However, there appears to be unnecessary duplication between FSMA part 2 and section 83 of the *Indian Act* as both legislative pieces grant powers to First Nations to collect

property tax on an optional basis. The existence of both pieces of legislation has introduced administrative inefficiencies for FNTC, such as the need to maintain two registries.

It also appears that there would be advantages to having greater coordination with related initiatives (specifically self-government, other optional legislation (FNCIDA, FNLMA and FNOGMMMA), and infrastructure spending) to ensure complementarity and appropriate incentives for First Nations to use the Act.

15. What best practices and lessons learned have emerged from the FSMA, within INAC and elsewhere that could contribute to improved delivery, performance measurement, and outcomes?

16. What modifications or alternatives, if any, might improve the efficiency and effectiveness in the implementation of the FSMA?

A number of the findings associated with other evaluation issues could easily be reported as best practices. FSMA represents an alternative approach for First Nations to access capital markets and raise local revenues.

The primary lesson learned from this evaluation is the importance of clearly establishing expectation for implementation and the achievement of expected outcomes during the design phase of initiatives like FSMA. This should include timelines for establishment of key delivery components such as governance structures and policy frameworks (in this case standards laws and management systems) and expectations around the scope and timing of service delivery (in this case the delivery of services in the core mandated areas of each institution). Finally, INAC should clearly articulate expectations around the achievement of outcomes along with timeframes and performance targets to support future evaluation work.

Appendix B – Profiles of the Four FSMA Institutions

First Nations Tax Commission

Governance

The FNTC's governance framework is prescribed under the Act as a shared governance organization.⁶⁴ Its governance structure consists of ten commissioners, including a Chief Commissioner and Deputy Chief Commissioner. The Chief Commissioner is a full-time position. On the recommendation of the Minister of INAC, his Excellency the Governor in Council appoints nine of these positions, three of whom are taxpayers using reserve land for commercial, utility and residential purposes. The Native Law Centre, University of Saskatchewan appoints one commissioner.

Overview of Powers

The FSMA empowers the FNTC to enter into cooperative arrangements and shared-cost ventures with national and international organizations to consult on or sell products or services developed for First Nations who have made property taxation laws.

The Commission must review all First Nation local revenue laws and approvals must be in accordance with regulations and subject to review of any representations from those who have interests in the reserve lands. The Act requires the Commission to maintain a registry of every local revenue law financial administration law that it has approved.

The regulations specify that the Commission cannot approve a property taxation law made for financing capital infrastructure for the provision of local services on reserve lands unless the First Nation has provided a certificate from the FMB to the Commission's Board and the First Nation has unutilized borrowing capacity. The Commission must then provide the FNFA with a true copy of the law and a certificate stating that the law meets all the requirements of this Act and the regulations made under this Act. The Commission must notify the FNFA immediately if it becomes aware of any judicial review proceedings that have been undertaken in respect to such a law.

The Act also provides for the Commission to review upon written request by a member of a First Nation, or by a person who holds an interest in reserve lands or has a right to occupy, possess or use the reserve lands complaints about a First Nation's non-compliance with the Act or that a law

⁶⁴“Shared-governance corporations include corporate entities without share capital for which Canada, either directly or through a Crown corporation, has a right, pursuant to statute, articles of incorporation, letters patent, by-law or any contractual agreement (including funding or contribution agreements) to appoint or nominate one or more voting members to the governing body. ...Similarly, there are organisations related to intergovernmental or First Nations Agreements that are within the scope of this definition and, therefore, are also subject to this policy.” *Policy on Reporting of Federal Institutions and Corporate Interests to Treasury Board Secretariat*, effective April 1, 2007.

has been unfairly or improperly applied. After conducting a review, if the Commission finds evidence on non-compliance or unfair or improper application of the law, the Commission must order the First Nation to remedy the situation. If the First Nation does not remedy the situation within the time set in the order, the Commission may provide notice in writing to the FMB, requiring the imposition of either a co-management arrangement on the First Nation or assumption of third-party management of the First Nation's local revenues to remedy the situation.

All local revenue laws approved and all standards and procedures established by the Commission under are to be published in the *First Nations Gazette*, at least once in each calendar year.

Appendix A contains a description of the property tax bases from which First Nations may collect tax revenues. It also summarizes what can be taxed and the steps that must be followed in order for a First Nation to levy taxes under the FSMA or s.83 of the *Indian Act*.

Expected Results

Expected results were summarized in the documentation provided by INAC:

- Increased confidence in First Nation property tax regimes.
- Increased transparency in law review process with more timely approval of First Nation local revenue laws.
- Increased number of trained administrators, and increased knowledge development, greater public awareness of First Nation property tax regimes.
- Greater access to and transparency in dispute resolution in respect of property taxation.

Funding

Planned Expenditures (000s)

Expenditures	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Five Year Total
FNTC Startup	\$438	\$983				\$1,421
FNTC Ongoing	\$2,537	\$4,360	\$4,490	\$4,500	\$4,510	\$20,397
FNTC Total	\$2,975	\$5,343	\$4,490	\$4,500	\$4,510	\$21,818

Source: Abridged from the program funding documents, Detailed Costing.

First Nations Financial Management Board

Governance

The FMB's governance framework is prescribed under the Act as a shared governance organization.⁶⁵ The FMB is managed by a Board of Directors consisting of a minimum of nine and a maximum of 15 directors, including the Chairperson and the Vice-Chairperson. On the recommendation of the Minister, his Excellency the Governor in Council appoints the Chairperson and a minimum of five and a maximum of eleven directors. The Aboriginal Financial Officers Association of Canada (AFOA) appoints up to three additional directors. The Board of Directors elect the Vice-Chairman from among the directors. The Board of Directors is to be composed of men and women from across Canada, including members of First Nations, who are committed to the strengthening of First Nation financial management and who have the experience or capacity to enable the FMB to fulfil its mandate.

Overview of Powers

The FSMA empowers the FMB to review a First Nation's financial management system or financial performance for compliance with FMB standards on the request of its band council. On completion of the review, the Board must provide the First Nation with a report setting out the scope of the review undertaken and an opinion as to the extent to which the First Nation was in compliance with the standards. If the Board is of the opinion that the First Nation was in compliance with the standards, it will issue a certificate to the First Nation. The Board may, with notice, revoke a certificate that it has issued if it is of the opinion that the basis upon which the certificate was issued has materially changed. The Board may determine the form and content of certificates issued, including any restrictions for use. If a borrowing member's certificate is revoked, the borrowing member shall, without delay, take any measures required to re-establish its certification. An opinion of the Board in this regard is final and is not subject to appeal.

On receipt of a notice from the FNTC or from the FNFA, the Board must either require the First Nation to enter into a co-management arrangement or assume third-party management of the First Nation's local revenues as the Board sees fit. The Board must give notice that it is requiring the First Nation to enter into a co-management arrangement in respect of the First Nation's local revenues, including its local revenue account if, in the Board's opinion, there is a serious risk that the First Nation will default on an obligation to the FNFA or has been requested to do so by the FNTC. Under a co-management arrangement, the Board may:

- recommend amendments to a First Nation's law made under the Act;
- recommend changes to the First Nation's expenditures or budgets;
- recommend improvements to its financial management system;

⁶⁵“ Shared-governance corporations include corporate entities without share capital for which Canada, either directly or through a Crown corporation, has a right, pursuant to statute, articles of incorporation, letters patent, by-law or any contractual agreement (including funding or contribution agreements) to appoint or nominate one or more voting members to the governing body. ... there are organisations related to intergovernmental or First Nations Agreements that are within the scope of this definition and, therefore, are also subject to this policy.” *Policy on Reporting of Federal Institutions and Corporate Interests to Treasury Board Secretariat*, effective April 1, 2007.

- recommend changes to the delivery of programs and services; order that expenditures of the First Nation's local revenues be approved by, or paid with cheques co-signed by, a manager appointed by the Board; and,
- exercise any powers delegated to the Board under a law of the First Nation or under an agreement between the First Nation and the Board or between the First Nation and the FNFA.

The Board may, on giving notice to a First Nation council and to the Minister, assume management of the First Nation's local revenues, including its local revenue account, if, in the Board's opinion, a co-management arrangement has not been effective, or if there is a serious risk that the First Nation will default on an obligation to the FNFA, or if the First Nation has been requested to do so by the FNTC. If the Board assumes third-party management of the First Nation's local revenues, the Board has the exclusive right to act in the place of the First Nation council to make laws, act in the place of the council under laws, manage its local revenue account, including any necessary borrowing, provide for the delivery of programs and services that are paid for out of local revenues, assign rights or interests under the Act, and exercise any powers delegated to the Board under a law of the First Nation or under an agreement between the First Nation and the Board or between the First Nation and the FNFA. The Board shall not make a law that delegates a power to a person or body to whom a power was not delegated at the time the Board assumed third-party management unless the council of the First Nation gives its consent. The First Nation council cannot repeal any law made under the Act during the time that the Board assumes third-party management. The Board must review the need for third-party management at least once every six months and advise the FNFA. The FNTC may repeal any law made by the Board under third-party management, and must inform the First Nation council of the results of its review of a law made by the Board under third-party management.

The Board may terminate a co-management arrangement with, or third-party management of, a First Nation on giving notice to its council that the Board is of that opinion: that there is no longer a serious risk that the First Nation will default on an obligation to the FNFA; or, if the First Nation remedied default of a payment obligation to the FNFA; or, if the situation for which the co-management arrangement or third-party management was required has been remedied. The Board may terminate a co-management arrangement if third-party management is required.

Opinions given by the Board are final and are not subject to appeal. The Board must advise the FNFA and the FNTC of the commencement or termination of a co-management arrangement or of the assumption or termination of third-party management of a First Nation's local revenues.

Upon request, a First Nation that has made a local revenue law must provide to the Board any information about the First Nation's financial management system and financial performance that the Board requires for a decision regarding a co-management arrangement or third-party management of the First Nation's local revenues.

Expected Results

Expected results were summarized in the program funding documents:

- Increased First Nation awareness of effective financial management;
- Greater First Nation capacity for effective financial management practices and processes;
- Increased number of First Nations certified by the FNFMB;

- Increased number of First Nations that are in a better position to enter into fiscal arrangements with other governments and the private sector;
- Increased stability through co-management and third-party management support of the local revenue account; and,
- Improved credit ratings for First Nations.

Funding

Planned Expenditures (000s)

Expenditures	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Five Year Total
FMB Startup	\$292	\$688				\$980
FMB Ongoing	\$1,855	\$3,550	\$3,660	\$3,760	\$3,890	\$16,715
FMB Total	\$2,147	\$4,238	\$3,660	\$3,760	\$3,890	\$17,695

Source: Abridged from the program funding documents, Detailed Costing.

First Nations Finance Authority

Governance

The FNFA's governance framework is prescribed under the Act as a non-profit corporation without share capital. It is not an agent of Her Majesty or a Crown corporation within the meaning of the *Financial Administration Act*. The Authority is to be managed by a Board of Directors nominated and elected by representatives of its borrowing members. The Board of Directors will consist of five to 11 directors, including the Chairperson and the Deputy Chairperson. Transitional measures are provided for the existing Board of Directors from its predecessor First Nations Finance Authority Inc., a corporation incorporated under the *Canada Business Corporations Act*, to continue as directors of the FNFA until new directors are elected.

In addition to borrowing members, the FNFA has investing members. Investing members are members that have invested in the Authority's Pooled Investment Funds. Investing members cannot be elected to the Board.⁶⁶

Overview of Powers

The FSMA empowers the Board of Directors of the FNFA to: borrow money in an amount authorized by resolution; issue securities of the Authority; lend securities to generate income, if the loan is fully secured; enter into agreements for risk management purposes, including swaps; and provide for payments related to the issuance of securities, the registration, transfer, management and redemption of securities, the re-issuance, reinstatement or other disposition of lost, stolen, destroyed or damaged securities or interest coupons, the examination, cancellation or destruction of securities and of materials used in their production, or the timing of the issuance of securities. The FSMA sets out the details of resolutions respecting the issuance of securities and the amount of issue and the sale price.

The powers of the FNFA are designed to allow the FNFA to borrow money on the wholesale market, and meet the financial tests of the rating agencies such as Moody's and Standard and Poor's in order to attain and retain an investment-grade rating. Ratings accorded to FNFA bonds impact the rate of interest that must be paid. The attractiveness to a First Nation of borrowing through FNFA pooled debt vehicles is that the First Nation can achieve significant savings in the interest paid on this wholesale debt, compared to the retail rates it would have to pay at a bank, on its own. Following the models of pooled municipal debt financing in use in BC and elsewhere, FNFA has the powers it needs to assure investors that their investment is secure. The pressure on FNFA (to attain and maintain its rating) is to ensure that investors who buy FNFA debt obligations will have assurance that they will be paid the interest and the principal at the time these are due. As such, FNFA also has the powers to order FMB to take immediate remedial action to ensure that the member quickly regains the capacity to meet its obligations to the FNFA pool of borrowers. FNFA needs to maintain contingency reserves to continue to make interest payments to investors, at the same time as it takes remediation action with a member in default. This is the essence of how the pooled debt can lower risks to investors, and thereby lower

⁶⁶ FNFA 2009-2010 Annual Report, p. 6.

interest rates for members of the pool. These necessary powers are provided in the Act and are described below.

The Authority can accept a First Nation that has applied to become a borrowing member only if the FMB has issued it a certificate that has not subsequently been revoked. A First Nation may cease to be a borrowing member only with the consent of all other borrowing members. The Authority has a priority over all other creditors (excepting a debt to the Crown) of a First Nation that is insolvent, for any moneys that are authorized to be paid to the Authority.

The Act prescribes the conditions under which long-term loans can be made including the FNTC's role in approving laws made by borrowing members, as well as restrictions on obtaining financing secured by property tax revenues from any person⁶⁷ other than the FNFA. The Act also specifies the conditions for short-term loans to borrowing members.

The Authority must establish a sinking fund and separate sinking fund account for each participating borrowing member to fulfil its repayment obligations to the holders of each security issued by the Authority. The Act prescribes where a sinking fund may be invested. The Authority may declare a surplus in a sinking fund and use the surplus to replenish any amounts paid out of the fund and to make a distribution to borrowing members who are participating in that fund.

The Authority must also establish a debt reserve fund to make payments or sinking fund contributions for which insufficient moneys are available from borrowing members. For the debt reserve fund, the Authority must withhold 5% of the amount of any long-term loan to a borrowing member for financing capital infrastructure for the provision of local services on reserve lands. The Act also provides guidance on how these monies may be invested.

The Act also empowers the FNFA to require borrowing members to pay amounts sufficient to replenish the debt reserve fund should its balance be reduced by more than half, and borrowing members can recover these amounts under their property taxation laws.

The Act also instructs the Authority to establish a fund for the enhancement of the Authority's credit rating and prescribes how this fund may be used and how fund monies can be invested.

If a borrowing member fails to make a payment to fulfill an obligation to the Authority, the Authority must notify the borrowing member of the failure and send a notice of the failure together with evidentiary documentation to the FMB and the FNTC. The FNFA may also require the FMB to conduct a review and report on the reasons for the failure in writing and recommend the extent to which any intervention is appropriate. The Authority may require the FMB, by notice in writing, to impose a co-management arrangement on a borrowing member or assume third-party management of its local revenues, at the FMB's discretion.

Finally, the Act empowers the FNFA to establish short-term pooled investment funds and prescribes the conditions.

Expected Results

⁶⁷ S. 80 of the Act uses the term "person" in the legal sense to denote a legal entity and not necessarily an individual.

Expected results were summarized in the program funding documents:

- Increased First Nation awareness of FNFA’s financial products and services.
- Greater First Nation access to affordable capital through pooled borrowing.
- Improved First Nation financing terms.
- Reduced cost of borrowing.
- Increased fiscal responsibility by borrowing First Nations.
- Greater First Nation access to short term and long term borrowing, and lease financing for approved borrowers.

Funding

Planned Expenditures (000s)

Expenditures	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Five Year Total
FNFA Startup	\$650	\$350				\$1,000
FNFA Ongoing	\$500	\$500	\$500	\$500	\$500	\$2,500
FNFA Total	\$1,150	\$850	\$500	\$500	\$500	\$3,500

Source: Abridged from the program funding documents, Detailed Costing.

First Nations Statistical Institute

Governance

FNSI is a Crown Corporation which is governed by a Board of Directors. It reports to Parliament through the Minister of INAC. Its Members are appointed by his Excellency the Governor in Council for a maximum five-year term. According to its website, the Chairman of the Board was appointed in August 2007. According to the interview held with FNSI officials, FNSI has 13 members on its Board of Directors.

In October 2009, the Chief Operating Officer and Interim Chief Executive Officer of FNSI was appointed.

Because FNSI is a federal Crown Corporation, the Office of the Auditor General audits its accounts.

Because FNSI is a Crown Corporation, the Board of Directors plays a key role in its governance. In addition to the appointment of its Board of Directors through GIC appointments, FNSI is expected to meet the provisions of its Act and of the *Financial Administration Act* (FAA) as it applies to Crown Corporations. Within the Crown Corporation governance structure, there is a role defined for TBS and INAC, particularly with respect to approval of the Corporate Plan. For example, section 118 of FSMA and section 122(1) of the FAA require each institution to submit a corporate plan to the Minister for approval. Section 130 of FSMA and section 150 of the FAA state that each Crown Corporation is to submit an annual report on the operations of the corporation in that year concurrently to the appropriate Minister and to the President of the Treasury Board. According to the TBS website⁶⁸, the corporate plan should be approved by the Board of Directors in December of each year. The responsible Minister then reviews, signs and recommends the plan for approval by TB within two weeks (by mid-January). TB has until the end of March to consider the plan and issue a decision letter. The GIC process for final approval happens during the first 12 weeks of the new fiscal year.

*Overview of Mandate and Powers*⁶⁹

FNSI is the first of its kind in Canada – a First Nations-led and managed statistical institution. FNSI's primary purpose is to support the work of its three sister institutions by providing accurate and reliable information and data. This work supports and promotes First Nations economic development.

FNSI also has a broader mandate to support the data and statistical needs of First Nations so they can better meet their own policy and planning needs. This work will also involve increasing knowledge of the importance of statistics in First Nations communities and to increase their capacity to gather, analyze and apply statistics in evidence-based decision making processes.

⁶⁸ Please see the TBS website: <http://www.tbs-sct.gc.ca/gov-gouv/tools-outils/fye-faf/2007/images/mar07-eng.JPG>, accessed January 25, 2011.

⁶⁹ Source is <http://www.fnsi-ispn.com/about.php?page=1-4>, accessed November 28, 2010.

The purposes and powers of FNSI are set out in Section 5 of the Act. Section 104 lists the purposes as:

- (a) provide statistical information on, and analysis of, the fiscal, economic, and social conditions of Indians and other members of First Nations; members of other aboriginal groups; and other persons who reside on reserve lands or lands of other aboriginal groups;
- (b) promote the quality, coherence and compatibility of First Nations statistics and their production in accordance with generally accepted standards and practices through collaboration with First Nations, federal departments and agencies, provincial departments and agencies and other organizations;
- (c) work with, and provide advice to, federal departments and agencies and provincial departments and agencies on first nations statistics;
- (d) work in cooperation with Statistics Canada to ensure that the national statistical system meets the needs of first nations and Canada; and
- (e) build statistical capacity within First Nation governments.

Section 105, part 2, states that FNSI may collect, compile, analyze and abstract data for statistical purposes respecting any of the following matters as they relate to First Nations, reserve lands, Indians and other members of First Nations: population; agriculture; health and welfare; commercial and industrial activities; Law enforcement; the administration of justice and corrections; finance; education; language, culture, traditional activities; labour and employment; prices and the cost of living; transportation and communications; electric power, gas and water utilities; public administration; community services; the environment; forestry, fishing and trapping; and any other matter that may be prescribed by regulation.

FNSI states on its website that it plans to develop strong working relationships and partnerships with existing statistical bodies and agencies. This was confirmed in the interview with FNSI officials. This is corroborated in FNSI's corporate planning documents. In this regard, FNSI states that it intends to work with all of the various government departments and agencies to determine information gaps, present and future statistical needs, and coordinate efforts among all of the various parties.

To accomplish its mandate, FNSI has established four key objectives. The key objectives of the FNSI include: expanding knowledge and understanding of how FNSI can contribute to improving the quality of life of First Nations through the use of information and statistics; strengthening the position of FNSI to be a leader in the collection and use of First Nation statistics; acting as a supporting agent within the institutional framework established by the First Nations Fiscal and Statistical Management Act; and, developing and maintaining positive relationships with First Nations, FNSI's partners and other stakeholders.⁷⁰

Expected Results

FNSI's expected results were set out in a document provided to Treasury Board as:

⁷⁰ PowerPoint presentation, "FNSI Current Status and Outlook", undated.

- Greater relevant, current and accurate First Nation statistical information and analysis.
- Increased First Nation statistical awareness and capacity.
- Improved collaboration with First Nations, federal departments and agencies, provincial departments and agencies, and other organizations to promote the quality, coherence and compatibility of First Nations statistics.
- Improved collaboration with Statistics Canada to ensure that the national statistical system meets the needs of First Nations and Canada.

Funding

Planned Expenditures (000s)

Expenditures	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Five Year Total
FNSI Startup	\$263	\$338				\$601
FNSI Ongoing	\$1,108	\$1,940	\$2,290	\$2,71	\$3,000	\$21,128
FNSI Total	\$2,841	\$4,888	\$4,300	\$4,700	\$5,000	\$21,729

Source: Abridged from the program funding documents, Detailed Costing.

Appendix C – FSMA Logic Model

Final Outcomes

Enhanced economic opportunities within First Nations
Increased sound financial management within First Nations
Increase investment and infrastructure within First Nations
Improved relations between First Nations, governments and other partners
Increased First Nation self-reliance



Intermediate Outcomes

Greater confidence by First Nation members, taxpayers, investors and other interested parties in First Nation financial management
Increased transparency in property taxation processes
Increased First Nation capacity in fiscal practices
Improved data and information sources
Increase economic activity on reserves



Immediate Outcomes

Improved First nation access to information that supports governance activities
Improved First nation access to professional advice and development
Improved First nation access to capital and investment opportunities
Improved First nation access to financial management models and frameworks



Outputs

Policies, procedures, processes, regulations standards, laws and certificates
Frameworks and reports
Communications, public relations and training materials
Information and databases/inventories
Statistical products
First Nation bonds and investments
Informal and formal agreements



Activities

Research, analysis and policy development
Professional and capacity development
Regulation and standards development
Law review and compliance
Financial management, financing and investment services
Dispute management and related services
Advisory services
Data compilation and review
Communications and public relations