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PROMISE FULFILLED: THE ROLE OF THE SBA 8(A) PROGRAM IN ENHANCING ECONOMIC DEVELOPMENT IN INDIAN COUNTRY

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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PROMISE FULFILLED: THE ROLE OF THE SBA 8(A) PROGRAM IN ENHANCING ECONOMIC DEVELOPMENT IN INDIAN COUNTRY

THURSDAY, APRIL 7, 2011

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:28 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

The CHAIRMAN. I call this hearing of the Committee on Indian Affairs to order.

Again, aloha and thank you for being with us today. Before we begin, I want to welcome Senator Begich who is joining my Indian Affairs colleagues on the dais. I want to thank all of my colleagues for taking time out of their schedules to be here with us as we discuss this very important topic.

Today's hearing is called Promise Fulfilled: The Role of the SBA 8(a) Program in Enhancing Economic Development in Indian Country. We will examine the nexus between the Federal policy on self-determination and the trust responsibility to American Indians, Alaska Natives and Native Hawaiians and the role of SBA 8(a) Program in enhancing economic self-determination for these groups.

For over 45 years, we have committed ourselves to the policy of self-determination and self-sufficiency for native communities. We have deliberately turned from the paternal policies of the past to ones that emphasize respect for native decision-making and partnerships between the American Indians, Alaska Natives, Native Hawaiians and the Federal Government.

We have found that when we do business with the tribes and other native organizations, whether that be through 638 contracting or procurement of other goods and services, the Federal Government achieves two goals. We enhance our ability to do the people's business, the business of good government and promises kept, and we strengthen the ability of native communities to be self-sufficient.

The SBA 8(a) Program has become an integral part of the way we advance these two goals with one program. This 8(a) Program has had successes, and of course, some challenges. I look forward to the discussion on how to build upon this program's ability to advance self-determination and self-sufficiency for native communities, while meeting the needs of the government customer.

I want to extend a special mahalo or thank you to all of those who have traveled far, from Hawaii and Alaska and other places, to join us today. I appreciate your presence at these proceedings.

Vice Chair Barrasso, would you like to comment?

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Well, I would, Mr. Chairman.

I want to thank you for holding this important hearing today, and I want to welcome all of those who are going to be sharing their thoughts and their ideas with us.

The Committee is quite familiar, as you said, Mr. Chairman, with the challenges of high unemployment and poverty rates in many of our Country's Indian communities. For decades, the Congress and the Executive Branch have sought to create sustainable economies and employment opportunities in Indian Country.

I am afraid that we have achieved, as you said, only limited success, too limited. The 8(a) Program for small businesses represents one of the Federal initiatives to create economic development in Indian Country, and it is fair to say that the SBA program has worked in many cases. Though, to be sure, certainly as you said, Mr. Chairman, not in all cases.

The fundamental purpose of this program is to assist small businesses to become self-sufficient and capable of competing effectively in the marketplace. In theory, that purpose fits quite well with the needs of Indian Country.

Now, I understand that some of our witnesses today will illustrate the benefits of the 8(a) Program, what it can accomplish when it is done right. However, according to the Government Accountability Office and the Inspector General reports, there have been some problems in the oversight and implementation of the program. So I am hoping to hear some specifics about what steps have been taken by the Small Business Administration and the 8(a) community to deal with these specific problems.

The Indian 8(a) contracting is only a small fraction of all the small business contracting, and an even smaller fraction of all Federal contracting. However, the program must fulfill its basic purposes, not simply operate as a way that benefits firms or individuals that the program is not intended to help. And it must be transparent and accountable to taxpayers and tribal members that the businesses support.

So I look forward to the testimony, Mr. Chairman. And I would say that Senator McCain, I visited with him a little earlier today, he is unavoidably detained. I know he does have some questions for Mr. Jordan and Mr. McClintock, so I am hoping that they could stay and remain available, and hopefully Senator McCain's delay will not be too long.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Barrasso, my partner here.

Would any of the other Members of the Committee like to make any opening statement?

Senator Tester?

STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA

Senator TESTER. Yes, thank you, Mr. Chairman.

First of all, the Native Hawaiian Recognition bill, congratulations on moving it forward. I think it is a bill that we need to continue fighting for. The *Carcieri* fix, as the Vice Chairman pointed out, is an important bill. And to you also, Mr. Chairman, we need to move that forward. Its time has long passed and we need to move it.

I would just say just very briefly, the 8(a) Program is a very, very critically important program. In Indian Country, I hear about it whenever I go around Montana. And I think reports that there are some unscrupulous folks that may be taking advantage of the program, we need to get cleaned up and cleaned up as soon as possible. And I look forward to hearing from the witnesses in looking for solutions to move it forward.

Unemployment in our neck of the woods is pretty doggone high in Indian Country and this is one of the programs that helps offset that unemployment problem. It could be a better program. Let's make it a better program and move forward in that direction.

Thank you.

The CHAIRMAN. Thank you very much, Senator Tester.

Senator Murkowski?

STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman.

And if I may ask the Committee's indulgence, I typically do not like to make much more than a minute opening statement, but if I may have just a few minutes this afternoon to speak. I have a lot of Alaskans here and, of course, a great deal of interest in this. I will try to go as quickly as possible.

First, I want to thank you. I want to thank you and Vice Chairman Barrasso for convening this hearing to explore the role of the Small Business Administration's 8(a) Program in promoting economic development in our native communities. It was about a year and a half ago that several on this dais participated in a hearing before Senator McCaskill's Subcommittee to examine what was referred to as the Alaska Native Corporation 8(a) Program.

In my opening remarks before that hearing, I pointed out that there is no such thing as an Alaska Native Corporation 8(a) Program. Rather, that there are specific contracting opportunities within the SBA's 8(a) Program that are available to Indian tribes, to Alaska Native corporations, and to Native Hawaiian organizations.

And moreover, there are specific rules that apply to the participation of Indian-owned entities in the 8(a) Program, and these opportunities and rules are rooted in Federal Indian policy to address the unique challenges that face our Indian tribes, our Alaska Na-

tive corporations, and our Native Hawaiian organizations in developing viable businesses.

So I welcome the decision of this Committee to examine the 8(a) Program through the lens of Federal Indian policy because we are uniquely positioned to undertake that task, uniquely positioned to inform our colleagues on the significant and unique handicaps that have historically made it difficult or impossible for tribes, Alaska Native corporations, and Native Hawaiian organizations to engage in sustainable business practices.

And this Committee is best positioned to evaluate how ending or substantially restricting these special contracting opportunities would affect the future of our tribes, our native corporations and our Native Hawaiian organizations.

I would like to take just a moment to mention a few of the difficulties that have faced the native people of Alaska as they entered the world of business. Participation in the business world didn't come naturally to the native people of Alaska. Alaska Native people were hunters. They are fishers. They are whalers. They are living off the land and marine resources. And we are not just talking about ancient times, past times.

This reliance on subsistence for sustenance remains true today in more than 200 native villages of bush Alaska, most of which lack road connections to the remainder of the American continent. These are isolated, remote communities which have some of the highest poverty rates in the Nation. In some of these communities, multiple grades of elementary school are still taught within a single classroom. There is no broadband Internet access, very few year-round employment opportunities.

And so in 1971, Congress settled the aboriginal lands claims of the native people of Alaska, which gave Alaska's native people title to some 44 million acres of land. But it also directed them to form businesses to help succeeding generations of native people bridge the gap between the subsistence lifestyle which was customary and traditional, and the challenge of surviving and succeeding in modern America.

The businesses that were formed at the direction of Congress are called Alaska Native Corporations. And this year, we observed the 40th anniversary of the formation of the ANCs. And as we will hear today, the ANCs have enjoyed some remarkable successes, and these successes have occurred in spite of the substantial handicaps that those businesses have to overcome. Nearly all of the first generation of Alaska Native Corporation leaders lacked a college education and most had no prior experience in business. But many have earned a place in Alaska history among our State's most respected individuals for the way that they have grown their native corporations.

And today, we have legions of young Alaska Native people who are graduating from school. Some are getting advanced degrees thanks in part to the scholarships from their corporations. Some have gone to work for their corporations and are employed in 8(a) businesses today. Others like Kristi Williams on my staff, an Athabascan Indian, she is cutting her teeth here in Washington, D.C. Some are working in native health, education, social services.

And some choose to return to their villages and continue the traditional. All of these roads are good and culturally appropriate.

In addition to the scholarships, native corporations are using the fruits of their 8(a) involvement in culturally appropriate ways, like funding special benefits for the traditional elders or investing in cultural preservation programs or ensuring that their aboriginal land base remains intact. And on top of that, many native corporations pay annual cash dividends to the shareholders. Some are paying these dividends for the first time in 40 years, and only because of the 8(a) business opportunity.

But it must also be noted that on the road to success, many have stumbled, and even 40 years after the passage of the land claims settlement, it is apparent that some are still stumbling, but few have failed. And what is remarkable is that Alaska's native people simply don't give up, not even when they are talked about, the spotlight is put on them by *The Washington Post, USA Today, and ProPublica.*

When they discover that they have made mistakes in the selection of business partners, they correct those mistakes, and they remember the lessons that they have learned. And when they discover that they have been ripped off by business partners, they don't sweep things under the rug and hope that nobody is going to notice. They go to court. They recover what is rightfully theirs, and they regain control of their businesses.

In my view, our objective today should be to celebrate the resilience of our Indian businesses. But we must also look to how we can improve the 8(a) Program. And to improve, we must identify the lessons of failure and find ways to help Indian 8(a) businesses succeed going forward. If reforms are needed to ensure that the Indian 8(a) Program achieves its objectives, let's get them out on the table.

And I want to commend the Small Business Administration for taking a stab at doing just that in the comprehensive regulations that they have recently released. If the SBA needs to be doing more as part of its educational and coaching mission to ensure that Indian 8(a) businesses don't fall into a trap, let's identify those resources needed to accomplish that.

I thank you, Mr. Chairman, for the indulgence of some additional time, and again I so appreciate that you have brought this hearing forward.

The CHAIRMAN. Thank you very much, Senator Murkowski.

Senator Udall?

STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO

Senator UDALL. Mr. Chairman, I would just ask unanimous consent to put my opening statement in the record and look forward to the hearing.

The CHAIRMAN. It will be included in the record.

[The prepared statement of Senator Udall follows:]

PREPARED STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

As my colleagues before me, I'd like to thank you all for being here. We appreciate your taking the time to be with us here today and your perspectives on the impact and significance of the 8(a) program.

New Mexico tribes and pueblos have contacted me expressing their support for the 8(a) program and for the participation of ANCs. And especially for how these preferences help fulfill our trust responsibilities to foster economic development opportunities.

My interest in this issue then, is in how ANCs are working with other tribal and native entities across the country; in the partnerships and relationships they have built to promote economic development in Indian Country across the country.

I believe that ANCs have worked to help other native and tribal entities develop their own economic development capacity and look for that to continue.

I look forward to hearing your testimony.

The CHAIRMAN. Senator Johanns?

STATEMENT OF HON. MIKE JOHANNS, U.S. SENATOR FROM NEBRASKA

Senator JOHANNS. Thank you, Mr. Chairman. I will be extremely brief.

Let me also say to the SBA thank you. I think we are all convinced that there were some needed changes to bring some sunshine and better regulation to what was happening here, and you grabbed a hold of it and I applaud you for that. And I am anxious to hear your testimony as to how you feel that is going to improve the situation.

But I do want to take just a brief moment to talk about a success story in this program. I am guessing each of our first witnesses will be familiar with this success story.

Let me roll the clock back to the 1990s. One of our tribes in Nebraska, the Winnebago Tribe, literally was experiencing unemployment at a 70 percent rate. Everybody was unemployed. It was that difficult.

But they decided they didn't want the world to be that way, and so they went to work. They rolled up their sleeves. They took advantage of the opportunities that were presented. And today, I am able to tell you that the unemployment rate on the reservation has fallen to less than 10 percent. That is because of an entity called Ho-Chunk, which now employs 1,400 people.

Ho-Chunk provides a diverse range of industries, information technology, construction, professional services, office products, just to name a few. Ho-Chunk's profits have been used to provide scholarships, to expand the tribal college, and to develop a native workforce.

The leader of Ho-Chunk was recently recognized as the regional Small Business Association minority small business person of the year, and he is sitting at the end here. Lance and I have known each other for a long time and worked together dating back to my time as Governor.

It is just a remarkable success story. Now, just in the last few years, this kicked off during my time as Governor, he led efforts to develop a 40-acre Ho-Chunk village in Winnebago, Nebraska. I have driven through Winnebago many times on my way to other places. I have spent time on the reservation. To describe this as a miraculous turnaround just simply doesn't do it justice.

This is truly a case where I think we have a model here for others to look at and ask the question: How did they do it? And can we learn from what they have done? Certainly, in any program, there is going to be some fits and some starts and some ebbs and some flows.

And that is why I will end my comments where I started, and just say thank you to the SBA for not giving up on this program, for realizing how important it is, for recognizing that there are success stories out there like Ho-Chunk, and also recognizing that we just need to do things a bit better. And I think everybody is willing to do that.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you very much, Senator Johanns.

Senator Begich?

Following Senator Begich, I will call on Senator Tester to make an introduction.

STATEMENT OF HON. MARK BEGICH, U.S. SENATOR FROM ALASKA

Senator BEGICH. Thank you, Mr. Chairman, and thank you for the ability to be here on the dais with you and the Members.

I want to echo the comments of Senator Murkowski and Senator Johanns. These are great examples of why the program and the many members that I know within the 8(a) corporations are incredibly successful.

In Alaska, as Senator Murkowski laid out, there were great challenges in the early days and we have come a long ways since the early days of Alaska Land Claims Settlement Act to what is now companies engaged in incredible opportunities for the Alaska Native people.

Just to say a couple of things just to put it in perspective, when you think of Alaska and when you think of the situations that we deal with, especially in our Indian Country, and you think of gas prices at $10 a gallon; 46 communities still using the honey bucket; one-third of the rural communities haul water from a community source; 20 percent of Alaska Natives living in poverty, this is actually an improvement from what it was 40 years ago and where we are today.

A big and sizable piece of that was 8(a) corporations and the establishment of them. There is no question that there have been challenges in years past on making sure the 8(a) corporations are successful. The SBA has stepped to the plate, as Senator Johanns, you have mentioned, and that is they have seen this program to be a success and want to make sure it is modified and make sure it works well.

The rules and regulations they put forward, the 8(a) corporations have been asking for for more than 10 years—asking for assistance to make sure they have the right oversight, the right accountability, so they can become even more successful and be a successful program for SBA.

So in a lot of ways, the work that SBA has done with the tribal consultation has brought forward some rules and regulations that will not only enhance the efforts already, but really grow the oppor-

tunities not just in the few that have already done the SBA 8(a) program, but all across this country.

And I think it is clearly one of the programs that when you think about it, is not one of these Federal programs that is a hand-out to anybody. It is really a step to help create opportunity, of self-sufficiency. And what I find always interesting when I hear about the SBA program and some of the critics on the 8(a) Program complaining it's an entitlement, well, to be very frank with you, it is not. It is an opportunity for people to create their own successes in their small and large communities. And many of these corporations pay taxes, lots of taxes to the Federal Government. I am not sure I know an entitlement program that pays taxes.

This is clearly a program that has great success. As Senator Murkowski has said, there have been challenges, but we have achieved a great deal in Alaska, especially with the 8(a) corporations. So as we have seen in newspapers over the last year, taking information that I consider somewhat old and making them sound fresh, I think has been somewhat irresponsible.

So today is maybe a chance to shed the full light on the success of 8(a) corporations. So I thank the Chairman and the Ranking Member for holding this hearing because I think it will really, clearly from Alaska's perspective, from the first people of the Country, for Native Hawaiians, this is an incredible program to advance not only this generation, but multiple generations in employment and self-sufficiency.

So again, thank you, Mr. Chairman, for holding this and I look forward to the testimony. And my view is probably when we are done here, we will have more positive light on a great program that needed some tweaking, which has been done, and now we will see some additional success in the future.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Begich.

I want to thank the Members of the Committee for your statements which will be included in the record.

We only have limited time to conduct the hearing and therefore had to limit the number of witnesses we invited. But as Chairman, it is my goal to ensure that we hear all who want to contribute to the discussion. So the hearing record is open for two weeks from today, and I encourage everyone to submit your comments through written testimony.

I want to remind the witnesses to please limit your oral testimony to five minutes today.

Before we begin with the witnesses, I would like to call on Senator Tester.

Senator TESTER. Thank you, Mr. Chairman. I appreciate the latitude.

On the third panel, which I am not going to be able to be here for, I apologize for that ahead of time, a gentleman from Polson, Montana by the name of Larry Hall, who is sitting in the front row, will be testifying. Larry has just done an incredible job creating jobs and creating an economy in western Montana, particularly on the Salish-Kootenai Indian Reservation. And he has developed a company that is a jewel in western Montana and really benefits not

only the folks in Indian Country, but the economy impacts people outside that reservation, too.

Thank you for being here, Larry.

The CHAIRMAN. Thank you.

I want to welcome Joseph Jordan, the Associate Administrator for Government Contracting and Business Development with the SBA. And also from the SBA, we have Mr. Peter McClintock, Deputy Inspector General from the Office of the Inspector General.

Welcome to both of you.

Mr. Jordan, please proceed with your testimony.

STATEMENT OF JOSEPH G. JORDAN, ASSOCIATE ADMINISTRATOR FOR GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT, U.S. SMALL BUSINESS ADMINISTRATION

Mr. JORDAN. Thank you, Mr. Chairman.

Chairman Akaka, Vice Chairman Barrasso and Members of the Committee, thank you for inviting the U.S. Small Business Administration to testify regarding the utilization of the SBA 8(a) Business Development Program in Indian Country.

My name is Joseph Jordan and I am the Associate Administrator for SBA's Office of Government Contracting and Business Development. My office has primary responsibility for the 8(a) Program from both the policy and programmatic execution perspective.

As you know, in response to Congressional findings that disadvantaged individuals did not play an integral role in America's free enterprise system, and did not share in the community redevelopment process, the 8(a) Business Development Program was created during the 1960s. Beginning in 1986, significant changes were made to the 8(a) Program when Congress enacted legislation that allowed Alaska Native corporations, Native Hawaiian organizations, community development corporations and tribally owned funds to participate in the 8(a) Program.

This was intended to allow these organizations to benefit from the community development opportunities available through the 8(a) Program. The utilization of the program by these entities to improve community and economic development is consistent with tribal self-determination policies and strategies supported by the Administration.

SBA's primary responsibility in regards to the 8(a) Program is to oversee and execute the program as intended by Congress. As it is currently operating, the 8(a) Program is simultaneously intended to provide business development opportunities to disadvantaged individuals, while also fostering regional or community economic development for firms owned by ANCs, tribes, and NHOs. In addition, the SBA has been working diligently to ensure that oversight of these programs is strong and that SBA programs are operating free of fraud, waste or abuse.

Over the course of the last two years, the Administration has done extensive reviews on the program and has implemented comprehensive regulatory reforms. This regulatory overhaul is the first of its kind in the 8(a) Program in more than 10 years. The regulatory package has addressed many of the issues raised in previous

years' Government Accountability Office and SBA Inspector General audits.

During the formulation of the SBA regulatory package, we worked closely with the tribal community. SBA held six tribal consultations during the formulation and drafting of the new 8(a) regulations. Additionally, SBA has been proactive by engaging with the tribal community outside of formal consultations, including participating in the White House Tribal Nations Summit.

Many of the SBA's recent regulatory changes were made to ensure that the program benefits flow to the intended recipients, and to help reduce the potential for fraud, waste and abuse. SBA works closely with the GAO and Inspector General to ensure that their recommendations are properly addressed. For example, in response to the I.G.'s July, 2009 report, SBA published these revised 8(a) regulations, is in the process of conducting a program review to evaluate the impact of the growth in ANC 8(a) obligations, and has updated the business development management information system to allow native subsidiaries to apply for the program and undergo portions of their annual review electronically.

While we have been responsive to many of the points raised in various audits, we would also like to note the following. The I.G. report correctly points out that 8(a) contracting dollars to ANCs have increased, but neglects to also note that 8(a) dollars have increased to all program participants over that same period.

Further, many of the concerns identified in these reports were not due to any wrongdoing by the 8(a) Program participants, but were in fact permitted under previous regulations.

As I noted, SBA has attempted to eliminate any of these perceived loopholes in our new regulations. As with any program, there are bad actors who will attempt to gain entry. The agency takes seriously any actions that negatively affect the integrity of the 8(a) Business Development Program. We appreciate the I.G.'s recommendations to curb abuses and we welcome the opportunity to work further with them to fully ensure that the benefits of the program flow only to its intended beneficiaries.

Despite the actions of a small number of program participants, the agency has seen the benefits of the 8(a) Program to many entity-owned participants in the development of both their businesses and their respective communities in the forms of dividends, jobs, scholarships and community pride, just to name a few.

These benefits have been fully authorized by the current statutory provisions and provide economic and community development opportunities for some of the most under-represented populations in the United States.

Thank you for allowing me to share SBA's views with you today and I will be happy to answer any questions you may have.

[The prepared statement of Mr. Jordan follows:]

PREPARED STATEMENT OF JOSEPH G. JORDAN, ASSOCIATE ADMINISTRATOR FOR GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT, U.S. SMALL BUSINESS ADMINISTRATION

Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee, thank you for inviting the U.S. Small Business Administration (SBA) to testify regarding the utilization of the SBA 8(a) Business Development (BD) Program in Indian Country. My name is Joseph Jordan, and I am the Associate Administrator for

the SBA's Office of Government Contracting and Business Development. My office has primary responsibility for the 8(a) BD program from both a policy and programmatic execution perspective.

In response to Congressional findings that disadvantaged individuals did not play an integral role in America's free enterprise system and did not share in the community redevelopment process, the 8(a) BD program was created administratively during the 1960s to help eligible small businesses compete in the American economy. Congress provided statutory authority for the program in 1978, and shifted the program's focus to business development. The Small Business Act authorized the SBA to develop business ownership among underserved groups that own and control little productive capital.

Beginning in 1986, significant changes were made to the 8(a) program when Congress enacted legislation that allowed Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs), and tribally-owned firms to participate in the 8(a) BD program.[1] Participating in the 8(a) BD program would allow these organizations to benefit from the community economic development opportunities available through the 8(a) BD program.

A primary difference between "entity-owned" participants and traditional 8(a) participants owned by one or more disadvantaged individuals is the motive for participation. On one hand, individual socially and economically disadvantaged small business owners participate in the program to receive individual business development assistance and to increase their firm's success for themselves and their dependents. On the other hand, it is assumed that entity-owned participants utilize the business development opportunities for economic and community development purposes. In other words, entities are beholden not to one or two business owners and their families, but to their entire shareholder base, tribal base, and community. The utilization of the 8(a) BD program by entities to improve community and economic development is consistent with tribal self determination policies and strategies supported by the Administration.

As a result of this distinction, firms participating in the 8(a) BD program that are owned by tribes, ANCs, and NHOs are not subject to the same rules as individually-owned companies participating in the program. First, a firm applying to, or participating in, the 8(a) BD program that is owned by a tribe, ANC or NHO may qualify as a small business without being considered affiliated with the tribe, ANC, NHO or any other business owned by the tribe, ANC or NHO. In other words, in determining size, the Agency qualifies each xcxentity-owned applicant or 8(a) participant individually, without aggregating the employees or revenues of that firm with the employees or revenues of any other firm owned by the tribe, ANC or NHO. For individually-owned firms applying to, or participating in, the 8(a) BD program, the size of a firm would include the revenues or employees of all entities with common ownership.

Second, a tribe, ANC or NHO may own and control more than one firm that participates in the 8(a) BD program at the same time. In contrast, an individual who qualifies one firm to participate in the 8(a) BD program may not participate again in the program as a disadvantaged individual. Thus, such an individual may not own more than one firm that participates in the 8(a) BD program.

Third, firms owned by tribes, ANCs or NHOs that participate in the 8(a) BD program generally are not subject to the sole source contract limitations as those 8(a) firms owned by individuals. Under the Small Business Act, an individually-owned 8(a) participant cannot receive a sole source 8(a) contract in an amount exceeding $6,500,000 for contracts assigned manufacturing NAICS codes and $4,000,000 for all other contracts. As a result of legislation enacted in 1988, there is no cap on the value of an 8(a) contract that may be awarded to an 8(a) participant owned by a tribe or ANC. This means that these companies are able to receive an 8(a) contract in any amount without competition. Similarly, in 2003, Congress authorized NHOs to receive 8(a) contracts above the competitive threshold amounts for Department of Defense procurements.

Lastly, companies owned by tribes, ANCs, NHOs and CDCs do not have the same requirements pertaining to control by non-disadvantaged individuals as do firms owned by one or more disadvantaged individuals. For individually-owned 8(a) firms, one or more individuals claiming social and economic disadvantage must control both the long term strategic policy setting and the day-to-day management and administration of the company. In contrast, firms owned by ANCs and NHOs need not have any disadvantaged managers in order to be eligible to participate in the 8(a) BD program. Although a firm owned by a tribe must generally be managed by one

[1] P.L. 99–272, Sec. 18015 added ANCs and tribes; P.L. 100–656, Sec. 207 added NHOs; and P.L. 97–35, Sec. 626(a)(2) added CDCs.

or more members of a tribe, non-disadvantaged individuals may manage such a firm, provided a written management development plan exist. This plan must show how tribal members will develop managerial skills sufficient to manage the concern or similar tribally-owned concerns in the future.

SBA's primary responsibility in regards to the 8(a) program is to oversee and execute the program as intended by Congress. As it is currently operating, the 8(a) BD program is simultaneously intended to provide business development opportunities to disadvantaged individuals while also fostering regional or community economic development for firms owned by ANCs, tribes and NHOs. In addition, the SBA has been working diligently to ensure that oversight of these programs is strong and that SBA programs are operating free of waste, fraud and abuse, within their statutory designs.

Over the course of the last two years, the Administration has done extensive reviews on the program and has implemented comprehensive regulatory reforms. This regulatory overhaul is the first of its kind in the 8(a) BD program in over 10 years. The regulatory package has addressed many of the issues raised in previous years' Government Accountability Office (GAO) and SBA Inspector General (IG) audits. During the formulation of the SBA regulatory package, we worked closely with the tribal community. Under President Obama's directive to engage in regular and meaningful consultation with tribal governments whenever the Federal Government intends to implement policies that have tribal implications, the SBA held 6 tribal consultations during the formulation and drafting of the 8(a) BD regulations. Additionally, SBA has been proactive by engaging with the tribal community outside of formal consultations, including participating in the White House Tribal Nations Summit at which Deputy Administrator Johns heard concerns voiced by tribal leaders on topics related to economic and community development and the role of small business in Indian Country.

Many of SBA's recent regulatory changes were made to ensure that the program benefits flow to the intended recipients and to help reduce potential fraud, waste and abuse. For example, SBA's regulations previously allowed a large, non-disadvantaged mentor to unduly benefit from the 8(a) program by allowing such a firm to perform the majority of work on an 8(a) contract through a joint venture with a small 8(a) protégé firm. The new regulations require an 8(a) firm to perform at least 40 percent of all work done by a joint venture and generally prohibit the joint venture from subcontracting additional work back to any non-8(a) joint venture partner.

Additional changes were also made to the provisions affecting firms owned by tribes, ANCs and NHOs. Specifically, SBA amended the rules pertaining to tribal, ANC-owned, and NHO firms to add a provision that a firm owned by a tribe, ANC or NHO may not receive a sole source 8(a) contract that is a follow-on contract to an 8(a) contract performed immediately previously by another participant (or former participant) owned by the same tribe, ANC or NHO. In response to audits of the 8(a) BD program conducted by GAO and SBA's OIG, SBA added a provision to the regulations requiring each participant owned by a tribe, ANC, NHO or CDC to submit information demonstrating how 8(a) participation has benefited the tribal or native members and/or the tribal, native or other community as part of its annual review submission. The regulation requires that each firm submit information relating to how the tribe, ANC or NHO has provided funding for cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services to the affected community.

After receiving extensive public comment on this provision, SBA has delayed the implementation of this reporting requirement for six months. SBA seeks to strike a balance between its responsibility to monitor and oversee the 8(a) program and the concerns raised by entity-owned 8(a) participants regarding their ability to generate meaningful information. This delay will allow further discussions with the tribal/ANC/NHO community through consultation and dialogue to determine how best to implement this rule.

SBA works closely with the GAO and IG to ensure that their recommendations are properly addressed. For example, in response to the IG's July 2009 report, SBA published the revised 8(a) BD regulations, is in the process of conducting a program review to evaluate the impact of the growth in ANC 8(a) obligations, and has updated BDMIS to allow ANC subsidiaries to apply for the 8(a) BD program and undergo annual review electronically.

While we have been responsive to many of the points raised in various audits, we would also like to note the following. The IG report correctly points out that 8(a) contracting dollars to ANCs have increased, but neglects to note that total 8(a) dollars have also increased to all participants. Further, many of the concerns identified

in the reports were not due to any wrong-doing by 8(a) program participants, but were permitted under the previous regulations.

As previously noted, SBA has attempted to eliminate many of the perceived loopholes in its new regulations. As with any program there is the potential for bad actors to gain entry. The Agency takes seriously any actions that negatively affect the integrity of the 8(a) BD program. We appreciate the IG's recommendations to curb abuses and welcome the opportunity to work further with the IG to more fully ensure that the benefits of the 8(a) BD program flow to its intended beneficiaries.

Despite the actions of a very small number of program participants, the Agency has seen the benefits of the 8(a) program to entity-owned participants in the form of increased business development of these firms, and to their respective communities in the forms of dividends, jobs, scholarships, and community pride, just to name a few. These benefits have been fully authorized by current statutory provisions, and provide economic and community development opportunities for some of the most underrepresented populations in the United States.

Thank you for allowing me to share the SBA's views with you today, and I will be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Jordan, for your testimony.

Mr. McClintock, will you please proceed with your testimony?

STATEMENT OF PETER L. MCCLINTOCK, DEPUTY INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, U.S. SMALL BUSINESS ADMINISTRATION

Mr. MCCLINTOCK. Chairman Akaka, Vice Chairman Barrasso and distinguished Members of the Committee, thank you for this opportunity to testify.

I was asked to discuss two audit reports my office issued several years ago concerning Alaska Native Corporations and the 8(a) Program. One report concerned non-native managers securing millions of dollars from ANC 8(a) firms through unapproved agreements. And the other report identified ANC contracting trends related to economic benefits for Alaska Natives and SBA's limited monitoring of ANC compliance with program rules.

We reported that ANC participation in the 8(a) Program resulted in a number of benefits, to include paying dividends to ANC's shareholders, funding cultural programs, employment assistance, jobs, scholarships, internships and other services. However, dollar for dollar, these benefits were not directly traceable to participation in the 8(a) Program.

In audit report 8–14, we found that non-native managers of several ANC firms obtained millions of dollars through management and other agreements that had not been adequately disclosed to or approved by SBA, raising questions, among other things, over who else was benefitting from the program.

We are therefore encouraged that SBA recently published a regulation requiring ANCs, tribes and NHOs to report annually to SBA on how 8(a) participation is benefitting tribal members. We are concerned, however, that SBA delayed its implementation for at least six months and we urge SBA to implement this requirement as soon as possible.

In report 9–15, we found that 8(a) contract obligations awarded to ANCs more than tripled from $1.1 billion in fiscal year 2004, or about 13 percent of the total 8(a) contract dollars that year, to $3.9 billion in fiscal year 2008, or about 26 percent of 8(a) dollars.

Also in fiscal year 2008, ANC firms which had received this 26 percent of the total 8(a) obligations, constituted just 2 percent of

8(a) companies. Further, in 2007, just 11 ANC firms received half of the contract obligations to all ANC participants. Of note, one of these firms had only 750 shareholders or less than 1 percent of all Alaska Natives, but accounted for nearly 20 percent of the 8(a) obligations made to active ANC firms. Also, the top four ANC firms accounted for less than 4 percent of the more than 100,000 ANC shareholders.

We also reported that most ANC 8(a) contracts were obtained on a sole-source basis. These top 11 ANC-owned firms received 82 percent of their 8(a) obligations through sole-source awards, which do not always provide the government with the best value. Three firms had received sole-source contracts in excess of $100 million over a two-year period and one firm received about $422 million in sole-source awards.

The Small Business Act limits sole-source manufacturing contracts to $6.5 million and other sole-source contracts to $4 million. However, ANCs and tribes are not subject to these limitations. They are also exempt from a $100 million cap on cumulative sole-source awards that apply to other 8(a) participants.

ANC firms have other advantages as well. Because ANC firms are conditionally exempt from size affiliation rules, they often enjoy access to capital resources and management expertise not available to other 8(a) firms. In reality, ANC firms are large businesses with significant competitive advantages over other 8(a) firms.

Despite this growth, SBA had not determined whether it had adversely affected other 8(a) participants. Under the Small Business Act, the exemption from the size affiliation rule is allowed unless SBA determines that it results in a substantial unfair competitive advantage. SBA had not done much analysis of this issue.

Lastly, SBA had not dedicated sufficient resources to oversee the often complex ANC corporate and ownership structures, and ANC partnerships with other firms to include mentor protégé and joint venture arrangements. SBA has taken some recent steps to improve oversight, but it is too soon to assess their effectiveness.

This concludes my statement. I am happy to answer any questions.

[The prepared statement of Mr. McClintock follows:]

PREPARED STATEMENT OF PETER L. MCCLINTOCK, DEPUTY INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, U.S. SMALL BUSINESS ADMINISTRATION

Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Committee, thank you for this opportunity to testify.

As the Deputy Inspector General for the Small Business Administration (SBA), I oversee an independent office that was established to deter and detect waste, fraud, abuse and inefficiencies in SBA programs and operations. My testimony today focuses on several audits the SBA Office of Inspector General (OIG) conducted regarding on the issue of Alaska Native Corporation (ANC) participation in the SBA 8(a) Business Development Program (the "8(a) Program").

The 8(a) Program is designed to help small, minority-owned businesses gain access to Federal contracts and to obtain other business development assistance so that they can successfully compete in the economy. Under the program, 8(a) firms owned by ANCs, American Indian Tribes, and Native Hawaiian Organizations (NHOs) enjoy special procurement advantages beyond those afforded most 8(a) businesses. These advantages were intended to provide economic development opportunities for Alaska natives and other tribal members. Our audits were initiated based on complaints about ANC-owned firms and issues identified by a prior Government Accountability Office (GAO) audit related to SBA's oversight of ANC 8(a) activity.

As an initial matter, I want to emphasize that the OIG is not taking a position on the issue of whether ANCs, Tribes or NHOs should be able to participate in the 8(a) Program. That is a policy determination for Congress to make. There is also no question, as stated in our audit report, that Alaskan natives have benefitted from ANC participation in the 8(a) Program. However, our audit report numbered 9–15, *Participation in the 8(a) Program by Firms Owned by Alaska Native Corporations,* did raise several questions about ANC participation in the 8(a) Program:

- Is the large percentage of 8(a) contracts obtained by a relatively small number of ANC-owned firms consistent with Congress' objectives for the program?
- Are the revenues from ANC participation in the 8(a) Program going to a broad array of ANC firms or concentrated among only a few ANC-owned companies?
- Are non-disadvantaged individuals inappropriately benefitting from ANC participation in the program and to what extent are benefits from program participation effectively reaching tribal populations?

8(A) Advantages for Firms Owned by ANCS, Tribes and NHOS

ANCs, Tribes, and NHOs enjoy special procurement advantages over most other 8(a) Program participants. Arguably, the most significant of these advantages is their ability to obtain unlimited sole-source awards. Under SBA's recent revisions to the program regulations, 8(a) firms are not entitled to obtain contracts on a sole source basis if the contract exceeds $6.5 million for manufacturing contracts or $4 million for other contracts. However, companies owned by ANCs or Tribes are exempt from this requirement, and firms owned by NHOs are exempt for contracts awarded by the Department of Defense. Additionally, 8(a) firms that receive $100 million in 8(a) awards (awarded on a sole source and/or competitive basis) are not eligible for additional 8(a) sole source awards under SBA regulations. Participants owned by ANCs, Tribes and NHOs, however, are not subject to this cap. These exemptions have allowed certain ANC-owned firms to obtain hundreds of millions of dollars of non-competitive awards.

Another advantage enjoyed by firms owned by ANCs, Tribes and NHOs is that the determination of whether they are considered to be small under SBA regulations is made without regard to the size of their parent company or any other firm owned by the parent company. These entities can own multiple 8(a) companies as long as each business is in a different primary industry, and SBA has determined that the firm does not have or is not likely to have a substantive unfair competitive advantage within an industry. Our 2009 audit confirmed that this advantage has allowed ANC firms that are really large businesses through affiliation with their parent corporations, and which have access to the capital and credit of their parents, to compete against truly small disadvantaged firms. Thus, Congress may want to consider whether the goal of the 8(a) Program—to help small-disadvantaged firms compete in the American economy—is impeded by allowing larger ANC companies participate in order to provide benefits to native populations.

Benefits ANCS Derive From These Advantages

Although ANC firms enjoy substantial advantages over other 8(a) firms, such advantages were intended to help ANCs fulfill a mission that is broader than the bottom line of the corporations; namely to help Alaska Natives achieve economic self-sufficiency. Understandably, ANC firms have attempted to maximize the opportunities afforded them under the 8(a) Program. We visited eleven ANC parent corporations, eight of which told us that they derived at least 50 percent or more of their revenues from the 8(a) Program. Two of the eight relied on the program for 90 percent or more of their revenues.

Unlike other 8(a) businesses whose profits generally go to one or more socially and economically disadvantaged persons, profits from ANC-owned firms go to hundreds, and sometimes thousands, of Native shareholders. ANCs have used profits to pay shareholder dividends, fund cultural programs, and provide employment assistance, jobs, scholarships, internships, subsistence activities, and numerous other services to native communities.

Dollar for dollar, however, there has been no way to trace exactly how much ANC participation in the 8(a) Program has benefited their members. In audit report 8–14, we found that non-native managers of several ANCs were able to obtain millions of dollars through management and other agreements that had not been disclosed to, or approved by, SBA. A similar arrangement was highlighted in the articles that appeared in the Washington Post last Fall. This raises a question as to whether more of the money that is derived from 8(a) participation could be going back to the native members. In the past, ANCs have not been required to report to SBA—

or to any other government agency as far as we could tell—how they use the 8(a) share of their profits to support Alaska Natives.

We are encouraged that SBA has included in its new regulations for the 8(a) Program a requirement that ANCs, Tribes and NHOs must submit annual reports to SBA discussing how their program participation has benefitted the tribal members. This requirement will shed light on the benefits going to tribal members and help SBA—and Congress—make more informed decisions about ANC, Tribal and NHO participation in the 8(a) Program.

The SBA OIG believes that this transparency in the 8(a) Program is long overdue. We are troubled, therefore, that SBA has decided to delay implementation of this reporting requirement for six months, and that the Agency has stated in its regulatory preamble that there is a possibility that it will delay implementation even further if "delay is necessary." We recommend that SBA not extend this implementation date any further.

Growth of ANC Activity Within the 8(A) Program

Long-term 8(a) contracting trends show a continued and significant increase in obligations to ANC-owned participants, both in value and as a percentage of total obligations to 8(a) firms. Our audit found that from FY 2000 to FY 2008 obligations to ANC-owned participants increased by 1,386 percent, and more than tripled from $1.1 billion in FY 2004 to $3.9 billion in FY 2008.

Although the amount of Federal contracting as a whole increased significantly during this time, what stood out from our review was the growth in the percentage of 8(a) contracting dollars going to ANC-owned companies as compared to other participants in the program. Between FYs 2004 and 2008, the percentage of 8(a) obligations to ANC firms doubled. In FY 2008, ANC firms received approximately 26 percent of total 8(a) obligations—even though they constituted just 2 percent of companies performing these 8(a) contracts. These trends suggest that ANC-owned firms may be receiving a disproportionate share of obligations to 8(a) firms.

An additional noteworthy finding from our audit was that a significant portion of the 8(a) obligations made to ANC-owned firms went to a small percentage of the ANC participants. In fact, 50 percent of 8(a) obligations to current ANC participants in FY 2007 went to just 11 (or 6 percent) of the ANC firms reported by SBA to Congress that year. One of these firms accounted for nearly 20 percent of the 8(a) obligations made to active ANC firms, but had only 750 shareholders, or less than 1 percent of the total population of ANC shareholders. The top four firms, which received collectively about $600 million in FY 2007, accounted for less than 4 percent of the 105,344 Alaska native shareholders represented by all of the ANC participant firms. Thus, revenues earned from ANC participation in the 8(a) Program may not be evenly distributed to the ANC population.

Finally, of note is that sole-source contracts were the major contracting mechanism used by procuring agencies when obligating 8(a) funds to ANC participants. We found that in FY 2007 the top 11 firms received 82 percent of their 8(a) obligations through solesource awards. As I have mentioned, ANC participants, like other tribally-owned firms, are exempt from SBA's cap on total sole-source awards. Generally, 8(a) firms that receive $100 million in total 8(a) awards are ineligible for additional sole-source contracts. Of the top 11 firms, 3 had received contracts in excess of $100 million over just a 2-year period. One firm received approximately $527 million, $422 million of which was sole sourced.

As reported by GAO and others, Federal agencies often made sole-source awards to ANC participants because it is a quick, easy, and legal method of meeting their small business goals. While sole-sourcing contracts to ANC firms may provide an expedient means of meeting small business goals, due to the lack of competitive bidding, such awards often do not result in the best value for the government. Reports by OIGs and GAO have shown that noncompetitive contracts have been misused, resulting in wasted taxpayer resources, poor contractor performance, and inadequate accountability for results. In March 2009, the President issued a memorandum discouraging the use of sole source awards unless their use can be fully justified and safeguards put in place to protect taxpayers. Recently, the Federal Acquisition Regulations were amended to put into place special rules for contracts awarded on a sole source basis that exceed $20 million. It is unclear what effect the President's memorandum or this $20 million threshold will have on the scope of sole source awards obtained by ANC participants in the 8(a) Program.

SBA'S Management and Oversight of ANC Participant Activity

Despite the growth in ANC participation in the 8(a) Program, SBA has not performed a review to determine whether such growth is adversely affecting other 8(a) participants. For example, in FY 2008, ANC-owned participants received 66 percent

of the 8(a) obligations made under the "facilities support services" industry code, which was the second largest industry code for 8(a) purchasing that year. However, SBA has not assessed the impact this has had on non-ANC-owned program participants. Neither has it determined whether procuring agencies are meeting their small-disadvantaged business procurement goals primarily through sole-source awards to ANC firms that essentially are large through affiliation with their parent and other affiliated companies.

Further, although SBA officials recognize that ANCs typically enter into more complex business relationships than other 8(a) participants, it has not tailored its policies and oversight practices to account for ANCs' unique status and growth in the program. Audits issued by GAO in 2006 and by our office in 2008 and 2009 identified shortcomings in SBA's oversight of ANC 8(a) activity. These involve monitoring the issues discussed below.

Secondary lines of business for multiple 8(a) participants owned by a single ANC. GAO reported that SBA did not track the business industries in which ANC subsidiaries had 8(a) contracts to ensure that ANCs did not have more than one subsidiary obtaining its primary revenue under the same industry code. GAO recommended that SBA collect information on ANC-owned participants as part of its 8(a) monitoring, to include tracking the primary sources of revenue. In July 2008, SBA began development of a system to collect primary revenue generators for ANC participants, and, in February of this year, we were advised that this system became operational. Neither GAO nor my office has yet had a chance to evaluate this system.

Changes in ownership of ANC participants and review of financial statements for firms owned by ANCs. SBA regulations require that ANC participants be majority-owned or wholly owned by an ANC, and that ANCs must seek SBA's approval before making ownership changes. However, SBA has had difficulty managing the large volume of ownership change requests requiring approval. Our audit report 8–14 identified an instance where an ANC was in violation of SBA's ownership rules and had not reported the ownership change to SBA. Our audit report 9–15 disclosed that approving ownership change requests had dominated the workload of the Alaska District Office, leaving little time for monitoring other aspects of ANC compliance with 8(a) rules or for identifying where ANC-owned firms had not reported ownership changes.

In Report 8–14, we also reported weaknesses in SBA's review of financial information reported annually by ANC participants. Because of these weaknesses, SBA had failed to identify that non-native managers of two 8(a) ANC-owned firms had secured millions of dollars of 8(a) revenue for companies they owned through management agreements that SBA had not approved, as discussed above.

These reports questioned whether SBA's Alaska District Office, which oversees the majority of the ANC participants, was adequately staffed. At the time, the office had only two full-time and one-part time employees to oversee 166 ANC participants. Since then, SBA has advised that it has hired two more employees for this office. We have not had an opportunity to determine whether the additional staff is sufficient to manage the current ANC participant level.

Whether ANC-owned firms have a substantial unfair competitive advantage within an industry. The Small Business Act provides that the size of a tribally owned firm will be determined without regard to its affiliation with the tribe or any other businesses owned by the tribe unless the SBA Administrator determines that one or more of the tribally-owned businesses may have or may obtain a substantial unfair competitive advantage within an industry. GAO reported that SBA was not making these determinations and had no policy or procedures in place to make them. It recommended that SBA clearly articulate in regulation how it would comply with existing law. SBA reported that it had adopted a different approach involving training of its Business Development Specialists and Federal agencies to ensure that a previous procurement history is provided to facilitate such determinations, which did not appear to adequately address GAO's recommendation. Recently, SBA advised the OIG that it was undertaking a study, with a target completion date of December 31, 2012.

Whether partnerships between ANC participants and large firms are functioning as intended. GAO reported that SBA's oversight of ANC partnerships with other firms and mentor-protégé arrangements was not adequate. When entering into joint ventures, ANC firms must manage the joint venture and receive at least 51 percent of venture profits. However, GAO identified instances either where mentors abandoned ANC participants after the contracts were not won or where mentor firms exploited the ANC partner for its 8(a) status. SBA has acknowledged that 8(a) joint ventures between mentors and their ANC protégés may be inappropriate for sole-source contracts above competitive thresholds.

In response to our 2009 audit, we were advised that SBA headquarters was collecting information to identify the number of joint ventures involving ANC firms. We are currently conducting an audit to determine whether SBA's information collection and monitoring efforts are adequate.

We also are pleased that SBA's new 8(a) regulations contain strengthened requirements for mentor protégé and joint venture agreements and limit certain subcontracting by joint ventures in an effort to limit abuse in the program. However, it is too early to tell whether these provisions will effectively address problems arising from some joint venture arrangements in the 8(a) Program.

Conclusion

In conclusion, ANC participation in the 8(a) Program has undeniably benefitted Alaska natives. However, long-term 8(a) contracting trends showed a continued and significant increase in obligations to ANC-owned participants, which may be limiting the ability of firms that are not owned by ANCs, Tribes or NHOs to obtain 8(a) contracts. Further, our audit found that a very small number of ANC participants received a disproportionate share of the 8(a) obligations, and the procurement advantages that ANCowned firms enjoy, including the relationship between these firms and their parent and other affiliated companies, may be working to the disadvantage of other 8(a) participants.

Our audit report presented several matters for congressional consideration and a number of recommendations to SBA, many of which have now been implemented. SBA has not, however, taken effective action in response to the audit recommendation that the Agency determine whether ANCs have obtained a substantially unfair competitive advantage over other 8(a) participants in particular industry codes.

This concludes my prepared statement. I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Mr. McClintock.

I would like to ask for any questions that we may have for our witnesses.

Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

And gentlemen, thank you for your testimony here this afternoon.

Mr. Jordan, I want to start with you. Thank you for all your activity within the SBA. Included in the final 8(a) program regulations that were published in February, it is stated that, "The tribal and Alaska Native Corporation component of the program serves a valuable economic and community development purpose, in addition to its business development purpose."

Now, as you know, Senator McCaskill has introduced some legislation which would eliminate the opportunity for ANCs to participate in the 8(a) Business Development Program. So I guess a twofold question to you.

First of all, you have this language within the report that SBA clearly has identified that there is valuable economic and community development purpose. Is it justifiable, in your mind, to single out ANC corporations that represent a single group of America's first people to say that you are no longer eligible. You are no longer eligible to participate in this program, while Lower 48 tribes would be able to continue to participate under the current rules.

Given the statement that has come out of the SBA regs, do you think that this proposed legislation is reasonable that specifically singles out the ANCs?

Mr. JORDAN. Well, I can't comment on the proposed legislation. But what I will say is, two things. One, we do view the 8(a) Program as having two distinct groups: one, the individual owners who are in the program for the nine-year period to develop their own skills and their business; and then the community development

component in which we look at ANCs, Native Hawaiian organizations, community development corporations and tribes in much the same way. They have many shareholders. They have a different set of goals and outcomes and definitions of success. And we want to be cognizant that we need to serve both of those communities and have them both be successful.

To your point about us recognizing the benefits that this program has delivered to many of the folks on the community development side of the house, that is why we added in the regulatory requirement that those groups report to us on some of those benefits.

Now, the Inspector General referred to the six-month period between when the regulations went final and when that one component of them becomes or is implemented. The reason for that is because we need to work collaboratively with the community to figure out how to do that. We have clearly articulated that we need to do that reporting, but we want to make sure that, one, the government gets the best data, that we get the most pertinent, highest-quality data from these firms. But we also don't want to over-burden these firms, which are by definition socially and economically disadvantaged, by just going forward without their input and consultation.

So that is the conversation that we are entering into now and we are excited for the results.

One other point is that we are not looking at SBA to make any pejorative judgments on what is a positive benefit or not. We are not going to say scholarships and burial services are in one category and language preservation and health care is in another. We just want to have a fact-based conversation and that is why we put that in there.

Senator MURKOWSKI. Then recognizing the comments that came from the I.G.'s report, do you think that what you have laid out with the new regulations there, do you think that these adequately address the criticisms that have been expressed by not only the Inspector General, but the media as well? We have all read these reports that are out there.

And then a further question to that is if you feel that we have addressed that, shouldn't we allow these regulations an opportunity to work, to go into effect, to play out?

Mr. JORDAN. We are very proud of the regulations from both a fraud, waste and abuse prevention standpoint and ensuring that the program's benefits are maximized for the intended recipients. We are doing an analysis at the I.G.'s recommendation of what the growth in ANC 8(a) awards means for other participants. But as yet, we have seen no data that would say it disadvantages other program participants.

From 2007 to 2010, for example, every single category of 8(a) participant saw their 8(a) awards increase by at least 50 percent. So at this point, it is a very tricky analysis both because of data quality and because of the nuance that we are looking at. So we are doing the analysis, but as yet we have seen no evidence of that.

Senator MURKOWSKI. Mr. McClintock, let me ask you a question. Do you believe that or does your office believe that the Indian 8(a) Program as it is currently structured should be eliminated or changed legislatively? And I will ask you the same question that

I asked Mr. Jordan, which was do you see any justification for singling out all of the Alaska Native corporations for effective elimination within the program?

Mr. MCCLINTOCK. Like Mr. Jordan, I am not that familiar with the legislation, and I really don't have a——

Senator MURKOWSKI. I am not asking you to comment about the legislation specifically, but do you see that there would be any reason that you would specifically and purposely exclude ANCs from within the Indian 8(a) Program?

Mr. MCCLINTOCK. No.

Senator MURKOWSKI. And you don't think that it should be eliminated, then, or legislatively changed?

Mr. MCCLINTOCK. Our report did have some considerations for Congress to amend the program. So again, perhaps there is room for changes. I guess the question is—certainly I am not familiar with anybody trying to exclude ANCs 100 percent from the program. I am just not aware of that as being ever on the table. Our office has never taken a position that ANCs should not participate.

Senator MURKOWSKI. Let me ask you one final question, then. In your testimony, written and what you have stated here, you have identified that there have been certain difficulties that your office encountered in determining how the 8(a) Program actually benefits the native people.

The query for you today is in reaching this conclusion that this has been a tough job, I am wondering what level of expertise your office has in assessing a question like this? Do you have staff that are experienced in Federal Indian policy? Have you worked extensively within reservations or within Alaska Native villages? Did you travel to some of these significant meetings like NCAI—we have Jackie Johnson will be testifying later—or AFN?

I am just trying to understand exactly how you reached the conclusions that you did.

Mr. MCCLINTOCK. We reached the conclusions by trying to track the money flow. In other words, some ANC corporations have significant numbers of 8(a) participants who are owned by holding companies. And as we were trying to trace the money flow and the profits that came out of 8(a) contracts through that extremely complex set of organizations, it loses its identity. Cash is fungible.

So I think in order to actually be able to demonstrate the benefits, there is going to be a need to actually separately account for the money, the profits from 8(a), and show how it directly is either included in dividends or used to fund some of these other programs.

Senator MURKOWSKI. So I take it from your answer, then, you stayed back here in Washington. You didn't have the consultation with either AFN or NCAI?

Mr. MCCLINTOCK. We didn't consult, but we did have our auditors go to Alaska and they did meet with people in some of the corporations.

Senator MURKOWSKI. We will follow up on this later. I have extended my time, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you very much, Senator Murkowski.

Because it eliminates time, I will send my questions in for the record.

Senator Begich, do you have a question?

Senator BEGICH. I just want to follow up on what Senator Murkowski just asked. I like the way you did that, Mr. Chairman. I will have other questions for the record.

But let me understand this. So you want to track the profits of the 8(a) Alaska Native corporations and how they utilize those profits. Do you think we should be doing the same thing with the individual 8(a) companies that are owned by individuals, too? Do you follow my question here?

Mr. MCCLINTOCK. Well, there are rules for the individual 8(a) companies that limit how much money they can use personally. There are limits on how much money they can take out of their company. There are limits on their salaries. There are limits on their net worth, personal net worth and their total assets.

So they actually may argue that they have stricter limits than the tribal 8(a) companies.

Senator BEGICH. If I can just say one more half of a question to the question, do you recognize there is a clear difference between the individual 8(a)'s and these larger organizations like the ANC 8(a)'s that ensure that the distribution of their profits, which may end up in a larger corporation, which then benefits through scholarships, burials, many other things? Do you recognize there is a huge difference there?

Mr. MCCLINTOCK. Yes.

Senator BEGICH. Okay. I will end there, Mr. Chairman. I will have questions for the record.

Senator AKAKA. Thank you very much, Senator Begich.

Senator Johanns?

Senator JOHANNS. I thank both of you.

Mr. McClintock, in a previous life, as you probably know, I worked with an Inspector General, and sometimes we would agree, sometimes I guess we wouldn't agree, but I have a good respect to the services of the Inspector General.

The impression I get as I look at what you have done is that very definitely this was a program that needed some review, digging in to seeing what was going on here, and you folks did that; made some recommendations.

But it is equally my impression that no one is testifying today, either you or Mr. Jordan, that the program should be thrown out. Because I think we all agree that the goals of the program have a lot of merit. And if we can clean up the abuse, we are headed in the right direction. Is that fair to say?

Mr. MCCLINTOCK. Yes.

Senator JOHANNS. Great. That is all I have. Thanks.

The CHAIRMAN. Thank you.

Senator McCain?

STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Jordan, is it true that in fiscal year 2009, the Federal Government spent about $18 billion on contracts with 8(a) firms and ANCs received about $3.9 billion? Is that pretty accurate?

Mr. JORDAN. Total contracting to all 8(a) firms in 2009 was about $26 billion or $27 billion. Of that, ANCs received about $3.8 billion.

Senator MCCAIN. And ANCs represent 100,000 Alaska Natives and there are 300 million people.

Does SBA have any discretion in establishing whether an ANC is in fact "economically disadvantaged" compared to establishing that an Indian tribe or NHO is economically disadvantaged?

Mr. JORDAN. No. ANCs are statutorily deemed economically disadvantaged.

Senator MCCAIN. No matter where they are or what their composition are, they are economically disadvantaged?

Mr. JORDAN. Yes, sir.

Senator MCCAIN. Do you believe that some ANCs are more economically disadvantaged than an Indian tribe in all cases?

Mr. JORDAN. I will leave the presumption of economic disadvantage to Congress.

Senator MCCAIN. Under the new SBA regulations, ANCs will have to report how native shareholders are benefitting from the contract. The deadline was extended by six months. Why did you need to extend the deadline? It seems to me it is pretty straightforward.

Mr. JORDAN. The issue in extending is we wanted to work out collaboratively with the tribal communities how to implement this. We wanted to ensure that SBA gets the highest quality and most pertinent data without overburdening these socially and economically disadvantaged firms.

Senator MCCAIN. Do you have a firm date now?

Mr. JORDAN. Yes, we said that we will implement this part of the regulation in September of this year. We went to 10 different cities to hold a listening tour; held two tribal consultations; received 2,500 public comments which we read and responded to every single one.

And the issue around the benefits reporting that we heard when I personally led tribal consultations in Seattle, in New Mexico and rural Alaska, was that it wasn't a complaint with instituting this. It was how we do it. And we wanted to work, make it a workable regulation.

Senator MCCAIN. But you expect to finalize those regulations soon?

Mr. JORDAN. Yes, sir, in September of this year.

Senator MCCAIN. September.

Mr. McClintock, dollar for dollar, how does the SBA trace how much ANC or tribal participation benefits its members?

Mr. MCCLINTOCK. Dollar for dollar, as I said, we are not able to. We did visit with organizations. They gave us examples. We were able to trace money from 8(a) participants into other subsidiaries or to the parent organization, but at that point its loses its identity.

Senator MCCAIN. Mr. Jordan, does it concern you that only about 5 percent of ANC contract jobs actually went to Alaska Natives?

Mr. JORDAN. That is not something that we track. No other 8(a) participant or government contractor, as far as I am aware, has a restriction on what geography they can pull their employees from.

Senator MCCAIN. I wasn't talking about restriction. I thought the intent of SBA loans was to go to the recipients that needed it. Ap-

parently, only 5 percent of the contract jobs actually went to Alaska Natives. Do you dispute that number?

Mr. JORDAN. I would have to look and get back to you. I am not aware of that number.

Senator MCCAIN. You absolutely should be, Mr. Jordan, and I am astonished you don't. This is not a new issue.

In 2009, Eyak ANC joined with a large government contract GTSI and secured a $409 million in Federal contracts. Of that amount, Eyak received only $18 million for its operations and their native shareholders got direct dividend payments totaling about $109,000. I am sure you are aware of all of these things. If you are not, you should be. A non-native ANC consulted in Washington, D.C. and made $500,000 a year helping secure $500 million in defense contractor with large foreign-owned corporate partners. Less than 1 percent of that returned to Alaska Native shareholders.

Now, if you dispute these figures, facts, I would very much like to hear the rebuttal. If you don't dispute these facts, then there is something obviously fundamentally wrong. That is not the intent of SBA for a lobbyist to get $500,000 a year. That certainly didn't benefit any Alaska Native that I know of.

Mr. JORDAN. I agree, Senator, that there have been abuses of this program. That is why we are very proud of the regulatory changes that we made. We are also proud of the enforcement actions that we have taken.

Senator MCCAIN. Are you proud of what has happened?

Mr. JORDAN. I am proud of where the program is headed.

Senator MCCAIN. Are you proud of what has happened was my question.

Mr. JORDAN. More specifically, which part of what——

Senator MCCAIN. That a lobbyist would get $500,000 a year, a non-native. Are you proud of that?

Mr. JORDAN. No. And that is why in the regulations that finalized on March 14th, we clearly articulate that agents and representatives cannot get a gross of any contracts; that that is going forward a prohibited practice.

Senator MCCAIN. In its series, *The Washington Post* reported that even some ANC executives agree the system is flawed: "We have seen things that show some organizations have broken the law," said Aaron Schutt, Chief Operating Officer of Doyan, Limited, a native-owned company that is the largest landowner in Alaska with more than 12 million acres in the heart of the State.

Well, I could go on and on here, but I guess, Mr. McClintock, I am sure you realize that part of your obligation is to track this, and somebody in your shop hasn't been. So I hope you will start doing your job a little more assiduously because what has been going on is obviously an unacceptable use of my taxpayers' dollars in the State of Arizona. I would be glad to hear your response to that.

Mr. MCCLINTOCK. Well, I do think that we were responsible for uncovering some of the issues that you just referred to, and while I can't go into any details, we are looking at some of these issues.

Senator MCCAIN. I hope so, and I will look forward to hearing your report. This is fundamentally at the end of the day most unfair to the people who were supposed to be the recipients of this.

This is most unfair, wouldn't you agree, to Native Alaskans who instead of getting the $500,000 a year that was given to a non-native consultant, they should have gotten the money. Would you agree that the most unfair aspect of this is to the people that it was most intended to help?

Mr. MCCLINTOCK. I would agree.

Senator MCCAIN. Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator McCain.

I want to thank our witnesses. There may be other questions that we will submit and move on here to our other witnesses. Thank you very much for your responses.

I would like to invite the second panel to the witness table. Today, we have Jackie Johnson-Pata, the Executive Director of the National Congress of American Indians, and Julie Kitka, President of the Alaska Federation of Natives.

Welcome to both of you to this Committee hearing.

Ms. Johnson-Pata, will you please proceed with your testimony? Welcome.

STATEMENT OF JACKIE JOHNSON–PATA, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Ms. JOHNSON-PATA. Thank you, Chairman Akaka and Members of the Committee on Indian Affairs. I want to thank you for this opportunity to be able to testify today.

Before I get started, I also want to thank you for the actions that you took earlier in your business meeting. The *Carcieri* bill, of course, is Indian Country's number one priority, and we look forward to your continued support in getting that to passage.

NCAI has a long history of supporting the Native Hawaiian bill and we look forward to continuing to supporting you in those efforts.

As you know, my testimony is quite detailed and so I am going to do something quite different from that and just talk a little bit about the benefits of the program. This is a Committee that I don't need to spend any time talking about the social and economic demographics of Indian Country. You are all really well aware of that.

And so I want to call upon the Committee to consider today the context of the Small Business Administration's native 8(a) Program as it operates as an important tool in fostering economic development and growth within our tribal and native communities across the Nation.

Many Members of this Committee can recall past Federal policies that sought to attract businesses and industries to our remote rural areas, and most of those were where most of our native communities are located. And many of those initiatives failed in Indian Country.

And during that same time, Congress began to turn away from the Indian reservation template that had long been the foundation of Federal Indian policy towards a new business model when it enacted and authorized the native corporations to manage the native lands and resources on behalf of native people in Alaska. And I know that Julie's testimony, Alaska Federation of Natives, provides

more background on the formidable conditions under which this new policy experiment had to take root before it could grow.

We all know that in order to attract businesses and industry to remote rural areas, we need to have a climate that is conducive to business development: modern infrastructure, access to transportation, and commercial corridors. Just as important are those community-based resources including business acumen, managerial strength, tight fiscal controls, a skilled workforce, and a stable government and corporate institutional capacities.

In fact, building these community-based assets were the focus of an Alaska Native Claims Settlement Act and the Alaska Natives Corporations Act.

Indian Self-Determination Act helped tribes to develop the fiscal management and the accounting systems, but it wasn't based upon the business model. And it wasn't until tribal governments were able to participate in the Native Small Business 8(a) Program that tribes were able to come into contact with experienced business mentors and joint venture partners who could assist them in developing the necessary core competencies or community-based assets to succeed in the world of commerce and Federal contracting systems which serve the needs of a global economy.

So it is with that context that our member tribes and native organizations firmly believe that the Native 8(a) Program is working. They see the evidence on a daily basis on just how the Native 8(a) Program is building capacities within their communities among their people. And that is why long after revenues have been realized and expended for greater good, the sustained legacy of the Native 8(a) Program is the creation of a workforce of native professionals, highly skilled native-trained managers, business development specialists, creative entrepreneurs, skilled laborers, accountants and fiscal managers.

The perception that the Native 8(a) Program is working is reflected in every single report issued by the Federal agencies and instrumentalities. It works because 8(a) firms are turning in quality work and transparency, accountability and executing government contracts with cost-effective and timely performance.

No contracting officer would be expected to be retained in this Federal government if each and every one of those thresholds were not met by the native 8(a) firms.

As our testimony suggests, the Federal procurement marketplace is global and in the marketplace, although traditionally dominated by large corporate concerns, there is plenty of room for tribal, Alaska Native, and Native Hawaiians and all minority businesses to make meaningful contributions.

Fostering the development of successful small business contractors advances the government's interest in broadening and diversifying our industrial base of service providers and suppliers. More competition in that marketplace will increase the value of the products and services and drive prices down.

While the new rules promise greater accountability and transparency, Congress in its oversight role should ensure that the regulations are implemented and enforced in a manner that sets new standards for program participants without distracting from the program's intent or detering contractors from using the program.

We want to thank you for giving us the opportunity to address the importance of the 8(a) Business Development Program to tribal communities. We look forward to your continued support and your efforts to be able to help us use this effective economic development tool to make a difference in our tribal communities.

[The prepared statement of Ms. Johnson-Pata follows:]

PREPARED STATEMENT OF JACKIE JOHNSON-PATA, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Introduction

The National Congress of American Indians (NCAI) is the intergovernmental body representing American Indian and Alaska Native tribal governments. For more than 60 years, tribal governments have come together as a representative congress through NCAI to deliberate issues of critical importance to tribal governments and endorse consensus policy positions. NCAI is honored to participate in the Senate Committee on Indian Affairs hearing to discuss the history, structure, and benefits of the Native 8(a) Business Development program that our membership has deemed critical to growing tribal economies and creating career paths for Native people where few existed before.

The Native 8(a) program demonstrates Congress' commitment to promoting tribal selfdetermination and self-sufficiency. This business development program reflects the unique character of Native communities and their responsibility to provide governmental services and other benefits to their members.

To promote economic development for American Indian tribes and Alaska Native Regional and Village Corporations (ANCs), Congress authorized their participation in the Small Business Act's Section 8(a) Business Development program. When certified as an eligible 8(a) participant, American Indian tribes or ANCs may contract with the Federal Government under unique terms, which permit a federal agency to award a contract not subject to the competitive threshold that applies to individually-owned 8(a) companies and allows tribes and ANCs to operate multiple 8(a) firms. Congress purposefully created these distinctions to further its federal trust obligation to American Indian and Alaska Native tribes, and to provide tools to combat escalating poverty in tribal communities and to remedy the low level of American Indian and Alaska Native participation in the government contracting industry.

Due to the recent public and Congressional attention on sole-source contracting, a number of investigations and press coverage unfortunately have cast an unfair and harsh light on tribal and ANC sole source contracting. The U.S. Government Accountability Office's (GAO) 2006 report of Alaska Native Corporation's (GAO–06–399) participation in the 8(a) Program recommended that the Small Business Administration (SBA) and contracting agencies exert greater oversight and monitoring of ANC sole source contracting. It did not recommend legislative changes that would effectively disband the program and reverse all of its positive contributions to advancing American Indian and Alaska Native policy. American Indian tribes and Alaska Native Corporations unique 8(a) provisions are consistent with other Congressional policies that advance Indian self-determination and economic development. The 8(a) Business Development program has demonstrated that it brings revenue growth, employment, profits, and social investment to tribal communities.

Indian Country is a world of economic extremes. There are a few high profile examples of tribes and ANCs who have prospered economically. These examples of tribes and ANCs with some wealth receive public attention. However, there are several hundreds more who remain nearly invisible, who are struggling economically to preserve their lands and community. The social and economic conditions in many Native communities are comparable to those in developing nations around the world.

Generational poverty among American Indians and Alaska Natives remains a serious challenge. American Indians and Alaska Natives are among the most economically distressed populations in the United States. Nationwide, this population experiences a poverty rate of 25.7 percent, exceeding that of all other racial categories and more than double the national average of 12.4 percent. Indians living on reservations face poverty rates more than three times the national average.[1] Reservation poverty is so pronounced it can be clearly seen on national maps, with hot spots of poverty in the northern plains, eastern Arizona, southeastern Utah, and western New Mexico, which overlap directly with Indian reservations. Real per-capita in-

[1] Jonathan Taylor, "Native American Section 8(a) Contracting," p. 6 (October 2007).

come of American Indians living on reservations is still less than half of the national average. In 2000, American Indian and Alaska Native unemployment stood at twice the national average and was more than three times as high on Indian reservations.

In addition, tribal governments have a severely limited tax base. Tribes cannot impose property taxes on trust land, and an income tax on impoverished people is not feasible. Recent U.S. Supreme Court cases have compounded this problem by permitting state taxation on Indian land while at the same time limiting the ability of tribes to tax non-members. In addition, tribes are hamstrung in their ability to access other traditional governmental revenue streams, such as tax exempt bond financing, in order to raise revenue for governmental services and are limited to what can be developed from tribal businesses.[2] In sum, tribal citizens often have greater service needs than their non-Native counterparts, and at the same time, tribal governments have fewer resources with which to fulfill their governmental responsibilities to their citizens. Meaningful economic development is sorely needed.

Economic growth in our nation's tribal communities remains a substantial challenge, and until this improves significantly, the unique 8(a) contracting benefits extended to tribes and ANCs should be part of the Federal Government's arsenal of policies, promoting economic development and working to alleviate dire poverty. The 8(a) program provides tribes and ANCs with critical tools needed to compete in the federal marketplace and enhances market-based competitive capabilities.

Federal Indian Policy

The U.S. Constitution and many statutes establish rights for American Indian and Alaska Native tribes based on their trust relationship with the Federal Government. In exchange for Native peoples ceding over 500 million acres of land, the United States entered into a trust relationship with American Indians and Alaska Natives. Treaties, the supreme law of our land, were originally the primary way that this trust relationship was expressed. Today, the trust relationship is carried out through the U.S. Constitution and the many statutes enacted by Congress, including the Alaska Native Claims Settlement Act (ANCSA) and the Native 8(a) business development provisions. The Federal Government's unique relationship with American Indian and Alaska Native tribal governments derives from the U.S. Constitution's grant of power to Congress "to regulate Commerce. with the Indian Tribes."[3] This Constitutional provision, and its interpretation in landmark Supreme Court decisions, gave rise to the Federal Government's special political relationship and trust responsibilities to American Indians and Alaska Natives.

The Federal Government has enacted numerous policies that are aimed at reducing poverty and creating economic opportunities for Indian tribes and Alaska Natives. Congress was even more specific about strategies to realize these goals when articulating, in the Alaska Native Claims Settlement Act (ANCSA), the Federal Government's relationship with Alaska Natives.[4] This law required compensation to settle land claims, and Congress mandated that for-profit corporations be used to implement the settlement. In ANCSA, Congress declared:

> (a) there is an immediate need for a fair and just settlement of all claims. . . based on aboriginal land claims; and (b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property . . .[5]

Furthermore, in ANCSA, Congress confirmed that federal procurement programs for tribes and Alaska Native Corporations are enacted under the authority of the Commerce Clause, Article I, Section 8 of the U.S. Constitution.[6] Among the most successful of these laws are the special provisions implementing Section 8(a) of the Small Business Act. These rules have helped tribal and ANC businesses overcome economic barriers. Competitive businesses have been created in both the private and federal markets. New business opportunities and career paths have been created in remote rural communities that are far removed from major markets, and profits, when earned, are invested to ensure future sustainability or returned as benefits to their communities.

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[2] Matthew Fletcher, "In Pursuit of Tribal Economic Development as a Substitute for Reservation Tax Revenue," 80 North Dakota Law Review 759 (2004).
[3] Article I, § 8, ¶ 3.
[4] *See* 43 U.S.C § 1601, *et seq.*
[5] *See* Id. at § 1601.
[6] 43 U.S.C. § 1629(e)(4)(A).

Community Benefits

Because of the high unemployment rates in tribal communities, capacity building for Native people is often the key goal of tribal governments and ANCs. In its 2006 Report, the GAO found that one-third of the ANCs interviewed had management training programs in place that encourage the recruitment, training, and development of Native employees.[7] Tribes and ANCs use internships, scholarships, on the job training, and subcontracting opportunities to build their own talent. This process can be slow and arduous as multi-generational poverty has taken its toll on worker preparedness, but success can be significant when it is achieved.

For example, the General Manager of Sealaska Environmental Services and a shareholder of Sealaska Corporation earned a bachelor and graduate degree with Sealaska Corporation. He interned at the company and eventually started a new 8(a) subsidiary of Sealaska, which is a certified environmental remediation firm, providing a number of support services to federal facilities. Former scholarship recipients also have earned positions at Sealaska as: Vice President and Financial Officer; Vice President, Corporate Secretary, and Human Resources; Vice President and Chief Investment Officer; and Vice President and General Counsel. Sealaska Corporation has provided scholarships to 3,000 tribal shareholder recipients since the inception of its scholarship program, and from 2000–2008, it provided $5.7 million in scholarships. Since the inception of its internship program in 1981, Sealaska has provided 200 internships, with 23 of these interns currently employed by Sealaska.

Benefits derived from the government contracting program go beyond developing local Native capacity through scholarships, internships, and employment. Other benefits, which are just as important, have begun to take hold and advance self-determination, ensure cultural preservation, and ameliorate dire social conditions. For example:

- One Alaska Native Corporation has aligned its cultural values with its dividend payments. A special dividend program has been developed to provide additional support for elders, who hold a highly respected position in Native communities. When elder shareholders reach age 65, they are offered a special dividend along with additional shares,that provide a larger dividend payment in the future.
- Community-based non-profit organizations, supported through 8(a) business revenues, are carrying forward cultural values through such wide-ranging activities as youth camps, leadership trainings, curriculum development, and language preservation.
- Cultural values and practices are reinforced through social and community programs funded by tribal and ANC 8(a) businesses, such as learning a traditional dance or language. These practices focus on preserving cultural values and traditions for Native communities, with an emphasis on providing youth with positive environments and influences.
- Native people serve as role models for fellow tribal members and are valued for their contribution to community. Tribal and ANC 8(a)s provide an opportunity for American Indians and Alaska Natives to see one of their own go to college, get a job, or work toward a career. These positive role models can increase community and individuals' hope for the future as well as provide inspiration.
- Business capacity is developed in the local community when tribal members and shareholders gain transferable business skills, such as financial literacy, strategic planning, and management. These skills are necessary for all aspects of economic and community development. Native community members may choose to utilize their skills in variety of ways: to start a local business as a supplier or provide a service that has been lacking in the community.
- Leadership capacity is developed when Native boards and tribal councils gain experience in making decisions that will directly affect the lives of their family, neighbors, and communities. Important investment and sustainability decisions are made in each tribal community: hiring, budgeting, dividend allocation, meeting community needs, and business and cultural sustainability.

This needed business development program has enabled tribal communities to participate in the mainstream economy as intended, and the capacity building component has reaped real rewards as infrastructure and human capital have been built in local communities.

As Congress monitors measures, both legislative and administrative, to bring more transparency and accountability to the 8(a) Business Development program,

[7] US GAO, (GAO–06–09) 2006, 81.

it also needs consider the legal, policy, and economic context for the special 8(a) provisions while gauging their effectiveness as regulatory policies are implemented.

Native 8(a) Contracting History

Since World War II, the Federal Government has adopted policies to increase the diversity of suppliers to the Federal Government. The intention is to assist businesses that have substantial barriers to capital formation and allow them to effectively compete in a highly concentrated market. The Small Business Act's Section 8(a) Business Development program directs the government to purchase from small businesses. In 1987 and 1988, the Senate Indian Affairs Committee held hearings to determine why so few Native American-owned firms participated in government contracting and why a Presidential Commission on Indian Reservation Economies found that existing procurement policies created substantial obstacles to Indian reservation economic development. As a result of these Congressional inquiries, changes to federal laws were made to ensure that American Indian and Alaska Native tribes could more effectively compete in the federal market place in a manner that reflects the unique federal obligations and different legal frameworks that apply in Indian Country.

Except in a few important ways, the rules and regulations that are applicable to all 8(a) companies owned by individuals, women, and minorities apply to American Indian tribal enterprises and to Alaska Native Corporations. Congress altered this legal framework to take into account the unique ownership structures of enterprises owned by tribal governments and by Alaska Native Corporations created under the Alaska Native Claims Settlement Act. These ownership structures distinguish them from all minority-owned businesses and other types of private sector firms. Thus, tribal and ANC contracting differs from private 8(a) contracting.

Tribal enterprises are owned by tribal governments. Tribal citizens determine who governs them and ultimately how their government will carry out economic activities through a tribally-owned business. The authority to create a tribal enterprise is typically governed by a tribe's constitution or governing authorities. A tribal governing council usually determines the officers of a tribal enterprise and hires a manager to oversee the day-to-day operations of the business. Usually, the tribal governing body will retain overall strategic direction of the enterprise, have the authority to acquire or distribute assets, and reinvest or distribute profits for the benefit of its tribal membership. Often, the sole shareholder of tribal enterprise is the tribal governing body itself.

The corporate structures created under ANCSA represented a new approach to settling land claims between the United States and Alaska Natives. ANCSA established a framework in which village and regional corporations would manage the assets, land, and natural resources that Alaska Natives received under the settlement.

Under ANCSA, shareholders may not sell their shares to non-Natives. Congress explicitly intended the use of corporate structures to give Alaska Natives greater control of their economic destiny—to achieve self-sufficiency as well as self-governance. In fact, in furtherance of this economic settlement, the opportunity to participate in federal procurement programs, including the 8(a) program, was embedded in ANCSA by amendments passed by Congress making it clear that ANC participation in these programs business development opportunities would be an integral part of the ANCSA settlement and contribute to the development a sustainable economy.[8]

The ownership structures of both tribally-owned enterprises and ANCs create a much broader mandate to address a wider range of interests than other minority-owned 8(a)s; tribal and ANC firms must operate and provide benefits that go far beyond the bottom-line of profitability. The special provisions which apply to tribal and ANC 8(a) contracting were tailored to take into account these differences and to take into account the federal Indian policy of promoting selfdetermination and economic self-sufficiency.

The special provisions include different criteria which govern the admission of tribal and ANCs into the 8(a) program, and they exempt tribal and ANCs from

[8] In 1988, Congress passed amendments to the Alaska Native Claims Settlement Act, P.L. 100–241, which granted presumptive minority status to ANCs, as defined in 43 U.S.C. § 1626(e)(2). The intent was to grant qualifying ANCSA corporations or ANCSA corporation-owned firms the status of "a minority owned and controlled corporation for purposes of federal law." In 1992, the Alaska Land Status Technical Corrections Act, Public Law 102–415, amended § § 1626(e)(1) and (2) by granting ANCSA corporations or ANCSA corporation-owned firms "economically disadvantaged" status.

lower[9] competitive threshold that applies to individually-owned firms[10] and also establish different affiliation rules, which permits tribal governments and ANCs to have multiple 8(a) companies. However, many of the other rules that apply to all 8(a) firms apply equally to tribes and ANCs. For example, all 8(a) firms have a maximum 9-year participation term in the 8(a) Program. Likewise, all 8(a) firms must be small to receive an 8(a) contract. When an ANC 8(a) firm grows out of its applicable size standard, it graduates out of the program, just like other 8(a) firms. Tribes and ANCs are permitted to form new 8(a) firms in different industries because of their responsibility to improve the livelihood of hundreds or thousands of community members. Accordingly, tribes and ANCs can operate multiple 8(a) firms and do not have a limit on the size of contract that can be awarded to them on a sole source basis. These provisions were intended to prepare tribal enterprises and ANCs to compete with others in their industry, particularly large contractors who have established relationships with government customers and possess capital and proposal capability sufficient to dominate the federal procurement market.

In order to compete effectively, Congress provided tribes and ANCs flexibility to hire experienced staff and management and the ability to use partnerships and subcontracting tools that are available to other contractors. Tribes must present a plan for Native managers to assume operations, while Alaska Native participants have the flexibility of hiring both Native and non- Native managers. However, the direction of the company and the management of assets and distribution of profits are ultimately determined by a tribal governing council or Alaska Native Board of Directors. The governing council or board of directors is elected by tribal members or by Alaska Native shareholders. Top managers are tasked with the responsibility of improving the assets and profitability of the company, while at the same time carrying out cultural and broader social goals of the Native community.

Additionally, tribes and ANCs, like other individually-owned 8(a) companies, have the ability to form partnerships or subcontract in order to complete jobs and make profits. SBA regulations permit all 8(a) contractors to subcontract a portion of the work under certain conditions. This can create benefits for local businesses where a contract is awarded by permitting tribes and ANCs to work with local companies while still fulfilling its own goals of self-sufficiency.

Similarly, tribes and ANCs can form joint ventures with large companies in the same manner available to all 8(a) firms. All 8(a) firms can form joint ventures under SBA's Mentor-Protégé Program. The use of teams and joint ventures are encouraged by the Federal Government as a means to stimulate growth, forge new business relationships, and develop expertise.

For example, Mandaree Enterprise Corporation faced bankruptcy in 1994. The tribal government owners, the Mandan, Hidatsa, and Arikara Nations of the Ft. Berthold Reservation in North Dakota, hired a CEO to develop a turn-around strategy. Mandaree Enterprise became certified in the 8(a) Business development program and grew rapidly as it expanded into government contracting. Part of its success was due to its participation in U.S. Department of Defense's Mentor-Protégé Program, which encourages major defense prime contractors to work in tandem with small disadvantaged businesses to develop their business and enhance their technical capabilities. The ultimate goal is to enhance the potential contributions of protégés, like Mandaree Enterprise Corporation, thus allowing them to more effectively compete for defenserelated work. Through this program, Mandaree Enterprise Corporation developed a relationship with Northrop Grumman, which contributed to their capabilities in manufacturing cables, wire harnesses, and circuit boards. During two separate occasions, the Mandaree Enterprise Corporation and Northrop Grumman received special recognition from the U.S. Department of Defense by winning the Nunn-Perry award.

The criticism about tribal and ANC contracting success from some in the small business community is misplaced and misguided. It distracts from the many issues that all small contractors have in common. While the federal contracting market has increased substantially, many small businesses believe they have been shut out of the market. The size of the market has increased; however, the Federal Government's statutory goals, which are intended to ensure small business participation, have remained stagnant, not keeping pace with the potential for greater small business participation. Additionally, the overall small business share has declined due to a number of reasons, such as bundling, the consolidation of contracts beyond the reach of many small business capabilities. The federal procurement market is huge,

[9] Justification and Authorization needed for all contracts over $20 million as passed in the National Defense Authorization Act of 2010, Section 811, P.L. 111–84 [H.R. 2647]

[10] Section 602 of the Business Opportunity Development Reform Act of 1988, P.L. 100–656 [H.R. 1807], November 15, 1988.

and there is plenty of room for tribal and ANC and all minority businesses to participate. NCAI has worked with other small business organizations, such as the Minority Business Roundtable and Women Impacting Public Policy, to urge Congress to increase opportunities for all small businesses by increasing agency contracting goals and size standards, as well as increasing the thresholds for individually owned 8(a) companies. The Administration has acted to increase size standards for some industries and is undertaking an effort to unbundle contracts, last least in the information technology arena. All are positive steps for all 8(a) participants.

Fostering the development of successful small business contractors advances the government's interests by broadening and diversifying its industrial base of service providers and suppliers. More competition can result by combating the consolidation of the government contracting industry into a few dominant large businesses. By providing different contracting provisions to qualified tribal enterprises and ANCs, Congress increased the likelihood of sustaining business opportunities, ownership, and revenues for American Indians and Alaska Natives. These provisions are helping to alleviate poverty, provide economic growth, and increase the business capacity of tribes and ANCs.

Recommendations for Program Improvement

We feel it is important for this Committee and Congress to know that these tools created to promote economic self-sufficiency in Native communities are working as the Federal Government intended. The 8(a) program is still a long way from universally building local tribal economies and offering hope to tribal citizens. However, even its infancy, it has already proved to be an effective tool for those tribes and ANCs who have the ability and tenacity to compete and profit in the federal market place.

Our member tribes, ANCs, and Native communities have all given us input on this issue, and their message has been simple and clear: Keep the program in place. It is working. While a handful of tribes and ANCs have achieved significant success in government contracting, the vast majority of tribes and ANCs remain in desperate need of meaningful, diversified economic development opportunities. Tribal communities face many obstacles to economic development, including lack of access to capital, inadequate infrastructure, remote locations, complicated legal and regulatory status, and insufficient access to training and technical assistance, among others. In fact, given its proven success in a limited number of communities, we should all be working towards ways to strengthen the 8(a) program so more communities can benefit from the purchasing power of the Federal Government.

With this directive from our member tribes, ANCs, and Native communities, NCAI set out to evaluate the program, listen to those who had concerns, and try to correct misperceptions. During a national summit held jointly with the U.S. Department of the Interior, NCAI heard from tribal leaders about these economic challenges and opportunities. In addition, a joint working group was formed with NCAI, the Native American Contractors Association, and the National Center for American Indian Enterprise Development to ensure that we were speaking with a unified voice and representing the issues and concerns of all American Indian and Alaska Native entities.

NCAI evaluated concerns about the program by carefully reviewing the April 2006 GAO report on Alaska Native Corporation 8(a) contracting (GAO–06–399). The GAO recommendations centered on the need for greater oversight activities by the Small Business Administration (SBA) and federal agencies. In response, we held a series of government-togovernment tribal consultations with the SBA Administrator to discuss the GAO and other SBA Inspector General (IG) recommendations and to identify potential solutions to address these concerns.

Through this process, we developed two comprehensive sets of administrative recommendations to improve oversight in response to the recommendations made in the GAO report (GAO–06–399) and other 8(a) SBA IG reports. We submitted these reports as part of the administrative record for the tribal consultation process that the SBA undertook as part of its 8(a) rulemaking on the SBA mentor/protégé program. Additionally, we have urged Congress to increase funding for the SBA to provide additional staff resources and to conduct an SBA assessment on re-engineering the Native 8(a) program with the goal of providing more transparency, accountability, and training. This effort was undertaken to ensure that this program remains one of the critical tools available more broadly in Indian Country as a way to generate revenue and build business capacity. These recommendations were developed to strengthen reporting systems and provide improved transparency and accountability for many of the concerns that have been raised.

Since these recommendations were developed, both Congress and the Administration acted to address a number of concerns regarding how Native and all other firms

participate in the SBA 8(a) program. Congress, through the National Defense Authorization Act for Fiscal Year 2010, enacted legislation that directly and disproportionately impacts Native 8(a) firms. The Act requires all federal agencies to justify and approve all contract awards over $20 million.

The Office of Management and Budget, through the Federal Acquisitions Regulatory (FAR) Council hosted consultations before releasing the regulations that will guide the level of justification and approval. The Far Council should be commended for hosting its first tribal government consultation and for drafting regulations that adhere to those specifically included in the legislation. These regulations are not intended to cap sole source contracting to a $20 million limit, but should add a layer of tax payer protection for all large contracts.

The Administration, through the SBA, released regulations earlier in 2011 that will add additional oversight and accountability. The SBA held a number of consultations with tribal governments before the regulations were drafted and is promising to conduct further consultations to give guidance on the new rules and discuss a delayed regulation governing benefits reporting. The regulations answer concerns raised over the years by NCAI and our partner organizations, participants, administrative officials, and Congress. Among other things, the new rules add accountability by clarifying mentor-protégé, joint venture, and sub-contracting relationships. The rules also provide new guidelines for NAICS codes and size standards and provide greater transparency for excessive or executive compensation.

While all of these new rules promise greater accountability and transparency, Congress, in its oversight role, should ensure the regulations are implemented and enforced in a manner that sets new standards for program participants without detracting from the programs' intent or deter contractors from using the program.

Additionally, Congress should ensure that the benefits reporting regulations being developed are done so in a way that reflects current federal Indian policy. Tribes and ANC's, by nature of their governing systems, are already responsive their respective citizen and shareholder interests and for the well-being of their communities and culture. The reporting mechanisms should not favor certain expenditures or limit the use of revenues to what may be acceptable to external interests.

We want to thank you for giving us the opportunity to address the importance of the 8(a) Business Development program to tribal communities. We look forward to your continued support of tribal self-determination efforts and our use of effective economic tools.

The CHAIRMAN. Thank you very much, Ms. Johnson-Pata.

Ms. Kitka, please proceed with your testimony.

STATEMENT OF JULIE E. KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES; ACCOMPANIED BY BYRON I. MALLOTT, DIRECTOR, SEALASKA CORPORATION

Ms. KITKA. Thank you, Mr. Chairman and Members of the Committee. It is wonderful to be here. On my right is one of our most respected native leaders, Byron Mallott, who was Founder of the Alaska Federation of Natives, as well as a President of one of our native corporations, a former CEO with a lot of experience. I have asked him to join me to share my opening remarks time and also to be available for questions as far as early background or any questions that you have on that. We will try to keep our comments very short.

Thank you for taking my written statement into the record. We are more than happy to respond to any and all questions that the Committee may have.

The 8(a) Program from our experience is one of the most successful programs we have ever seen this Congress enact. It allows us to build capacity. It is not an entitlement program and a handout. It builds capacity for the long term. I cannot underestimate what that means to us.

If you are required to have tight financial and accounting systems, if you are required to deliver services on time, under budget,

whatever, the skills that that develops with your people and your managers are transferrable to every type of business that you are involved in.

So you should be very proud of the program and the success. And we want to build on that. We see aspects that could be surrounded around the program that wouldn't necessarily be in the 8(a) Program, but other areas that could support the capacity-building of native people, support the reduction of poverty and elimination of marginalization of our people, and that includes such areas as the investment climate in our home communities and reservations.

Unless our investment climate is favorable to business development, many of the business opportunities will be outside of our communities, so we have to pay attention to investment climate. We have to pay attention to tax policy and tax incentives and tax credits. That will directly influence and encourage more opportunities on our reservation and in our villages, and is just essential.

The idea of patient capital, some of our communities are land-rich, but cash-poor. If they are to succeed in business enterprises, if you are to see local results on that, we need patient capital that people can use to build up their capacity, especially in the smaller areas. Again, they don't really fit into the 8(a) thing, but in the big picture, they will have just as important a benefit for our people. And again, they are not hand-outs. They are not entitlements. They are investing in the native community building their enterprises and improving the standard of living.

I also wanted to share one critically important result of the experience in Alaska with our native corporations and our land claims. I bring this to your attention because I think it has application for many of your considerations you deal with in the Congress. One of the most important aspects of our experience with corporations is the ability to organize separately for political purposes and separately for business and economics. It is that ability to organize economically to engage in economic activities with other businesses which is critically important. And I think our participation in the 8(a) proves that that separation of organization and purpose on that is just a keystone of our success and our participation.

And I bring that to your attention because I do think that that has application to decisions you make in nation-building in countries like Afghanistan, Iraq, even the Middle East and things like this.

Taking a look at building communities and building stability and the capacity of people who are in poverty and they are marginalized, that ability to organize separately economically versus just political organization is an important lesson that we contribute, that the Congress and the United States should be very proud of. And we would be glad to work with you on being able to showcase that. But I can't underestimate how timely and relevant our experience in the 8(a) government contract has in these other arenas that you deal with.

With that, I would like to ask Byron Mallott to share some comments.

[The prepared statement of Ms. Kitka follows:]

PREPARED STATEMENT OF JULIE E. KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES

Mr. Chairman, and distinguished Members of this Committee, I appreciate the opportunity to present testimony on behalf of the Alaska Federation of Natives (AFN) regarding SBA's 8(a) program, an important legal tool which is intended to help us escape poverty and marginalization, and empower our people to compete in the federal marketplace, deliver value to our federal partners and learn during the whole process.

On behalf of AFN Co-Chairs State Senator Albert Kookesh and Ralph Andersen, and our 37-Member Board of Directors—we want to express our appreciation for these hearings, and your support of programs that provide economic opportunities to Native Americans. I offer this testimony to speak to the legal and equitable basis and importance of the Small Business Administration's 8(a) program to the Native people of Alaska and to offer several recommendations.

I submit this testimony in my capacity as President of the Alaska Federation of Natives (AFN). By way of background, AFN is the largest statewide Native organization in Alaska representing more than 125,000 Alaska Natives residing in Alaska, and more than 120,000 Alaska Natives scattered over the rest of the 49 states. Alaska Native leadership organized AFN in 1966 to facilitate bringing the various regional and village associations together, to advocate with one voice for a fair settlement of our aboriginal land claims. Congress approved the Alaska Native Claims Settlement Act (ANCSA) in 1971, and for the last 40 years we have been involved in implementation and adapting both the settlement and our relationships to meet the real needs of our people.

As President of AFN, I have seen where AFN is both an organization and a movement of Native people who are striving for self-determination. Our decision making process is shared with a 37 member Board and an annual convention of elected Native representatives of approximately one delegate for each 25 members of our villages, communities and Native institutions. It is a formalized process, which has served us well, and continues to adapt. The AFN convention is the largest annual gathering of Native people in the United States and generally numbers about 5,000 people. The AFN convention is a representative and inclusive Native gathering for Alaska Native people.

At our annual convention we work hard to maintain unity of purpose, recognizing we have a great diversity within the state, different ethnic and cultural experiences. We focus on statewide priorities, and debate and decide our positions on critical issues. The AFN convention has repeatedly voted to support the SBA 8(a) program as a viable economic tool for Native Americans and have urged us to do everything in our power to protect the opportunities for participation, and to ensure that Alaska Natives are at the table for any discussions that affect our people.

I would like to make clear that the AFN has zero tolerance for abuses of this program, or for media hype, which is not grounded in fact. AFN and I candidly recognize that there have been isolated instances of abuse or lapses in judgment by some involved in the 8(a) program. We do not condone such abuses or lapses and are committed to helping ensure that they are not repeated. We believe that the implementation of the new SBA regulations will go a long way toward making sure that they are not. We are committed to ensure the long-term benefits of this program are shared between the federal agencies for whom we do work, and for our young growing population, which is continually building their experience and expertise. By the same token, we urge this Committee and others in Congress to not let a few such instances be misused to destroy this highly meritorious and effective program for others in need of the opportunity it affords Native Americans.

I would like to note that we appreciate your leadership of this distinguished Committee in the administration of laws designed to benefit Alaska Natives and Native Americans. This Committee serves a very important role in the lives of our people, protecting commerce with, and among, Native American tribes, corporations and other organizations, while recognizing our unique role and relationship with the U.S. government. We welcome and appreciate your leadership in reviewing the 8(a) programs. We also appreciate the efforts of our elected representatives, Senators Murkowski and Begich, and Congressman Young, who have stood with us to see that the truth is told about 8(a) contracting, and about its great importance to our people.

The work you and your Colleagues have done over the years have improved the lives of Native Americans—our people live longer, we have greater access to health care and educational opportunities, poverty is being reduced, and we are hopeful for the future and our place in society as contributing members. Thank you for all you

have done and the sacrifices you have made in your lives to take on public service. It really matters and we appreciate it more than you will ever realize.

Now, I will focus on the 8(a) program. First and foremost, it is important to recognize that the 8(a) amendments, as they relate to Alaska Natives, are the result of congressional amendments to ANCSA, and to further understand that ANCSA is a fundamental federal law that was intended to establish a fair and equitable relationship between the Federal Government and Alaska Native people. ANCSA is the foundation of much of our economic and legal relationships with the Federal Government, but it is much more than that. ANCSA embodies most of our economic and relational agreements with the Federal Government, agreements approved by the United States Congress for which our people relinquished valid legal claims to lands and resources in Alaska, our homeland. Our leaders took a tough stand. We accepted a settlement that freed the State of Alaska [1] to receive its lands and the Federal Government to manage its lands.

And we should recognized that the citizens of the United States, and the Federal Government, received a bargain: by settling Alaska Native land claims, title to lands in northern Alaska was cleared, paving the way for the Trans-Alaska oil pipeline to be built, which this summer will deliver the 18th billion barrel of oil to domestic consumers, from U.S. fields. These 18 billion barrels of domestic oil are directly attributable to the agreements that were made possible by ANCSA. The fields of Prudhoe Bay alone have delivered several hundred billions of dollars of goods, services and taxes to the Federal Government. ANCSA made this possible by addressing the status and claims of Alaska Natives.

ANCSA remains one of the largest and most complex land settlements in U.S. history. In December 1971, after years of effort by Members of the U.S. Congress and Alaska Native leadership, the Alaska Native Claims Settlement Act (P.L. 92–203) was signed into law by President Richard Nixon. In return for extinguishing their aboriginal claims to Alaska's 360 million acres, Alaska Natives were allowed to retain fee simple title to 44 million acres of land and received $962.5 million for lands transferred to the State, federal and private interests. The Act created 13 regional for-profit corporations and more than 200 village corporations to receive and oversee the land and monetary entitlements. It took decades to get the promises of ANCSA implemented.

The structure of ANCSA, and the creation of corporations to be owned and operated by Alaska Natives, was—and remains—of lesser importance to Alaska Native people than protecting our land and our traditional way of life, and surviving in the modern world.

The basis of the treatment of Alaska Native corporations under the Small Business Act stems from amendments to ANCSA and to the Small Business Act—it is, today, a critical component of the Alaska Native Claims Settlement Act. In 1986 and 1987, I was working on behalf of AFN in Washington D.C. on a package of amendments to ANCSA called the "1991 Amendments" when the 8(a) amendment was debated and enacted.

For those unfamiliar with ANCSA, the "1991 Amendments" were a result of five years of internal discussion and debate within the Alaska Native community, and with Members of Congress. This legislative effort modified ANCSA and addressed fundamental land protections, the ability to provide special benefits to our Elders and to our younger generations, and the legal structure of Alaska Native Corporations. For example, one major provision would have allowed Native corporation stocks to be sold on the public market.

We knew at the time of the debates regarding the 1991 amendments that, if ANCSA was allowed to remain as it originally was enacted, the Alaska Native people were in danger of losing their corporations, those legal entities created by Congress to manage Alaska Native lands and resources.

Amendments to the SBA 8(a) program were included as part of the "1991 Amendments" because the program was viewed as necessary to the ability of Native Corporations—based in remote, rural areas of Alaska—to transition into the U.S. business world. And, as has been the experience of many minority peoples in our nation's history, we saw that Natives corporations were sometimes excluded or ignored as potentially viable business entities.

The "1991 Amendments" were fully considered by Congress in 1987, passed without opposition, and were signed into law. The 8(a) amendments also were passed by Congress without opposition and signed by the President. As you well know, the 8(a) amendments provided contracting authority that applies equally to all Native

[1] In 1971 when the Alaska Native Claims Settlement Act (ANCSA) was enacted by the Congress, Alaska was a fledgling state, not even 15 years old.

American tribes as well as Alaska Native corporations. The contracting opportunity available under 8(a) is not unique to Alaska Native corporations.

Also, it is worth considering the basis for the distinction between laws differentiating between Native American relationships and others. In a great many cases, Native Americans entered into agreements with the Federal Government relinquishing ownership and use and occupancy of lands for treaties and statutes. In our case, Alaska Natives relinquished claims to approximately 320 million acres of land in Alaska with the passage of ANCSA. The agreements embedded in these treaties and statutes across the United States properly provide a basis for differential treatment under the law. Congress can properly distinguish between Native American and non-Native American contracting opportunities. Congress' authority to do so comes from the unique status of Indian tribes under federal law and the plenary power of Congress to legislate on behalf of federally recognized tribes and Alaska Native corporations. This principle is well established in federal law and was recognized by the United State Supreme Court in a leading case, *Morton v. Mancari,* 417U.S. 535, 551–52 (U.S. 1974). The Supreme Court has upheld legislation that provides for unique application of laws to Native Americans due to the unique history and role of dealings with Indians and has stated that as long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward Indians, legislation regulating commerce with Indian tribes will not be disturbed. *Mancari,* 417 U.S. at 555. That is the correct and constitutional basis for the Indian and Alaska Native treatment under the 8(a) program.

To look back now and seek to separate the economic treatment of Alaska Natives, or any other Native American tribe or group, from the settlement of aboriginal claims would not be just or fair. As you meet here today, in this hearing, not all the lands that were promised to Alaska Natives have been conveyed to our people and our corporations 40 years after ANCSA was enacted. What is the net present value of the lost use of our lands, delayed in some cases by decades?

To Alaska Native people, ANCSA is as important as the fundamental human rights statutes of the Civil Rights Act and Voting Rights Act. ANCSA is based on recognition of the validity of the claims of Alaska Natives to lands and waters in Alaska, where our people resided for thousands of years. To pull out pieces of the Act now and examine them out of context would be wrong. ANCSA corporations are not merely for-profit corporations; they are stewards of the Native homeland, sponsors of education and training opportunities, employers of "first resort" for our aboriginal people. There is so much more tied into these corporations than some people understand. Most of our entire land base—our land is key to our heritage, culture and future—is held by the corporations, just as Congress intended in passing ANCSA. The corporations have broader responsibilities than many other corporations, for in their hands are our settlement lands, lands which we can not afford to lose. Alaska Native corporations were not started as ordinary corporations, and were not intended to function as ordinary corporations.

These corporations were required to be formed by federal law, ANCSA, a requirement not applied elsewhere in other aboriginal land settlements, or to many, if any, other corporations in America. The corporations were a foreign-type entity to our people, but we worked hard, and did what the law instructed us to do with the corporations. Our people struggled in many cases to overcome social and economic disadvantages of operating new corporations in what to the business world is remote Alaska, and to run the corporations as intended. Our people persevered to seek the success Congress intended. Contracting under section 8(a) is, and has been an important aspect of the success of some of our ANCSA corporations, and through them, we have seen important socioeconomic benefits to thousands of our people, as intended. Again, our corporations hold the keys to our heritage, our lands, and economic base, which are essential to our well-being.

As these corporations began to succeed, many of the indicators of a healthy society began to improve. For example: Alaska Native life expectancy for both men and women has increased, infant mortality has decreased, poverty has been reduced from over 60 percent to 20 percent—a major accomplishment. Key findings in a report commissioned by AFN shows dramatic improvements in positive indicators; dramatic decreases in negative indicators; and a *continuing thread of disparity* between the Alaska Native population and non-Alaska Native population, both in Alaska and in the U.S. in all indicators.[2] Overcoming this disparity must be a targeted focus of all our efforts.

[2] In 2004, AFN commissioned a 30-year trend analysis on all major socio-economic and health indicators of the Alaska Native population. The University of Alaska, Institute of Social and Economic Research prepared the report. Key findings show that Alaska Natives have more jobs, higher incomes, and better living conditions, health care and education than ever. But they re-

Of course, AFN does not assert that ANCSA and our Native corporations are the source of all the improvements in the last thirty years. Other significant impacts on well-being have been federal and state appropriations in health, education and social services; and the Alaska Permanent Fund dividend. However the impacts of ANCSA are very substantial.

I believe that it may be tempting to look at some of the greatest success of Alaska Native Corporations and see only success. From where we started, with small, new start-up corporations, beginning with a people that had not operated corporations before, our corporations have come a long way. We have asked other members of Congress and other committees not to skip over what we started with, living and working in what is to most businesspeople the most remote corner of America, in one of the harshest climates in the world: A history of extreme prejudice toward, and lack of understanding of, our people. A history of wariness toward a people who, in a great many cases, literally spoke a different language than most businesspeople in America. A history of exclusion from genuine business opportunity. And a history of no business history with "mainstream" large economies in America. This is clearly a case study of an economically disadvantaged minority business. That is why ANCSA and the Small Business Act were amended to provide for economic opportunity for our corporations. These amendments are the basis of the 8(a) program as it applies to Alaska Native Corporations.

SBA 8(a) contracting has created the benefits that it was intended to create. Our corporations have built up a capacity that did not exist before. Methodically, efficiently and responsibly, these corporations have built up a capacity to provide employment to Native shareholders, provide training to young people, and develop and offer scholarship opportunities. Our corporations have built up a capacity to provide jobs and help young people see what it takes to succeed in modern America. They have built, as intended, a managerial and business expertise that can carry forward. They have helped create an economic stability where none existed before. Our people take pride in this work, and feel strongly that this is our work, not the work of others. It is an accomplishment to behold, one which is worth understanding in full for its roots, path and basis in law, including Native American law.

We believe that the laws governing the 8(a) program provide the correct balance of interests and provide for an effective small business program. Native American participation in the 8(a) program represents less than 2 percent of the total contracting undertaken by the U.S. government. When the regulations need updating, the SBA and federal agencies have shown that they have the authority and ability to modify the program where needed. New regulations for the 8(a) program were published in a Final Rule in February of this year and took effect last month. These regulations provide for changes in the joint venture requirements, require more assistance from mentors in the mentor-protégé relationship, and require greater reporting on the benefits to Native members and communities resulting from 8(a) contracts, including the reporting of dividends, funding of cultural programs, employment and other programs. We should give the changes of this new regulation a chance to work and then assess what else needs to be done.

As I testified last year to the Subcommittee on Contracting chaired by Senator McCaskill, what happens with Alaska Natives has an impact everywhere: our homeland, our traditional way of life, our economic future—so much depends upon our relationship with the U.S. Government, and the development of our Native people and our corporations. If they fail, we could lose everything.

I look at our Native corporations' participation in government contracting as a repudiation of federal termination and assimilation policies of previous decades. With our participation in the SBA 8(a) program, our Native corporations become *integrated in the economy.* At the same time, we retain our culture and identity; we create jobs; and control the amount of involvement or non-involvement. I view the greatest benefit of our participation in the SBA 8(a) program is the *capacity building,* which is occurring and continues. We are both contributing to the U.S. economic recovery and building our capacity to help more. We are involved in *nation-building work,* which benefits all Americans. We work hard, we do quality work within budget and on time, or we do not receive contracts. We build tight financial and accounting systems because we want to work responsibly and according to the law. We are developing our people to be responsible U.S. citizens capable of solving any problems or crisis and working to build our country.

I believe strongly that the success of the program is so good that it could be considered a national model for integrating ethnic minorities into the modern global

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main several times more likely than other Alaskans to be poor and out of work. All the economic problems Alaska Natives face are worst in remote areas, where living costs are highest. AFN has made the request available to Members of the Committee.

economy. Several areas around the world, which I am sure you monitor, could greatly benefit from the experiences we are gaining in building a better base in our economy for our indigenous people. The upheavals in places like Tibet, while very complex and historical in root causes, reveal the long-standing ethnic tensions and weakness in China's social and economic structure. Unlike the Soviets, who dealt with potentially problematic ethnic minorities in part by moving them *en masse* from their homelands, China left its ethnic minorities largely within their traditional lands. Ethnic tensions arise and are exacerbated by disparities in social status and economic situations in these two provinces, as well as elsewhere in the world. The experience of Alaska Natives, our separation of economic and political organization, our working relationships with the state and Federal Governments, are all models, which could have application in other parts of the world.

In my view, together we have done many things right in the United States and Alaska. The ultimate benefit of the SBA 8(a) government contracts is the capacity building and the nation building work. It is the integration into the larger economy and the opportunity to contribute which is the genius of the U.S. approach. It hasn't been easy, and it is a lot of continuous work by our people, with continual adjustment, but we are on the right path.

As we look at 2011 with a slow recovery and serious federal budget issues, we know we are looking at a new reality. The federal fiscal environment has changed. We are in the midst of a global economic realignment and recovery. There is a critical need for the U.S. Congress and Administration's recovery act investment and further action taken and planned. The SBA 8(a) program is a proven way to move resources quickly and to get things done and employ people. With national unemployment figures remaining stubbornly high—we all must be concerned.

As we look towards a post-crisis recovery and how Native Americans, including Alaska Natives are helping and can help in the recovery, we request an opportunity for a dialogue with the appropriate Congressional committees on strategic, opportunity expanding ideas. We want to keep developing economic tools, infrastructure, expanding education and training for our people, and developing our institutions and organizations to be effective in the post-crisis economy and world. It will be a changed world, and we want to be ready for it.

We want to maintain our Native identity, our cultures and homelands. We want life opportunities and choices. We want to continue to build capacity within all our Native corporations, and tribes and to be known for our good governance and leadership.

The continuation of the SBA 8(a) program helps us accomplish our aspirations and goals, and helps our country. We would be pleased to continue a dialogue on this and other matters of concern to this Committee. Mr. Chairman, and Members of the Indian Committee, we sincerely request and invite you to see what a difference contracting has made for our people in Alaska. Please come to Alaska and witness for yourselves and for the United States Senate what a difference the success of these corporations has made.

Thank you.

The CHAIRMAN. Welcome, Mr. Mallott.

Mr. MALLOTT. Thank you, Mr. Chairman. It is so good to see you.

Members of the Committee, I thought that I would share with you a little bit of history. I was involved with the passage of the Alaska Natives Claims Settlement Act. I was very young.

The involvement took me here to the United States Senate as an aide to one of our U.S. Senators, specifically focused on land claims. I went back and helped found the Alaska Federation of Natives. I was on the first board of directors of Sealaska Corporation, the Alaska Natives Claims Settlement Act corporation for Southeastern Alaska. I was CEO of Sealaska for 10 years. I left the corporation for seven years, came back as a member of the board of directors.

And I give you that background just to say this. The ANCSA Corporations are incredibly unique institutions. They have the obligations that any for-profit corporation have. We were created out of whole cloth to be for-profit corporations, having all of those tremendous obligations and responsibilities, not the least of which is a legal fiduciary obligation to our shareholders who are our tribal

members, who are able to sue us, bring action against us at any time if we do not meet strict legal definitions of meeting our obligations.

And almost all of those obligations tend to be financial and business-oriented. We have tried to make the institutions different in the sense that we can accomplish what we must in the competitive marketplace, in the free enterprise system. And in that marketplace, we are virtually naked. We have to live by all of the laws, all of the precedents, every aspect of all of both the richness and the complexity that drives our free enterprise system.

We cannot rest for a single day for fear that competitive or other factors could overwhelm us. We had to learn that very, very quickly.

At the same time, we have tried to make corporations responsible institutions for our shareholders as native people. And we have done it, as has been explained to you, in many, many ways. I just mentioned, Mr. Chairman, that this struck home to me in 1990 when I received a call from Herb Kane from Hawaii and he said, Byron, I have been asked to call you because I understand that your corporation has very large trees. And to make a long story short, we are trying to build a replica of a traditional Polynesian voyaging canoe and we would like to purchase trees from you.

And as we chatted, he said the reason we want to do this is to strengthen who we are, to build our traditions, to re-inspire our own culture so that our children can meet the future in a way that allows them to have all of the tools necessary, but build fundamentally on who they are as Native Hawaiian people.

And I said to Mr. Kane, that is exactly what we are wrestling with in these corporations. We are in our own canoe and we are trying to sail it in the same direction as Native Hawaiians seem to be seeking.

And so we made a gift of those logs to Native Hawaiians and it changed our lives in some very powerful ways. We have had to survive in an incredibly competitive world, while trying to maximize the financial benefits to our shareholders, but not just financial benefits; again, the other things: scholarships and education and culture and trying to maintain our communities on our homeland. We are the last American first peoples still living in our own homelands, literally still living on our own homelands.

And so the passion for our future is carried by these institutions, but in some powerful ways the institutions are but a tool, but a tool that we take very, very responsibly and we view our obligations with great significance.

When Senator McCain was asking the questions he was asking, the thought struck me that, for example, Sealaska, and we have had many success stories. We are a multi-$100 million corporation. We have done this we have done that. But we have had our share of difficulty for sure, as any competitive business does over time. But we have survived and we make every attempt to prosper.

But we were among the first business corporations in the Country to bring with the United States Government a recall action successfully against several of our own employees who were seeking to derive private benefit from their role with our corporation. And we put them in prison.

We have always been very, very sensitive to others taking advantage of us. In some ways, it is in the DNA because for so many generations, that was a reality. But a program like 8(a), all of the other range of opportunity for ANCSA Corporations, most of which exist in the private marketplace, not in governmental programs, are important ultimately to our existence not as corporations, but as native peoples who want the same kinds of opportunity, who seek the same life that every other American can seek.

And I just want to say finally, Mr. Chairman, that it sears my soul when I hear about and know of abuse within our own institutions. And I know that it affects every native person involved in 8(a) in anything we do in the very same way. And for the program, for the regulatory structure to work, for the statutory structure to work properly, we want to be right there at the table with you.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Mallott follows:]

PREPARED STATEMENT OF BYRON I. MALLOTT, DIRECTOR, SEALASKA CORPORATION

Background on ANCSA and Sealaska

My name is Byron I. Mallott. I am currently a director of Sealaska Corporation and a trustee of the First Alaskans Institute. I have had extensive experience with the formation and implementation of the Alaska Native Claims Settlement Act of 1971, as I had the opportunity to be part of the Alaska Native leadership team which lobbied ANCSA through Congress, served as President of the Alaska Federation of Natives, and from an operational standpoint, have served both as the Chairman and President and CEO of Sealaska Corporation.

Sealaska Corporation is one of 13 Regional Corporations established under authority of the Alaska Native Claims Settlement Act of 1971 (ANCSA). Sealaska is owned by approximately 20,000 Tlingit, Haida and Tsimshian tribal member shareholders. Like our culture, language and heritage, Sealaska is grounded in our lands, waters and homeland of Southeast Alaska. Our culture enables our employees and companies to build upon Native traditional values and enables us to be a unique provider of quality and competitively priced products and services, by virtue of our Native ownership.

Through the ANCSA conveyances, Congress directed that Native corporations should implement ANCSA "in conformity with the real economic and social needs of Natives . . . .". The Congressional directive is consistent with our traditional values which require that Sealaska develop sustainable economies and address the needs of our Native communities. From our headquarters in Juneau, Alaska, we have built a strong economic presence in Southeast Alaska and are also extending our business beyond our traditional homeland as a way of creating even greater economic benefit and employment opportunities to our tribal member shareholders. As a result, our influence and shareholder presence are found in many parts of the world.

ANCSA was a historic settlement of land claims between the United States and Alaska's Native people. It is essentially a statutory Indian treaty. ANCSA was a seminal shift in congressional policy that previously only provided for cash payments for pennies on the acre in exchange for the taking of aboriginal lands by the United States. This was a highly dysfunctional federal Indian policy. Instead, ANCSA returned 44.5 million acres of land to Alaska Natives through a corporate, rather than federally recognized tribal structure. Although amended many times over the ensuing years since its enactment in 1971, ANCSA remains as Congress' commitment to Alaska Natives that it would provide the resources to reverse over 100 years of disenfranchisement from our Native culture, language and land. ANCSA Corporations are now able to participate in the economy, including government procurement programs designed to benefit minority populations, and by providing land and resources to help reverse a history of mistreatment of Native people. With this commitment, Alaska Natives have the economic opportunity – through their corporations – to promote a sustainable economy for ourselves. Relatively speaking, this was an inexpensive solution for the federal government – which received the benefit of the relinquishment of claims to over 300 million acres of aboriginal lands while

simultaneously providing an alternative and sustainable economic model for Native policy.

ANCSA is a living document and a congressional experiment. By using a statutory framework for the land claims settlement, Congress structured ANCSA to accommodate substantive amendments that would achieve its purposes of developing a sustainable and healthy economy for Alaska Natives. The goal of meeting the real social and economic needs of Alaska Native people that Congress sought in 1971 has not been met. We still face extreme poverty, very difficult health and unemployment issues. In fact, within our southeastern region of Alaska there is a tremendous out migration of our tribal member shareholders from our villages because of a lack of economic opportunity. The economic benefits from the ANCSA 8(a) program can continue to contribute to rebuild our village and regional economies.

There have been hundreds of individual amendments to ANCSA in the last 39 years. The ANCSA amendments authorizing Alaska Native participation in the Small Business Administration's 8(a) program provide federal procurement opportunities for business development that contribute to the development of sustainable Alaska Native economies and are embedded in ANCSA as part of our settlement with the United States. This congressional commitment must be sustained.

Sealaska's Contribution to the Southeast Alaska Economy

Southeast Alaska, the home of Sealaska, is an island archipelago bisected by major marine waterways. This geography isolates many of the communities of Southeast Alaska from each other, as well as from the rest of the world. This isolation limits access to energy and transportation infrastructure, and increases the cost for delivery of goods and services. For example, it can cost as much as ten times per kilowatt hour for electricity in our villages as in urban Alaska. The net effect of this isolation is that the cost of doing business in our own region is extremely high, and, as such, it is a challenge to diversify and grow the region's economy. The economic conditions in rural Alaska are much more like third world conditions than the rest of the United States.

The Southeast Alaska economy is dominated by federal and state government activities and by the seasonal industries of tourism, fishing, logging, wood manufacturing and mining. The seasonality of employment and availability of primarily remote jobs results in high levels of unemployment – in some communities as high as 80 to 90 percent. Despite these challenges, Sealaska makes significant contributions to the economy of Southeast Alaska.

In both a 2004 and 2008 study, the McDowell Group, a regional economic consulting group, found that Sealaska Corporation was the largest private for-profit employer in Southeast Alaska. In some of the poorest rural communities, Sealaska provides between thirty and fifty percent of the annual disposable income of the total community. Most of this income is the result of

logging and logging-related activities, Sealaska corporate operations and the activities of its non-profit organization, the Sealaska Heritage Institute. The corporation recognizes the dire condition of Native communities in our region. As a result it has adopted a strategic and operating plan for the development of new jobs and economic opportunities in the region, and executive compensation is partially tied to accomplishing these strategic objectives.

Most of the revenues of Sealaska Corporation from 2000-2010 are from its timber resources and its investment portfolio. Currently, just over thirteen percent of Sealaska's revenue is derived from 8(a) contracting. Sealaska has only been involved in 8(a) or government contracting since 2003.

Sealaska's natural resource development and other business revenue enable the corporation to provide significant benefits to its tribal member shareholders and shareholder descendants, including scholarship programs, cultural programs through the non-profit Sealaska Heritage Institute, elders benefits, contributions to the Alaska Federation of Natives, redress of the inequity faced by the Landless Native people of our region, contributions to the Alaska Native Heritage Center, contributions to the Healing Hands Foundation, and donation of logs for totem poles and other cultural purposes.

Small Business Administration's 8(a) Program

Sealaska's finite land and resource base alone is not sufficient to maintain sustainable shareholder jobs and benefits programs. Many of Sealaska's tribal member shareholders, and the communities in which they reside, suffer from poverty and unemployment levels that are an embarrassment to an industrialized nation. The development of our natural resources has improved the economy in many of our Native communities, but these programs may not be sustainable without the successful completion of ANCSA land entitlements.

In addition to land, Congress has provided authority for additional economic programs to promote economic sustainability of Alaska Native Corporations (ANCs). The inclusion of ANCs in government procurement programs in the aboriginal settlement provisions of ANCSA enables ANCs to build upon the proven success of individual minority entrepreneurs and to apply that model to the ANCs in a manner that benefits all tribal member shareholders. The existing ANC provisions of the Small Business Administration's (SBA) 8(a) Business Development Program encourages ANCs to strive for corporate entrepreneurship that will help Native corporations meet their federally-defined obligations to further the economic, cultural and social well-being of the entire tribal member shareholder population. Without the 8(a) program, the barriers to entry for ANCSA corporations and tribes would be too high to realistically compete with multi-billion dollar federal contractors. These programs are a mechanism to help transition tribal member shareholders out of poverty, combining the ever-improving business acumen of the Native corporations with the government's massive procurement opportunities to help jump start the otherwise destitute economic opportunities of Alaska Natives.

The growth of Alaska Native corporations over the last 39 years since ANCSA's enactment, and the participation of ANCs in the 8(a) contracting programs enable ANCs to perform large and complex federal contracts, creating opportunities for the financial and operational success necessary for Sealaska to continue to provide benefits to its over 20,000 tribal member shareholders. The ANCSA 8(a) program also helps achieve a key congressional objective of providing a means for Alaska Natives to participate in the mainstream U.S. economy.

Sealaska's Participation in 8(a) Government Contracting

Sealaska is a diverse company, in which 8(a) government contracting represents only a small portion of our business. Our business strategy focuses on meeting our customers' needs for goods and services and to additionally assist our customers in meeting their minority procurement goals – goals that are either required by law or by an agency's own internal policies. Sealaska currently owns eight (8) SBA 8(a) certified companies: Sealaska Environmental Services, Inc.; Synergy Systems, Inc.; Olympic Fabrication, LLC; Managed Business Solutions, LLC; Alaska Coastal Aggregates, LLC; Sealaska Constructors; Sealaska Global Logistics, LLC; and Security Alliance, LLC. We will highlight our most successful 8(a) participant – Sealaska Environmental Services - below.

Providing economic, social and cultural benefits to our 20,000-plus tribal member shareholders is the primary and driving force in all that we do at Sealaska. We use our land base and federal government programs and opportunities to meet our mission of increasing shareholder equity and maximizing dividends and other shareholder benefits for the purpose of enhancing the quality of our shareholders' lives, providing not only dividends but the creation of employment and business opportunities.

Business Highlight: Sealaska Environmental Services

Sealaska Environmental Services, Inc. (SES) was one of Sealaska's first businesses that participated in federal contracting, entering into the SBA 8(a) program in 2003. As the largest private landowner in southeast Alaska, Sealaska had gained over 25 years of natural resource management experience through the management of our own timberlands. This experience ranged from front-end environmental services like environmental impact statements and assessments to back-end environmental services like remediation and long term monitoring.

It was this experience and Sealaska's efforts to diversify away from being solely a natural resource company that led Sealaska to start SES in early 2003. As a steward of its own existing land base - nearly 300,000 acres of commercial forestlands - Sealaska had worked with a variety of large commercial contractors to assist us in a variety of stewardship tasks. These relationships

formed the initial focal point in locating a potential teaming partner to assist the newly formed SES to build up its capacity and capabilities as a provider of a variety of environmental services.

The intent of the SBA 8(a) Business Development program and the SBA Mentor-Protégé Program is to grow and provide guidance to small, fledgling businesses such that when the small business concern graduates from the program, they have the proper foundation for success. In over eight years, SES has grown from a company with one employee and zero revenue to a company with multiple federal contracts, 88 total employees, and $63M in revenue. SES could not have experienced that kind of success without the guidance and assistance of its mentor Tetra Tech EC, Inc. and its parent, Sealaska Corporation.

Through this mutually successful relationship, a small business with limited previous experience and no revenue was able to benefit in several positive ways:

1. Continued and sustained investment in capacity, capabilities, and self-performance building within SES;
2. Sealaska tribal member shareholder employment and other tribal/minority employment;
3. SES's continual improvement and success in a very competitive and dynamic contracting landscape; and
4. Cultural benefits back to Sealaska, Sealaska Heritage Institute and Sealaska tribal member shareholders.

SES Capacity and Capability Building:

- SES has been awarded 6 total IDIQ (Indefinite Delivery/Indefinite Quantity) contracts over the past eight years; the first two were sole sourced, the remaining 4 were competitively awarded.
- SES's last three contract wins have been multiple award IDIQ contracts.
- SES works in three states (Alaska, Washington, and California) and in ten countries overseas (Malaysia, Kazakhstan, Philippines, Cambodia, Latvia, Bulgaria, Spain, Croatia, Jordan, and Djibouti).
- SES has worked with the Department of Energy's National Nuclear Security Administration, the Department of Defense (Navy and Army Corps), the Department of the Interior (National Park Service), and the Port of Seattle.
- SES has added in house technical capacity in the following areas: geology and hydrogeology; environmental, chemical, civil, and mechanical engineering; and general construction and construction management.
- SES administers all of its contracts, manages all of its joint ventures, and performs all accounting and financial aspects of all of its contracts.
- SES went from 1 employee with zero revenue in 2003 to 88 employees and $63M in revenue in 2010.

The SBA 8(a) business development program and SBA Mentor-Protégé program have contributed both the transfer of knowledge and technical capacity to SES, which has provided SES with a competitive head start on other companies of similar age and experience.

The SBA Mentor-Protégé caused a transfer of knowledge and SES has gained the following expertise:

- Company-wide health and safety program;
- Company-wide quality control program;
- Operational policies, processes and procedures related to project and program management;
- Financial and accounting best practices related to both fixed price contracts and cost reimbursable contracts;
- Standard human resources policies;
- Business development and marketing analysis for effectively targeting and capturing contracts;
- Standard procurement and subcontract formats and procedures; and
- Risk management, cost controls, and change management procedures related to effective portfolio, program, and project management.

In terms of the transferring of technical capacity SES has gained the following skills:

- Contract administration;
- Portfolio, program, and project management;
- Estimating;
- Resource planning;
- Procurement;
- Project controls (monitoring and controlling costs);
- Competitive proposal development; and
- On the job training.

In addition to the tangible business benefits SES has gained through this program, there have been other direct and indirect benefits to both SES and Sealaska Corporation and its tribal member shareholders.

Table 1. SES Revenue Since Inception (in thousands)

	2003	2004	2005	2006	2007	2008	2009	2010
Revenue:	0	(210)	1,800	7,519	10,257	16,261	50,743	63,005

As you can see, SES had grown through its participation in the 8(a) program and will soon graduate with a successful track record that will allow it to participate on a competitive basis in the future.

SES Tribal Member Shareholder Employment and Other Tribal Member/Other Minority Employment

An important Sealaska philosophy is to employ Sealaska tribal member shareholders and other tribal members, to team or subcontract with other tribal entities, and self perform as much work as possible. We provide opportunities throughout the organization, from management and program related activities like project management, technical staff like engineering and geology, to functional opportunities like accounting, finance, IT and others. We employ the best people and provide them with opportunities to excel in their field.

- Of SES's 88 total current employees, 17 are Sealaska tribal member shareholders, 14 are other tribal members (Aleut, Choctaw, Yurok, Yakama, Nez Perce, and Umatilla), and 4 are other minorities (two Asian-Americans, two Hispanic-Americans);
- 35 or 88 SES employees are minorities, or 39.7%;
- A tribal member shareholder is the General Manager overseeing the entire SES operation; and
- Of the 17 current Sealaska tribal member shareholders that work for Sealaska, 7 went through either Sealaska Corporation's internship program or SES's internship program.

Table 2. SES Employee Totals

	2003	2004	2005	2006	2007	2008	2009	2010
Total Number of Employees	1	2	6	11	17	53	65	86
Number of Sealaska Tribal Member Shareholders	1	1	1	3	10	11	16	16
Number of Other Tribal Members	0	0	0	1	3	4	2	14
Number of other minorities	0	0	0	0	1	2	3	4

SES's continual improvement and success in a very competitive and dynamic contracting landscape:

- SES has received two sole sourced contracts valued over $10M; one contract was $30M, the other was $20M. These contracts were the first two contracts that SES was awarded.
- SES has not received any sole sourced contracts valued over $10M since 2005.
- Of SES's six total IDIQ contracts that the company has won to date, 4 of the 6 were competitive contracts and 3 of the 6 were multiple award competitive contracts.

Benefits back to Sealaska Heritage Institute and Indian Country:

Since 2006, SES has returned $3.1M in dividend payments back to Sealaska. These dividends have been used in dividend payments to over 20,000 Tlingit, Haida, and Tsimshian Sealaska tribal member shareholders and these other programs:

- Cultural and social programs;
- Language programs;
- Youth leadership culture camps;
- Elder assistance; and
- Internship and scholarship programs.

(* Overall Benefits from Sealaska to Shareholders discussed below).

Benefits to Sealaska Shareholders

The following is a summary of the benefits provided by Sealaska to its tribal member shareholders.

Dividends for Shareholders

One of the missions of Sealaska Corporation is to "maximize dividends" to shareholders. The corporation has well-defined dividend policies that include dividends from investment funds and from operations. In summary the policies are to payout a percent-of-market-value on the 5-year average balance for the Permanent Fund and to payout 35% of the five-year average net income from all operations. The sources of revenue from which dividends are calculated require that Sealaska's business and investment strategies are well diversified. In this manner, we are not overly dependent on one source of revenue for company profitability and dividends. The 8(a) program is considered an important point of diversification that will enable Sealaska to maintain its dividends to shareholders and the creation of associated employment, contracting and subcontracting opportunities now and into the future.

Scholarships Provided to Sealaska Tribal Member Shareholders

Sealaska Corporation has a vested interest in the education and careers of its tribal member shareholders. We are consciously building tribal member professional capacity. As a result of our corporate emphasis on shareholder employment, Sealaska monitors the progress of our Native youth. One method employed by Sealaska has been to track those shareholders and shareholder descendants who have received scholarships through Sealaska Heritage Institute (SHI). The scholarship program administered by SHI is wholly funded by Sealaska Corporation.

Over the years, we have created a database of more then 3,000 recipients of scholarships since the program's inception in 1982. Through ongoing outreach efforts, we monitor basic contact information and track data such as programs of study, types of degrees, whether the recipient completed their education, is currently employed, or possesses certain skills or experience. Sealaska actively recruits from among the individuals in this database, and most of the recently secured shareholder employees for the positions of VP & Corporate Secretary, Treasurer & Chief Investment Officer, VP for Corporate Development, VP & General Counsel, and Director of Human Resources are from among the former scholarship recipients. We have awarded thousands of scholarships, totaling more than $5.7 million from 2000 – 2008 alone.

Internships Provided to Tribal Member Shareholders

The first interns in the Sealaska Intern Program were selected in 1981. Since then, more than 200 students have participated in the program. The intern program provides current college students with real world job experience. Sealaska provides a salary to each intern and provides travel costs to and from school, in addition to a housing. The program has been highly successful for both the students and for Sealaska. Sealaska's benefit is a network of capable prospective employees.

Interns are placed both at corporate headquarters and at subsidiaries or projects in and outside of Alaska. For example, in 2009 and 2010, we placed interns at Sealaska Environmental Services in Washington State and at Nypro Kanaak-Alabama. Sealaska and our subsidiaries currently employ 23 former interns. Sealaska headquarters employs 13 former interns. Sealaska Heritage Institute employs 4 former interns. Sealaska Timber Corporation currently employs 2 former interns. Sealaska Environmental Services employs 3 former interns, one of whom is the General Manager. Finally, our General Manager for Synergy Systems is a former intern. Sealaska is proud of its long and successful history of managing a shareholder intern program.

Shareholder Employment

In order to attract and retain talented, experienced, and educated individuals, Sealaska's compensation policy ensures that the base salaries of its employees, including officers, are both competitive and reasonable. Reflecting our goal of maximizing the number of Sealaska tribal member shareholders who serve in positions of responsibility, a majority of Sealaska's corporate officers are tribal member shareholders. At corporate headquarters, shareholder employment is around 70 percent, which includes many executives; long-shoring (ship-loading and tending) for our timber operation is nearly 100 percent; and the executive leadership at several of our subsidiaries is comprised of shareholders.

The Sealaska Board of Directors has established specific policies and procedures for the employing tribal member shareholders and has consistently defended its right of preferential hiring of tribal member shareholders pursuant to an amendment to ANCSA that accords ANCSA corporations the same status as federally recognized tribes for certain employment and legal purposes. In addition to specific employment policies, the board compensates management for meeting specific tribal member shareholder employment goals and percentages as part of the executive compensation plan.

In all of our companies, it is Sealaska's goal to make its employment base "look like America," and we make specific efforts to recruit people of diverse ethnic backgrounds. While all of our subsidiaries may not employ significant number of shareholders, there are key employees who are people of color and members of the majority ethnic or racial population in their region. For example, we have persons of Hispanic descent operating and managing our Nypro Kanaak joint ventures.

A key Sealaska strategic goal is to build professional and managerial capacity among its tribal member shareholders, in order that they might assume executive management positions at headquarters and within our subsidiaries. This is made possible by our commitment to education through scholarships, internships, and placement of shareholders in our operating companies. Throughout Sealaska, this effort has been successful by grooming shareholders for key positions. A significant number of Sealaska's middle and senior management were beneficiaries of Sealaska scholarships and internship programs.

A significant number of our employees in Alaska are shareholders – as many as 70 percent. Shareholder employment becomes more challenging as Sealaska expands the geographic reach of its business operations, with fewer than 3% of outside Alaska employees being shareholders, but Sealaska makes every effort to seek out qualified shareholder candidates for placement in our various subsidiaries. We have been successful in placing shareholders or shareholder descendants in senior management in several of our subsidiaries located outside of Alaska. For example, shareholder Derik Frederiksen is the General Manager at Sealaska Environmental Services (SES) – a company that also employs seven (16) additional shareholders. Shareholder Jon Duncan is General Manager at Managed Business Solutions, LLC (MBS), and shareholder Bob Wysocki is the General Manager at Synergy Systems, LLC, both of whom joined their respective companies in 2009. Sealaska also places many of its summer interns in the subsidiaries located outside of Alaska.

Our historic investment in interns and scholarships is now the foundation for our ability to place skilled tribal member shareholders in management positions throughout our organization. These home-grown managers require a great deal of mentoring so that they can assume leadership roles. The

long-term trends of employment in Sealaska companies prove that our early investments (e.g. scholarships, internships and educational mentoring) in young tribal member shareholders and shareholder descendants are paying off. We expect to see continuing growth in the placement of tribal member shareholders in our companies well into the future.

Tribal Member Shareholder-Owned Business Preference

The Sealaska Board of Directors has established policies for providing economic preference for tribal member shareholder-owned businesses. Through our land management and timber harvesting operations, we have achieved significant results in using shareholder-owned businesses. Much of Sealaska Timber Corporation's ship-tending and log towing activities are performed by shareholder-owned companies. All agreements with these contractors include a requirement that they extend a preference in employment to Sealaska tribal member shareholders to the extent allowed under law. Sealaska's forest management consulting is performed almost exclusively by shareholder-owned companies. Our annual silviculture program includes incentives for contractors to employ and train shareholders to assume forest management contracts.

Corporate Support for Community Projects or Organizations

Sealaska provides donations on a consistent basis to local, regional and statewide organizations to support their initiatives that benefits Sealaska shareholders or the Native community broadly. Sealaska actively supports programs for community projects. Support occurs through charitable giving and donations of valuable logs. Sealaska, through its Natural Resources Department and Sealaska Timber Corporation, has donated valuable logs to various organizations for cultural purposes, including the carving of totem poles, the carving of house posts, the construction of traditional long houses, the carving of box drums, and for the carving of canoes. For example, Sealaska donated a traditional Tlingit canoe, which is now on display at the Smithsonian Institution's Museum of Natural History, in the Oceans Hall exhibit.

Sealaska participates in community improvement projects, including providing land access and helping secure funding for municipal drinking water improvement systems for the villages of Kake, Hoonah and Hydaburg. Sealaska has worked with communities and other Native corporations or organizations to secure legislation and funding for community roads and road maintenance; and has provided numerous donations for the repair of Alaska Native Brotherhood halls (one of which is located in each of the villages in Southeast Alaska). Sealaska has also worked with communities, particularly the community of Hydaburg, to maintain their municipal landfills by contributing contractor services and fill materials to stabilize solid waste facilities.

Sealaska provides Financial and public policy support for Native organizations, such as the Alaska Native Brotherhood (ANB); the Alaska Native Sisterhood (ANS); the Sealaska Heritage Institute; the Southeast Alaska Regional Health Consortium Foundation; the Alaska Federation of Natives; the Alaska Native Heritage Center; Tlingit, Haida, and Tsimshian dance groups; culture camps; and the Southeast Alaska Landless Natives coalition. In addition, we provide legislative monitoring and advocacy at the State and Federal level on behalf of our shareholders, shareholder communities, and the industries and issues that are important to them.

Sealaska Heritage Institute

A significant portion of the benefits provided to Sealaska shareholders are administered through the Sealaska Heritage Institute (SHI). Sealaska contributes funds on an annual basis to SHI for general administration, as well as for the scholarship programs. SHI is a 501(c)(3) organization that was established by Sealaska Corporation. Through SHI, Sealaska provides the following benefits to shareholders:

- Scholarships
- Curriculum development in Native culture
- Leadership training
- Language preservation programs
- Cultural preservation and perpetuation programs, including culture camps
- The biennial "Celebration", a gathering and celebration of Native art, song and dance
- The support and perpetuation of Native Arts
- The creation and distribution of publications and videos about Native culture

Sealaska Corporation contributes anywhere from $1.2 - $2 million annually to SHI for the various programs it administers for our shareholders.

Stewardship of ANCSA Assets

The enactment of ANCSA in 1971 resulted in the transfer of land from the Tongass National Forest to Sealaska Corporation. Sealaska manages the lands received under ANCSA in order to maximize the economic, social and cultural benefits to shareholders, including historical and sacred sites, cemetery sites, and subsistence hunting, fishing and gathering areas. It is important to note that prior to ANCSA there were no standards for the harvest of timber on private lands. Sealaska worked with the State of Alaska and conservation interests to develop the State Forest Resources and Practices Act to regulate timber harvest on private lands.

Sealaska expends a significant amount of money annually to ensure that Sealaska lands are managed for the benefit of current and future shareholders. The average expenditure for silviculture on its lands per year is $1 million, but can be as high as $1.5 million. Sealaska is making investments into its forests, from which it may not economically benefit for at least 70 years because of the long growth cycle in the Southeast Alaska rainforest. The silviculture activities ensure that timber lands that have been harvested will regrow into productive forests for sustainable harvest or for wildlife habitat.

Elder Benefits

For Sealaska management and shareholders, our elders have always been our most valuable resource and asset. They have helped our people and our cultures to persevere and to survive, even through the most difficult times. Our respect for our elders led the shareholders to adopt a resolution in favor of the establishment of an Elders Trust benefit, which allows the corporation to make a one-time payment to our elder shareholders once they reach the age of 65. Under this program, Sealaska tribal member shareholders receive a benefit of $20 per share when they reach the age of 65. Therefore, a shareholder with 100 shares at the age of 65 will receive a one-time payment of $2,000. In 2009, shareholders approved a resolution that authorized the corporation to issue an additional 100 non-voting shares to elders, shareholders over 65, who will benefit from increased dividends.

Closing Remarks

Sealaska appreciates the opportunity to provide insight on the culture and perseverance that drives the mission of the Sealaska, the economic diversity of our company, our involvement in performing 8(a) contracts, and the benefits that are provided to Sealaska's tribal member shareholders.

The CHAIRMAN. Thank you so much for your statement. This is part of the reason also we are moving quickly on 8(a), and we certainly want to improve the system, and this is one way of beginning to do that.

Thank you very much. We really appreciate your statements.

Because of limited time, I will forego my questions and submit it in the record. By the way, your full statements will be included in the record.

Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

My questions will be limited here today.

Jackie, I wanted to ask you to respond to an issue that Senator McCain raised. And this was about the economic disadvantage as a condition to participating within the 8(a) Program. If you can just speak to this issue. Why do you think Alaska Natives are not required to demonstrate an economic disadvantage as a condition? And then a subsequent question would be: Should all tribes be included in the designation of economically disadvantaged, rather than requiring that each tribes proves it?

I would like to clear up the air on that a little bit.

Ms. JOHNSON-PATA. Thank you, and thanks for that question.

I am going to start by saying yes, I think all the tribes should have the same Congressional designation that Alaska Native cor-

porations have, being economically disadvantaged. And the reason being, first of all, just look at the history of our communities and where our communities are placed. The majority of them are in rural remote areas.

Now, if you want to measure economic disadvantage, what is that measurement? Is it a measurement about the level of community poverty? Is it the level of income that comes in? How do you take into account the access to proper health care? How do you deal with the fact that we have the highest number in the Nation of high school dropouts; that we still have the infant mortality rates and the low life expectancy rates; that we still have the health issues and concerns? Our transportation systems are still considered the most unsafe transportation system.

I can go on and on, but you would have to account for all those things because they are all components of being economically disadvantaged. It is not a poverty rate. It is not an income level. It is a historic problem in our communities and it is going to take generations to be able to change that dynamic.

And that is why I think that trying to do that in Alaska where you may have maybe a corporation that might have one community that is one of our three more urban centers, but the rest of them are in our remote villages. And how can you make that measurement for a region? It is not any different than the challenge you have of how you make that measurement for a tribe.

Senator MURKOWSKI. When you think about how you measure, how you account for, we have a system, and the IG, the gentleman, I have forgotten his name, I am drawing a blank, but suggested this is all about following the money.

I think we recognize in Alaska just measuring things by dollars oftentimes is not a sufficient or an adequate measurement. Certainly, when we think to the benefits that are conferred to Alaska Natives through this program, how do you put a benefit on preservation of a culture, preservation of a language, that education opportunity?

Julie and Byron, I truly appreciate both of you being here. Thank you for traveling so far. Thank you for your words and for your leadership. You have been a leader within the State, Julie, for decades now, as we try to build out our Alaska Native corporations,

Byron, your history that you have recounted here, and truly the beginning of so much governance within the State of Alaska and what you have helped to build out. And I think it is important to keep this all in perspective and in context.

One of the things that I think is often overlooked is when we talk about an ANC, an Alaska Native Corporation. Well, we all have an understanding of what a corporation is. A corporation is like GE. An Alaska Native Corporation and the structure and how it works is different.

And with the Land Claims Settlement Act basically you are told, okay, go into business, without any real assistance there to provide for those opportunities. And so when I mentioned in my opening statement, there were some stumbles. I think we recognized that we were pushing a lot of growing into a very short time period there.

But how difficult has it been to really find viable business opportunities? Julie, you have mentioned that without the 8(a) Program, we would simply not see the level of success that we have within our native corporations. But again, how do you build out a successful business opportunity in a small remote village like Scammon Bay or Chevak or Quinhagak or down there in Southeast, Yakutat.

If you can just very briefly speak to that, and I know my time is limited here.

Mr. MALLOTT. Well, number one, all shareholders are disadvantaged in using the kind of definition that Jackie used for sure. We without question utilized 8(a) as another tool to help deal with that disadvantaged circumstance. It is among a number, and to create our corporations and give them the kind of ability to be successful in the marketplace, such diversity is important.

We began in Alaska. We will never leave Alaska. The first efforts of ANCSA Corporations for more than a generation was to create opportunity in our own communities and within our own State. We felt a tremendous obligation.

We found it necessary both for competitive and business survival reasons to move out into the corporate world and to seek enterprise wherever it might take us, but always for the purpose of creating opportunity for our shareholders.

And I don't know how else to answer it other than to say we I believe always feel like we are on the razor's edge. We have to be extremely competitive in all aspects of our business. At the same time, we have this tremendous obligation to our shareholders as native peoples, as people.

And I think it is important to note in looking at ANCSA that we took that obligation upon ourselves. ANCSA is very clear in saying that this is a legal essentially settlement of land claims; that the Federal Government and other institutions in their roles and their obligations to native peoples both as Indian peoples and as citizens of the United States is not diminished one iota by the passage of the Alaska Native Claims Settlement Act.

But being who we are and knowing what our circumstance was and what our potential is, the ANCSA Corporations live that obligation. I don't know how else to articulate it.

Senator MURKOWSKI. I thank you.

Mr. Chairman, I know that we have a third panel and I want to give deference to them, but Julie, if you have something you want to wrap up with?

Ms. KITKA. Yes, I just have a couple of things. One, on the disadvantaged, recently we had done a tracking study by decades of the socioeconomic well being of Alaska Natives. And you can see clearly from the data the whole thread of disparity on every major indicator. And I would suggest that it doesn't even make any sense to carry on with whether or not you are included as disadvantaged or not disadvantaged until you see that disparity gap closed on all those major indicators.

Clearly, there has been substantial improvement in the living conditions and socioeconomics of Alaska Native people. You can see the poverty rate going from in the 60 percentile down to 20 percentile. You see infant mortality dropping down. You see our elders living longer. Every major thing, you are seeing huge improve-

ments in the last 30 years, and we are so grateful for the Federal presence and the role that it had helped us do. It has totally made a difference.

But to say you are not disadvantaged, I would wait until you see that disparity gap by statistics, by numbers, disappear, and then revisit that.

As far as the results of 8(a) government contracts, I will use one regional corporation as an example. A small regional corporation, small population, when they got started right on our land claims, one of their first businesses was fishing because most of the board members were fishermen and they knew how to fish.

Well, they didn't know how to market fish. They didn't know how to deal with international pricing. And so they bought a cannery and all the stuff, and then they lost money. They hired the wrong people. Then they got into timber and they did every major area that they were familiar with as people. And they would hire people and it would be the wrong people. They would rip them off.

If it hadn't been for 8(a) for this regional corporation and for them getting into it and having to have the tight financial systems, the accounting systems, the top security clearances their managers need to have, everything in that, this corporation, in my judgment, would have had to sell its land back to the Federal Government and would have been buried under debt where the shareholders would have nothing of value.

But instead, the 8(a) Program was available for them to build the capacity with a dedicated managerial team that put their resumes on the line, that built partnerships, and began to build a track record. And they are a stunning success now.

And like I said, that is one that I am familiar with, and they clearly know they need to diversify beyond just government contracting on that, but clearly the program is outstanding and there needs to be more support of the program. And we need to make sure in this round of budget cuts in the Congress that you don't diminish the money going to SBA to continue their role of oversight because we don't want to go backwards on that.

But there is no doubt in my mind that this is one of the most successful programs we have ever seen.

Senator MURKOWSKI. I thank you all.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Murkowski.

Senator Begich?

Senator BEGICH. Thank you, Mr. Chairman. In light of the time, I just first want to say to Jackie, Julie and Byron, thank you for being here. I think the questions and the back and forth that you had with Senator Murkowski really put out on the table a lot of the reasons why 8(a)'s exist.

To be very frank with you, I wish Senator McCain would have stayed because it is nice to talk to the regulators, but it is more important to talk to the people who actually do the business and how these resources are expended, and what you do with an 8(a) corporation.

Maybe we will able to take some of this testimony you have given and deliver it to his office because I think it would be very important because I think there is a misunderstanding between

tribes and ANCs and how it all operates and the work and where the resources go.

So I will have some questions that I will send to you folks for the record, but I just wish that he was here to hear this because I think this is the piece of the equation that never gets the full story, and you have done a good job today.

So thank you all very much.

Ms. JOHNSON-PATA. Thank you. And we will follow back up with his office.

Senator BEGICH. I knew you would, Jackie.

The CHAIRMAN. Thank you.

Senator Crapo?

STATEMENT OF HON. MIKE CRAPO, U.S. SENATOR FROM IDAHO

Senator CRAPO. Thank you, Senator Akaka.

I will forego asking any questions of this panel, but I would ask the indulgence of the Chairman if I might use a few minutes of my questioning time to introduce one of the witnesses on the next panel who is from Idaho.

The CHAIRMAN. Thank you so much for being here.

I want to thank this witness panel very much for your responses and your testimonies. Thank you so much for being with us.

Now, I would like to invite the third panel to the witness table. Let me call on Senator Crapo for his introduction of the Chief.

Senator CRAPO. Thank you, Mr. Chairman.

As I just indicated, one of our witnesses today on the third panel is the Honorable Chief James Allan. Chief Allan is a very good personal friend of mine. I have worked with him on many issues over the years, and it is an honor for me to introduce him here to you.

Before delving into the specifics of this hearing on the 8(a) Program, I want to commend Chief Allan for his strong leadership on issues of importance to both Idahoans and the American people.

With a name like Chief, he has had a lot to live up to and has literally been Chairman of the Coeur d'Alene Tribal Council and heavily involved in leadership in Idaho and in tribal matters for a long time, and I expect will be for a long time to come.

I will just submit for the record the rest of my introductory statement. I was going to go through something which I think Chief will do during his testimony, the experience of the tribe in Idaho with the 8(a) Program and how critical the 8(a) Program is to them. But I will wait again for my opportunity during questions and answers to get into that in a little further detail, but welcome, Chief.

[The prepared statement of Senator Crapo follows:]

PREPARED STATEMENT OF HON. MIKE CRAPO, U.S. SENATOR FROM IDAHO

Thank you, Mr. Chairman and Vice Chairman Barrasso for holding this important hearing on the role of the SBA 8(a) program in enhancing economic development in Indian Country. I appreciate the opportunity to introduce Coeur d'Alene Tribal Chairman, Chief James Allan, who is appearing for this committee today as a witness. It's good to see you, Chairman Allan, and I am glad that the Committee will have the opportunity to hear your testimony.

Before delving into the specifics of this hearing and the 8(a) program, I want to commend Chairman Allan for his strong leadership on issues of importance to both Idahoans and all Native people. With a first name like "Chief", he has dedicated his professional career to the high expectations bestowed upon him at birth.

In his tenure as Chairman of the Coeur d'Alene Tribal Council, Chief's responsibilities include leadership decisions that guide the direction the Tribe takes regarding cultural, historical and natural resources, among other things.

Today, Chairman Allan will be testifying to the tremendous success that the Coeur d'Alene Tribe in Idaho has had under the SBA Native 8(a) program.

Specifically, the Committee will hear the story of how in just the first year with the 8(a) designation, Coeur d'Alene's tribally-owned company, Echelon LLC, received a contract worth almost 40 million dollars and put over one hundred people to work in an area with the highest unemployment and poverty levels in the state. I had the tremendous opportunity to tour the plant last year and saw firsthand the benefits the program has had on the Tribe's economy and throughout north Idaho.

However, you will also hear the story of how in this past year, Echelon LLC was forced to lay off 70 of those Native American employees after recent disparagement caused government contractors to pull out of the program, forcing the Tribe to lose out on a multi-million dollar contract. The basis for these attacks is the premise that Native 8(a) is abusing sole source contracting, despite the fact that only one percent of all federal contracting dollars are awarded to Native 8(a) businesses.

As you will hear, the intent of Native 8(a) is to allow minority-owned businesses a chance to compete against the large corporations in the federal contracting market, effectively helping them develop into robust and successful businesses. This has been the case in my state, and I would urge you to listen closely to Chairman Allan and the Coeur d'Alene Tribe's personal successes with this program. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Crapo. Your opening remarks will be included in the record.

I would like to welcome Chief Allan, who is the Tribal Chairman of the Coeur d'Alene Tribe; also Lance Morgan, Chairman of the Native American Contractors Association and President and CEO of Ho-Chunk, Incorporated; and finally, Larry Hall, President of S&K Electronics.

Welcome to all of you.

Mr. Allan would you please proceed with your statement?

STATEMENT OF HON. CHIEF JAMES ALLAN, CHAIRMAN, COEUR D'ALENE TRIBE

Mr. ALLAN. Mr. Chairman, thank you so much for inviting me to this important Committee, thank you Members of the Committee. And thank you, Senator Crapo, for that kind introduction.

I wanted to start off just by saying why we are here. Why we are here is again perceptions, miscommunication, the bogeyman, a lot of the same issues I have faced my whole life growing up as a native man, with Main Street America always looking to paint a big target on Native America's back saying we are the problem, why everything exists.

Being the tribal leader for the last six years of the Coeur d'Alene Tribe, I have seen it all: the arguments against gaming, 8(a), whatever it may be. There is always something or somebody out there, some bogeyman in the corner waiting to spread the misconceptions of welfare, hand-outs, everything under the sun.

And quite frankly, it is disheartening because native peoples, the Coeur d'Alene Tribes, my job is to look out for not only my people, but also the people of the community. I come from North Idaho, a heavy logging industry area. A lot of the logging jobs have been wiped out. We have been hit hard.

And so the tribe took it upon itself to look out for everybody, Indian and non-Indian alike. Why? Because if we succeed as a whole, everybody succeeds. And that is what we have always done.

Five years ago, we had high hopes. We opened up Echelon. We started building the big fuel bladders for the Army, a big contract. In one year's time, we went from four employees to over 100. But sadly, about two years ago, we started hearing all the bogeyman stories again that 8(a) was somehow bad, somehow needed to be fixed. So it really had a devastating effect on some of the contracts we went after.

We spent two years on research and development; spent a lot of money to get a pump contract. We thought we had it. At the last minute, the Army pulled out. We got a memorandum saying to overlook 8(a) companies, and quite frankly it ticked us off. We spent all that money. We spent two years doing that. We invited them to come down and take a look at what we are doing. But they just said they bypassed it.

I wanted to really point out the facts. There are a lot of comments here today. I know some of your colleagues brought up some numbers, but let's put that in perspective. The numbers really are, while 37 percent of Federal contracting is sole-sourced, only 1 percent of all Federal contracting goes to 8(a). And I ask you to do the math, and those are the facts. I mean, we didn't make that number up. Those numbers are real. And 25 percent of all contracts still go to five of the biggest companies in the United States, and not 8(a), not native companies.

So with that, I just wanted to again thank you so much for having me here today. I don't want to take up too much of your time. I know your time is really busy. My comments have been submitted for the record. I stand for any questions that you may have and I thank you so much for having me here again.

[The prepared statement of Mr. Allan follows:]

PREPARED STATEMENT OF HON. CHIEF JAMES ALLAN, CHAIRMAN, COEUR D'ALENE TRIBE

Dear Chairman Akaka,

On behalf of the Coeur d'Alene Tribe, I would like to thank you for the opportunity to present testimony today regarding the role that the Small Business Administration's 8(a) Business Development Program plays in enhancing economic opportunities in Indian Country through tribal government-owned and Alaska Native Corporation-owned firms participating in this crucial SBA program (hereinafter referred to collectively as "Native 8(a)").

I would also like to commend you and this Committee for the efforts you have undertaken to improve the lives of Native people in this great nation. We appreciate your dedication to fighting the good fight for all of Indian Country.

The title of today's hearing is "Promises Fulfilled." Sometimes it is easy for people to forget about the "promises" US Presidents and members of this body have made to Indian people. It is also easy to lose sight of the calculated public policy goals of programs like Native 8(a) that were carefully created in furtherance of fulfilling those promises. My testimony today will hopefully provide a useful perspective for this Committee about such promises and how recent unwarranted attacks on Native 8(a) have ignored and broken those promises, with detrimental economic effects.

As Chairman of the Coeur d'Alene Tribe, one of my goals has been to educate members of the community, the media and elected officials regarding the facts about Indian Country. All my life I have had to deal with these misperceptions and misinformation. One of the biggest challenges we face as Indian people today is overcoming the misconceptions of mainstream America, often perpetuated by the national media. It is these misconceptions and the ignorance of facts that provide the impetus behind the recent attacks on Native 8(a).

The Coeur d'Alene Tribe started a manufacturing company about 5 years ago called Echelon LLC. The company was certified as a Tribally-owned firm in the SBA 8(a) program in 2007. In just over a year, our 8(a) company grew from 4 employees

to over 100 employees primarily due to the award of a multi-million dollar 8(a) manufacturing contract. The company expanded into three facilities on the reservation with over 40 percent of our employees being Native American. The Coeur d'Alene reservation also happens to be an area historically with the highest unemployment and poverty levels in the state. The 8(a) program helped our company to breathe a new life and hope into a struggling reservation community.

In 2008–2009, we started hearing about scrutiny this program was receiving from members of Congress, primarily Senator Claire McCaskill. Multiple hearings and investigations of the Native 8(a) program ordered by Sen. McCaskill have been conducted in an attempt to expose some "loophole" being abused by Native 8(a) in federal contracting. Press releases vowing to bring accountability to government contracting by doing away with the benefits of Native 8(a) have consistently been issued by her office, even taking credit for the quiet inclusion of Section 811 to the National Defense Authorization Act of 2010. It is my understanding that another piece of legislation sponsored by Sen. McCaskill aimed at gutting Native 8(a) has been introduced.

The basis for these attacks is the erroneous premise that Native 8(a) is abusing sole source contracting. Interestingly, the facts show that roughly 32 percent of all federal contracting dollars are awarded non-competitively (sole source). Yet, only about 1 percent of all federal contracting dollars, competitive and non-competitive combined, are awarded to Native 8(a) businesses. This means that Native 8(a) is being unfairly and wrongly singled out.

While some of these ill-conceived and misguided attacks on Native 8(a) have been unsuccessful, others have had devastating effects on tribal economies. Government contracting officials are shying away from using Native 8(a) because of the scrutiny and negative attention surrounding around it.

The Department of Defense has unfortunately bought into this rhetoric, issuing memorandums effectively urging their government contracting officials to use the Native 8(a) sparingly. These contracting officers have several procurement options available when they put federal contracts out for bid. They do not have to use Native 8(a) businesses or any small businesses for that matter and a resultant chilling effect has caused Native 8(a) businesses to lose millions of dollars in government contracts. Select members of this Committee sent a letter after Section 811 was passed warning that its new requirements could make contracting officials reluctant to award contracts to Native 8(a) firms. Sadly, this has come to fruition.

While I do not expect that many contracting officers would go on the record to confirm this reluctance or admit to receiving a directive against using Native 8(a) firms, the evidence already exists. Our company has seen multiple sizeable contracting opportunities pulled out of the 8(a) program to be awarded through other contracting vehicles, some of which cancelled after years of R&D and thousands of dollars invested in receiving the award. In the last year, we have been forced to lay off almost 70 percent of our workforce.

The ability of our tribally-owned 8(a) company and other similarly situated firms to secure federal contract and compete in the federal marketplace is being diminished. Native 8(a) has been under a systematic attack that has reduced the amount of jobs and revenue for native economies, most of which located in the most poverty-stricken areas of the nation.

I ask members of this Committee to implore your fellow members of Congress to preserve and expand the SBA 8(a) program. This program is one of the few government programs providing the results for which it was intended. We ask the Committee to join us in our fight to protect Native 8(a).

The Coeur d'Alene Tribe is honored to provide our testimony today. If you have any questions, please contact our Legislative Director, Helo Hancock. Thank you and we look forward to working with you and the Committee on these important matters in the future.

The CHAIRMAN. Thank you very much, Chief, for being here. We welcome your testimony.

All of your full statements will be included in the record.

Mr. Morgan, please proceed with your testimony.

STATEMENT OF LANCE MORGAN, CHAIRMAN, NATIVE AMERICAN CONTRACTORS ASSOCIATION; PRESIDENT/CEO, HO–CHUNK, INC.

Mr. MORGAN. Thank you for the opportunity, Chairman and Senators.

I am the Chairman of the Native American Contractors Association. I also represent 4,800 Winnebago tribal members as the CEO of Ho-Chunk, Inc. I am thinking about this regulatory reform and I don't fear it at all. I am much more afraid of embarrassing the Winnebago people and the people I have to answer to back home are much scarier to me.

And I think in terms of the rules and that sort of stuff, it doesn't bother me at all. We are not going to have any problem with it. It is nothing compared to the problems I have to deal with. I live in a world where the entire economic and legal system seems to be stacked against us at every level. The legal system seems slanted against us. No Indian tribe in their right mind wants to go to the U.S. Supreme Court.

Our government systems were imposed upon us. In the 1930s, someone could sign on the dotted line to extract our resources during the Depression. All of our assets, or most of our assets anyway, are held in trust and they are not in our name. We don't control them. We can't collateralize. We can't get a home loan. We can't borrow against it. It has killed farming. It has done all these bad things for us.

Our governments can't have taxes. We can't issue bonds. It makes us dependent upon the Bureau of Indian Affairs for things like schools, roads. We have no local control over anything. The only entity with any sort of capital are the tribal governments themselves because of these restrictions, which really impacts entrepreneurism.

So we have this sort of socialism going. I mean, you could not have designed a worse economic system for us: bad legal, bad government, no control of your assets, and socialism. That is the world that we have to somehow provide for our people for and it makes it very, very difficult.

Now, I run this corporation that started with one employee. I was the only one. I believe in starting at the top so I made myself CEO.

[Laughter.]

Mr. MORGAN. We have 1,400 employees now in five different countries. You would have to come to rural Nebraska to even believe how strange that is. And we have been able to do it largely because of things like the 8(a) Program. In the first year, we had revenues of $400,000, and I remember thinking we had $12,000 this week and that is pretty good. Well, we did $193 million last year, and it changes the whole world for us and our environment.

But what is interesting, when I brought up the idea of starting a corporation, everybody basically was against the idea because we had failed at every business we had ever tried before in the past; not one out of two, for our modern history in economics. But the tribe went forward because we have to go forward. We don't have any choice. We have to try.

When we started as a corporation, we were doing things that are very typical. The tribe did gaming and it's mildly successful there, but we also really focused in on things where we could create an advantage: gasoline cigarettes, the kind of stereotype stuff, but that's nothing to build an economy on, not for the long term in the future.

And we were looking for alternatives. And the Federal Government came to us and said you should get into 8(a) contracting. And because the cigarettes and the gas are so controversial on taxation issues, we jumped at it, ironically because it was less controversial. We had no idea that this could possibly end up, our success would be held against us on some level.

To be honest, we were terrible at government contracting. Our attitude was sort of anti-government as a young company and we came around largely with the help of the Salish and Kootenai Tribe who partnered with us on a contract and taught us how to do that, and we have been able to take off from there.

In 2004, after losing $700,000 in the first four years of our attempt to be a government contractor, we partnered with them and our revenues have grown to $70-some million as of 2010 on the government contracting side, changing everything for us. It has done a couple of things. It has made us smarter and it has given us pride. The pride is hard to measure because it is a very intangible thing. But the smart is there. It is hard to take it away. Once you learn something, you can't reverse that.

And government contracting is something that I really stayed away from in the beginning because in the 1970s, government contracting was a back room sort of thing. You would do some sort of low-end subcontract. It was minimum wage. It was a dark room. And I didn't think that that was what I wanted for our future.

But something happened. The 8(a) Program isn't a subcontracting program. It is a prime contracting program and it allowed us to get smarter. It allowed us to move up the economic food chain in these contracts. And the people who used to treat us as subs to kind of deal with, to check the box so that they can get the contract, so to speak, have to deal with us on equal terms. And to be honest, I think all Indians are mild conspiracy theorists, I think that our competitors are now having trouble dealing with us as equals. And that is just the reality of what we face.

Now, I know there is a lot of controversy going on related to 8(a), and I think a lot of people have repeated over and over again that there are regulations in place that are going to deal with that. And we think those regulations need to play out. I think some of the stuff is misguided to go further than that.

The reason I took the time to talk about the economic environment we live in, because that economic environment still exists. Government contracting and gaming have kind of overlaid on top of this shaky foundation. But if you were to take these sort of things away, we would fall right back into poverty. We would revert almost immediately back into very desperate situations and we would become the subcontractor again, and we would move back down the train to the low-cost labor. And that is really not what we have in mind for ourselves and our future.

The other thing that I think is important to mention, and this is my last major point, is that if we were to go backwards, it wouldn't save the government a penny. They are going to spend that money anyway. What would happen is we would go back on welfare. We would go back on food stamps. We would cost the government a fortune. Taking thousands of people, maybe tens of thousands of people off government assistance and giving them hope is the way to go. There is no doubt about it in my mind. And I think that anything else would be cruel after us getting a little taste of what it is like to be successful and self-determined.

In conclusion, I want to tell a mini-story. When I was a kid, I spent my summers on the reservation at my grandparents' house. At my grandparents' house, we raised hogs to eat, not to sell. We had to eat them. We raised food. We grew our food on a three-acre plot behind the house. That is how we survived. When we wanted water, we had a hose that came from a pump in through the kitchen window. That was a big deal because you didn't have to go outside.

That was the nature of it. My grandmother now lives in a new modern house. We are building a town on our reservation that Senator Johanns referred to. We have our own homes. The homes are built by our construction company. They are built in our housing factory. Our employees move into them with loans from our bank.

The Winnebago Tribe recently just committed $1 million of the dividends from Ho-Chunk, Inc. The next 20 people who buy a home get $50,000 in down payment assistance. We had people who had jobs, but because of our economic environment we had zero savings. And so nobody would loan us money on our reservation because we didn't have down payments and the rural valuations weren't there.

So the Winnebago Tribe took the money from the corporation and are helping our tribal members achieve the American dream. And that is a major step in a positive direction.

Senator Johanns from Nebraska, who was kind enough to give us introductions, paid a visit to us when he was Governor at the groundbreaking of this town. And he said, what can I do for you to help? And I said, frankly, Mr. Governor, you can do more harm than good. We are on to something here. We are providing for ourselves. We are learning to do it ourselves. Just leave us alone and we will be okay.

This was before I knew he was going to become a Senator.

[Laughter.]

Mr. MORGAN. I now have a list of demands I will be submitting in writing.

But I think that is the point. Let us control our destiny. Give us a chance. In the end, all we are asking for is to work for you.

Thank you very much.

[The prepared statement of Mr. Morgan follows:]

PREPARED STATEMENT OF LANCE MORGAN, CHAIRMAN, NATIVE AMERICAN CONTRACTORS ASSOCIATION; PRESIDENT/CEO, HO-CHUNK, INC.

Thank you Chairman Akaka and Vice Chairman Barrasso and distinguished members of this Committee for affording me the opportunity to discuss how the Small Business Administration's 8(a) Program is a critical Federal Indian Economic Development program and how this program is positively shaping the future of Native communities. My name is Lance Morgan, and I am the President and CEO of HoChunk, Inc, the economic development arm of the Winnebago Tribe of Nebraska. I am a Tribal Member of the Winnebago Tribe. Ho-Chunk, Inc. was launched in 1994 with one employee. Today Ho-Chunk, Inc. operates 24 subsidiaries with over 1,400 employees with operations spanning the United States and four foreign countries. Much of that growth has come as a result of our ability to participate in the SBA 8(a) program. Despite being located in a rural Nebraska community of 1,500 people, our revenue has grown from $400,000 in 1995 to $193 million in 2010.

I also serve as the Chairman of the Native American Contractors Association (NACA). I am here speaking today on behalf of NACA and HoChunk, Inc. I have a short statement to read and would like to submit my longer, written testimony for the record.

NACA was formed in 2003 as a voice for Alaska Native Corporations, Indian Tribes and Native Hawaiian Organizations, collectively known as "Native Enterprises." NACA's mission is to enhance Native self-determination through preservation and enhancement of government contracting participation based on the unique relationship between Native Americans and the federal government. NACA represents 43 Tribal, Alaska Native Corporations (ANC), and Native Hawaiian Organizations (NHO) nationwide. NACA's members represent and serve more than 475,000 Tribal citizens, Native Shareholders of Alaska Native Corporations, and Native Hawaiians.

Introduction

From pre-constitutional times forward, through provisions of the U.S. Constitution, various treaties with Indian Nations, Acts of Congress, and actions of the Executive Branch, the United States has assumed a trust relationship with the indigenous, Native people of our nation. This trust relationship carries with it the responsibility to help ensure the economic sustainability of Native communities wherever possible. Congress has consistently recognized the devastating economic and social conditions endured by Native communities, and has sought to level the economic playing field so that Native people could effectively overcome poverty and address rampant social ills and the lack of access to basic infrastructure that has enabled other American communities to grow and prosper.

History of Federal Policies Affecting Native People

For decades, Congress has enacted legislation to more effectively carry out the United States' responsibilities as they relate to Indian lands and resources and the economic health and well-being of Native communities. Nevertheless, over the past 150 years, Federal policies have vacillated. Some of these policies had a positive impact. Others did not, as Native peoples endured everything from extermination to forced relocation, assimilation and the removal of

Indian children from their homes for boarding schools. Collectively, Native peoples retained 56 million acres of lands, or approximately 2.43 percent of their original lands. Native peoples were not entitled to American citizenship until 1924.

Remarkably, amid the widespread poverty and social distress found in Indian Country and Alaska Native villages, there are signs of hope and as an increasing number of tribal governments and Alaska Native Corporations make strides in building stronger communities and economies. Native people have been experiencing a resurgence of their cultures and are starting to experience a gradual increase in socio-economic status. This hope is born in a new era of federal Indian policy, focused on empowering Native peoples and Tribes and removing the obstacles to self-governance and self-sufficiency. The participation of Tribes, ANCs, and NHOs (collectively "Native Enterprises") in the 8(a) program was born in this era – an era that must not be ended along with the dreams and aspirations of the Native people who depend on it.

Native Enterprise Participation in the SBA 8(a) Program

The SBA's 8(a) Business Development Program is a result of the efforts in the 1960s to expand access to basic civil rights for minorities, women, veterans, and other small and disadvantaged individuals, as well as expand access to the federal marketplace. Participation in government contracting was a key way to open that door. The 8(a) program was Congress' attempt to provide small and disadvantaged businesses with not only greater access to the federal marketplace, but also to promote business success for disadvantaged peoples.

Beginning in the late 1980s, based on this trust relationship and recognition of the social and economic conditions plaguing Native communities nationwide, Native Enterprises were included in the 8(a) program. For instance, the Alaska Native Claims Settlement Act [43 U.S.C. 1626(e)(4)(A)] specifically provides, "Congress confirms that Federal procurement programs for tribes and Alaska Native Corporations are enacted pursuant to its authority under Article I, section 8 of the United States Constitution.") In fact, Native participation in the 8(a) program, as the Federal Government has argued in court, "furthers the federal policy of Indian self-determination, the United State's trust responsibility, and the promotion of economic self-sufficiency among Native American communities." See AFGE v. United States, 95 F. Supp.2d4, 36 (D.D.C. 2002), aff'd 330 F.3d 513 (D.C.Cir. 2003).

Thus, Native 8(a) helps the federal government execute its socio-economic obligations under the U.S. Constitution, treaties, land claim settlements, federal statutes and regulations, and court decrees. And it directly engages those policies advanced by Presidents and the Senate Committee on Indian Affairs. (See Attachment A titled, "Tribal and ANC Participation in the SBA 8(a) Program.") I would also like to bring to the Committee's attention an authoritative legal analysis of the history of Alaska Native Corporations' participation in the SBA's 8(a) Program. This law review article by Travis G. Buchanan, "One Company, Two Worlds: The Case for Alaska Native Corporations," is appended to my statement as Attachment B.

In 2002, the Congress authorized the participation of Native Hawaiian Organizations (NHOs) in the SBA 8(a) program. NHOs are nonprofit organizations incorporated in the State of Hawaii that are designed to serve the needs of the Native Hawaiians through for-profit 8(a) businesses as a means of providing benefits to the Native Hawaiian community.

There is a significant distinction between Tribal 8(a) firms, ANC 8(a) firms, and NHO 8(a) firms (collectively "Native 8(a)s") and other 8(a) businesses. Native 8(a)s are owned by Native Enterprises that have a direct responsibility to the Native communities they serve. They are not investor-owned 8(a) firms that benefit one or two people. Instead, they are Native government- and community-owned and controlled firms that have been established to advance the economic growth of and support entire communities and cultures. Their net profits support the provision of fundamental government services, as well as social and cultural programs, education, employment and training, and economic development.

The Laguna Pueblo of New Mexico was the first Native community enterprise to enter the 8(a) program, followed years later by other American Indian tribal governments and some ANCs. Some of these Native Enterprises were early entrants to the program and its success. Now, hundreds of Native 8(a)s are at work, vying for federal contracts with over a hundred thousand other federal contractors and with each other.

Frustratingly, now that some Native 8(a)s are finally succeeding, some would use that success to bar the door to others. Because growth flows in a natural business cycle, those Native Enterprises that started in the 8(a) program early are more established and seasoned and have been better positioned to grow the fastest. The growth of Native 8(a) contracts indicates Native participation in the 8(a) program is working.

Equally frustrating is that some of the same critics argue that lack of success (the fate of many small businesses), or real success distributed in substantial dividends, are also reasons to bar the door. Over the past 500 years, Native Americans have suffered from the loss of their land, economic assets and culture. These changes have resulted in the breakdown of many tribal systems, families and communities. By most social and economic indicators, Native Americans are still at the lowest rung, struggling with the legacy of rural isolation and stagnant local economies. It is irresponsible to assume Native Enterprises can overcome these severe, multi-generational disadvantages in 10 years. There are numerous Tribes, regional Native, and National Native organizations that strongly support continuing Native 8(a). (See Attachment C.)

Now is not the time to further dilute or eliminate a program that is improving the quality of life of Native people.

Improving the Socio-Economic Condition of Native Americans, Alaska Natives, and Native Hawaiians

Nationwide, American Indians and Alaska Natives have suffered from decades of poverty and neglect. The 25.7 percent poverty rate in Indian Country exceeds that of all other ethnic or racial categories, and is twice the national average of 12.4 percent. This poverty contributes to the 40 percent unemployment rate in Native America and is eight times the national unemployment rate. Not surprisingly, Native communities experience many of the social ills associated with poverty: Inadequate health care, alarmingly high rates of suicide – more than twice the national average and higher-than-normal rates of disorders such as alcohol and drug abuse, diabetes, and obesity. Heart disease, which is the number one cause of death among American Indians, is 71 percent higher for American Indians than the rest of the U.S. population. Furthermore, American Indians have a life expectancy of 5 years less than other American citizens.

Native 8(a) contracting directly supports the efforts of Native communities to address and reverse the social consequences of poverty. Decades of below-average income, combined with the expropriation of Native lands, assimilation policy, and ineffective federal approaches to addressing social problems has resulted in some of the worst possible social and economic conditions in America as evidenced by significantly reduced life expectancy and educational attainment, as well as overcrowded housing and criminal victimization and lack of basic infrastructure.

Opponents of Native 8(a) contracting often say that the program can safely be ended now because its success has eliminated any need for continuing the program. The grim, socio-economic statistics fill facing many Native communities belie this argument.

Native Benefits

ANCs, Tribes, and NHOs are fulfilling their goal of creating economic development opportunities for Native people while addressing the social and cultural needs of their communities. More than ever before, due, in large part, to their participation in the 8(a) program, Native Enterprises are providing dividend payments, scholarships, internship programs, cultural preservation initiatives, community infrastructure, social programs, and other benefits to their respective communities. This support has empowered the next generation of Native people with opportunities that were previously unavailable. Many who never had access to education or job training programs now have the chance to go to college, start businesses and improve their quality of life.

As noted Harvard economist Jonathan Taylor stated in his testimony before the House Natural Resources Committee hearing, *Diversifying Native Economies*, on September 17, 2007:

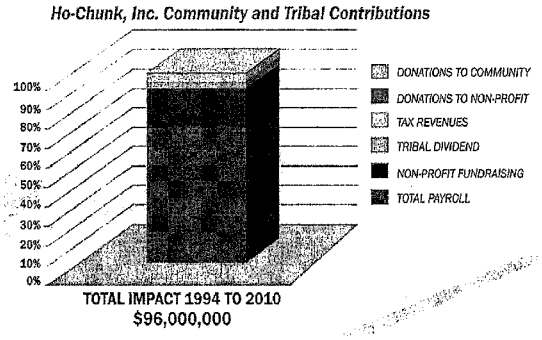
> Tribal & ANC 8(a) companies distinctly represent whole communities of Americans. This characteristic means that the social and economic effects of

> Section 8(a) contracting tend to concentrate in the community of tribal members or ANC shareholders. In some cases, the effect proceeds directly to every individual Indian in the community, say, as a dividend check. Other benefits may be universally available (e.g., college scholarships or burial assistance), but not universally embraced. In other cases, the effect spreads across a community, such as would occur when the 8(a) company improves the community business climate or supports a Native cultural ceremony. Regardless of where in the communities these benefits arrive, they are nearly always needed, and in many cases they were unavailable prior to Section 8(a) contracting...
>
> In addition to profits, jobs, and business experience, 8(a) contracting directly supports efforts underway to address and reverse the social consequences of poverty. Decades on end of below-average income combined with property expropriation, assimilation policy, and paternalistic federal approaches to social problems leave deficits in Indian social indicators ranging from life expectancy and educational attainment to overcrowded housing and criminal victimization. (See Harvard Project on American Indian Economic Development, 2007.) As noted above, federal resources available to address these deficits fall short of what is required and are in decline. To rebuild schools, to prevent late-onset diabetes, to reduce juvenile delinquency, to protect Indian graves, and to maintain Native water quality (among other things), tribes and Alaska Native communities need fiscal resources. Tribal & ANC 8(a) contracts help provide them.

My Tribe, the Winnebago, established Ho-Chunk, Inc., in 1994 as the economic development arm of the Tribe. Its mission is to provide economic development and job opportunities for tribal members. I was Ho-Chunk's first employee in 1994. Our operation was, and still is headquartered on our reservation. In 1994, the Winnebago faced a staggering 65 percent unemployment rate. Today, thanks in part to Native 8(a), our unemployment rate has decreased more than 60 percent. A wide variety of job opportunities have been developed by Ho-Chunk, Inc. both on and off the reservation for Tribal members with various skill sets. These opportunities have been created in both the non-profit and for profit sectors; including government contracting, corporate services, construction, retail sales and wholesale distribution.

Ho-Chunk operates 24 subsidiaries and employs more than 1,400 people from diverse ethnic backgrounds and skill sets in locations spanning the United States and four foreign countries. We have operations in information technologies, construction, government contracting, green energy, retail, wholesale distribution, marketing, media and transportation.

Throughout its history, Ho-Chunk, Inc. has made significant contributions to our community and the Winnebago Tribe. Contributions include direct donations and fundraising for organizations and non-profits, to tax revenues, tribal dividends and payroll. These funds, many of which were earned through 8(a) Program, provide self-reliance, hope, opportunity and real progress in the lives of our Winnebago people. From our launch in 1994 through 2010, total contributions have reached $96 million.



Access to education is a top priority of Native leaders. Native Americans, Alaska Natives, and Native Hawaiians face many barriers with the federal government education policy. "The No Child Left Behind Act of 2004" was enacted to improve the education of American children, yet only 30 percent of the schools in the Bureau of Indian Affairs system are achieving adequate yearly progress. Native American schools are underfunded, and significant language and cultural barriers exist between Western schools and traditional tribal students. As of today, the State of Alaska has under-funded rural education of Alaska Natives by millions of dollars, a fact that is at the center of two court cases.

Native Enterprises play an essential role by offering essential scholarship opportunities to disadvantaged Native people, opportunities that otherwise would not exist. One ANC has awarded more than $5.7 million in scholarships to more than 3,000 Native students in the period from 2000-2008.

Ho-Chunk, Inc. has also developed an annual scholarship program for Native students to help them attend college and provided part-time job opportunities while the students attend school. Ho-Chunk, Inc. provides financial support for Winnebago High School students to attend a Native American Youth Entrepreneur Camp on the University of Arizona campus. Additionally, Ho-Chunk, Inc. sponsors youth each year to the Native American Youth Governance Camp (NAYGC) at the University of Arizona. In order to promote business and entrepreneurial skills Ho-Chunk, Inc. has brought Junior Achievement to reservation schools by providing both financial support and donating Ho-Chunk employees to teach classes to young Winnebago students.

Many young Native students are first-generation college graduates who embody the spirit and purpose of Native participation in the 8(a) program. Others are able to attend vocational schools, enabling them to prepare for skilled occupations that pay far more than the minimum wage. As future generations benefit from resources provided by the 8(a) program, more Native people will go to college, earn degrees and return to their home communities to lead these Enterprises and promote continued economic development within their state. *This is precisely what Congress intended by including Native Enterprises in the 8(a) program.*

Many Native communities are only just now realizing the benefit of first-generation college graduates who are now returning home to work for their communities. Even with this achievement, Alaska Natives, Native Americans, and Native Hawaiians still have some of the highest dropout rates in the country. Educating and preparing our next generation of Winnebago's to lead our economic operations is a major goal of our Tribe. As such, Ho-Chunk, Inc. has created an internship program to give Native students significant business experience while attending college. This twelve-week summer program provides a paid internship and exposes students to a variety of diverse industries and operations under the Ho-Chunk, Inc. corporate umbrella. Ho-Chunk has sponsored more than 50 Native interns since the program started. Several of these interns have become permanent employees of Ho-Chunk, Inc. and the Tribe as managers and executives.

Ho-Chunk, Inc. has used contracting revenue to create a new Ho-Chunk Village on the reservation. The Village is a modern mixed use commercial/residential development with walking and biking paths, parks and cultural landmarks. Today, it consists of several private residential homes, a national wholesale distribution company with modern warehouse, a national retail Native merchandiser with a large modern storefront and warehouse, a local general merchandise retailer, two large apartment complexes, a cultural Arts Center with retail showroom and artist studios, and a Statue Garden honoring the 12 Clans of the Winnebago Tribe of Nebraska.

Through an annual Ho-Chunk, Inc. profit dividend and tax payment to the Tribe, the Tribe has provided funds to assist Tribal members with purchasing affordable quality housing; and created a $1 million dollar housing stimulus program for Tribal members. Over the next two to four years, new homes will be constructed on the reservation. Funds provided through the new Housing Stimulus Program, when combined with existing Tribal housing programs, would make tribal members eligible for up to $70,000 in down-payment assistance for new homes on the reservation, decreasing the cost of purchasing a new home by as much as one third. This housing program is adding 20 additional home owners, encouraging people who currently rent to become homeowners and providing an incentive for off-reservation tribal members to move back to the community.

With funding from Ho-Chunk, Inc., a non-profit community development corporation (HCCDC) was launched in 2001 to identify economic services to Tribal members. That has resulted in village development projects, a new fire truck for the community, entrepreneur training, education programs for tribal youth and other community activities, with a total of $23 million in funding goring to the community of Winnebago.

Ho-Chunk, Inc. has also taken a leadership role in the State of Nebraska in developing and using green energy technology through active tracking solar panels and wind energy turbines installed on the reservation and it has been included in affordable housing for our Tribal members.

Ho-Chunk has also made financial donations and/or participated in almost 25 various community programs such as the Winnebago Fire Department, Whirling Thunder Wellness Program,

Winnebago Child & Family Services, Siouxland Blood Bank, Winnebago Domestic Violence Program, and Winnebago Headstart Program.

The success of Ho-Chunk, Inc. and the resulting benefits to the Winnebago Tribe are but one example of how Native 8(a) makes a difference. The benefits Native Enterprises provide are as diverse as their peoples' cultures and focus on the needs of their respective communities. A 2009 NACA survey of 11 ANCs showed that between 2000 and 2008 these Enterprises alone provided over $530 million in various categories of benefits to over more than 67,000 Native shareholders. More than $341 million of this amount represented shareholder cash dividends. While some may focus on dividends, providing social services is important to the Maliseet Band of Indians in Maine. They have utilized profits from their Native 8(a), Tribalco, LLC to fund burial assistance programs, a women's shelter, and an Elders' center to name a few.

Given the lack of economic opportunities in rural Alaska, Bering Straits has identified education and jobs as their top priority. This corporation is devoting at least 25 percent of its net profit to employing, training, and educating its shareholders and their families. This is exactly the kind of economic opportunity Congress intended Native access to the 8(a) program to bring about.

Native Enterprises are just now getting a foothold in the federal marketplace after being left out, locked out, and elbowed out for decades. With some modest success, Native 8(a)s now represent a small slice of the total procurement dollars; yet however small, their work is beginning to have a substantial impact in their Native communities. The positive impact of 8(a) is already evident; however, creating economic self-sufficiency for tens of thousands of Native people will take considerable time.

In much of the criticism of Native corporations' work within the 8(a) program, considerable attention is given to the size of the contracts overall. It is important to note that, first, in many cases, the amount identified represents the total of several years, a base year plus all options; in some cases, those options are not exercised. Second, and more importantly government contracting work does not yield a high profit margin. Corporations – Native and non-Native, alike, pay dividends and provide benefits out of net profits – not gross receipts. The profit margin in these types of contracts tends to be in the low to middle single digits. An analysis of 2008 8(a) profits from selected ANCs found that while gross 8(a) income was $221 million, net 8(a) profit was $9.1 million – or 4.1 percent.

The economic state-of-affairs of Native peoples remains serious and requires continued access to initiatives such as the 8(a) program to help Native people succeed. With continued access to vital programs, like 8(a), NACA is confident this goal can be achieved.

The Importance of Compliance with Contracting Requirements

Critics often cite the Government Accountability Office report, "Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight," published in 2006. Ironically, this report details numerous benefits ANCs provide to their people. This thorough

GAO investigative analysis failed to identify *any* examples of ANC misconduct or abuse of the federal procurement system. The report notes only that the SBA should provide additional oversight to better monitor ANC contracting activities, in order to avoid *potential future* misconduct, a recommendation that NACA supports.

NACA has long maintained that all Native Enterprises must comply with the rules and regulations that govern their participation in government contracting and the 8(a) program. As with all federal contractors, if companies are not in compliance with government contracting and 8(a) requirements, or fail to take proper measures to establish such compliance, they must face the appropriate consequences. As with every other industry in America, there are rare occasions when individual companies or individuals associated with them, face compliance challenges. However, as some in the Congress and the media have done, it is irresponsible and unfair to mischaracterize an entire class of federal contractors as abusing the federal procurement system when such isolated incidents occur. Federal procurement is complex. As has also been the case with non-Native federal contractors, large and small, when a Native contractor's compliance is questioned, and a company takes proactive steps to come into compliance, including alerting the SBA of its efforts, the company should be recognized and not vilified.

NACA has implemented a number of programs designed to mentor Native Enterprises and reinforce the importance of maintaining compliance with all statutory and regulatory requirements. These programs include the following:

- A "Best Practices" guide, originally published in 2007 and currently being updated for publication in 2011, identifying standards in government contracting.
- A Code of Ethics, which each NACA member must sign annually, stating, in part, that the member maintains the highest ethical business standards and complies with government contracting laws, regulations and requirements and self-governs with appropriate internal control systems, transparency, and corporate best practices.
- Regional workshops and online training sessions, to instruct Native Enterprises on compliance with federal contracting laws and regulations, company structure, contract management, the importance of strong internal ethics and compliance practices, and other topics.

Native Enterprises must set a high standard of excellence based on the simple fact that *it makes sound business sense to do so*. Native Enterprises recognize that they must provide the government good value and exceptional service at competitive rates, as they have historically done. If Native enterprises do not provide good value, government customers will not use them – regardless of their 8(a) contracting status. The marketplace is crowded with highly competent, highly skilled federal contractors – and such competition compels Native Enterprises to deliver the best quality service in order to remain competitive and to succeed.

Native Contracting in Perspective

Beginning with the 109th Congress, there has been a significant focus on federal procurement reform and intense scrutiny and oversight as it relates to Native contracting. This disproportionate review -- given that we are but a small fraction of federal contracting -- has resulted in proposals to eliminate or diminish contracting opportunities afforded to Native 8(a)s.

The record of oversight and statutory and regulatory changes demonstrates that concerns that have been identified have been addressed appropriately:

- The Government Accountability Office (GAO) studied the participation of Alaska Native Corporations in the 8(a) program and did not recommend any legislative changes to the program. Instead, the GAO recommended that the Small Business Administration (SBA) and contracting agencies take a number of administrative actions to improve oversight.

- The SBA initiated a tribal consultation to address the GAO recommendations and implemented wide-sweeping regulatory changes that became effective in March 2011.

- Section 811 of the National Defense Authorization Act for FY2010 now requires any Native 8(a) award over $20M to go through a formal written justification and approval process.

The SBA and the Federal Acquisition Council have promulgated new rules to improve transparency and accountability in the 8(a) program. These rules should be allowed to have their intended effect. Now is not the time to remove the economic opportunity and self-sufficiency the program provides for Native communities.

Critics of Native Enterprises have challenged the practice of Native Enterprise sole-source contracting through the 8(a) program, claiming it results exorbitant costs. The statistics speak for themselves. *In 2007, 32 percent of all federal contracts were sole sourced, yet Native 8(a) sole-source awards represented less than 0.08 percent of the federal contracting arena.* NACA finds it ironic that Native Enterprises have been cited as an example for abusive sole source contracting when the overwhelming majority of sole source contracts are being awarded to non-Native businesses.

The use of misrepresentation and incomplete data is especially exasperating when the lens is on Native Enterprises and not all contractors. For example, according to the Federal Times, "only 12 percent" of the work of the "top ten" contractors "… came about through full and open competition." (January 14, 2009)

Indeed, the SBA specifically rejected the notion that the government receives anything less than best-value on sole-source awards to Native Enterprises. In his testimony before the Senate Subcommittee on Contracting Oversight in 2009, SBA Associate Administrator of Government Contracting and Business Development, Joseph Jordon, stated:

> ...it is also a bit of a misnomer to say there is no competition when it comes to 8(a) ANCs. In 2008, of the figures stated in terms of 8(a) contracts, over $650 million was through 8(a) competition. In terms of sole source authority not providing the best value, I do somewhat reject that on its premise. I believe that competition is good. I believe that promoting competition is good. I believe that general principle. The President has talked about competition, transparency, accountability. However, in every contract, and this also applies to all sole source contracts, the contracting office must certify that the government got fair and reasonable value and it must monitor performance of that contract and can terminate it if the contracting officer sees fit. So to say that the government did not get the best value because it was sole sourced is, or should be, inaccurate. *(Joseph Jordon, Senate Subcommittee on Contracting Oversight hearing Q&A, page 23 http://www.gpo.gov/fdsys/pkg/CHRG-111shrg250/pdf/CHRG-111shrg250.pdf)*

Native Enterprises collectively received *less than 1.3 percent* of all contracts awarded by the federal government in 2007, or put another way, *98.7 percent of all government contracts in 2007 were awarded to non-Native businesses*. Yet, Native Enterprises continue to be the focus of intense media interest and continued Congressional examination, further illustrating the disproportionate scrutiny Native Enterprises receive compared to the number of contracts awarded.

All Native Enterprise 8(a) contracts, including those that are sole-sourced, are scrutinized by experienced government contracting officers and by Defense Contract Audit Agency auditors who understand the procurement marketplace. Sole-source prices are negotiated, not dictated by the Native Enterprise, and every contract term undergoes a comprehensive review to ensure the government receives the best value. Further, with the implementation of Section 811 of the NDAA for FY 2010, across the government, all Native 8(a) sole-source awards in excess of $20 million must now undergo a rigorous, standardized evaluation as to fair value to the government. The contracting officer and an official agency representative are required to now justify, certify, and approve the value of each Native 8(a) contract to the taxpayer.

Contrary to assertions by critics who argue Native Enterprises simply "pass through" the contracts they are awarded , Native Enterprises are required to perform a minimum of 51 percent of each service contract to ensure that the contract is indeed performed by a Native 8(a). Native 8(a)s, like all other federal contractors, have the ability to subcontract up to 49 percent of a service contract. In this regard, Native Enterprises are no different from any other federal contractor in their ability to employ the use subcontractors.

Native Enterprises do have unique considerations within the 8(a) program -- and for good reason. ANCs, Tribes, and NHOs, by definition, are small minority businesses because their owners are collectively one of *the* most egregiously disadvantaged populations in America. Until Native economic opportunity improves dramatically, Native access to 8(a) contracting must be protected. Until every Native who wants a job, is qualified for a job, and gets a job, Native 8(a)

must be protected. Until every Native child has a quality of life on par with other Americans, Native 8(a) must be protected.

Native 8(a) Under the Microscope

The participation of Indian Tribes and Alaska Native Corporations in the SBA 8(a) Program has been closely examined from a variety of perspectives for several years. There has been little beyond the occasional, anecdotal reports of individual Native firms; however, these are individual cases and not an indication of systemic problems. When any company violates law or regulations, it should be dealt with accordingly.

In August 2004 the *Los Angeles Times* and *New York Times* ran articles on ANCs in government contracting. In November the *Washington Post* began a series of articles about ANC-owned firms that had been awarded contracts under the SBA 8(a) program primarily on a sole-source contract basis. These articles drew media attention to Native American contracting and lead to a series of investigations by GAO, the SBA Inspector General Office, the House of Representatives Committee on Oversight and Government Reform and the 2009 hearings conducted by the Senate Select Subcommittee on Contracting Oversight.

The GAO conducted and released on April 27, 2006, the first comprehensive study entitled "*Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight.*" GAO-06-399. Using data from the Fiscal Year 2004, the GAO found that ANCs represented 13 percent of the total 8(a) dollars and that sole-source awards represented 77 percent of the 8(a) obligations for six major procuring agencies. In a four-year period ANC firms grew from $265 million to $1.1 billion in FY 2004. The GAO found that some ANCs were heavily reliant on the SBA 8(a) program for the majority of their revenue. The report identified that the SBA had not adequately tailored its program and regulations to deal with this increased use of the 8(a) program by Tribes and ANCs. Further it said that the SBA needed to examine how best to balance the program needs of small 8(a) firms and firms owned by Tribes and ANCs. Most importantly, after an exhaustive review, the GAO found *no evidence of waste, fraud and abuse by ANCs.*

The GAO testified before the House Committee on Natural Resources on September 19, 2007 about the 2006 report. GAO released its testimony entitled, "*Alaska Native Corporations Increased Use of Special 8(a) Provisions Calls for Tailored Oversight.*" GAO-07-125IT. The GAO recommended again that the SBA take action to change the 8(a) Program regulations specifically take into consideration Native American participation in the program.

The SBA IG office has conducted and released several audits and reports in which ANCs or 8(a) firms owned by Tribes were the subject of criticism for issues related to control and ownership issues. These investigations resulted from SBA staff conducting required administrative oversight. No firm has been proposed for administrative discipline or action as a result of these SBA IG investigations and audits. The firms have, in fact, taken management actions to ensure

that control and management are properly vested in the Alaska Native Corporations' Boards of Directors or Tribal Councils.

The SBA IG issued a report on July 10, 2009 entitled "*Participation in the 8(a) Program by Firms Owned by Alaska Native Corporations.*" The report pointed out that ANCs were heavily reliant on the 8(a) program to provide economic assistance to Alaska Natives. However, again, the SBA IG did not find that any of the top 11 firms, as measured by 8(a) revenues, had engaged in conduct that constituted waste, fraud or abuse of the 8(a) program.

There have also been articles in newspapers over the last two years about litigation involving the former managers and possible owners of some ANC firms related to control and management arrangements involving 8(a) firms. These are business disputes involving private parties that do not reflect on the integrity of the Native Enterprises that participate in the SBA 8(a) program.

In March, 2010, the GAO released a report entitled "*8(a) Program Fourteen Ineligible Firms Received $325 Million in Sole-Source and Set-Aside Contracts.*" GAO-10-425. However, none of the 14 firms identified in the report were owned by Tribes or ANCs.

Native Enterprises want to ensure that the public gets full and good value for Native 8(a) contracts. These firms are committed to ensuring that if abuses arise that they are dealt with effectively and responsibly. But, they also would urge, that if any "bad apple" or abuse should one occur, it should not be used as an excuse by some to eviscerate the entire program.

The SBA IG has testified that ANC success "may have resulted in diminished opportunities for other 8(a) participants." This statement is more than unsupported, it is contradicted by fact and is illogical. It is disheartening because very late in the SBA IG's investigation (June 2009) "in preparation for a July 2009 congressional hearing," a "high importance" request was made to SBA District Directors for "information regarding the impact that ANC firms participating in the 8(a) program has had on other 8(a) firms." According to the email chain I was provided, the desired "information" was specific:

> "Name of the ANC firm (if known)
> Value of Contract Award (Missed opportunity for 8(a) Firm)
> Brief Description of Complaint"

They did not ask for all information or for all impacts that would have provided a balanced review of ANC 8(a)'s. Instead they only asked for information on "missed opportunities" and "complaints." More importantly, this fishing expedition ignored a fundamental distinction within the 8(a) program. With the ability to pursue contracts in excess of the limits placed on individually owned 8(a)s, ($3.5 million), most Native Enterprises do not target those opportunities and seek larger contracts instead. Furthermore, the SBA IG neglected to ask another vital question, "In those instances where a Native Enterprise was the prime contractor, to what extent did the firm subcontract with a small, minority or disadvantaged business?"

Significant Native 8(a) Reforms are Under Way

NACA, working closely with the National Congress of American Indians and the National Center for American Indian Enterprise Development, has been very active for years in strenuously advocating for reforms and more resources for the SBA. As the GAO study and IG Reports have concluded, Congress needs to focus on enhancing SBA's capacity -- more personnel, resources, enforcement, guidance, training, and direction to contracting agencies. NACA supports these efforts.

As noted earlier, the National Defense Authorization Act (NDAA) for FY2010 included a provision, Section 811, which requires any sole-source contract to Native Enterprises valued at $20 million or more go through a formal written Justification and Approval process. As required under Executive Order 13175, the Federal Acquisition Regulation (FAR) Council, held Tribal consultations on Section 811 prior to drafting the implementing regulations, and provided Native Enterprises the opportunity to comment on the implementation and potential effects of Section 811. Tribal consultations were completed in October 2010. The FAR Council published an interim final rule on March 15, 2011.

In addition, on February 11, 2011, the SBA issued final regulations that provided **significant** reform to the 8(a) program that address concerns that have been raised by some in Congress and the media about the program. The SBA regulations went into effect March 14, 2011. These regulations are a product of years of work, including numerous Tribal consultations held nationwide in 2007, and 2009-2010. In addition to changes to the program overall, the final regulations will increase oversight of Native 8(a) firms, significantly changing how ANCs, Tribes, and Native Hawaiian Organizations participate in the program, and increasing reporting and transparency.

The following highlights the most significant allegations that have been voiced and how the new regulations address those matters. These changes will have long-lasting impacts on Native Enterprises.

Issue: Benefits are not reaching the Native community.

- Tribes, ANCs, and NHOs are required to report annually on the benefits provided to their Native communities from 8(a) profits. Examples include: funding cultural programs; employment assistance; jobs; scholarships; internships; subsistence activities; and other services to the community. Implementation has been delayed six months to work with Native communities on how to implement this provision.

Issue: Large businesses are taking advantage of small businesses and doing the majority of the work on 8(a) contracts.

- The new SBA regulations place additional limitations on Joint Ventures and Mentor/Protégé relationships and increase the percentage of work that must be performed by an 8(a) firm. This change will ensure that small businesses, not large businesses, are reaping the benefits of the 8(a) program.

Issue: Native 8(a) companies can continually receive sole-source contracts as companies graduate from the 8(a) program.

- The new SBA regulations prohibit a Tribe, ANC or NHO from receiving a sole-source 8(a) contract immediately after another 8(a) subsidiary of the same Tribe/ANC/NHO held the contract.

Issue: Firm management received too much compensation, reducing the benefits of Tribal members and shareholders.

- Native 8(a) firms are prohibited from "excessive withdrawals" that are deemed not to benefit the Tribe, ANC, NHO, or Native community. This includes non-disadvantaged executive compensation that exceeds specific withdrawal thresholds.

Issue: 8(a) firms hire consultants (also known as "agents" or "marketeers") that take too much money from the firm.

- Agents are restricted from receiving unreasonable compensation for services performed such as assisting in obtaining 8(a) certification or 8(a) contracts.

Issue: Native firms in the 8(a) program are not actually small businesses like traditional individually-owned 8(a) companies.

- The new SBA regulations continue to prohibit any 8(a) firm, including Native 8(a) firms, from exceeding the size of a small business during its participation in the 8(a) program.

Issue: Native 8(a) companies can receive sole-source contracts without a formal written justification and approval process to ensure best value to the American taxpayer.

- Section 811 of the National Defense Authorization Act for FY2010 requires contracting officers to provide a formal written justification and obtain approval by the "head of agency" before awarding a sole-source contract over $20 million to a Tribe, Alaska Native Corporation (ANC), or Native Hawaiian Organization (NHO).

We not only want -- but need -- to make sure the Native 8(a) program is working properly for the sake of our people and our Native community enterprises. The above reforms reflect the thoughtful and cumulative result of years of dialogue and review. The Native community, Congress, and the Administration must now allow time for these significant reforms to be properly implemented so that the implications for Native communities, Native businesses, the SBA and agencies may be fully understood.

It is important to note that the issues raised by the 2006 GAO report and the IG reports are not specific to Native Enterprises or the 8(a) program, but rather are inherent concerns related to the broader federal procurement system. America needs a larger, better trained acquisition workforce; more contract transparency; enhanced online technology; consistency in 8(a) and other classifications; clearer delineation of policies regarding prime/sub, mentor/protégé and directed contracts; and overall increase in accountability. NACA supports these efforts.

Conclusion

Long-established U.S. policies recognize, encourage, and protect the central role Native Enterprises have in the portfolio of Native American economic development strategies. Treaties, statutes, and Federal policy recognize the legal rights to Native self-government, and there is abundant evidence that demonstrates the practical efficacy of Indian self-determination. Section 17 of the Indian Reorganization Act of 1934 authorizes Native governments to establish Federally chartered Native-owned Enterprises to assist in the tribe's economic development.

Today Native Enterprises *are being penalized for doing exactly what they were asked to do*. Sadly, the position by some in Congress has changed from one that originally encouraged economic self-reliance to one that seeks to restrict the level of success Native Enterprises are allowed to achieve. It is the equivalent of saying, "We originally wanted Native Enterprises to be successful – but Native Enterprises do not deserve to be *that* successful" in order to justify reforms to the promised initiatives, such as 8(a), that are a critical core of federal Indian policy.

The recent proposal in Congress to restrict Native Enterprise participation in the 8(a) program is misguided. Tens of thousands of people need the benefits that come are attributable to success in this program. Limiting Native Enterprise participation in 8(a) will only result in a dramatic reduction of resources for their disadvantaged communities – and reverse the progress that has been made to improve the lives of Native people. Further, if Native Enterprises lack the resources and are unable to continue to provide the social safety net now provided from their profits, those responsibilities will default to the state and federal government.

If the 8(a) program were no longer providing economic benefits for disadvantaged Native communities, the federal state, and local program that would be required are already underfunded and overburdened. It makes far more sense to enable these communities continued access to a program that is already providing economic opportunity, than to remove that opportunity and replace it with a return to a cycle of dependence and economic stagnation.

Native Enterprise participation in the 8(a) program has demonstrated that the 8(a) program is one of the few federal Indian programs *that are actually working to improve the lives of Native people*. Now is not the time to roll back years of socio-economic progress – progress that has already taken too long to occur .

The Native 8(a) Program has resulted in just what Congress intended -- building stronger Native communities that have been devastated by economic distress. The Native 8(a) program is a rare federal program that works by providing incentives that stimulate economic development in Native communities, diversifying Native economies, and providing revenue for scholarships, training and encourages entrepreneurship in Native communities.

As noted earlier, the SBA has issued final regulations that provide significant reform to Native participation in the 8(a) program and these regulations have already fixed any potential problems that have been raised by the media and others. Let these regulations work to improve the

effectiveness and value of the 8(a) program rather than eliminating a program for Native people that is not a "hand-out" but a "hand-up".

We are heartened that the Senate Committee on Indian Affairs, as the committee with jurisdiction over federal Indian policy issues, is taking a proactive role in ensuring the Native 8(a) program is working, is serving the needs of all Americans, and is helping educate others as to the importance of the Native 8(a) program and the federal government's unique relationship with Native people of America. This hearing is a great beginning.

This Committee has always understood the importance of sovereignty in matters regarding this Nation's first people. The inherent sovereignty of Indian nations, the government-to-government relationship they have with the United States, and the responsibility of Alaska Native Corporations and the Native communities they serve, as well as the status of the Native Hawaiian people as the third group of America's indigenous people, serves as the foundation for the United States' assumption of a trust responsibility – a responsibility that is predicated on assuring that the Native people of this land will always have an equal opportunity to grow and thrive, and for their economies to flourish.

I want to thank the Chairman and Members of this Committee for your work on Native issues. We at NACA and in the Native community will continue to work with you to ensure the relationship between the federal government and the Native people in this country is one that benefits both peoples.

Attachment A

Tribal and ANC Participation in SBA 8(a) Program

The United States Constitution, Article I, Section 8

Gives Congress the power:

- To regulate commerce with foreign nations, and among several states, and with the Indian tribes.
- To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department thereof.
- Using the authority granted by the Commerce Clause, Congress has passed a number of statutes designed to utilize the Federal government's procurement activity to economically aid reservations and grant unique rights to ANCs.

Alaska Native Claims Settlement Act 43 U.S.C. §1601 et seq.

- Created Alaska Native Corporations (ANCs) as the mechanism for distributing land and monetary benefits to Alaska Natives. The Act was a settlement of lands by Congress, and resulted in Alaska Natives receiving title to land, as well as compensation for land lost.
- In 1986, Congress specifically designated Indian tribes and ANCs as socially disadvantaged business enterprises.
- In 1988, ANCSA was amended to establish a prescribed corporate structure for ANCs, which created a presumption of control by the shareholders of the ANC.
- In 1992, Congress again amended ANCSA to deem all ANCs to be economically disadvantaged. This designation, combined with the prior designation of social disadvantage enabled ANCs to participate in the 8(a) Program by automatically deeming them to meet both social and economic disadvantage eligibility determinations.

The Small Business Act 15 U.S.C. § 637(a)

- Originally passed in 1953.
- In 1967, the Section 8(a) Program was established to aid disadvantaged individuals and private firms.
- In 1982, federally recognized Indian tribes were first included in the 8(a) Program.
- In 1988, the Act was amended to include ANCs and make them uniquely eligible for federal contracting opportunities for socially and economically disadvantaged minority-owned businesses.

Business Opportunity Development Reform Act 15 U.S.C. § 637 (1988)

- Exempted ANCs and economically disadvantaged Indian tribes from the new monetary limits on sole source contracts.

Tribal and ANC 8(a) Eligibility in the 8(a) Program

- ANCs need not prove that they are socially or economically disadvantaged because such status is automatically conveyed upon them. 13 C.F.R. 124.109(a)(2).
- Tribal and ANC 8(a) firms are eligible to receive sole source 8(a) contracts. 13 C.F.R. 124.506(b).
- Tribal and ANC 8(a) firms may receive sole source 8(a) contracts of any amount. 13 C.F.R. 124.519.
- Sole-source procurements to tribes and ANC 8(a)s may not be protested, because there is no other bidder and thus no other party has standing to protest. 13 C.F.R. 124.517(a).
- Because of the collective nature of governance, Indian tribes and ANCs may have multiple 8(a) companies so long as each firm is in a different primary industry. 13 C.F.R. 124.109(c)(3)(iii).
- When determining the size of a firm owned by a tribe or ANC, SBA will not affiliate the parent entity the tribe or ANC. SBA will consider only the size of the particular tribal/ANC subsidiary at issue. 13 C.F.R. 124.109(c)(2)(iii). Sister companies can be affiliated in certain situations. 13 CFR 121.103(c) - (g).
- Because under ANSCA shareholders control the ANC, the CEO of an ANC-owned 8(a) need not be a shareholder of the ANC. 13 C.F.R. 124.109(a)(4).

ATTACHMENT B

Attachment B—Travis G. Buchanan's notes entitled "One Company, Two Worlds: The Case for Alaska Native Corporations" from the Alaska Law Review, Volume XXVII, December 2010, Number 2 has been retained in Committee files and can be found at *http://www.law.duke.edu/journals/alr/*

ATTACHMENT C

Resolutions in Support of the Native 8(a)

View NACA's Resolutions of support for the Native 8(a) Program. Resolutions may be viewed on NACA's website at: http://www.nativecontractors.org/pages/advocacy/naca-resources.php

Affiliated Tribes of Northwest Indians
- Resolution #1041: In Support of Native American Full Participation in the SBA 8(a) Business Development Program

Alaska Federation of Natives
- Resolution #09-03: In Support of Native Americans' Full Participation in the SBA 8(a) Business Development Program

All Indian Pueblo Council
- Resolution #2010-17: In Support of the Rights of Native Americans to Participate in the SBA 8(a) Program

California Association of Tribal Governments
- Support of the Rights of Native Americans and Alaska Natives to Participate in the SBA 8(a) Program

Central Council Tlingit & Haida Indian Tribe of Alaska
- Resolution #10/67: Rights of Native Americans to Participate in the Sba 8(a) Program

Council for Native Hawaiian Advancement
- Resolution #01-2006: Resolution in Support of the SBA Native 8(a) Program

Enterprise Rancheria Estom Yumeka Maidu Tribe
- Resolution #10-27: In Support of the Rights of Native Americans and Alaska Natives to Participate in the SBA 8(a) Program

Great Lakes Inter-Tribal Council Inc.
- Resolution #2010-11.06: Supporting the Rights of Native Americans to Participate in the Small Business Administration 8(a) Program

National Congress of American Indians
- Resolution #ABQ-10-063: In support of Native American Full Participation in the Small Business Administration's 8(a) Business Development Program

National Congress of American Indians
- Resolution #PSP-09-044: In Support of the Rights of Native Americans to Participate in the SBA 8(A) Program

United South & Eastern Tribes, Inc.
- Resolution #2011-064: Native Americans' Full Participation in the SBA 8(a) Business Development Program

The CHAIRMAN. Thank you very much, Mr. Morgan, for your testimony.

Mr. Hall, will you please proceed with your testimony?

STATEMENT OF LARRY HALL, PRESIDENT/GENERAL MANAGER, S&K ELECTRONICS, INC.

Mr. HALL. Thank you, Chairman and other Members of the Committee.

My name is Larry Hall. I was introduced by our Senator Tester from Montana who is a good friend of mine. We have been on various groups there in Montana over the years.

I am a tribal member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation and President and General Manager of S&K Electronics, Inc., a successful graduate of the SBA 8(a) Program.

I appreciate the opportunity to tell the S&K Electronics story and how the SBA program has helped to enhance the economic development of the Flathead Reservation. I can sum it up in three words: the program works.

When my father came home to the reservation after World War II, he couldn't find any work. So he moved our family to Seattle where he could find work. He went to work for Boeing. But as children growing up in the Seattle area, we always wanted to come to the reservation for our summer vacations and time with our cousins and my aunts and uncles.

My heart was always on the reservation. I always wanted to live there. I was able to come back to the reservation as an intern in college. After graduating from college, I got my first job as economic planner for the tribes, focused on creating jobs on the reservation.

First, I tried to create government jobs using various grant programs that the Federal Government had, HUD, CDBG, you name it. And did very well at that, but then those jobs are just transfer-fund type of jobs. I knew that eventually we needed to have businesses, businesses that could have ways of generating their own capital.

One of those businesses was S&K Electronics. S&K Electronics, a tribally-owned company, started in 1984 as a way to diversify our reservation economy which was just pretty much related to timber and cattle ranching. We became certified in the 8(a) Program in 1990, after there were significant changes in the 8(a) Program in the late 1980s.

We used the program to grow both our capacity and capability to do business. We grew from 35 employees as we started in the program to over 100 when we graduated. We graduated from the program in 1999. That was the nine-year program. We continue to be a highly competitive successful contract manufacturer in electronic and electro-mechanical assemblies for both the U.S. Government, as well as private industry.

Some of our largest customers currently are BAE, Northrop, Raytheon, Lockheed. S&K's facilities are on the Flathead Reservation. This is our only place of our business, although in early times we were able to get into some other contract opportunities off the reservation in the I.T. business.

The jobs are on the Flathead Reservation. It is over 100 jobs for our people that did not exist before 8(a). S&K has continued to grow and provide dividends to the Confederated Salish & Kootenai tribes through their social and economic programs and initiatives.

That amounts to $1.75 million date. It does not include the millions that were invested to grow our business and to maintain our competitiveness in our industry, and the wages of our workers that are then spent in our local communities.

One of the economic initiatives that we invested in was to start up another 8(a) company, and that was S&K Technologies. S&K Technologies, which is the company that Lance was mentioning that helped them. It graduated from the 8(a) Program also and continues to return dividends back to the tribes for their social and economic programs and initiatives, as well as grow additional companies. To date, S&K Technologies has returned over $10.6 million to the tribes in dividends.

What is different about tribally owned 8(a) companies and other 8(a) businesses? The profits go to the tribe as a whole, not to individuals. What does the money do? Well, it is reinvested in other companies, internships, native language programs, various social programs, job training, economic development initiatives, and even fractionated heirship land consolidation.

My father would be proud to know that his children and grandchildren and the children and grandchildren of his peers now have a choice of job opportunities that did not exist when he was young. As I said before, the program works.

Thank you for the opportunity to speak and tell the S&K story.

[The prepared statement of Mr. Hall follows:]

PREPARED STATEMENT OF LARRY HALL, PRESIDENT/GENERAL MANAGER, S&K ELECTRONICS, INC.

My name is Larry Hall, a tribal member of the Confederated Salish & Kootenai Tribes of the Flathead Reservation and the President and General Manager of S&K Electronics, Inc. a successful graduate of the SBA 8(a) program.
I appreciate the opportunity to tell the S&K Electronics story and how the SBA 8(a) Program has helped enhance the economic development of the Flathead Reservation.

I can sum it up in three words, The Program Works!

S&K Electronics a Tribally owned Company:

- Became a certified 8(a) company in 1990.
- Used the program to grow both its capability and capacity through its life in the program.
- Graduated from the 8(a) program in 1999 and continues to be a highly competitive and successful Contract Manufacturer of electronic, electro-mechanical assemblies for the US Government and Private industry.
- S&K Electronics facilities are on the Flathead Reservation.
- The jobs are on the Flathead Reservation.
- S&K Electronics has continued to grow and provide dividends to the Confederated Salish & Kootenai Tribes for their social and economic programs and initiatives.
- One of these economics initiatives was to start up another 8(a) company, S&K Technologies.
- S&K Technologies has also successfully graduated from the 8(a) and continues to return dividends back to the Confederated Salish & Kootenai Tribes for their social and economic programs and initiatives.
- What is different about a Tribally owned 8(a) business and other 8(a) businesses? The profits go to the Tribes as a whole not to an individual.
- Where does the money go? It is used for Internships, Native language programs, Various social programs, Job training, Economic Development initiatives, and even fractionated heirship land consolidation.

As I said before, The Program Works!

Let's take a closer look at the history.

In the early 1980's the Tribes were looking at ways to diversify the economy of the Reservation from its primarily resource extraction base. Also in this effort they were looking for good long term sustainable Jobs. Contract Manufacturing was selected as the direction to go, specifically Electronic, Electro-mechanical Assemblies.

Thus S&K Electronics was born. SKE was established by the Tribes in 1984 and incorporated in 1985 as an Electronic Manufacturing Services (EMS) provider. SKE is located on 10 acres that was originally a fractionated heirship allotment on the Flathead Reservation that the Tribe acquired. SKE was primarily capitalized by Tribal funds.

SKE started business by bidding on solicitations found in the Commerce Business Daily. We struggled to stay in business those early years. There were a lot of players in the game, both large and small. The tribes kept us going, knowing it was going to be a long term investment.

We became aware of the 8(a) program in those years, but were not ready for the program. After the 8(a) program was modified to allow Tribal wholly owned companies to participate more freely, S&K Electronics applied to the program and became certified in 1990.

S&K Electronics secured its first 8(a) contract in 1992. S&K Electronics became profitable the next year. SKE continued to grow and expand in a variety of business areas through the nine years of program eligibility.

S&K Electronics successfully graduated from the 8(a) program in 1999 to go on to even greater growth and success. SKE currently provides over 90 good long term sustainable jobs and continues to pay dividends to our owners the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

The SBA 8(a) program provided the business foundation that S&K Electronics has been able to capitalize on for its continued growth and success.

The Tribally owned companies of The Confederated Salish and Kootenai Tribes(CKST) have epitomized the intent and spirit of the 8(a) program and we have clear and measurable results that document the success both our companies hard work and the support of the Small Business Administration's program.

We have used the benefits of the 8(a) program and Tribal ownership to build capability and capacity and have graduated from the program as fully competitive companies, delivering outstanding products and services to the Government and industry in the full and open competitive environment.

We offer not just jobs, but careers, to both native and non-native people on our reservation where these career opportunities did not previously exist. We train perspective employees and provide meaningful employment in highly technical work with full benefits supporting our employees, their families and the entire community.

The profits from our hard work are not used to enrich individuals but are reinvested in our continued economic development, education and social programs benefiting our Tribe and its members.

Unfortunately the achievements and success stories of many companies such as S&K Electronics and S&K Technologies who have worked hard for so long to build a future for their people are overshadowed by the stories of the few who may have used the system to the advantage of the few instead of the many.

The success stories of the our Tribally owned companies would not have been achieved without the support of the 8(a) program and the additional advantages of Tribal ownership. The ability to be considered for award of significant sole source contracts provided the ability to borrow or invest money in equipment and infrastructure to grow our business. We have never let our customers down and we have always delivered our products and services on-time and on-budget. Without delivering quality and value a business can not grow and our success in growth since graduation from the 8(a) program stands as a testament of what can be accomplished by Tribes and government working together.

On behalf of our Tribes, our employees, their families and our proud people, I thank those who had the foresight to implement program that truly give a hand-up. We hope that you will come in person to our reservation to see first hand the fruits of your vision and our hard work. We hope that those who follow will protect the programs that will help and encourage others to move to sustainable economic development and prosperity.

The CHAIRMAN. Thank you very much, Mr. Hall, for your testimony. I am going to submit my questions for the record and call on Senator Murkowski for any questions she may have.

Senator MURKOWSKI. Thank you, Mr. Chairman.

And I want to thank each of you for your testimony here today, for coming to Washington, for speaking up on this. What I heard from the three of you coming from different tribes, different experiences, was that not only does this program work, as you have stated, Mr. Hall, but what it has delivered are a series of intangibles that are perhaps difficult for an IG, difficult for Mr. McClintock as he tries to itemize what the benefits of this 8(a) Program, this Indian 8(a) Program are.

He says he has to follow the money and that was why it was important to ask the question about whether or not he has any experience in Federal Indian law; any experience in dealing with reservation communities or Alaska Native villages; whether or not he has been a participant in this. I didn't really hear that.

But what I heard you articulate very clearly, Mr. Morgan, was that with success comes a level of smartness, and okay, we might be able to identify gains in education. But what is very difficult to quantify is the pride that comes with being self-sufficient; that comes with being self-sufficient after decades and centuries of a system where basically you have described the system quite well in terms of how things have been provided on the government's terms, with the opportunity to really try to do anything on your own stifled or limited. And the efforts that have been made have resulted in failure.

And when you have subsequent failures, that leads to kind of an attitude or a mind set that we can't do this; that perhaps we are not capable of this. What I am seeing coming out of the 8(a) Program is a challenge that, yes, in fact we can compete and we can compete well. And we can provide for our people in a way that lifts everyone. And that sense of pride and that sense of self-sufficiency unfortunately doesn't kind of fall into this matrix when we measure government accountability.

So I think we need to all be working with people like Mr. McClintock and the I.G.'s, the auditors, those that are looking this; people like Senator McCain who clearly have some questions.

But I will ask a question, and it may be a bit of a rhetorical question, but I will leave it at this. Do you think that it is perhaps blowing things out of proportion or sensationalizing things for the media to focus just on the revenue numbers? Just on the revenue numbers?

You have mentioned, Mr. Morgan, that you have done well; that the tribe is receiving considerable return in terms of revenues. And I don't believe you told me how many tribal members you have, but when you do the math, it probably looks pretty impressive, pretty good.

Do you think this is the wrong way to be measuring things? And if so, how can we change this dynamic? Because I think it is critical to the success of the Indian 8(a) Program.

Mr. MORGAN. I appreciate the question. A couple of things. I have a rule that I never put my accountant in charge of the business. They are good at what they do, but they are not the people you want making the decisions for the future of our people. And I am sure the IG, Mr. McClintock, is great at his job, but he didn't seem to have any clue about the kind of challenges that are out there in Indian Country. And to make it a numbers game only is a mistake, especially when you keep out all the other numbers that might in some way impact us. So I think that is unfair.

As far as some of the revenue numbers, we faced this problem in our own community. We will get a contract for $20 million. That might be over five years. The government is pretty careful about what your profit percentage is, so you are not making a lot of money off of that.

Senator MURKOWSKI. It sure sounds good, though.

Mr. MORGAN. Yes, it sounds wonderful. I have gotten to the point, though, where I won't even say the number in our own community because they are thinking, all right, how much do we get. And so you really have to work hard to perform to get those contracts.

First, to be in the stage to get them, then to keep them, and to keep them going. But the profit margins aren't that good, but we are not saying no. It is still the best things we have in terms of diversifying our business. Ho-Chunk, Inc. would not be an international entity were it not for those kind of opportunities.

No one is going to come out of their way and come to the Winnebago Reservation in rural Nebraska to give us some sort of sophisticated contract. Without these programs, it just simply would not happen. We would never have gotten to the point where we were able to evolve; where we could make a meaningful impact in our communities.

Senator MURKOWSKI. But on the other hand, you have to perform and you have clearly performed or they wouldn't be coming back to you.

Mr. MORGAN. We were the State Department's small business of the year a few years ago, so obviously we have been doing our part, but it is an incredibly difficult environment, as other people have said.

And we don't just answer to the government. We answer to our own people and our own tribal government. And so there are a lot of people looking over our shoulders in our world. And there are a lot of people who are depending on us to make the right decisions and do the right things so that we can impact people's lives in our community.

It is an incredible responsibility, but it is not something you are just going to put down on a piece of paper and put it on a flow chart or spread sheet.

Senator MURKOWSKI. I appreciate that.

Chief Allan, did you want to make a comment?

Mr. ALLAN. Yes, I just wanted to put that in perspective. I think what people do forget to look at, or they look at the numbers, is what impact it has as a whole. For example, we are the largest employer in Benewah County. We are the second-largest in Bonner and Kootenai County. And we have every tribal member that wants to work put to work. And so we have to get the workforce from the community and we employ almost 2,000 people, people as a whole, for the good of Idaho, for the good of everybody. So when you hear a number out there, it is misleading and it is almost damaging because it is not the whole picture. The whole picture is how many people you put in a job; how much taxes are going back to the State of Idaho for the betterment.

We did a study in the State of Idaho for the five tribes in Idaho, and we were one of the top 10 employers because of all of our separate businesses and everything that we are doing.

So I think when a government agency fills a number out there, it is wrong and it is harmful. Thank you.

Senator MURKOWSKI. Again, gentlemen, thank you so much for your testimony.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Murkowski.

Senator Crapo?

Senator CRAPO. Thank you, Mr. Chairman.

I know that the time is getting late and we are kind of getting jammed up up here. So I am going to focus my questions on you,

Chief, and frankly you just did make most of the points I was going to ask you about. But I wanted to get a little bit specifically into the experience that you had with Echelon plant.

As you know, I was there to tour this plant with you, and I know of the big success that it was. But could you explain just in a little more detail just what happened? My understanding is that because of the criticisms and the attack on the 8(a) Program and the allegations about the program that have been made that basically you have had to lay off about 70 percent of your employees at that plant. Is that not correct?

Mr. ALLAN. That is true, Senator. We did have to lay off 70 percent of our employees so we can sit back and now we have to reevaluate our game plan and figure out which direction we are going to move our 8(a) Program.

We were with the Army and with our fuel bladders, and we thought we had the pump contract, but everybody kind of got spooked at the last minute. And so we are kind of backtracking a little bit and we will live to fight another day, though.

Senator CRAPO. Well, I am very confident of that because I have seen how efficient and how effective you are able to be in the operations of these businesses. But I just wanted to add my support and concern to that which has already been expressed here at the hearing about not only the importance of maintaining the 8(a) Program, but also about the importance of making it clear that the allegations that have been made about the 8(a) Program are themselves having negative impacts on our Native Americans. And that simply has to be addressed and addressed quickly.

And so Mr. Chairman, I again appreciate you holding this hearing and look forward to working with you as we seek to address and resolve the issue.

The CHAIRMAN. Thank you very much, Senator Crapo. It has been a great hearing. I would tell you that I personally look at the 8(a) Program as a great opportunity, big or small, as was mentioned by Mr. Morgan. You can do something with it and it is something that can grow into bigger things.

I hope that native people of our Country will look upon that as something that is workable. And the reason I use workable is that it is not perfect. You can get into trouble with it, too, if you make wrong decisions. But it can help you come about to grow so that you can get into bigger things.

And this is what I am hoping will come about with the 8(a) Program as we proceed here. Our intent is to try to look at the challenges that we are facing with this program and to try to turn it around so that it will be able to help us better than it did in the past.

There are problems, no question about that, and the thing is, we just have to be aware of that and continue to proceed. I like to think of this program that would be supported by education, meaning to get all the facts about these things so you can use it to your advantage. And also to be able to protect you and the tribes in case that is needed. Then of course, the resources to help to empower you to build and to help your communities as has happened in many cases that you mentioned.

There are challenges, but we must work together to try to limit those and take advantage of the opportunities. I thank you so much. It was good to hear from you and what you have been through already. We will look forward to continuing to work with you.

I want to thank our witnesses for coming all these miles to Washington to testify. And to remind you that the record is open for written testimony for two weeks. We will permit the members, of course, to add anything they want, whether it is questions or other things.

So I want to thank you again, mahalo nui loa, for making this a success. Thank you very much. This hearing is adjourned.

[Whereupon, at 4:30 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Mr. Chairman, thank you for holding this oversight hearing on the Small Business Administration's Native 8(a) program. Senator Begich and I originally requested this hearing to provide an opportunity for the Tribes, Native Hawaiian Organizations, and Alaska Native Corporations to tell their stories, the real stories and not those sensationalized in the media. We wanted those stories to be placed into the record which actually helped Native people and provided opportunities for future generations all across Native America.

When the Native 8(a) program was first started, the goal was to provide an economic development tool to provide economic self-sufficiency for Native communities. The intent was a "helping hand" and not a "handout" via social welfare programs. This program has demonstrated success, and as a result, it has become a target. I look forward to hearing from the witnesses in hopes of establishing a balanced record.

In Hawaii, we have established Native Hawaiian Organizations (NHO). Native Hawaiian Organizations are non-profit organizations, managed by Native Hawaiian individuals and principally serving Native Hawaiians, which have majority ownership by an 8(a) designated for-profit firm. What makes NHO's most unique is their ultimate mission to serve their communities. Profits generated by the 8(a) firms are dispersed for the benefit of the Native Hawaiian community.

Each NHO has a different priority. They provide different services and programs into the Native Hawaiian community. For example, these services include educational scholarships, mentorship and job training, culturally-based leadership development for at-risk youth, extra-curricular science technology engineering and mathematics (STEM) education programs, and financial literacy educational programs.

NHO's are the youngest among the Native 8(a) businesses. However, they are making their mark in the Native Hawaiian community in a positive way. They are becoming more competitive in government contracting. As they become profitable, social programs and Native Hawaiians benefit. I truly hope it continues.

I commend the Small Business Administration for proposing reasonable regulations which will help to strengthen this program. These regulations will bring more oversight, as well as transparency to the Native 8(a) program. This will help dispel the misinformation, and allow the successes to be highlighted.

I look forward to continuing this discussion and working with my colleagues to strengthen the Native 8(a) program such that more Native Americans can move toward economic self-sufficiency. A rising tide raises all ships.

PREPARED STATEMENT OF HON. CHAD "CORNTASSEL" SMITH, PRINCIPAL CHIEF, CHEROKEE NATION

Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee, thank you for convening this hearing and giving the Cherokee Nation the opportunity to submit testimony regarding SBA 8(a) and its role to enhance economic development in Indian Country. The Cherokee Nation is the second-largest tribal nation in the United States with more than 300,000 citizens and a 7,000-square-mile Oklahoma jurisdiction. To maintain self reliance and economic stability, the Cherokee Nation strives to create meaningful jobs and develop a vibrant hub of industry and commerce in Oklahoma.

Cherokee Nation Businesses (CNB) is the company that develops and manages the Cherokee Nation's diverse business portfolio, including many small businesses that are 8(a) and HUBZone certified. These companies generate revenue for the Cherokee Nation and form beneficial partnerships with local communities while developing long-term strategies for workforce and economic development.

The Cherokee Nation uses revenue earned from these business activities to supplement federal government funding for many Cherokee programs and services. For example, we operate the largest tribal health system in the United States, including a hospital, eight outpatient medical facilities with medical, dental and vision care, as well as multiple other health care programs.

These revenues are also used to support educational programs, including supporting Head Start throughout the Cherokee Nation, early childhood classrooms, higher education scholarships and Cherokee language revitalization programs, which include a pre-K through 5th grade Language Immersion School in Tahlequah, Okla. Coursework, which adheres to primary education curricula, is taught entirely in Cherokee. This total immersion is a significant step toward preserving and revitalizing the Cherokee language.

It is extremely important to note that not only do these profits fund programs and services, but they also are used to capitalize additional businesses, many of which are 8(a) certified or pending certification. These businesses create new employment opportunities and allow Cherokee entrepreneurs to run businesses, which in turn, makes a significant impact within the Cherokee Nation's 14-county jurisdiction.

During the last 10 years, more than 5,000 jobs have been created in rural northeastern Oklahoma. These jobs have had a positive economic impact on the communities where

they operate, which historically receive little to no economic development aid from outside sources. Job creation has not only increased economic revenue for the rural towns, but it has allowed citizens to stay in their communities instead of seeking employment elsewhere, thereby solidifying community ties.

With the advent of 8(a) business opportunities, more jobs are created within the Cherokee Nation, which are staffed by Cherokee citizens. Through partnering with the Cherokee tribal government, citizens receive job training in order to educate and prepare them for the growing opportunities within Cherokee businesses, while cultivating economic self reliance. Rather than viewing the 8(a) program as an economic end point, the Cherokee Nation is utilizing it as a means to develop Cherokee capacity in order to better compete in the open market.

Although tribal enterprises receive less than 1.3 percent of the total U.S. procurement pie, that funding enables tribes to secure contracts that support social and economic investments. As evidenced above, this program allows the Cherokee Nation to contribute to the health and happiness of Cherokee citizens and preserve the Cherokee culture, while working toward the greater good of the local economy through programs and accomplishments.

Once again, the Cherokee Nation thanks the Chairman, Vice Chairman and the Members of the Committee for their time and should you have any additional questions, please feel free to contact our Cherokee Nation Washington Office .

PREPARED STATEMENT OF HON. TEX HALL, CHAIRMAN, MANDAN, HIDATSA AND ARIKARA NATION

INTRODUCTION

Dosha! Good morning, Mr. Chairman Akaka, Mr. Vice Chairman Barrasso, and distinguished Members of the United States Senate Committee on Indian Affairs. My name is Tex Hall, or *Ihbudah Hishi*, which means "Red Tipped Arrow." I am honored to present this testimony on the Section 8(a) Business Development Program of the Small Business Administration Act and the important role that program has played in enhancing economic opportunities and economic development for Native nations and Native peoples.

I am the Chairman of the Mandan, Hidatsa and Arikara Nation, a federally-recognized Indian nation located on the Fort Berthold Reservation in North Dakota. I am also Chairman and C.E.O. of the Inter Tribal Economic Alliance, a national organization devoted to improving economic opportunities and conditions within American Indian reservations, Alaska Native villages and Native Hawaiian homelands. I am chairman of the Great Plains Tribal Chairman's Association, which represents and promotes the common interests of sixteen Native nations in South Dakota, North Dakota, and Nebraska. Finally, I am a two-term past President of the National Congress of American Indians, which is the oldest, largest and most representative American Indian and Alaska Native organization serving the broad interests of Native governments and communities.

I submit this testimony in my capacity as Chairman of the Mandan, Hidatsa and Arikara Nation. In that capacity, I want to thank the Members of this Committee for their work on behalf of Native peoples. This Committee appreciates the sovereign status of Native nations and it understands and respects the unique trust relationship the Federal Government has with Native nations and Native peoples. The Committee understands and appreciates the importance of federal programs and policies that encourage economic development, empowerment, and self-

sufficiency in Native communities. The Section 8(a) Business Development Program is one of the few federal programs that works: it empowers Native businesses and Native nations; it promotes economic development in Indian country; and it helps Native communities achieve self-sufficiency.

The Native social enterprise provisions of the Section 8(a) Business Development Program are firmly rooted in the Federal Government's trust relationship with its indigenous peoples. It is important to remember that the Native 8(a) Program is not an affirmative action program, but a program intended to fulfill longstanding federal responsibilities to our Native people. The program makes Native social enterprises eligible for contracts that are larger than those available for individually-owned 8(a) business as a means of promoting economic development and self-determination for large Native communities. It is one of the most efficient uses of federal dollars to fulfill the government's trust responsibility to its native peoples. By contracting with Native businesses, the Federal government procures essential products and services. At the same, and with the same dollars, it promotes economic development in Indian country.

In the testimony that follows, I will provide a historical and legal framework through which Members of Congress can better understand and appreciate the Native social enterprise provisions of the Section 8(a) Business Development Program. In so doing, I will respond to critics who argue that the Native 8(a) Program's unique provisions for Native social enterprises are unjustified, ineffective, or subject to fraud, waste, and abuse.

I. CONGRESS HAS THE CONSTITUTIONAL AUTHORITY TO ENACT LEGISLATION FOR THE BETTERMENT OF NATIVE AMERICANS.

A. The Sovereign Status of Native Nations.

American Indian tribes are sovereign nations whose existence predates that of the United States. The source of our Native sovereignty is found in the spirit of our people, which stretches back to the dawn of time, when our nations were founded as the first democracies on this continent.

From its earliest days, the United States recognized our Native nations as sovereigns, with pre-existing rights to self-government and territorial integrity. Through treaties, the United States guaranteed those rights. It also established diplomatic, government-to-government relationships with our Native nations. The Federal Government's treaties with our Native nations created military alliances, promised perpetual peace, and promised Federal protection of our Native lands from non-Native incursions. Inherent in the treaty-making process was a bilateral, nation-to-nation relationship based on mutual respect.

The United States Constitution recognizes and affirms the sovereignty of our Native nations in at least four fundamental ways. First, it empowers the President, with the consent of the Senate, to enter treaties with our Native nations.[1] Few people know that, prior to ratification of the Constitution, the United States had entered more treaties with Native nations than it had

[1] U.S. Const., art. II, § 2, cl. 2.

with foreign nations. Thus, it is no stretch to say that the Treaty Clause is just as concerned with the formation of Native treaties as it is with the formation of international treaties.

Second, the Supremacy Clause states that, "[a]ll Treaties made, or which shall be made … shall be the Supreme Law of the Land."[2] This Clause ratifies the "Treaties made" by the United States and our Native nations prior to ratification of the Constitution. Those treaties acknowledged our Native nations as sovereign entities with rights to land, natural resources, and self-government. By ratifying these "Treaties made," the Supremacy Clause enshrines these treaty-based rights in the Constitution.

Third, the Indian Commerce Clause states that, "Congress shall have the power to … regulate Commerce … with the Indian tribes."[3] This power is to be exercised between nations. It is bilateral, and it respects the independence of our Native tribes.

Fourth, in the Apportionment Clause, Native peoples were excluded, as "Indians not taxed," from the apportionment of Representatives in the House.[4] By excluding "Indians not taxed" from the electorate, the Founding Fathers recognized that our Native people stood outside the Federal union. We had our own unions, our own democracies. Decades later, when the United States enacted the Fourteenth Amendment, it repeated the exclusion of "Indians not taxed" from apportionment of Representatives in the House.[5] In so doing, the United States reaffirmed its long-standing policy of treating Native peoples as citizens of separate nations—and its corresponding policy of dealing with Native nations through government-to-government diplomacy.

In these ways, the Constitution acknowledges our Native nations as sovereigns with preexisting rights of self-government and self-determination. The Treaty, Supremacy, and Indian Commerce Clauses call for bilateral, nation-to-nation relations, and the Apportionment Clause in the original Constitution and the Fourteenth Amendment confirm the independent status of our Native nations and our people.

All three branches of the Federal Government have confirmed this understanding of the Constitution. The Supreme Court has held that Native nations are "separate sovereign[s],"[6] whose "powers of local self-government … existed prior to the Constitution," and whose powers are not "operated upon" or restricted by the Constitution.[7] For their part, Congress and the Executive Branch have confirmed the sovereign status of our Native nations, and our

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[2] U.S. Const, art. VI.
[3] U.S. Const., art. I, sec. 8, cl. 3.
[4] U.S. Const., art. I, § 2, cl. 3.
[5] U.S. Const., amend XIV, § 2, cl. 1. We were also excluded from the Citizenship Clause of the Fourteenth Amendment. U.S. Const., amend XIV, § 1 cl. 1. This is because we owed our primary allegiance to our independent, Native nations. *See Elk v. Wilkins,* 112 U.S. 94 (1884). Indians were not made citizens of the United States until the 1924 Indian Citizenship Act. 43 Stat. 253 (1924).
[6] *United States v. Lara,* 541 U.S. 193, 210 (2004).
[7] *Talton v. Mayes,* 163 U.S. 276, 284 (1896).

government-to-government relationship with the United States, in treaties, statutes, and Executive Orders.[8]

B. Congressional Power to Legislate for the Betterment of Native People.

Through the Treaty and Indian Commerce Clauses, the Constitution vests in the Federal Government the authority to address the conditions of our Native peoples. Until 1871, the United States dealt with our Native nations by treaty, entering hundreds of treaties with our Native nations. In 1871, Congress ended formal treaty making with Native nations. Since that time, Congress has enacted hundreds of pieces of legislation addressing the special needs of Native nations.

Federal-Indian policy always has been governed by principles of government-to-government diplomacy, not equal protection. This is made clear in the Fourteenth Amendment itself. That amendment is the birthplace in the Constitution of the principle of equal protection. Yet, the Fourteenth Amendment denied citizenship to Native Americans and excluded "Indians not taxed" from the American political system. No clearer demonstration could be made that the Federal Government's Indian affairs powers stand apart from, and are not subject to, the principle of equal protection.

Furthermore, the Supreme Court has rejected the racial discrimination argument. In *Morton v. Mancari*,[9] the Court said that federal laws directed at Native Americans are not race-based. Such laws treat Native Americans "not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities ..."[10] The Court has said that laws granting so-called "special treatment" to Native Americans are constitutional, and will not be disturbed, "[a]s long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians," including its obligation to "further Indian self-government."[11]

In fact, the Federal courts have upheld the constitutionality of the Native 8(a) Program on precisely this basis.[12] The courts have said that the preference for Native social enterprises in government contracting is not race-based, but is instead consistent with Congress's constitutional power legislate in respect to Indian affairs. In *American Federation of Govt. Employees v. United States*, the district court found the Native 8(a) Program is constitutional since it stems from "a long history regarding Native Americans and our country's unique duty toward them,"[13] and since it serves to "fulfill [the Federal Government's] unique trust obligations and [to] promote self-determination and self-governance of Native-Americans."[14] The court of appeals agreed, stating that the Native 8(a) Program is authorized by the Indian Commerce Clause, since

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[8] *See, e.g.*, 25 U.S.C. §§ 3601(1), 3701(1); Executive Order 13175, 65 F.R. 67249 (Nov. 9, 2000); Executive Memorandum, 59 Fed. Reg. 22951 (April 29, 1994).
[9] 417 U.S. 535 (1974).
[10] *Id.*, at 554.
[11] *Id.* at 555.
[12] *See American Federation of Govt. Employees v. United States*, 195 F. Supp. 2d 4 (D.D.C. 2002), *aff'd* 330 F.3d 513 (D.C. Cir. 2003), *cert. denied*, 540 U.S. 1088 (2003).
[13] 195 F. Supp. 2d. at 19.
[14] *Id.* at 20.

"regulation of commerce with tribes is at the heart of the Clause, particularly when the tribal commerce is with the federal government, as it is here," in the case of government contracting.[15]

In short, the Constitution recognizes the power of Congress to deal with our Native nations as governments and to enact legislation addressing the unique conditions of our people. The United States has assumed a unique obligation to protect our Native nations and people, as will be discussed in more detail below. When Congress enacts legislation to fulfill that obligation, it does not run afoul of the Constitution. Instead, it honors the promises the United States has made to our Native nations.

II. THE FEDERAL GOVERNMENT HAS A TRUST RESPONSIBILITY TO PROTECT NATIVE AMERICANS.

A. Origins of the Trust Responsibility.

The Federal Government has a special political and legal relationship with Native nations. It is a government-to-government relationship in which the Federal Government has assumed a trust responsibility to protect Native nations and to legislate on our behalf. The origin of this relationship is (at least) three-fold:

First, through treaties, the United States promised to protect our Native nations. It did so in exchange for the millions of acres of land and countless other resources we ceded to the United States. It also did so because it considered our Native nations to be in need of protection from non-Natives who sought to exploit us and to take our remaining lands and natural resources. That the government did not always honor the promises it made is immaterial. As the Supreme Court has said, the treaty-based "duty of protection" remains an essential, on-going source of the government's trust obligation to our Native nations.[16]

Second, the government has assumed a trust obligation toward Native nations in order to rectify the failures in its historic "course of dealing" with Native nations.[17] Congress expressly acknowledged these failures in the Native American Apology Resolution of 2009, in which it apologized for "a long history of official depredations and ill-conceived policies by the Federal Government regarding Indian tribes."[18] Among other things, the United States apologized for the "unlawful acquisition of recognized tribal land," the "theft of tribal resources," the practice of breaking treaties with Native nations, and ill-conceived and ultimately unsuccessful attempts to eradicate Native "traditions, beliefs, and customs."[19] These policies and practices destroyed our Native economies and have, to a large extent, "placed Native Americans in a state of coerced

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[15] 330 F.3d at 521. The court of appeals noted that when Congress exercises its "constitutional power" under the Indian Commerce Clause, "it necessarily must engage in classifications that deal with Indian tribes." *Id.* The court noted that, "'Constitution itself provides support for legislation directed specifically at Indian tribes,'" *id.* at 521-522 (quoting *United States v. Cohen*, 733 F.2d 128, 139 (D.C. Cir. 1984) (en banc), and "'in a sense the Constitution itself establishes the rationality of the ... classification, by providing a separate federal power that reaches only the present group.'" *Id.*

[16] *United States v. Kagama*, 118 U.S. 375, 384 (1883).

[17] *Id.*

[18] *Native American Apology Resolution*, S.J. Res. 14, 111th Cong., 1st Sess. (2009).

[19] *Id.*

dependency."[20] The Federal Government has taken responsibility for the damage it has caused to our people it has assumed an obligation to protect our nations and our people.

Third, to this day, the Federal Government still owns, manages, and controls most Native lands, natural resources, assets, and funds. The government holds this property in trust for our Native nations (and, in some cases, for individual Native Americans), and it has a trust obligation to manage the property according to "the most exacting fiduciary standards."[21] This includes a duty to maximize the return on, and economic opportunities involving, the property.

B. The Trust Responsibility to Promote Economic Development for Native Nations.

The Federal Government has an obligation to foster self-government, self-sufficiency, and economic development in Native communities. In particular, the government is committed to "removing obstacles to self-government" for Native nations and to "creating a more favorable environment for the development of healthy reservation economies."[22]

"For much of the past two centuries, federal Indian policies inhibited tribal economic development."[23] These policies included: the unlawful acquisition of Native lands and resources; the removal and relocation of many Native nations from their homelands to the territory now known as Oklahoma; the violation of treaty-based promises to protect reservation lands, resources, and rights; the forced allotment of reservations into individual farm-sized parcels and the sale of so-called surplus lands; the forced removal of Indian children from their Native reservations to faraway boarding schools; pervasive and extensive federal control over remaining reservation lands, resources, and programs; and the termination of many Native nations.[24]

These policies had devastating effects on our Native economies. For example, many Native nations, like the Cherokee, that had thriving economies in their homelands in the eastern United States, when they were removed to the territory that is now Oklahoma. They were forced to rebuild their nations and their economies from scratch. In the West, the vast hunting grounds of many Native nations were overtaken by settlers and our people were confined on smaller and smaller reservations. The subsistence economies of many Native nations were crippled. The Federal Government attempted to convert our people to farming, allotting our reservations and selling our "surplus" lands. This policy failed, but not before two-thirds of our reservation land bases were sold to non-Natives. The resulting checkerboard pattern of land ownership continues to undermine Native land use planning and economic development on most reservations.

The Federal Government has repudiated these and other failed policies. Today, the government promotes Native self-determination and self-governance.[25] But, the effects of past

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[20] *Cobell v. Babbitt*, 91 F.Supp.2d 1, 7 (D.D.C. 1999).
[21] 25 U.S.C. § 450, *et seq.*
[22] PUBLIC PAPERS OF THE PRESIDENT OF THE UNITED STATES: RONALD REAGAN, 1983 (1986), *cited in* DOCUMENTS OF UNITED STATES INDIAN POLICY (THIRD EDITION) 302-304 (Francis Paul Prucha, ed., 2000).
[23] COHEN'S HANDBOOK at § 21.01.
[24] *See, id.*, at §§ 1.02-1.07.
[25] Through the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450, et seq., the Tribal Self-Governance Act, 25 U.S.C. § 458aa, et seq., and other laws, the Federal Government has permitted Native nations to assume greater control over federally funded reservation programs and over the management of Native lands, resources, and assets.

policies are still being felt today. "Indian nations continue to confront serious issues of poverty and its social consequences."[26] In fact, many reservations remain "underdeveloped" and "dependent on federal transfer payments, federal housing, education, and health care services, and government employment."[27] Major barriers to economic development exist in Indian country, such as lack of access to financial capital, lack of natural resources or lack of control over existing natural resources, and difficulty convincing non-Natives to invest in, or locate on, reservations.[28]

To help Native Nations overcome these barriers and to fulfill its trust obligation, the Federal Government operates numerous programs that promote economic development in Indian country. This includes "programs to improve physical infrastructure, increase employment training and skills, develop Indian businesses, and assist tribes in attracting and retaining investment capital."[29] The SBA Section 8(a) Business Development Program complements these programs by providing federal contracting advantages and technical assistance to qualifying Native-owned small businesses.

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[26] COHEN'S HANDBOOK at § 21.01 (noting: "In 1999, according to the Bureau of Indian Affairs (BIA), the unemployment rate among all Indians on or near reservations was 43 percent and still remained as high as 85 percent on the poorest reservations. In 2000, 37 percent of Indians living in reservation areas without gaming and 27 percent of those in reservation areas with gaming lived below the poverty line, and per capita income for reservation Indians was $8,816 and $8,466 respectively. Health and social welfare indicators are equally troubling.") (internal citations omitted).

[27] *Id.*, at § 21.04[1] (citing S. Rep. No. 106-151 at 1-2 (1999)).

[28] Stephen Cornell and Joseph P. Kalt (eds.), RELOADING THE DICE: IMPROVING THE CHANCES FOR ECONOMIC DEVELOPMENT ON AMERICAN INDIAN RESERVATIONS 6-7 (1992).

[29] COHEN'S HANDBOOK at 21.04[1] (citing S. Rep. 106-151 at 2 (1999)). *See also, id.*, at §§ 21.03[4] and 21.04 (discussing numerous federal laws and programs). These programs include, but are by no means limited to, the following: Buy Indian Act of 1908, 25 U.S.C. § 47 (requiring the Secretary of the Interior to exercise Native American preference as far as practicable in Federal Government hiring and procurement), Pub. L. No. 105-393, 112 Stat. 3596 (authorizing the Economic Development Administration in the Department of Commerce to provide planning grants to tribes to formulate and implement economic development programs); Indian Financing Act, 25 U.S.C. § 1451 *et seq.* (providing direct loans and loan guarantees to Native nations for economic development initiatives); USDA Rural Business and Cooperation Programs, Business and Industry Guaranteed Loan Program, 7 U.S.C. § 1932 (providing guarantees for up to 90 percent of loans made by commercial lenders to Indian tribes); 42 U.S.C. § 2991a (authorizing the Department of Health and Human Services Administration to provide grants to Native nations for locally controlled social and economic self-sufficiency); 42 U.S.C. § 3141 (authorizing Economic Development Administration to provide grants to tribes for infrastructure and public works that will generation long-term improvement in economic conditions); Workforce Investment Act 29 U.S.C. § 2911 (authorizes support for Native youth programs that provide training, work experience, and support to participants seeking permanent, unsubsidized jobs).

III. THE SECTION 8(A) PROGRAM FULFILLS THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY TO NATIVE NATIONS.

The stated purpose of the 8(a) program is "to assist eligible small disadvantaged business concerns compete in the American economy through business development."[30] In Indian country, the 8(a) program is doing just that. It is encouraging business development, and it is doing so on a scale that reflects the large size and need of our Native nations and Native communities.

The Small Business Association Section 8(a) Business Development Program provides qualifying Native-owned businesses with access to sole source and limited competition federal contracts set aside for Socially Disadvantaged Businesses, as well as federal technology transfer, surplus property, training, and technical assistance.[31] In order to qualify for the Native Section 8(a) program, Native businesses must be controlled and majority-owned by an American Indian tribe, Alaska Native Corporation ("ANC"), or Native Hawaiian organization ("NHO").[32]

By making the Section 8(a) Business Development Program available to Native businesses, and by tailoring it to the unique needs of large tribes, nations, and communities, the Federal Government promotes Native self-determination and fulfills its trust obligation to promote economic development in Native communities. The program allows qualifying Native 8(a) businesses to access and perform contracts for the Federal Government. This, in turn, encourages growth in the Native-owned business sector, fuels Native economies, and provides tools and resources to better combat poverty and other social ills in Native communities.

Yet, notwithstanding these successes, some have criticized the Section 8(a) program because it allows Native 8(a) businesses to contract with the Federal Government under unique terms not available to individually-owned, non-Native 8(a) businesses. Among other things, Native 8(a) businesses are eligible for contracts that are not subject to the award limits placed on contracts for individually-owned, non-Native 8(a) businesses. Further, Indian tribes, ANC's and NHO's may operate more than one Native 8(a) business at the same time.

These criticisms demonstrate a fundamental lack of understanding of the Federal Government's responsibility to Native peoples and the nature of Native 8(a) businesses. Native 8(a) businesses are native social enterprises. They are community-owned; they often represent thousands of Native constituents; and they use their revenues to address the social, economic, and cultural needs of entire Native communities. Profits generated through the Native 8(a) Program are not distributed to capital investors or divided among a small group of owners. Instead, they are used to fund social, economic, and cultural programs of Native communities.

While there have been instances where the program has not worked as well as intended and where non-Native executives have profited, those instances are rare, and the newly promulgated regulations by the Small Business Administration have increased oversight and implemented procedures to prevent such instances from reoccurring. By implementing these procedures and providing technical assistance to Native 8(a) businesses, the SBA is

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[30] 13 C.F.R. § 124.1.
[31] 15 U.S.C. §§ 636(j), 637(a); 13 C.F.R. § 120.320.
[32] 13 C.F.R. §§ 124.101-124.110.

strengthening the program and helping Native businesses grow and develop so they can continue to build upon their successes.

The answer to the recent criticism of the Native 8(a) Program in *The Washington Post* and by the Government Accounting Office is not to eliminate the program, rather the answer is to strengthen the program to more effectively meet the needs of native communities. The Native 8(a) Program has created American companies that, in turn, have created thousands of American jobs. The program encourages self-sufficiency in Native communities. It helps Native peoples to engage in federal contracting and to participate in the global marketplace.

It is important to remember that Native 8(a) businesses are performing valuable services through their contracts with the Federal Government. It is also important to remember that they are complying with the exacting contracting requirements that all companies must meet pursuant to the Federal Acquisition Regulation. Native 8(a) businesses are subject to government audits. Their contracts must give "best value" to the Federal Government, and their profit margins must not be excessive. Imposing the Federal Acquisition Regulation on Native 8(a) businesses is another way the government has strengthened these businesses and their accounting procedures.

Native 8(a) contracting utilizes less than 2% of federal procurement funding, but has a tremendous positive impact on native communities. We must not eliminate a program that has generated so much success in so little time utilizing such a small portion of the federal procurement funding. Few federal programs encourage economic development and self-sufficiency in Native communities. Even fewer have had as positive an impact as the Native 8(a) Program on building capacity within Native communities, encouraging the formation of Native corporations, and creating jobs, both Native and non-Native. No other program utilizes the same dollar for contracting and for native economic development, as does the Native 8(a) Program.

CONCLUSION

Native nations are separate sovereigns with whom the Federal Government has a government-to-government relationship and on whose behalf the Federal Government may enact special legislation. The Native 8(a) provisions of the SBA Section 8(a) Business Development Program fulfill the government's unique obligation to promote economic development in Native communities. That obligation is rooted in treaty-based promises, the history of failed Federal policies directed at Native nations, and the Federal Government's ongoing management and control of Native property and resources.

We want to work with Congress to make the Native 8(a) Program an even bigger success. We must not eliminate or minimize one of the few federal programs that is actually making a positive difference in the lives of our native peoples and fulfilling the United States' obligations to its indigenous peoples.

Prepared Statement of Hon. Sean Parnell, Governor, State of Alaska

The enactment of the Alaska Native Claims Settlement Act (ANCSA) was a turning point in the history of Alaskan and federal Indian policy. ANCSA embodied a completely new approach to resolving aboriginal title claims in the United States. Abandoning previous reservation models, Congress and the State of Alaska jointly provided nearly $1 billion, and the federal government conveyed 44 million acres of land to over 200 newly-created regional and village Alaska Native corporations (ANCs). These corporations were formed to manage the conveyed lands and bring economic development and social progress to Native communities.

The expressed intent of ANCSA, and its subsequent reforms, was to utilize ANCs as a vehicle to modernize the socioeconomic standing of Alaska Natives and as a means to revitalize and preserve their cultures. Unfortunately, after the passage of ANCSA many ANCs initially struggled. Recognizing this, Congress amended ANCSA and created unique ties between ANCs and the Small Business Administration's (SBA) 8(a) Business Development Program (8(a)) to foster development. Whereas traditional 8(a) participants are often owned by an individual or small handful of individuals, Congress undertook such changes noting that ANCs are owned wholly and in perpetuity by entire communities of socially and economically disadvantaged people. These ANCSA and 8(a) modifications reinforced the pact and settlement between Alaska Natives and the federal government by underscoring the need for economic development in Native communities.

As intended by Congress, the 8(a) program has become a critical cultural, social, and economic pillar of Alaska Native communities. All regional corporations, and many village corporations, operate non-profits which provide critical services and programs for their rural villages. The success of this unique model has been proven to Alaska Native communities and individual ANC shareholders by increasing the number of Alaska Native homes with plumbing, tripling the Alaska Native high school graduation rate, and cutting Alaska Native poverty in half.

In addition, ANCs have become vitally important members of the Alaskan business community, ranking among the largest employers in the state. As an SBA Inspector General's report concluded, "the 8(a) program has helped ANCs fulfill a mission that is broader than the bottom line of corporations – namely, to help Alaska Natives achieve economic self-sufficiency." ANCs have only recently begun to realize the possibilities created for their communities through the 8(a) program. In light of these successes, my Administration supports the SBA's 8(a) program as it relates to ANCs.

Some have equated recent ANC growth as indicative of a generally unsound program or one in which ANCs are illegitimately benefitting. ANCs, like all Alaska state corporations, are required to follow and abide by State and federal laws and regulations. Recent media attention casting a negative light on ANC involvement in the 8(a) program has focused on a few high-profile cases representing only a small fraction of the over 200 ANC 8(a) participants.

It is important to note that since media focus has turned to ANCs, the SBA has finalized robust new rules governing ANC participation in the 8(a) program. These new rules address many of the perceived inequalities cited by some in the media and Congress. Among the many changes, this approach has resulted in new requirements for joint ventures to ensure that non-disadvantaged firms do not improperly benefit, requirements that ANCs report on benefits provided to their communities, and new authority for the SBA to graduate ANCs out of the 8(a) program early should they grow beyond certain size standards.

The socioeconomic benefits Alaska Native communities are now realizing, in part through the 8(a) program, are far too important to dismiss on account of a few isolated cases. We should give the SBA's new rules, which were only finalized in February of this year, an opportunity to fully take hold. I am confident that the changes adopted by SBA will address concerns previously raised. If isolated cases of waste, fraud, or abuse continue to occur, I fully support identifying and rectifying them.

Although the 8(a) program has spurred economic development for some Alaska Natives and has been a catalyst for social progress, much work remains. At a time in which it is clear that Congress' intent as expressed in ANCSA is being realized, it would be counterproductive and misguided for federal Indian policy to abandon this successful model.

PREPARED STATEMENT OF VIRGINIA WARD, CHAIRWOMAN, BOARD OF DIRECTORS, AFOGNAK NATIVE CORPORATION

Chairman Akaka, Vice Chairman Barrasso and honorable members of the Senate Committee on Indian Affairs, cama'i (hello). My name is Virginia Ward and I am the Chairwoman for the Board of Directors of Afognak Native Corporation. Thank you for the opportunity to provide written testimony for the hearing record about Afognak Native Corporation and the benefits we provide to our Alaska Native shareholders.

I am a shareholder of Afognak Native Corporation and I am originally from the Old Afognak Village, which is located on Afognak Island in the Kodiak Archipelago in Alaska. The Old Afognak Village was heavily damaged as a result of the great 1964 earthquake and tsunami that struck much of south-central Alaska. Following the destruction of my home, I, along with most people of Old Afognak Village, relocated to the Village of Port Lions on Kodiak Island. Even though we no longer live in the Old Afognak Village, we, as a people, still identify ourselves as Afognak People. We are Aq'wanermuit (People of Afognak). This is our identity and our community spans cities, oceans, and countries. But no matter where we go, our foundation is set by the Alutiiq core values of harmony, appreciation, respect, efficiency, communication, and trust. These values guided the Alutiiq people for generations before us, and they have provided the framework around which we structure our Corporation, as they are embedded in our Code of Conduct.

History of Afognak Native Corporation

Afognak Native Corporation (Afognak) is a village corporation organized under the Alaska Native Claims Settlement Act of 1971. Afognak was formed in 1977 through the merger of two Native Corporations, Port Lions Native Corporation and Natives of Afognak Inc. Afognak is governed by a nine-member Native Board of Directors, all of whom are shareholders of the Corporation. Board members are elected by their fellow Native shareholders and serve three-year staggered terms. As an Alaska Native Corporation, Afognak is responsible for meeting the economic, social and cultural obligations of our 812 shareholders. This is a congressional mandate we take very seriously. We are fulfilling this mandate by providing benefits to individual shareholders and by strengthening Aq'wanermuit (our community). By providing benefits to our shareholders and by strengthening our community, we develop a collective strength; we empower every shareholder as well as their families and their descendants.

Afognak owns 160,000 acres of land in the Kodiak Archipelago, primarily on Afognak Island. In addition we are the managing partner of the Afognak Joint Venture (AJV) which owns 130,000 acres of land also primarily on Afognak Island. The AJV is a partnership between Afognak and Koniag Inc., which is an Alaska Native Regional Corporation. As managing partner, we are responsible for the use and care of these additional acres. Our lands represent our most valuable asset. Our corporation and our shareholders use our lands for cultural, subsistence, and recreational activities as well as some limited opportunities for economic development. Prior to our involvement with the SBA 8(a) program, Afognak relied heavily on natural resource development, mainly the harvesting of timber on Afognak land. Over time, our Board of Directors recognized that the volatility of the international timber market, as well as the finite timber resources owned by Afognak, made timber harvesting an unsuitable long-term economic development strategy for the Corporation. As we attempted to fulfill the mandate of the Alaska Native Claims Settlement Act (ANCSA); we repeatedly struggled with geographical isolation, the steep learning curve required to master the Western corporate model, and the intense needs of our shareholder population. Despite being tasked under ANCSA to operate as a business, we found that a profitable entry into the marketplace was easier said than done.

History of ANCSA and the Link to the 8(a) Program

The legislative history of ANCSA clearly shows that the goal of the act was to provide a mechanism with which Alaska Natives could participate in the capitalist economy. Under ANCSA, the federal government has a statutory duty to encourage participation by Alaska Natives through Native corporations in America's capitalistic economy.

As the ANCSA evolved and the Alaska Native Corporation structure was established, it became increasingly evident that Alaska Natives were not receiving all the benefits intended by Congress and to which Alaska Natives were entitled under the Act. Alaska Native Corporations (ANCs) were inefficient as the geographic and economic barriers of our rural settlements proved difficult to overcome. It became ap-

parent that ANCs would not be able to fulfill social responsibilities to their shareholders and achieve economic potential without some adjustments.

Congress amended ANCSA in 1988 and again in 1992 establishing ANCs as minority and economically disadvantaged businesses for purposes of government procurement programs. By these amendments, Congress made clear that favoring ANCs for government contracts was an integral and intentional part of ANCSA's economic settlement. These 1988 and 1992 ANSCA amendments provide ANCs' eligibility for government contracting preferences as bargained for consideration in exchange for the extinguishment and settlement of Alaska Native aboriginal claims in Alaska. The Board of Afognak decided to enter the government contracting marketplace based on the well-established legislative history of the ANCSA.

The Development of the Alutiiq Family of Companies

In 1998 and 1999 we began the due diligence process on government contracting and the opportunities for business development through the SBA 8(a) program. The Board was aware of a few other ANCs that were using the program to grow their businesses, and we believed we could emulate that success over time with the development of the Alutiiq family of companies.

As with many new business ventures, the creation of the Alutiiq companies has had many challenges. Not all of our contracts have been profitable, and some of the lines of businesses we explored were not a good fit. Now, eleven years after the first Alutiiq company was formed, we are both grateful and accountable for the blessings and responsibilities our success has bestowed on Afognak. We believe our unwavering commitment and a laser-like focus on measurable results and accountability has allowed our participation in the 8(a) program to provide a myriad of benefits to our shareholders, their descendants, and the Native community at-large.

The Benefits Provided by Afognak to its Shareholders

We understand that the Committee's focus is on the successes of the Native 8(a) program and the benefits it has provided to Native Communities. Afognak has been blessed in that we have enjoyed business success in the program, which has allowed for a wide range of benefits to be distributed to our shareholders in a variety of forms. Benefits we provide include a Shareholder Hunting & Subsistence Program; Lands Management Programs; donations, community contributions, and sponsorships; a Shareholder Death Benefit; Elder Benefit; Small Business Growth Program and Shareholder Development Programs. However, the most notable and tangible benefit provided to our shareholders during this time period came in the form of substantial semi-annual dividends.

In the last 10 years Afognak has paid out almost $95 million in dividends to our shareholders. The decision to benefit our shareholders in the form of dividends, rather than other services or programs, came after much research and deliberation by our Board of Directors. A 2005 survey of Afognak Shareholders, which was commissioned by our Board, revealed that the average household income of our shareholders was approximately $45,000 per year. This is only $17,430 above the 2010 U.S. poverty guideline of $27,570 for a family of four in Alaska. This data strongly suggests that the dividends paid to Afognak shareholders over the last several years have had a significant, measurable effect on moving our shareholders out of poverty. Clearly Afognak's success in building our businesses has allowed us to make a dramatic effect on our shareholders' lives and particularly the lives of those living in our rural communities. Many of our shareholders live in a village with no grocery store; and where an airplane ticket to travel to Kodiak or Anchorage costs $100 and $700, respectively. The cash dividends Afognak provides meet critical needs of our shareholders on basic human necessities—housing, food, childcare, education, and energy costs.

Also noteworthy is the increase in Afognak Shareholder equity as a result of our participation in 8(a). Afognak's Shareholders' equity, which is the total assets of the corporation less the total liabilities of the corporation, has grown $87,350,000 over the last eleven years. However, our shareholders' equity, like that of all other ANCs, is substantially different from that of other business owners, particularly other individual 8(a) participants. As mandated by ANCSA, shares in Afognak Native Corporation cannot be bought or sold. Shares are not a liquid asset for our shareholders, and they cannot be used as capital for private investment. Nevertheless, this growth in shareholder equity strengthens the foundation of our corporation and sustains the benefits we currently provide, while also supplying resources to support and enhance our culture and traditions that may have otherwise been lost for future generations.

One final benefit I would like to touch upon is Afognak's scholarship programs. Our corporation is committed to developing future generations of Alaska Native

leaders. As such, Afognak offers two scholarship programs for shareholders and their descendants who want to attend traditional universities, vocational education, or other training programs: the Higher Education Program (HEP) and the Career Enhancement Opportunities (CEO) Program.

The Higher Education Program provides financial support to shareholders and their descendants who are pursuing higher education through traditional university or vocational education. From 2000 to 2010, Afognak awarded $1,368,144 in 334 scholarships to our shareholders and their descendants under the HEP.

The Career Enhancement Opportunities Program provides financial support to shareholders and their descendants who are seeking additional education to enhance career opportunities through means other than full-time traditional college or university attendance. From 2000 to 2010, Afognak awarded $210,771 in 171 scholarships to our shareholders and their descendants under the CEO Program.

These programs provide the means and opportunities to further our shareholders' educations in a manner which otherwise might not have been available. We are beginning to see the fruits of our efforts. Many recipients are graduating or completing their chosen program and putting their new skills to work for Afognak, their communities, and/or their families. We are slowly working towards the generational shift that will allow our shareholders to hold the senior management positions in our Corporation—but we are not there yet.

Afognak is proud of the collective benefits we are able to provide our shareholders, their families, their descendants and the Native community at large as a result of participating in the 8(a) program. We believe it is exclusively the role and responsibility of our Board of Directors to evaluate the needs of our shareholders and to implement the appropriate methods to best meet those needs. This practice is consistent with the overarching federal Indian policy of economic self-determination.

Conclusion

In closing, I would like to reiterate my overall message—the 8(a) program is working as intended and working quite well. This program has enabled Afognak to provide the financial support and economic opportunities to many who previously had little hope of gaining an education, starting a business, or joining the professional workforce. The 8(a) program enables ANCs like Afognak to deliver critical support in the form of shareholder dividends and community services to revitalize economically-challenged Alaska Native communities as well as provide great value and service to the Federal Government.

In 1971, the U.S. Government made a commitment to honor and support the Alaska Native people. This promise came through the Alaska Native Claims Settlement Act when the U.S. Government seized millions of acres of oil-rich Native land worth hundreds of billions of dollars in exchange for the formation of ANCs and subsequent participation in the SBA 8(a) program. Today, we expect the U.S. Government to keep its promise by sustaining ANC participation in this program.

Quyanaasinaq—(thank you very much) for the opportunity to tell the Afognak story.

PREPARED STATEMENT OF KEN JOHNS, PRESIDENT/CEO, AHTNA, INC.

Chairman Akaka, Vice-Chairman Barrasso, and honorable members of the Senate Committee on Indian Affairs, *Nts'e dit'ae* (a formal Athabascan greeting). My name is Ken Johns and I currently serve as the President & CEO of Ahtna, Inc., one of the 13 regional corporations established under the Alaska Native Claims Settlement Act (ANCSA) of 1971. By way of introduction, I am a shareholder of Ahtna, Inc., and am originally from Copper Center, which is located in the Copper River Valley. Thank you for the opportunity to provide written testimony for the record pertaining to the hearing held on April 7, 2011, titled, *"Promise Fulfilled: The Role of the SBA 8(a) Program in Enhancing Economic Development in Indian Country."* The title of the hearing could not be more appropriate. As this testimony will demonstrate by providing background on Ahtna, Inc., its business operations, and its participation in the Small Business Administration's 8(a) program, the SBA 8(a) program has provided Ahtna with knowledge, tools and skill sets to bring our Corporation from near bankruptcy to a solid foundation and the ability to provide many needed benefits to our shareholders. This is one program that is working for Native peoples.

Background of the Ahtna People

Historically, the Ahtna People are Athabascan Indians, who settled the Copper River Basin region over 7000 years ago. The Athabascan people traditionally lived in Interior Alaska, an expansive region that begins south of the Brooks Mountain Range and continues down to the Kenai Peninsula. We lived in small groups of 20

to 40 people that moved systematically through the resource territories. Annual summer fish camps for the entire family and winter villages served as base camps. Depending on the season and regional resources, several traditional types of houses were used.

Our aboriginal lands included the area of Alaska which houses the Kennecott Copper Mine, the richest concentration of copper in the world. When the area was "discovered" by explorers, it was Chief Nicolai, an Athabascan Tyone who other chiefs recognized as their leader that greeted the famous first explorer of the whole of Interior Alaska. In 1885, US Army Lt. Henry Allen was given the mission to explore and chart all of the rivers in the Alaskan interior, record the indigenous tribes, and assess their numbers. [1]

Allen's small group began at the mouth of the Copper River and headed up the rugged valley. As he struggled up the rapids and cliffs about the river he was observed by the Ahtna people. Chief Nicolai, whose village of Taral was far up river near the present town of Chitina, was kept informed of Allen's progress. Eventually Chief Nicolai came face to face with the Allen party. Convinced that the Americans were no threat, he let them proceed; however, Chief Nicolai had great perception. When Allen revealed his keen interest in the copper found along the valley, Chief Nicolai knew it was only a matter of time before others would come. A few years later, Chief Nicolai's foresight became a reality when surveyors and engineers began to arrive. Soon after, the railroad was built and the Ahtna people's way of life was changed forever. [2]

The Kennecott Mine was the largest Alaskan operation of its type from that time until long after World War II ended. With the exception of the Juneau gold district, Kennecott's gross revenues in copper exceeded that of every gold mining operation in Alaska and the Yukon. On April 8, 1911, the first ore train hauled $250,000 of 70 percent copper ore. In 1916, the peak year for production, the mines produced copper ore valued at $32.4 million. [3] The Ahtna people never realized any profits or other forms of payment for the resources of their lands being taken.

In the 27 years of operation, except for 2½ years of shutdown, Kennecott produced 4.625 million tons of ore averaging 13 per cent copper valued at roughly $207,000,000 with an estimated profit of $100,000,000. In addition, the silver byproduct from this operation brought in another 4½ to 9 million dollars in revenues. The mine closed up shop in 1938. [4]

In the 1980s, Kennecott became a popular tourist destination, as people came to see the old mines and buildings; however, the town of Kennecott was never repopulated. Residents involved in the tourism industry often lived in nearby McCarthy or on private land in the surrounding area. The area was designated a National Historic Landmark in 1986 and the National Park Service acquired much of the land within the Kennecott Mill Town in 1998. [5] The land of the Ahtna people had been formally taken from them forever.

When Alaska became part of the United States in 1867, there was no provision in the law for private ownership in the new territory, except for the private individual property holders who had obtained written title to the land when it was under Russian rule. "Uncivilized" tribes (which included all but the acculturated Natives who had accepted the Russian Orthodox religion) were to be treated like Indians in the continental United States, which meant they had claim to their ancestral lands but no citizenship rights. "Civilized" tribes were to be given the rights and citizenship of other Americans; in practice, however, the United States government and new residents to the newly acquired territory treated all Alaska Natives as "uncivilized" tribes.

In 1906, John Billum, Sr., (Nasghilniie) an Ahtna Athabascan from Chitina drafted a document that claimed aboriginal rights to traditional lands. He was able to develop a map that included all headwaters and indicated what lands to which the Ahtna people had aboriginal claim. The document was delivered to Washington, D.C. by Mr. Charles O'Brien, a Bureau of Indian Affairs (BIA) teacher. This vital document would later become the foundation for the Ahtna region within the Alaska Native Claims Settlement Act.

By the time of statehood in 1959, most of the land in Alaska was already claimed by the federal government, with small amounts centered around the cities being owned by individuals, almost all of whom were non-Natives. Yet, the rights of Alaska Natives to their ancestral lands had been acknowledged in a number of legal doc-

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[1] *Legacy of the Chief,* Ronald Simpson 2001.
[2] Id.
[3] *http://en.wikipeida.org/wiki/Kennecott,Alaska*
[4] Id.
[5] Id.

uments from the time of the purchase by the United States. The message in all the documents was that Alaska Natives own their own land, but that it was up to future generations to decide how they would get title to it. The issue of exactly which lands were ancestral did not begin to be addressed until the 1900's when, bit by bit, Natives began to lay claim to portions of the land in the state.

The discovery of oil in Prudhoe Bay by Atlantic Richfield Company (ARCO) on March 12, 1968, created a sense of urgency as the need to pave the way for construction of an oil pipeline became evident. The first formal discussions by the Ahtna people on the proposed oil pipeline began in March, 1969. Our Ahtna leadership worked with members of Congress to help settle our land claims and clear the title on the land where the pipeline would be built.

On December 18, 1971, Congress passed landmark legislation known as the Alaska Native Claims Settlement Act (ANCSA). This Act completely changed the traditional role historically played by the federal government and its relationship to Native people. Rather than perpetuate the reservation system, the Act established corporate ownership of assets to ensure long-term profitability and financial independence for Alaska Natives. ANCSA provided the foundation of Alaska Native peoples' economic and legal relationships with the federal government. For these relationships and the approval of agreements by Congress, the Ahtna People and all other Alaska Native groups relinquished valid legal claims to lands and resources in Alaska.

History of Ahtna, Inc.

ANCSA established thirteen Alaska Native Corporations (ANCs) including Ahtna, Inc. and over 200 individual village corporations. Eventually the US Government ceded 44 million acres of land and paid $962.5 million to ANC corporations. To date a total of 1,528,000 acres of land has been conveyed to Ahtna, Inc. from an entitlement of 1,770,000 under the Act.

Seven of the eight village corporations within the Ahtna region created as a result of ANCSA, merged with Ahtna, Inc. in 1980 and their lands are now the responsibility of Ahtna, Inc. With this merger came a strong unity and vision of the future for Ahtna's original 1179 shareholders. Chitina Native Corporation is the only village corporation that did not merge with Ahtna and the only other ANC in the Ahtna Region.

Ahtna is governed by a 13-member Native Board of Directors, all of whom are shareholders of the Corporation. Board members are elected by their fellow native shareholders and serve three-year staggering terms. As an Alaska Native Corporation, Ahtna is responsible for meeting the economic, social and cultural obligations of our now 1,651[6] shareholders. This is a Congressional mandate taken very seriously by the Corporation and is reflected by our vision statement and expressed values.

Ahtna's vision reads:

Ahtna, Inc., with a strong sense of cultural pride and identity, will enhance the overall well-being of our shareholders through the wise stewardship of our natural resources, and sustained growth and economic development for future generations.

In addition, Ahtna's values are comprised of the following:

- Cultural and Traditional Principles
- Integrity
- Professionalism
- Dedication
- Respect
- Sharing
- Ethics
- Perseverance
- Courtesy

Ahtna is committed to providing a broad range of opportunities for our shareholders and preserving our Native culture; the Small Business Administration's 8(a) Program has provided a means to help achieve that end.

[6] As of April 15, 2011, there are 1630 active shareholders for 207,318 shares. There are an additional 21 inactive shareholders for shares totaling 2932 for a total of 210,250 shares. This includes Class L stock who are shareholders; the Ahtna Board and shareholders approved to opening enrollment to individuals born after December 18, 1971. As a result, the number of shareholders continues to increase.

Link Between ANCSA and Government Contracting

ANCSA established ANCs in part to resolve long-standing issues around aboriginal land claims and to facilitate economic growth in Alaska by introducing Native companies into the Western economic system. ANCSA was and continues to be an extraordinary national experiment in federal relations with Native Americans. The formation of corporations to deliver benefits to the Alaska Native people differs substantially from most government programs. ANCSA's main goal was to have a fair and just settlement of all claims by Alaskan Natives through self-determination, but it was also a development tool for one of America's poorest minority groups to escape from poverty through direct participation in a U.S. market economy.

As Ahtna, Inc. and other ANC's emerged from ANCSA, there was substantial evidence that Ahtna, Inc. and its shareholders were not receiving all of the benefits from the Act, including lands promised under ANCSA. As referenced earlier, Ahtna, Inc. still has 242,000 acres to be conveyed as part of the settlement. Due to the vast area and rural nature of Alaska, the lack of economic development opportunities in Native villages and the lack of basic infrastructure in rural Alaska, it was virtually impossible for ANCs to generate economic progress without significant assistance. Alaska's vast size and isolation created insurmountable obstacles to sustain economic development. In addition, the conventional corporate structure conflicted with our traditional Native values, hindering our ability to enter into a free enterprise society.

By the mid 1980s, many of the regional and village corporations were experiencing financial hardships and unable to break out of the geographic constraints in rural Alaska. Congress recognized the need for ANCs to be able to diversify in their economic opportunities and as a result, legislation was passed in 1986, amending ANCSA and allowing ANCs to participate in SBA's 8(a) program: "Congress confirms that Federal procurement programs for tribes and Alaska Native Corporations are enacted pursuant to its authority under Article I, section 8 of the United States Constitution." 43 U.S.C.1626 (e)(4)(A). Recognizing the unique structure and purpose of ANCs, Congress stated that for all purposes ANCs and subsidiaries controlled by ANCs would be considered owned and controlled by Natives as a minority business enterprise. 43 U.S.C. 1626(e)(1)&(2).

In 1992, Congress further amended ANCSA clarifying that ANCs and the businesses controlled by them are deemed "economically disadvantaged." 43 U.S.C. 1626(e)(1)&(2). This amendment eliminated the need for ANCs or our subsidiaries to prove "economically disadvantaged" status as part of the 8(a) application process, therefore, streamlining the acceptance process into the 8(a) program. However, even with this issue being resolved, it was still a two year process before Ahtna was successful in having a subsidiary enter into the program in 1994.

While Congress has enacted many laws to nurture self-determination and economic development in Alaskan Native communities, our ability to participate in SBA's 8(a) program has been the most successful program enacted to meet the federal government's Trust Responsibility towards the Native people of this land.[7] A primary goal of federal policy toward Native people in Alaska is that ANCs will help alleviate poverty and economic and social disadvantages among Alaskan Natives. Not surprisingly, as Alaskan Natives, we continue to experience many of the social ills associated with high rates of poverty: low per capita incomes, lower levels of educations, high rates of alcohol and drug abuse, higher than normal rates of diabetes, heart disease and obesity, and many social problems such as shockingly high rates of suicides (three times the rate of other Alaskans), high rates of crime, and incarceration.

ANCs and the SBA's 8(A) Program

In 1968, the SBA 8(a) Business Development Program was established to assist firms owned and controlled by economically and socially disadvantaged individuals to enter the economic mainstream. Assistance is rendered to eligible firms in a structured developmental process over a nine year program participation term. Services include provision of: developmental analysis, counseling, and progress monitoring; management and technical assistance authorized under 7(j) of the Small

[7] See *AFGE v. United States*, 95 F. Supp.2d4, 36 (D.D.C. 2002), aff'd 330 F.3d 513 (D.C.Cir. 2003). Federal Government argued in court that Native participation in the 8(a) program "furthers the federal policy of Indian self-determination, the United States' trust responsibility, and the promotion of economic self-sufficiency among Native American communities." See also, *Morton v. Mancari*, 417 U.S. 535, 555 (U.S 1974). U.S. Supreme Court upheld legislation that provides for unique application of laws to Native Americans due to the unique history and role of dealings with Indians and has stated that as long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward Indians, legislation regulating commerce with Indian tribes will not be disturbed.

Business Act; and access to business development opportunities under section 8(a) of the Act. Alaska Native Corporations, lower 48 Tribal Governments, and Native Hawaiian Organizations (NHOs) have been granted unique rights under this program to help foster economic development.

The establishment of the unique aspect of the SBA 8(a) specifically for what has been termed as "Tribal 8(a)s," "ANC 8(a)s," or "Native 8(a)s" (collectively "Native 8(a)s") is a recognition by Congress and our federal government that these Native organizations have a larger obligation and responsibility in doing business as government contractors—Native 8(a)s must utilize business approaches and models to perpetuate the indigenous cultures whose only home lands are within the United States while at the same time fostering economic independence through participation in the mainstream economy. Unlike investor owned 8(a) firms that benefit one or two people, Native 8(a)s are owned by Native enterprises that have a direct responsibility to the Native communities they serve, communities which are comprised of hundreds and often times, thousands of native individuals.

As a matter of law, ANCs' deservedly qualify as "economically disadvantaged," which is a fundamental part of governmental efforts to encourage Native American participation in federal contracting. Tribes and ANCs are exempt from a federal cap on no-bid service and construction contracts that applies to 8(a)'s owned by individuals. Congress created this distinction because as explained above, tribes and ANCs serve large communities and groups of shareholders, while other minority small businesses generally provide benefits to sole proprietors or small groups of owners. Like all 8(a)'s, an ANC 8(a) company must perform at least 50 percent of the work on 8(a) contracts with their own employees for federal service and manufacturing contracts and 15 to 25 percent of the work for federal construction contracts. Those requirements set the minimum amount of work 8(a)'s must perform. In reality, the vast majority of ANCs, including Ahtna, surpass those amounts and provide employment for thousands of Alaskans, along with people residing in the Lower 48.

The primary goals of ANCs are economic self-sufficiency, community and cultural development and continuity of Alaska Native tribes and villages. In recent years, there has been substantial interest regarding monitoring and oversight of Native 8(a) contracting. As a result, the National Defense Authorization Act (NDAA) for FY 2010 included a provision now known as Section 811. This section requires any sole-source contract to Native Enterprises valued at $20 million or more to go through a formal written Justification and Approval (J&A) process. Tribal consultations were held on Section 811, in accordance with Executive Order 13175, prior to drafting the implementing regulations. These consultations were finalized in October, 2010 and the FAR Council published an interim final rule on March 15, 2011.

In addition, on February 11, 2011, the SBA issued final regulations that provide significant reform to the 8(a) program, addressing concerns that have been raised by some members of Congress and certain factions of the media, about the program. These regulations were the result of years of work including numerous Tribal consultations held over the course of three years. The regulations went into effect on March 14, 2011, and will increase oversight of Native 8(a) firms, significantly change how ANCs, Tribes and Native Hawaiian Organizations participate in the program, and increase reporting and transparency.

ANC companies and leaders have embraced more oversight by SBA in order to verify that ANC enterprise in the 8(a) program are good stewards of taxpayer funds, consistent with the intent of Congress. The fostering of competitive and self-sufficient ANCs is in the interests of the United States, and Alaska Native communities. Competitive and self-sufficient ANCs will help alleviate economic and social disadvantages of Alaska Native communities, increase tax revenues, and reduce the costs of government support programs to Alaska Natives. Continued support and guidance from SBA programs will incubate market competitiveness among ANCs and allow Alaska Native and Congressional goals of economic self-sufficiency and greater local self-government and cultural recovery more quickly and efficiently.

Ahtna, Inc. and SBA's 8(a) Program

Prior to entering into government contracting, Ahtna's primary source of revenue was contracting with oil companies to perform work on the Trans Alaskan Pipeline. Construction on the pipeline began in 1973 and Ahtna, Inc. formed its first subsidiary, Ahtna Construction & Primary Products Corporation, to pursue this line of work. Ahtna has a unique relationship with the oil companies as the Trans Alaska Pipeline travels through 55 miles of Ahtna land and bisects the region along the Copper River. By the mid 1980's the contracts on the pipeline began to decline and by the end of the 1980's our operational profits from pipeline ventures were at a breakeven point. Like many other ANCs, Ahtna learned the hard way that the lack of diversity of economic opportunity in our region left us chronically at risk. As we

had no other sources of regional economic development, we knew that we had to venture into new markets to secure additional revenue streams and ensure a more stable economic platform. The 8(a) program offered the ability to diversify and secure additional revenue streams.

In November 1994, Ahtna Development Corporation (ADC) became the first of Ahtna, Inc.'s subsidiaries to receive certification as a Tribal 8(a) company from the Small Business Administration. ADC's lead core business has been Operations and Maintenance (O&M) with specialization in Department of Defense sites worldwide. The Information Technology and Records Management core businesses were added in 1997 forming the new growth aspect of the company. ADC graduated from the 8(a) program on October 31, 2002 and continues to perform numerous contracts and business operations to provide opportunities and benefits to our shareholders.

By the late 1990s, Ahtna, Inc. made a business decision to increase our capabilities, expertise and ability to go after larger sources of contract revenue. In this process, Ahtna decided to purchase ownership in 3 separate companies to pursue government contracts. The Clearwater Group, Wire Communications Inc. and Ahtna Government Services Corporation were all companies in which Ahtna acquired 51 percent ownership. We were new to a complex organizational structure and were growing quickly, and did not yet have the business expertise to manage these changes. As a result, the Corporation experienced management challenges and difficulties in dealing with business partners. It was at this point that the board and shareholders embraced a change in management and direction.

After learning some hard lessons from business losses, Ahtna decided to take greater control of its subsidiaries and acted on retaining companies with 100 percent ownership or selling our ownership interest if 100 percent ownership could not be attained. We took 100 percent ownership and control of Ahtna Government Services Corporation and The Clearwater Group and in 2004 sold our ownership in Wire Communications Inc. Since making those changes, all of our subsidiaries are now 100 percent owned by Ahtna, Inc. and their boards are all comprised of Ahtna shareholders. This structure provides transparency throughout the family of companies, which is the key to our future success.

This transformation was vital because at the beginning of 2004, Ahtna was reeling from a string of unprofitable years and facing a growing amount of debt. Our financial institution was squeezing the corporation with restrictions and made no bones about the fact that they did not want our business anymore. On top of that there was a growing list of pending litigation that threatened to topple our company. One case in particular involved a previous decision to back a third party construction company bond that had a $14 million liability. Ahtna was in dire straits and the light at the end of the tunnel was getting dimmer and dimmer.

In the fall of 2004, Ahtna Government Services Corporation entered into the Department of Energy's Mentor/Protégé program with Tetra Tech and won a large DOE contract ($80 million—3 year) to provide contract oversight and design build of overseas nuclear detection devices at key points of cargo transit. This contract was competitively re-bid in 2007 and awarded to Ahtna Government Services Corporation. The growth and experience Ahtna gained through this contract is a testament to the intent of the 8(a) program and ANCSA. It was a huge success and helped to breathe life back into Ahtna, Inc, as our banking institutions were now willing to provide financial support to our company.

Throughout the course of this contract, Ahtna Government Services Corporation self-performed only the contractual minimum percentage of the work, and by the end we had acquired the knowledge and skill set to meet and surpass our SBA required percentage of self-performance. This helped us capture profit which we used to pay down other obligations in a timely manner. This contract, the capabilities we developed through it, and our unique rights in the SBA 8(a) program saved our corporation from having to declare bankruptcy. Although we were unable to pay shareholder dividends during this time, we maintained a strong financial effort to provide benefits to our shareholders in the form of land protection, subsistence advocacy, scholarships, employment, burial assistance benefits and self-determination (benefits are more thoroughly address later in this testimony).

Since 2006, Ahtna has turned the corner on our past problems and we have begun to see the light at the end of the tunnel. Our efforts to keep this company focused on shareholder leadership and development has not only met the intent of ANCSA and the 8(a) program but it also meets the aspirations of our people. Our people know that as a corporation we have come a long way, but there are still many struggles in our communities we have yet to overcome. The 8(a) program has played an enormous role in our ability to provide benefits to our shareholders. We still need continued assistance and support to ensure that all our shareholders have the op-

portunity to fulfill the promises of both our land settlement and as citizens of the United States the ability to have self determination.

Ahtna now has twelve[8] operating subsidiaries involved in a wide variety of business, including government contracting, civil and vertical construction, pipeline maintenance, environmental remediation, surveying, facilities maintenance, administrative and janitorial services, food service contractors, tourism, forestry and gravel sales. Of our twelve operating subsidiaries, five have successfully graduated from the SBA's 8(a) Program, and four are currently in the Program. Each of these companies are budgeted to show profits for Ahtna in 2011 and beyond. Each has created name recognition within their fields of industry and all are highly competitive in going after new contracts. This economic diversity would not have been possible without the 8(a) program and the ability to go outside Alaska to find opportunities.

Ahtna's Vision Regarding Shareholder Benefits

Ahtna is a shareholder run company at all levels which is the driving force behind Ahtna's ability to provide meaningful opportunities and culturally significant benefits to our 1,651 shareholders.

Our thirteen-member board directs operations, and all board members are Ahtna shareholders. Ahtna has several active board committees which also provide direction to Ahtna's management in all aspects of the Corporation, including the Customary and Traditional Committee (subsistence); Land Committee; Shareholder Committee; Investment Committee; and Policy Committee. In addition, each subsidiary has a three or five-member board selected from the Ahtna, Inc. Board of Directors, resulting in all subsidiary board members also being Ahtna shareholders.

Ahtna's management team consists of nine members, five of which are Ahtna shareholders, including the President/Chief Executive Officer, Chief Operating Officer, Vice President of Land and Resources, Vice President of Human Resources and Vice President of Corporate Affairs. In addition, the Vice President of Legal Affairs & General Council (another management team member) is an Alaskan Native, making a total of six of the nine members being native individuals. Five of the seven subsidiaries that have Presidents are shareholders.

These numbers reflect that Ahtna shareholders are leading our companies into the future with a strong desire to enhance the overall well-being and education of all shareholders so our future generations can step into their roles and lead our companies with a sense of cultural pride.

Ahtna and its family of subsidiary companies understand that the ultimate purpose of all operations is to benefit our shareholders and future generations. The question asked by leadership regarding any endeavor is "What is the long-term benefit for our shareholders?" A majority of Ahtna's 1,651 shareholders (and their descendents) reside in rural Alaska in isolated and economically disadvantaged areas. For example, in 2000, Gulkana (74 percent Alaska Native) was 41 percent below poverty and 39 percent unemployed. In comparison, Glennallen (12 percent Alaska Native), a town 14 miles south of Gulkana, was only 8 percent below poverty and 5 percent unemployed. *See http://www.commerce.state.ak.us/dca/commdb/CF_BLOCK.htm*. Therefore, providing certain services to shareholders, such as advocacy for subsistence rights and assistance with burial costs for family members, is a priority.

Land is one of the most important shareholder assets. In exchange for giving up its aboriginal claims, Ahtna has thus far received 1.5 million acres out of its 1.77 million entitlement under ANCSA, which was small in comparison to the original 44 million acres set aside for all ANCSA corporations. Under the Alaska National Interest Lands Conservation Act (ANILCA), 603,000 acres of Ahtna's entitlement was locked up in the formation of the Wrangell Saint-Elias National Park and Preserve and the Denali National Park Preserve. Development of this land for shareholders' benefit has been difficult, if not impossible. Additionally, Ahtna's land is accessible by road and on the pipeline corridor, causing trespass and unauthorized to be a long standing problem. It is easy to understand why protecting and preserving our land for resource development, shareholder use and subsistence is a top priority to our People.

Of the $962 million dollars distributed from ANCSA, Ahtna's share was only $13.3 million dollars paid over a number of years in small installments. Balancing our shareholders' interests over the years, Ahtna has needed to carefully spend these funds to protect shareholder land and provide basic shareholder services. As a result, over the past decade, Ahtna has invested over $15 million in protecting, preserving, maintaining and being good stewards of our lands. All resources used to protect our most valuable asset will always be money well spent.

[8] As of March 31, 2011.

Although stated earlier in this testimony, it is important to remember Ahtna's vision when discussing benefits. The company's vision focuses not only on profitability, but also on providing vital shareholder services and cultural preservation, land protection and preservation, and economic opportunities for our People. Ahtna strives to promote these priorities for our shareholders.

Benefits to Ahtna Shareholders

Ahtna exists to improve the lives of the Athabascan People that have inhabited the Ahtna Region for over seventy centuries. Ahtna also exists to protect and preserve the Athabascan culture and values, by providing financially for individual shareholders and their communities, by protecting and preserving our lands, by promoting cultural gatherings and supporting the preservation of cultural resources, by bringing shareholders together to discuss issues of importance to the Ahtna People such as lands and subsistence, and by supporting organizations and endeavors that benefit Native people across Alaska. From 2000–2010, Ahtna has spent in excess of $20.2 million to provide a great myriad of benefits to our shareholders and their families.

As Ahtna finds its way through financial recovery, the Ahtna Board has been able to focus more on investment strategies that will ensure the sustained funding for future generations of shareholders, as well as increasing shareholder benefits and services for the generation that made ANCSA and Ahtna, Inc. a reality. Ahtna maintains shareholder relations staff in each of its offices, to answer questions and provide services to shareholders. Ahtna provides quarterly shareholder publications to report on business, announce opportunities, provide subsistence and land information, and make announcements about special events in shareholders' lives. The following provides an overview, but not comprehensive explanation, of the benefits Ahtna is now able to offer its shareholders, largely in part of the Corporation's participation in the SBA 8(a) program.

A. Shareholder Relations and Cultural Preservation

The Ahtna Heritage Foundation. The Ahtna Heritage Foundation (TAHF) is a regional non-profit that administers Ahtna's cultural and educational programs. TAHF was established in 1986 to perpetuate the Ahtna heritage and enhance the socio-economic status of the Ahtna people. To accomplish its mission, TAHF uses the traditional culture to enhance the education, the life skills, the pride and self esteem of the Ahtna people. TAHF focuses on remembering and retaining the positive aspects of the Ahtna history and culture.

Ahtna supports TAHF by funding its operating costs ($186,865 in 2010), as well as providing in kind support through other professional services and office space. TAHF is able to use its funds to run the Ahtna Cultural Center, document oral traditions, maintain cultural artifacts, assist with the Ahtna Culture Camp, facilitate the Ahtna dance group, and support many other projects that focus on Ahtna history and culture. Since 2000, Ahtna has contributed approximately $2 million towards TAHF, either in scholarship monies, operating costs, or other in-kind donations.

Scholarship Program. In addition, TAHF administers the Walter Charley Memorial Scholarship Program, named after our prominent Athabascan Elder and Chief who spoke to youth and elders about heritage and wisdom. The Scholarship Program uses funds set aside by Ahtna, Inc. for this purpose. Scholarships are available to full-time and part-time students in good standing. In recent years Ahtna has been able to substantially increase the amount budgeted for this Program. For example, in 2001 Ahtna spent $30,000 in scholarship awards, while in 2010 Ahtna spent $187,000. The budget for 2011 is $200,000.

Ahtna also encourages our shareholder students by providing them graduation financial awards at every stage of their process. Ahtna provides these gifts for students receiving a GED, a certificate, or an undergraduate or a graduate degree.

Cultural Preservation. Apart from TAHF, Ahtna supports other projects and activities that perpetuate the Ahtna culture and history. Ahtna purchases traditional artwork and jewelry, including the beadwork that is so much a part of Ahtna's history and ceremonial dress. Ahtna has supported the Ahtna Culture Camp, where elders share precious time and knowledge with youth and others in the Copper River Region. These are opportunities to share historical stories, traditional ways of subsistence and the Athabascan language. Learning these traditional skills helps youth develop a closer connection to their culture. In recent years, Ahtna has also hosted an annual Youth and Elders Conference, providing another opportunity for Elders to share their wisdom and traditions with the younger generation. Ahtna has commissioned consultants to digitalize tape recordings, and recently commissioned an anthropologist to identify historic trails within the Ahtna Region and document

their names in the Ahtna language. Investing in our culture is an intangible asset that is priceless but since 2007, Ahtna has contributed approximately $700,000 into our cultural preservation activities.

Burial Assistance Fund and Memorial Support. For many years, Ahtna has maintained a Burial Assistance Fund, providing shareholders with much needed funds following the death of a close family member. This Program has seen significant increases in funding in recent years, currently providing $3000 to help a family suffering a loss to cover the funeral expenses and over the last decade, Ahtna has offered approximately $465,000 in burial assistance to our shareholders. In addition, Ahtna often provides shareholders other support during the traditional potlatch to celebrate a loss.

Elders Benefits Program. Ahtna considers one of its most valuable and honored resources to be its Elders, and the health and welfare of its Elders to be of utmost importance. Ahtna's Elders provided the guidance to establish Ahtna, Inc. and to lead it to becoming a very successful company for all shareholders. We have long provided our Elders resources they may need, such as salmon, game and chopped wood, as well as food gift baskets during the holidays. In recent years, the Ahtna Board of Directors established an Elders Benefit Program to further foster our Elders' health and welfare. The Board declared the first Elders' benefit in the amount of $300 per Elder in December, 2009 and declared the same Elders' benefit in December, 2010. Although the dividend may seem small, it was a huge step for Ahtna and helping to provide for our Elders.

Dividends. Recognizing that the majority of our shareholders do not have much financial wealth or the ability to find employment in the Region, Ahtna strives to responsibly issue dividends to shareholders. As discussed above, Ahtna has been through some tough times in the early 2000s and was unable to issue a dividend in those years. With the economic successes in recent years, Ahtna provided dividends in 2007, 2008 and 2009 of $2.79 per share and $4.00 per share in 2010. This is a total of $2,377,923 being paid out in dividends to our shareholders over the past four years!

Regional Community Support. We understand the importance of community and the role that other entities have in supporting our shareholders. Every year the Board provides an annual contribution of $10,000 to each Village in the Region, and often helps fund their annual meetings. Our donation helps with administrative costs associated with running tribal programs that are chronically underfunded by the BIA and other agencies. Ahtna also supports the Copper River Native Association (CRNA), the Regional non-profit entity providing health and social services to the Native people living in the Ahtna Region. CRNA is also significantly underfunded by the Indian Health Service (IHS), which routinely does not pay tribal entities the indirect costs associated with running IHS programs. We support other community activities in the Region, such as an annual basketball tournament, community carnivals and parades, dances, shareholder open houses and holiday receptions.

Other Organizations. Ahtna also recognizes that collectively many ANCs and Alaska Native organizations face the same opportunities and challenges as we do, as well as the drive to provide for our People in culturally appropriate avenues. Therefore, Ahtna donates to some of these organizations, such as the Alaska Federation of Natives (AFN), the Native American Rights Fund (NARF), and the ANCSA Regional Association. The existence of these other organizations, their pursuit of like causes, and the ability to tackle issues as a collective benefit to our shareholders.

B. Shareholder Development—Training, Education and Employment

Ahtna's shareholder development vision is to "encourage shareholders to reach their highest employment potential and to provide them employment opportunities within Ahtna for all future generations." As such, Ahtna focuses on helping shareholders obtain employment, training and education, and by getting shareholder employees into management training tracks within our company to ensure Ahtna is shareholder run and managed.

In recent years, with additional funding from profitable subsidiaries and with additional job opportunities, Ahtna has been able to institute a more aggressive program to recruit, hire, train and retain shareholders. In 2008, Ahtna hired a Shareholder Development Coordinator to run the Shareholder Development Program. Over the course of 2008, Ahtna and each subsidiary company prepared a 2009 Shareholder Development Plan, outlining their Board and Management Team's shareholder development initiatives. Over the past two years, Shareholder Development has made tremendous strides in reaching our shareholders and assisting them

with their employment goals. For 2011, the focus areas of the Shareholder Development Department are:

- Strengthening subsidiaries relations and reporting mechanisms
- Strengthening shareholder employee relations and use of shareholder development plans
- Expanding shareholder outreach efforts and communications
- Redesigning Talent Bank to be a more comprehensive recruitment/employment assistance tool
- Establish P&Ps for On-call and Workforce Development programs
- Further development of Internship Program
- Release a Shareholder Demographics Survey
- Expand employment support services and educational assistance resource library

To provide a better understanding, we highlight a few specific Shareholder Development programs below.

Shareholder Hire. First and foremost, Ahtna has always promoted shareholder hire through a "shareholder hiring preference," which also includes a preference for hiring shareholder descendants and spouses. This preference has translated into hundreds of employment positions within Alaska and particularly through Ahtna's construction and pipeline projects. In our 2005 report to the U.S. Government Accountability Office, we reported 760 employees across the Ahtna family, of which 86 were shareholders. As of December 31, 2010, Ahtna has 2,188 employees, of which 96 are shareholders.[9] Although we recognize that our shareholder hire percentage would appear small due to increased work outside Alaska, we have been able to maintain about a 1 in 4 shareholder hire ratio for our Alaska positions. (Ahtna generally maintains the existing workforce when taking on new work in the lower 48.) Ahtna had approximately 401 Alaska-based employees in December 2010, of which 96 were shareholders, shareholder descendants or shareholder spouses.

Ahtna also partners with companies outside the Ahtna family to provide employment and training opportunities in the Region. For instance, Ahtna has an agreement with Princess Lodge, which is has a resort in the Ahtna Region, whereby Princess will train qualified shareholders in management positions at the resort. Additionally, Alyeska Pipeline Service Company provides Ahtna funding to support individual shareholder interns in fields that are relevant to the pipeline work.

Internship Program. Ahtna began its internship program informally and started the Shareholder Internship Pilot Program in Fall 2006. This Program is now permanent and has three internship opportunities within the Ahtna Family of Companies in 2011. This Internship Program assists Ahtna shareholders and descendants in pursuing higher education by funding school costs, providing work experience, and helping them achieve successful employment within the Ahtna family of companies. Along similar lines, in 2008 Ahtna also started the Youth Summer Intern Program, providing recent high school graduates the opportunity to work at Ahtna for the summer.

Ahtna has many success stories over the short course of this Program. Specifically, five of the six interns that participated between Fall 2006 and Spring 2008 have been hired within the Ahtna family. For example, Eva Olhausen participated in the Pilot Program between 2006 and 2007. After she received her B.A. in Business Administration in 2007, Eva was hired on full time as a Human Resources Specialist at Ahtna Technical Services, Inc. Eva has since transferred over to Ahtna, Inc., as the Benefits Specialist and has received her Benefits certification.

Temporary Employee Program. Ahtna maintains a list of on-call shareholders interested in working within the Ahtna family of companies. Ahtna fills all temporary clerical and laborer-type positions through this on-call list. These "temp" placements give shareholders an inside view of working for an Ahtna company and also give them an opportunity to display their skills and qualifications.

Individual Shareholder Development Plans. Ahtna helps employee shareholders identify their career goals through Individual Shareholder Development Plans (ISDP). An ISDP outlines the shareholder's strengths and goals, and identifies professional/education development opportunities that help the shareholder reach their career goals.

Management Trainee Program. Shareholder management is not new to Ahtna, as is demonstrated by the current Ahtna leadership. Ahtna shareholders are leading

[9] For the purposes of these numbers, "shareholders" includes shareholder descendants and spouses of shareholders.

the companies and ensuring future generations can step into their roles and lead our companies with a sense of cultural pride. Ahtna recognizes the need to identify and promote "emerging executives" and the need for "executive management training" to ensure Ahtna stays a shareholder managed company. In past years, Ahtna has funded significant continuing education and training expenses for our shareholder executives and managers.

Through this program, we identify shareholders with the potential and interest to manage within the Ahtna family and develop an ISDP to get them there over an appropriate timeframe. Many other Ahtna, Inc. manager positions are currently held by shareholders, including:

Shareholder Records Manager (maintains all shareholder records and stock transfers)

Land and Administrative Supervisor (oversees 8 employees in the Glennallen office)

Information Technology Technician (manages Alaska-based IT needs)

Management Trainees and other managers can receive assistance with a college degree or other training, and may work across several different departments and companies within the Ahtna family. The ultimate goal to maintain a manager or executive leadership position with the Ahtna family of companies.

Workforce Development Fund. In past years, Ahtna has funded training opportunities that promote employability in the trades. For instance, in 2006 Ahtna sent 13 shareholders to training in Texas for "rough neck" training. In recent years, Ahtna has budgeted $30,000 in a Workforce Development Fund to (1) provide individual shareholders funding for training opportunities, including enrollment and travel costs; and (2) to sponsor trainings in the Region impacting the employability of a large number of shareholders. With regard to the latter, Ahtna Contractors, LLC has been sponsoring skills trainings in the Region where there is an identified skill set needed to perform current construction projects.

Outreach. Ahtna is committed to providing shareholders access to information, support services, training and employment through effective outreach and marketing of Ahtna occupations and careers. We continuously update our job openings and advertise career opportunities to shareholders, through the Shareholder Development News (e-newsletter), the Kanas (quarterly shareholder publication), the *Ahtnajobs.com* website, and other shareholder contact tools (such as advertising at local high schools and other job fairs).

C. Land and Resource Management

Ahtna, Inc. owns in fee title, approximately 1,528,000 acres conveyed in December 1998 from an entitlement of 1,770,000 acres. This includes 714,240 acres of land surrounding the eight villages, and close to 45,000 acres in bonus selections to be distributed to the villages based on historic use and subsistence needs. Ahtna's Land Department is guided by the strategic direction of the Ahtna, Inc. Board of Directors and the Board's Land Committee and the Customary and Traditional Committee. Unlike "traditional" for-profit corporations managing buildings or property, the priority of Ahtna's shareholders is to manage these lands and resources for future generations of the Ahtna People in accordance with cultural and traditional uses and values, conservative development strategies, and principles of culturally appropriate stewardship.

The Land Department has four primary functions: (1) identify and preserve Ahtna's land interests and allocate appropriate interests to others; (2) protect Ahtna's customary and traditional uses; (3) protect the land from unauthorized uses; and (4) manage and develop commercial land uses. Crossing over these broad categories, Ahtna maintains strong communications with shareholders and villages on land-related issues; works closely with State and Federal agencies on land and natural resource matters; and provides for geographic information system (GIS) mapping to provide support and research land status and development issues. Our land programs are a direct benefit to our shareholders, and several specific programs are discussed below.

Merged Village Programs. In 1980, seven of the eight Village Corporations merged with Ahtna, Inc. Under the terms of the Merger Agreement, Ahtna assumed management of all former Village Corporation lands. Ahtna is required to coordinate use of these lands with village-based shareholder committees known as Successor Village Organizations (SVO). The SVO reserves the right to withhold consent to any type of new development within the former village lands. The Land Department also obtains permission from an SVO before issuing any commercial use permit within those lands. Ahtna respects these rights and expends considerable funds ensuring Land Committee and SVO participation in land decisions.

The Merger Agreement also provides for the transfer of former Village Corporation lands to individual shareholders from the merged Village Corporations. This Merger Land Use Program provides shareholders to a long-term lease of 5 acres per 100 former Village Corporation shares. Ahtna manages this program as well.

Homesite Program. Under ANILCA, individuals are entitled to 1.5 acres of land in fee title if they can prove traditional use of the land. Ahtna administers a Homesite Program that assists shareholders with identifying their property interests, completing the appropriate paperwork, and documenting their traditional uses for submission to the BLM.

Resource Development. Ahtna's lands include areas that are either known resources or have high probability for resources for gravel, timber, minerals, oil and gas. The Land Department manages development of Ahtna's resources considering potential revenue to Ahtna and shareholder dividends and minimizing negative impacts on traditional shareholder activities such as fishing and hunting. For instance, in 2010 Ahtna's gravel sales brought in $81,412 in revenue.

Commercial Land Use Program (Lease, Permit, Easement). The Land Department issues leases, easements and permits for commercial uses. These arrangements generate funding through a $1000 proposal fee, which supports administration of the Land Department's research and review. Additionally, if Ahtna accepts the proposal, as part of the agreement, the lessee donates 10 percent of the contract or $1,000 (whichever is greater) to the Walter Charley Memorial Scholarship Fund.

Individual Use Permit Program. Ahtna's lands are open to entry by permit only. Ahtna's Permit Program allows individual use in a variety of manners. A land crossing permit can be purchased to cross Ahtna lands to reach public hunting or fishing areas. Permits are issued for small amounts of gravel, for individual use such as a driveway. Permits are issued for camping and berry picking. Ahtna does not allow hunting on its lands except for a special Bison permit and for Predator Control Hunting (i.e., wolves). In 2010, Ahtna issued 451 individual use permits.

Shareholder Resource Program. Ahtna provides shareholders access to free gravel for personal use such as for a driveway, and allows villages access to free gravel for village projects. Shareholders are also entitled to 100 free house logs per year and 25 cords of fire wood.

Shareholder Assistance Program. Ahtna assists shareholders with land status research at no cost. Ahtna provides maps, GPS services, property legal descriptions, surveys, title research, and assistance with BIA Native Allotments. Ahtna waives all the fees associated with shareholders submitting requests under the Commercial Land Use Program, as well as the Scholarship donation for accepted proposals.

Subsistence Preservation. Like most ANCs, Ahtna's People have a traditional subsistence lifestyle, hunting moose and caribou and fishing in Ahtna's many rivers like the Copper River. We help protect these customary and traditional practices through subsistence advocacy. The Land Department and Ahtna management review proposed regulations, attend meetings, and submit proposals and comments regarding both State and Federal laws and regulations. Ahtna representatives sit on boards and committees that provide venues to protect Native subsistence rights. Ahtna has also been at the forefront of litigation against the State of Alaska to protect subsistence rights. Ahtna supports other entities, like NARF, which also seek to protect Native subsistence rights.

Land Protection. Ahtna land is on the road system in an area accessible to Alaska's major population hubs (Fairbanks and Anchorage). Trespass is frequent and land protection is a major component of Ahtna's land management program. Land Protection Officers are stationed in each village and deal with all complaints of trespass, hunting disputes, trap line disputes, theft, wood cutting disputes, vandalism, criminal mischief, littering, hazardous material dumping and clean up issues. Officers educate shareholders and the general public on private land laws, patrol via ATVs and boats, post private property signs, and issue permits in the field to individuals on Ahtna property.

D. Reinvestment in Our Companies

Ahtna's ability to provide benefits to our shareholders can only come as a result of successful business opportunities and growth of our companies. In order to have successful and growing companies, it is imperative that we reinvest back into our companies, empowering them to build stronger infrastructure, powerful leadership, and the capabilities to bid and win larger and more competitive work. As the companies build, the benefits expand which is the ultimate goal and empowers our shareholders.

Conclusion

We as Alaska Natives ceded large parts of Alaska to the United States and trillions of dollars of natural gas and oil reserves. The Alyeska-Pipeline Service Company reported on its website that as of through 2010, over 16.2 billion barrels of oil have run through the Trans Alaska Pipeline System and although only rough estimates can be calculated, using the average price range of $80–$100 per barrel of oil, the equates very roughly to somewhere between over $1.28 trillion and $1.6 trillion being generated in revenue. That is an amazing amount in natural resources that Alaska Natives ceded to the United States and the number only continues to rise! In return, we retained some land and less than a billion dollars as assets to develop for-profit and non-profit regional corporations and associations. ANC access to the SBA's 8(a) program helps fulfill Congressional mandates for government contracting aimed at providing training and market opportunities for minority and disadvantaged businesses. Our Native shareholders are in control of our Corporations and are the primary beneficiaries of dividends, equity, and philanthropy generated by ANCs.

Our business is shareholder driven in every aspect. Our leaders, whether as Ahtna Shareholders in management, Village spokespersons, or directors on the board, have all played a meaningful role in shaping Ahtna as it stands today and the direction for the future generations of the Ahtna People. Through special contracting opportunities, we have been able to realize economic development opportunities that benefit entire communities of people that have historically and continue to this day to be economically depressed. Benefits cannot be measured by dividends alone, but rather employment opportunities, preservation of the traditional culture, opportunities for higher education and training, protection of our lands and resources, and enhancement of the pride and self esteem of the Ahtna People. Federal contracting through the SBA 8(a) Program is one of the vehicles that has given Ahtna the means necessary to provide these benefits.

I would like to close my testimony with one message—the 8(a) program is working and it is working well! To date, Alaska Natives still remain among the most impoverished populations in America but through utilizing programs such as these, we will continue addressing the needs of our people.

Thank you very much for the opportunity to provide this testimony.

PREPARED STATEMENT OF ERIC S. TREVAN, PRESIDENT/CEO, NATIONAL CENTER FOR AMERICAN INDIAN ENTERPRISE DEVELOPMENT

I. Introduction

Chairman Akaka and Ranking Member Barasso, the National Center for American Indian Enterprise Development (the "National Center" or "NCAIED") commends the Senate Committee on Indian Affairs for convening this important hearing, appropriately titled "Promise Fulfilled: The Role of the SBA 8(a) Program in Enhancing Economic Development in Indian Country." The National Center is pleased to present this testimony on how this program is furthering Native business development and fulfilling the overarching Federal Indian Policy goals of Indian self-determination and self-sufficiency.

The Small Business Administration (SBA) operates several small business contracting programs to achieve two important goals: (1) enable the Federal Government to diversify the supplier base for the Federal procurement market, and (2) strengthen small, minority and Native contractors seeking to penetrate that enormous market. Of all the SBA's programs, its Business Development Program authorized by Section 8(a) of the Small Business Act (the "8(a) Program") has been the most successful in helping Indian tribes, Alaskan Native regional and village corporations (ANCs), and Native Hawaiian Organizations (NHOs) diversify, grow their enterprises, and generate revenues and jobs for their Native communities. As enterprises of each of these indigenous aboriginal groups are eligible to apply for certification as 8(a) Program participants, our testimony refers to them collectively as "Native 8(a) enterprises" participating in the "Native 8(a)" program.

The National Center has long played a pivotal role in spurring Congress and Federal agencies to support Native and minority business development. NCAIED leaders have testified repeatedly before Congress, and worked closely with other national Native organizations to improve the Native 8(a) program and advance other Native business and economic development initiatives. We also collaborated in the first-ever consultations that the SBA and the Office of Management and Budget (OMB) and Federal Acquisition Regulatory Council (FAR Council) conducted with Indian tribes to discuss 8(a) regulatory proposals, and submitted comments and recommendations for the SBA and FAR Council consultations record.

II. Background on the National Center

The National Center, organized over 42 years ago, is the longest serving Native American business development assistance provider in the United States with the mission to *develop the American Indian private sector* as a means to help Native communities become self-sufficient. The National Center operates a national network of non-profit centers across the country that provide procurement technical assistance, business development and management consulting services to Indian tribes, ANCs, NHOs, and businesses owned by these entities, as well as individual Native Americans, Alaskan Natives and Native Hawaiians. Our business centers assist a broad range of first generation Native entrepreneurs to sophisticated tribal enterprises in developing business feasibility studies, business plans, banking relationships and lines of credit, marketing and growth strategies. We are supported by, and also help, Federal agencies by: coaching contractors on completing applications for certifications and registrations; finding capable Native companies to fulfill Federal requirements; and providing contractors guidance on contracting programs administered by the SBA, various other Federal and state agency requirements, and various agencies' Mentor-Protégé programs and other teaming arrangements.

The National Center also produces various national and regional events that train, promote and market Native enterprises to the public and private sectors. Our premier annual national event is the phenomenally successful Reservation Economic Summit & American Indian Business Trade Fair (RES). At RES 2011, nearly 3,000 individuals and 400 exhibiters attended, including tribes, ANCs, Native enterprises, Fortune 500 and other major corporate representatives as well as Federal, state, local and tribal political and procurement officials. Trade delegations from Canada, Turkey and China also attended.

Over the years, the National Center estimates that its operations have assisted approximately 80 percent of the Tribes in the lower 48 states and more than 25,000 Native enterprises, and have trained over 10,000 tribal members. Furthermore, due to its centers' bid matching, other business assistance and networking opportunities produced at its RES and other conferences, the National Center has helped companies generate over $4.5 billion in contract awards.

The comments below are based on countless hours of assisting Native 8(a) enterprises as they struggle to grow, diversify, thrive and return economic benefits to their Native communities and other areas where their companies generate tax revenues and jobs. We have learned that our conferences and training sessions must provide opportunities for Native 8(a) enterprises to learn from fellow contractors, federal procurement officials, and other contracting experts their valuable guidance on best practices to ensure compliance with the spirit and letter of the 8(a) rules. We also have found that the Native 8(a) program works best when the Native community's political and business leaders recognize their fiduciary duties to their tribal members to do their due diligence to understand the intricacies and responsibilities of operating government contracting enterprises. Key to this process is to vet carefully and hire experienced managers (whether Native or non-Native) who know or can quickly learn how to navigate procurement rules and market effectively. Some tribes may decide contracting is too difficult and risky for profit margins that they consider too low. Other tribes find that contracting presents new and different types of job opportunities for their tribal members, offers a chance to diversify the tribe's economy, and expands their horizons to operate both on and off their remote reservations and even in the global marketplace. In short, the Native 8(a) program is proving to be an effective procurement tool and economic development program, fulfilling its promise just as Congress intended.

III. Legal Framework of the Native 8(a) Program

Very compelling reasons prompted Congress to authorize the Native 8(a) Program's provisions. Their enactment were grounded on the confluence of Federal Indian Policy, Federal Small Business Policy and Federal procurement policy considerations, and were and still are fully justified by sobering socio-economic indicators that have improved very little over time.

A. Foundations of the Political "Trust Relationship"

The governments of indigenous American Indians, Alaskan Native and Native Hawaiians were considered sovereign nations from their first interactions with European settlers. The U.S. Constitution's grant to Congress of the power to "regulate Commerce . . . with the Indian tribes" in Article I, § 8,] 3, and its interpretation in subsequent landmark Supreme Court decisions, gave rise to the Federal Government's special political "trust relationship" with and responsibility to the Tribes. *See Cherokee Nation v. Georgia,* 30 U.S. 1 (1831); *Worcester v. Georgia,* 31 U.S. 515 (1832). These cases arose from violations of constitutional and treaty protections.

Tribes across the country entered into treaties, giving up lands in exchange for promises of Federal protection and support for education and community development, only to suffer more treaty violations. The General Allotment Act of 1887 forced conversion of more than 90 million acres (two-thirds of reservation lands) from tribal ownership—often without compensation—to non-Indian settlers as "surplus" lands. The 1867 Treaty of Cession promised Alaska Natives peaceful possession of their lands and the Alaska Statehood Act confirmed these rights. Then discovery of rich oil fields led to enactment of the Alaska Native Claim Settlement Act and relinquishment of 89 percent of Alaska Natives' lands. That Act created regional and village corporations to administer the settlement funds and generate revenues for the benefit of their many thousands of Alaska Native shareholders. This constitutional and statutory foundation underpins subsequent Congressional action to assist these Native communities in their struggle for economic business and community development, self determination and self sufficiency.

B. History of the 8(a) Program and Specific Native 8(a) Provisions

Beginning in 1942, Congress authorized Federal contracting with small businesses and in 1977 created the Small Business Act's Section 8(a) program for Federal agencies to award contracts through the SBA to small, minority-owned businesses. Congress also set a goal of at least 10 percent of all federal contract awards to minority-owned businesses, including those owned by American Indians, Alaska Natives and Native Hawaiians. About 15 years later, the Senate Committee on Indian Affairs held its first hearings to determine whether Indian preferences in government contracting were effective, why so few Native-owned enterprises were participating in government contracting, and why a "President's Commission on Indian Reservation Economies" report had found that government contracting and procurement policies, regulations, and procedures were significant obstacles to Indian reservation economic development.[1] The National Center presented testimony at both hearings.

In 1987, our then President, Steven Stallings, testified on Indian economic development and government contracting. He recommended expansion of the Buy Indian Act's application to more Federal agencies, and proposed a Buy Indian Act certification that all Federal contracting agencies could accept, including the SBA's contracting programs. He urged that more contracts be issued as Buy Indian because the "unchecked discretionary authority" of the Bureau of Indian Affairs (BIA) to award substantial and valuable procurement opportunities to non-Native contractors. Despite Buy Indian Act requirements and implementing policy directives that "all purchases or contracts are to be made or entered into with qualified Indian contractors to the maximum extent practicable," Mr. Stallings stated that BIA procurements using Buy Indian Act procedures totaled only $10 million in FY 1971 and grew only to $60 million in FY 1983. Unfortunately, lack of Buy Indian Act usage and enforcement persist to this day.

The National Center testimony focused on the difficulties that Indian-owned contractors often encountered in seeking certification for the SBA's 8(a) program. Of the few firms that had achieved certification by 1987, most had received no 8(a) contract awards. Stallings noted that the two largest contracts (representing the majority of 8(a) award dollars to Indian-owned companies) were awarded to tribal-owned companies on the Devil's Lake Sioux and Fort Peck Reservations under special arrangements. At that time, most of the 8(a) certifications resulted from a Memorandum of Understanding signed by SBA and the Department of Defense (DOD) in September 1983. The Memorandum committed SBA to "receive" 150 fully completed applications for 8(a) status and "target" 75 of them for certification. Stallings reported that SBA did its part, but DOD had not provided the contract support promised. He recommended improvements to the 8(a) program, more business and procurement technical assistance to Indian-owned businesses and tribal governments, and more effective training programs.

At the Senate Committee's later hearing in 1988 on "Barriers to Indian Participation in Government Procurement Contracting," Mr. Stallings again testified in support of 8(a) program reforms, especially to assist tribal-owned companies. He reported slow growth of contracting companies owned by Indian tribes and American Indian and Alaska Native individuals, lagging far behind other groups: only 14,843 companies, generating gross receipts of just $646.7 million, representing only 1.8 percent of the total number of small businesses, and a mere l.4 percent in gross receipts of all minority-owned businesses, combined. Comparative figures showed:

[1] *See* Hearing on "Indian Finance Act and Buy Indian Act," Senate Select Committee on Indian Affairs, 100th Cong. 1st Sess. 21 (1987); Oversight Hearing on "Barriers to Indian Participation in Government Procurement Contracting," Senate Select Committee on Indian Affairs, 100th Cong. 2d Sess. 80 (1988).

248,141 Hispanic-owned companies with gross receipts of nearly $15 billion; 339,239 African American-owned firms with gross receipts of $12.4 billion; and 240,799 firms owned by Asian American and other minorities with gross receipts of nearly $17.3 billion. To reach parity with these other groups on a per capita basis, a 4,000 percent increase in Native business ownership would be needed.

Also testifying at this hearing was Ronald Solimon, the National Center's immediate past Board Chairman. He then served as CEO of Laguna Industries, Inc. and described how his collaboration with Raytheon Corporation, SBA and DOD had led to a joint venture between Laguna Industries with Raytheon that was awarded a DOD contract. Mr. Solimon recommended that the Congress amend Section 8(a) to authorize 8(a) companies owned by Tribes or ANCs to joint venture with companies that could mentor them along the way.

The low level of Federal (particularly defense) contract awards to Native-owned firms greatly concerned then Committee Chairman Daniel K. Inouye. He emphasized that "directing [the] purchasing power [of the Federal Government] to accomplish social goals such as assisting disadvantaged members of society is well established" and acknowledged that "unfortunately, . this public policy goal has not been achieved with respect to the participation of businesses owned by [N]ative Americans."[2] In keeping with Federal Indian policies, he acknowledged that it is Native groups' "common trust relationship with the United States" that "allow[s] the Congress to legislate unique benefits and treatment for the Native Americans."

Responding to these recommendations, the Congress passed the Business Opportunity Development Reform Act in late 1988 (as well as amendments authored by Congressman Rhodes in 1990) that added the special 8(a) provisions applicable to companies owned by tribes and ANCs. Congress included these special 8(a) provisions recognizing that tribes and ANCs, as representative organizations, are responsible for generating continuing income and jobs for, and improving the livelihood of, hundreds or thousands of tribal members and Native shareholders.

In parallel action in 1988, the Congress also amended the Procurement Technical Assistance Center (PTAC) Program to target assistance to Indian Country. It authorized creation of American Indian PTACs, or AIPTACs, designed to serve multiple Bureau of Indian Affairs areas. A number of these AIPTAC offices now operate within the National Center's network of business assistance centers, and help Native-owned companies learn how to navigate the complex Federal procurement marketplace using the 8(a) program and other procurement and business development tools available to them.

C. Native 8(a) Fulfills Federal Small Business and Indian Policies

Part of the National Center's function as a procurement technical assistance provider is to assist Native American contractor clients to be capable bidders, awardees, and performers of Federal contracts. In order to meet these objectives, these contractors must be prepared to serve the best interests of the Federal agency that will award the contract. We believe that a competitive or sole source award to a Native 8(a) enterprise will allow the agency to meet its small business goals and further Federal Small Business Policy objectives, including:

- Congress' declaration that the development and growth of small businesses is a national priority, 15 U.S.C. § 631(a);
- Congress' articulation of the federal government's policy to "aid, counsel, and assist small businesses to ensure that a fair proportion" of federal contracts for goods and services are placed with small business, 15 U.S.C. § 631(a);
- The FAR's articulation of such policies by requiring executive agencies to provide "maximum practicable opportunities" to small businesses, including small disadvantaged businesses, such as 8(a) contractors, in federal acquisitions of goods and services, 48 C.F.R. § 19.201(a), *see also* 15 U.S.C. § 637(d)(1); and
- Congress' establishment of goals for award of federal contracts to small businesses and small disadvantaged businesses, 15 U.S.C. § 644(d)(1).

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[2] Oversight Hearing on "Barriers to Indian Participation in Government Procurement Contracting," Senate Select Committee on Indian Affairs, 100th Cong. 2d Sess. 2 (1988). The public policy referenced in Chairman Inouye's 1988 statement derives from the U.S. Constitution's grant to Congress of the power "to regulate Commerce . . . with the Indian Tribes." Article I, § 8, ❙ 3. This Constitutional provision, and its interpretation in subsequent landmark Supreme Court decisions, gave rise to the federal government's special political relationship with and trust responsibilities to the tribes. *See Cherokee Nation v. Georgia,* 30 U.S. 1 (1831); *Worcester v. Georgia,* 31 U.S. 515 (1832). Thus Congressional enactments bestowing special rights to tribes and ANCs are based on this political relationship and trust obligation, not on a racial classification designed to remedy past racial discrimination.

Equally important are the numerous articulations of Federal Indian Policy that underpin the Native 8(a) provisions, including:

- Congressional recognition of "the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities." 25 U.S.C. § 450a(a);
- Congress' declaration of its "commitment to the maintenance of the Federal Government's unique and continued relationship, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy . . . . In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing economies of their respective communities." 25 U.S.C. § 450a(b); and
- Congress' declaration of its policy "to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities." 25 U.S.C. § 1451.

As each Federal agency is a component of the Federal Government, and therefore is obligated to honor the Federal trust relationship with Indian tribes, the determination to award a contract on a sole source basis to a Native 8(a) enterprise is in the best interest of the agency as part of its trust obligation to promote Indian self-determination.

IV. Reports Confirm Native 8(a) Enterprise Success

The results of these Congressional enactments demonstrate real progress. The U.S. Census Bureau reported in 1997 that its data (though incomplete) showed 197,300 Native American-owned businesses in the United States, up 84 percent from 1992, employing 298,700 people and generating $34.3 billion in revenues. *See* 1997 Economic Census: *Survey of Minority Owned Business Enterprises:* Company Statistics Series (2001). By 2002, Census estimates were 206,125 Native-owned firms, up 4 percent from the 1997, but total revenues down 23 percent to $26.3 billion. *See* 2002 Survey of Business Owners, U.S. Census Bureau.

In 2007, the National Center estimated that, of the roughly 360 tribes in the lower 48 states, several dozen had launched government contracting operations and applied for 8(a) program certification. Some were very successful, while others struggled to break into the difficult federal market. The SBA's list of the top 8(a) firms included several owned by ANCs and Tribes, and some had appeared on the Top 25 8(a) list of information technology firms. *See* Wakeman, *8(a)s Still a hit with ANCs, tribally owned companies,* 20 Washington Technology (Sept. 26, 2005).

Numerous other reports, even those that critique elements of the Native 8(a) program, confirm that the above-recited Congressional initiatives to spur Native economic development have been remarkably successful. The first major report issued in April 2006 from the Government Accountability Office (GAO) entitled "Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight" (GAO–06–399). This GAO report provided helpful, balanced information on ANC 8(a) contracting as activities undertaken in response to the ANCSA that directed ANCs to pursue economic development to benefit their Alaska Native shareholders. GAO's report also explained how ANCs' participation in the 8(a) program has helped them generate revenues to return benefits to their Alaska Native shareholders, and how the SBA and federal agencies need to improve their oversight of ANC and other 8(a) contracting. The GAO report also made some recommendations for improvements, virtually all of which have been accomplished with SBA administrative actions and recent promulgation of revised 8(a) regulations.

Also very helpful in presenting a clearer picture of economic development progress in Indian Country is the September 2007 report, entitled "Native American Contracting Under Section 8(a) of the Small Business Act—Economic, Social and Cultural Impacts," by Jonathan B. Taylor of Taylor Policy Group, Inc., who is associated with the Harvard Project. His analysis confirms what the National Center's network of offices has learned anecdotally from working with Native-owned businesses across the country: the Native 8(a) provisions have succeeded, as Congress intended, in facilitating Native communities' diversification, self-determination and economic self-sufficiency. The Mentor-Protégé programs of the SBA, DOD and other

federal agencies also have helped in strengthening tribal- and ANC-owned companies.

These reports, and many other studies, economic impact analyses, and other documentation submitted for this Committee's hearing record contain substantial additional information on the success of the Native 8(a) provisions, how they fulfill Congress' intent in enacting them in the first instance, and why they should continue.

V. Remedial Actions Should Improve, Not Cripple, the Native 8(a) Program

It is hard to think of a more worthy contracting program that has been more maligned than the Native 8(a) program. Nonetheless, the current and past Administrations certainly have recognized the program's worth, especially the SBA which directed its limited staff to take significant administrative, enforcement and rulemaking actions to improve its operation and oversight of the Native 8(a) program. The SBA addressed problems it identified, issues raised in GAO and SBA Inspector General (IG) reports, Congressional critiques, and concerns voiced by tribes, ANCs and their 8(a) program participants about the behavior of a few errant 8(a) companies and their non-Native managers that unfairly placed the whole Native 8(a) program in a bad light. Other SBA actions have focused on enhancements, such as efforts to clarify (and thereby improve) the process for tribal enterprises and other applicants seeking 8(a) certification. We applaud SBA's willingness to conduct many consultations with Indian tribes, businesses, and national organizations, such as the National Center, the National Congress of American Indians (NCAI), Native American Contractors Association (NACA), Alaska Federation of Natives, and National 8(a) Association to hear proposals to address the various issues raised.

In addition to Federal consultations and other activities, many private sector initiatives have been undertaken to develop proposals, implement trainings to build capabilities and broaden procurement knowledge, adopt best practices and compliance manuals, institute compliance reviews and more trainings. The National Center is proud of the role it has played in conducting training sessions, advocating best practices and compliance, and fostering mentoring and partnering for Native 8(a) enterprises to enhance their capabilities. We have conducted special 8(a) panel discussions at our business development and procurement assistance conferences focusing on the special Native 8(a) provisions, the fiduciary responsibilities of the enterprise management and the Native board (e.g., tribal councils, tribal business development boards, and other Native boards) to their tribal members and Native shareholders to operate their 8(a) enterprises in full compliance with both the letter and spirit of the laws. The National Center also has entered into partnering arrangements with various other national organizations to encourage greater collaboration among Native and other contractors in bid matching, joint venturing, teaming and performing federal contracts.

The National Center continues to work with NCAI, NACA and the National 8(a) Association to develop joint statements and reach out to other organizations representing 8(a) and other small contractors to work jointly toward the day that all Federal agencies increase, meet and even exceed their 23 percent small business contracting goals.

VI. Specific Recommendations for Additional Improvements

The National Center recommends the following additional actions, many of which this Committee can and should take, to strengthen Native American entrepreneurial and economic development outreach, program support and oversight:

A. Enact Native American Business Development Provisions

After careful deliberations, last year the Senate Committee on Indian Affairs developed several very signification proposals to enhance business and economic development in Indian Country. Chairman Byron Dorgan circulated a comprehensive Discussion Draft, received comments, and proffered many of the legislation's provisions as floor amendments while the full Senate was considering the Small Business Jobs bill. Below are the provisions that the National Center urges the Committee to take up again and promptly move forward:

1. Native American Business Development Program: After several years, there is now consensus on provisions (most recently contained in last year's S. 3534) to authorize the SBA's Office of Native American Affairs (ONAA), headed by an Associate Administrator, and grants for Native American Business Centers so that more business management, financial and procurement technical assistance can be made available in more locations throughout Indian Country. SBA's ONAA must have more authority to be able to compete for a fair share of the funds already appropriated for SBA's entrepreneurial development program overall. Without specific authorization to access those entrepreneurial development program funds, the ONAA will continue to be substantially disadvantaged in trying to provide adequate out-

reach and assistance across the country with its grossly inadequate budget of only $1,250,000 (down from $5,000,000 annually during the Clinton Administration).

2. Surety Bonding: Expansion of existing, but unutilized, surety bond guarantee authority for the Secretary of the Interior to issue surety bond guarantees either independently or supplemental to a surety bond guarantee issued by SBA, up to 100 percent of amounts covered by a surety bond issued for eligible construction, renovation, or demolition work performed or to be performed by an Indian individual or Indian economic enterprise. Often tribal and individual Indian-owned construction companies engaging in construction contracting (whether under federal, state, local or tribal government contracts, or commercial contracts) face significant barriers to securing any surety bonding at all. Many insurance/surety companies choose not to work with tribal contractors, because they do not understand tribal sovereignty and do not want to work with tribal courts. Technical assistance and training for contractors seeking surety bonding also would help them mitigate risk, build capacity, improve performance, grow and create more jobs. The National Center's business assistance centers provide this type of guidance now, but more targeted assistance related to surety bonding is needed.

3. Indian Loan Guarantee Program Enhancement: The Indian Finance Act authorized the Secretary of the Interior to provide guaranteed loans to businesses that are majority-owned by tribes or Indians. Implementing regulations require tribal businesses to provide collateral worth at least 20 percent of the loan principal. Too frequently, this equity requirement inhibits the launch of on-reservation enterprises or development projects that employ reservation residents. The Dorgan proposal would amend the loan guarantee provisions to require the Department of the Interior to establish a tiered system, based on the number of on-reservation jobs created, that would provide more favorable equity terms and authorize an increase in the amount guaranteed up to 100 percent for energy and manufacturing businesses. This change would make the Indian loan guarantee program far more helpful to the establishment of tribally-owned energy or manufacturing businesses, and potential employment of more local reservation residents.

4. Buy Indian Act Amendments: Enacted in 1910, the Buy Indian Act obliquely states simply that "so far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior." (25 U.S.C. 47). The Dorgan Discussion Draft included provisions to clarify and strengthen Buy Indian procurement procedures to apply when fulfilling agency requirements will make use of funds appropriated for the benefit of Indians. Such procedures would foster increased award of contracts to Indian economic enterprises by procurement personnel of the Department of the Interior, Indian Health Service, and other agencies receiving funds appropriated for the benefit of Indians. Also proposed was creation of a Data Center for the collection of information on the experience, capabilities and eligibility of Indian economic enterprises, and reporting requirements on agency use of the Buy Indian Act and information collected by the Data Center.

B. Other Actions the Committee Can Take

We urge the Committee members to share what they have learned with their colleagues on other committees, and explain why Congress enacted the special Native 8(a) contracting provisions. Equally important is stressing how the Native 8(a) provisions are fulfilling their promise and purpose by: (1) upholding the Federal trust responsibility; and (2) serving the Federal agencies' best interests by meeting requirements at costs that are fair and reasonable.

This Committee also can play a major role in urging the various Federal contracting agencies over which it has direct jurisdiction to meet and exceed their individual agency's small and minority business contracting and subcontracting goals, using Buy Indian Act contracting authority to the fullest extent possible. Just as witnesses at the Committee's 1987 and 1988 hearings emphasized, the Federal departments and agencies that disburse funds "for the benefit of Indians" (e.g., Bureau of Indian Affairs, other Interior agencies, the Indian Health Service, the Army Corps of Engineers, the Departments of Transportation, Housing, Agriculture, etc.) should be using the Buy Indian Act authority to contract with Native-owned businesses, small or large. To ensure that more "teeth" are put into Buy Indian Act implementation, the Committee should request briefings by the agencies and conduct oversight hearings to receive status reports from these contracting agencies on their past performance in contracting with Native contractors of all types, and their plans for increasing that contracting support. Witnesses from Indian country also should be invited to report on their efforts, successful and unsuccessful, to convince these agencies to award contracts and other arrangements (such as park concessions) qualified Native contractors.

C. Ensure Federal Agencies Meet Small Business Contracting Goals

Tribes, ANCs, NHOs, their Native 8(a) enterprises, and all the national organizations representing 8(a) and other contractors must rally together to focus much more attention on the question of what can be done to improve the record of all Federal agencies in meeting both their prime and subcontracting goals for awards to small and minority businesses. With the significant growth in the Federal market, there is no excuse for the continual decline in the percentage of contract awards to small businesses. The following joint policy positions best summarize actions that should be taken:

- Fulfill Congressional intent to further the Indian Self-Determination policy set forth in 25 U.S.C. 450a by preserving the provisions that promote the competitive viability of 8(a) companies owned by Indian tribes, Alaska Native regional or village corporations, and Native Hawaiian Organizations that help support their Native communities by developing more self-sufficient Native economies;
- Support limits on bundling and consolidation of contracts, break up such contracts for award to small businesses, or employ procurement procedures to enable teams of Native-owned and other small businesses to pursue bundled or consolidated contracts;
- Spur the SBA on in its efforts to negotiate with individual contracting agencies to set and meet small and minority business contracting goals higher than their current levels, and to be more accountable for their past performance and future plans to make more awards in each subcategory of small business contracting;
- Increase the Government-wide contracting goals for awards to small and minority businesses (previous bills have proposed not less than 30 percent of total contract awards to small business, and not less than 8 percent of total contract and subcontract awards to small disadvantaged business and 8(a) concerns); and
- Encourage small businesses with larger contracts to implement subcontracting plans to develop stronger business alliances among all types of small business contractors, including 8(a) and other small disadvantaged concerns, HUBZone, service disabled veteran-owned, women-owned and other small businesses.

V. Conclusion

The National Center thanks the Committee in advance for considering our comments and recommendations.

PREPARED STATEMENT OF CHRISTINE E. KLEIN, A.A.E., EXECUTIVE VICE PRESIDENT/ CHIEF OPERATING OFFICER, CALISTA CORPORATION

Please see the below bullets and attached fact sheet on a few of the benefits that the 8a program has helped enable Calista corporation to provide to its Alaska native shareholders through some of the contracts received:

- *Shareholders:* Calista had 13,300 original Shareholders enroll in 1971; their Descendants number over 20,000, making Calista one of the largest Alaska Native Corporations (ANCs) based on population. The Calista area of Alaska is larger than the state of New York, has little if any infrastructure, and is remote and now surrounded by federal lands, wilderness, preserves, and parklands which isolates the region and makes it very difficult to access and develop economically.
- *Dividends:* the Board of Directors established an "Akilista" Fund to generate a dividend income stream for Shareholders in perpetuity. Calista has provided dividends to Shareholders for the past three years after it recouped its capitalized losses and became profitable through business revenues, and the Akilista Fund met its criteria for making distributions. Over $12.3 million in dividends and distributions have been made since 2008.
- *Elders:* Original Shareholders who reach the age of 65 have received special Shareholder benefit check distribution for the past three years to help them with the high cost of heating fuel and living expenses.
- *Education:* A Scholarship Fund has been providing assistance for 16 years providing post secondary, graduate, certification, and vocational education opportunities through scholarships. Since 1994 over $2.2 million has been awarded to over 1,300 Shareholders and Descendants.
- *Internships:* Calista provides paid summer internships to college students in good standing, helping them acquire hands on critical job skills. Students re-

ceive work experience, pay, and a living stipend, totaling more than $78,000 in 2010 alone.

- *Employment:* Calista maintains an active Shareholder and Descendant resume and talent bank database for job recruiting and its companies all have and utilize Shareholder hire preference policies for employment opportunities.
- *Infrastructure Studies, Assessments, and Plans:* Energy assessments of hydroelectric, geothermal, oil/natural gas and diesel, as well as transportation infrastructure have been conducted or led by Calista. These efforts are to try solving difficulties associated with the extremely high living costs due to lack of any basic infrastructure in the region.
- *Apprenticeships and Training:* A highly successful certified drillers training program was established by Calista with the State of Alaska through apprenticeships, with their employment hours going towards shareholder journeymen certifications.
- *Jobs:* Calista has consistently had high Shareholder hire rates for over 10 years. More than 30 percent of Calista and subsidiary employees in Alaska are Alaska Native. Subsidiary company Chiulista Services has a 92 percent Shareholder hire and retention on its Donlin Creek mine exploration contracts within the Region and is a model program of success. The Brice Incorporated construction company owned by Calista is also known for its highly successful local hire numbers and training on remote civil construction projects and long history of building airports and roads throughout the Calista Region.

Calista supports the SBA 8a program and ability to do sole source contracting with qualified Alaska Native Corporations' (ANC's). The ANC's are unlike other companies in that they are owned by whole communities of disadvantaged native peoples unlike other companies owned by a few members who benefit from the profits. Limiting the ANC 8a program contract caps to the same limits of individual small business cap limits would be devastating to the steady positive progress finally being made in some of the poorest areas of the country.

If you have any questions at all, please feel free to call us. Thank you for the opportunity to provide this information.

Attachment

Calista Corporation
Contributions and Benefits to Shareholders

FACT SHEET

- **Shareholders:** Calista had 13,300 original Shareholders enroll in 1971; their Descendants number over 20,000, making Calista one of the largest Alaska Native Corporations (ANCs) based on population. Calista provides assistance to village corporations for Shareholder records, community assistance, advocacy, dividends, elder benefits, education, internships, training programs, employment and jobs to both Shareholders and Shareholder Descendants.

- **Regional Land Area:** The Calista Corporation Region (over 57,000 square miles) is equivalent to the state of New York. There are no roads connecting the Region to the rest of Alaska.

- **Dividends:** In 1994 the Calista Board of Directors established the Akilista Fund for the purpose of generating a dividend or distribution income stream for Shareholders or Shareholder services in perpetuity. Calista has provided dividends to Shareholders for the past four years after it recouped its capitalized losses, became profitable through business revenues, and the Akilista Fund met its criteria for making distributions. Over $12.3 million in dividends and distributions since 2008.

- **Elders:** Original Shareholders who reach the age of 65 have received special Shareholder benefits for the past three years from Calista to help them with the high cost of heating fuel and living expenses.

- **Education:** The Calista Scholarship Fund, with over $10 million in cumulative funding, has been providing assistance for the past 10 years. This fund provides post secondary, graduate, certification, and vocational education program opportunities through scholarships. Since 1994, Calista has awarded over $2.2 million to hundreds of Shareholders and Descendants.

- **Internships**: Calista provides summer internships within its subsidiary companies to students in good standing, helping them acquire hands-on critical job skills. Students receive work experience, pay, and a living stipend, totaling more than $78,000 in 2010 alone.

- **Apprenticeships and Training:** A certified drillers training program has been established with the State of Alaska through apprenticeships, employment hours going toward Shareholders' journeymen certifications.

- **Jobs:** Calista has consistently had high Shareholder hire rates for over 10 years.
  - More than 30 percent of Calista and subsidiary employees in Alaska are Alaska Native
  - Chiulista Services has a 92 percent Shareholder hire and retention rate on its Donlin Creek contracts in the Region and is a model program for success.
  - The Brice Incorporated construction is known for its highly successful local hire numbers and its training in civil construction and history of building airports and roads throughout the Region.

- **Employment:** Calista maintains an active Shareholder and Descendant resume and talent bank database for job recruiting. Calista and its companies all have and utilize Shareholder hire preference policies for employment opportunities.

- **Cultural Preservation:** Calista participates annually in support of the establishment and operation of the Smithsonian Native American Indian Center, Alaska Native Heritage Center, and the Calista Heritage Foundation programs. In 2009 and 2010 over $2 million was reserved for these programs alone.

- **Infrastructure Studies, Assessments, and Plans:** Energy assessments of hydroelectric, geothermal, oil/natural gas and diesel, as well as transportation infrastructure have been conducted or led by Calista. These efforts have been done to try to help solve the difficulties the Region faces in inordinately high living costs associated with a lack of any basic infrastructure development in this Region, which in turn reduces the economic opportunities available.

- **Natural Resources:** Data collection, assessment, documentation and mapping of Calista lands, fish and wildlife habitat, subsistence harvesting, timber, hydrocarbon, minerals and natural resource potential occurred for many years. Historically, there were impressive gold and platinum extraction operations in the Region that could potentially be developed in the future if sources of energy were available. Calista continues to conduct geochemical assessments of its land and resources and seeks mineral industry generated resource projects.

- **Advocacy and Lobbying:** Calista partners with other Region organizations to help represent and advocate for needed state and federal legislation, public policy and funding to support education, energy, economic development and transportation infrastructure in the Calista Region. This Region has some of the harshest challenges in the United States, including some of the lowest pay, poorest school graduation rates, highest fuel and cost of living, very little basic infrastructure and no roads connecting communities.

- **Socio-Economic Challenges:**
  - The Institute of Social and Economic Research has found that for Alaska Natives: incomes are 50 to 60 percent lower than other Alaskans, are three times as likely as other Alaskans to live in poverty, and only 6 percent have bachelor's degrees compared to 25 percent among other Alaskans.
  - The Alaska Department of Health and Social Services has found that approximately 31 percent of rural Alaskan households lack plumbing, the Alaska Native suicide rate is three times the national average, and homicides are five times the national average.
  - According to the Alaska Department of Labor and Workforce Development, as of September 2010, the unemployment rate in the Bethel Census Area was 14.8 percent and the unemployment rate in the Wade Hampton Area was 18.7 percent.
  - U. S. Census Bureau data reports that 29.2 percent of the population in the Wade Hampton Census Area is below the poverty level, and in the Bethel Census area 21.5 percent of the population is below the poverty level.

Response to Written Questions Submitted by Hon. Daniel K. Akaka to Larry Hall

Question: Would there be any value to promoting more Native-to-Native mentorships, wherein experienced Native 8(a) firms are mentoring emerging Native 8(a) firms?

Answer: There would be value in promoting these relationships if size standards were more flexible.

Response to Written Questions Submitted by Hon. John Barrasso to Larry Hall

Question: What considerations should the SBA evaluate in determining whether a substantial unfair competitive advantage exists?

Answer: By definition the protégé would not have a substantial unfair competitive advantage within an industry so any competitive advantage would need to be considered during the development of the Mentor-Protégé agreement.

Question: How do these new regulations sufficiently guard against the risks of unscrupulous business partners so that tribes receive the benefits of the bargain?

Answer: The combination of various reporting requirements and limitation excessive withdrawals along with financial reporting should safeguard Tribal interests.

Question: How do these new regulations ensure that tribal businesses are not merely "pass-through" companies, where a significant portion of the money is essentially going to the non-Native partner, not the tribe?

See previous answer.

Response to Written Questions Submitted by Hon. Daniel K. Akaka to Peter McClintock

There have been several I-G reports regarding the Native 8(a) program. These reports often highlight instances when specific companies have been investigated and reporting issues have been found.

Question: Are there instances when you have investigated companies in the Native 8(a) program and found no wrong-doing; and if so, what percentage of companies investigated require an I-G report?

SBA OIG Response: As we examine any allegation impacting Small Business Administration (SBA) programs, the goal of the Investigative Division for the SBA, Office of Inspector General is to conduct independent, accurate, and objective investigations. Within SBA's Native 8(a) program, we have investigated companies where no wrongdoing was found. When conducting preliminary or full investigations, an investigative report is always required to outline the evidence developed and state whether the allegation was proven or not.

Question: Do you believe that the new SBA regulations, together with Section 811 of the National Defense Authorization Act, strike a fair balance between the 8(a) program's goal of helping Native 8(a) companies successfully compete for the government customer's business, and the government's need to ensure that federal procurement is done in an accountable manner and with our policy goals in mind?

SBA OIG Response: The SBA OIG does not have data to show whether procuring agencies are limiting the size of sole source 8(a) contracts based upon the $20 million limitation in section 811 of the NDAA or issuing justifications to award contracts on a sole source basis in excess of this limit. SBA's recent regulatory revisions do not contain any limits on the size of a single sole source award that an ANC can receive and do not limit the total amount of sole source awards that an ANC can obtain. Non-tribally owned firms are subject to both types of caps. Thus, although the most recent regulatory revisions do contain some positive elements, they do little to address the advantages that ANCs have over other 8(a) companies.

Response to Written Questions Submitted by Hon. John Barrasso to Peter McClintock

Guarding Against Unscrupulous Business Partners

The Small Business Administration issued new regulations to address concerns your office has raised, including concerns that non-Native managers may be receiving millions of dollars through agreements undisclosed to or approved by the agency.

Question: How do these new regulations sufficiently guard against the risks of unscrupulous business partners so that tribes receive the benefit of the bargain?

SBA OIG Response: We do not believe the regulations contain adequate safeguards to guard against these risks. SBA did not make any changes to its regulations that would require greater disclosure of (1) the extent to which a non-disadvantaged business partner is involved in the management of a tribally-owned concern or (2) the revenues earned by such a partner or a company owned by a business partner. Further, SBA added a new provision at 13 C.F.R. § 124.602(g) that will allow 8(a) program participants owned by Tribes, ANCs, NHOs and CDCs ANCs to file consolidated financial statements for all 8(a) firms they own rather than a separate financial statement for each 8(a) company. This will likely make it more difficult for SBA to identify when a non-disadvantaged business partner is obtaining excessive compensation from an ANC-owned 8(a) company.

Question: How do these new regulations ensure that tribal businesses are not merely "pass-through" companies, where a significant portion of the money is essentially going to the non-Native partner, not the tribe?

SBA OIG Response: SBA added several provisions that may address the situation where non-disadvantaged companies are using tribally owned firms as "pass throughs", including (1) a provision requiring tribally owned firms to submit annual reports disclosing the benefits they have provided to tribal members; (2) additional reporting requirements for joint ventures that perform 8(a) contracts and for mentor-protégé agreements between an 8(a) company and a non-disadvantaged company; and (3) a provision clarifying that procuring agencies must track compliance with the performance of work requirements set forth in 13 CFR § 124.510. However, it remains to be seen whether these provisions will effectively ensure that tribal businesses are not merely "pass-through" companies, where a significant portion of the money is essentially going to the non-Native partner. In this regard, it should be noted that earlier 8(a) regulations already contained provisions to prevent "pass throughs" but we have found that regulations are not always followed.

Unfair Competitive Advantage

Your written testimony indicated that the Small Business Administration did not have policies or procedures in place to determine whether a Native 8(a) firm had a substantial unfair competitive advantage in an industry. Instead, the agency was conducting a study to be completed by December 31, 2012.

Question: What considerations should the Small Business Administration evaluate in determining whether a substantial unfair competitive advantage exists?

SBA OIG Response: Although this is a policy determination for SBA to make, SBA could compare tribally owned 8(a) firms to regular 8(a) firms by industry category. For example, compare that the number of contracts, and the amount of dollars earned, that tribally owned firms obtain in a particular North American Industry Classification System (NAICS) code in a particular fiscal year against the number of contracts awarded, and dollars earned, in that NAICS code by regular 8(a) firms. The most significant issue in conducting such an evaluation is for SBA to define criteria as to what constitutes "substantial unfair competitive advantage."

Sole Source Awards

The National Defense Authorization Act for FY 2010 required additional justifications, approvals, and notices for sole source 8(a) contracts in excess of $20 million, similar to the requirements for sole source contracts awarded under general contracting authorities. This provision was enacted in part to address concerns about sole source contracting to tribal or Alaska Native Corporation 8(a) firms. These concerns included the potential diminishment of 8(a) contracting dollars as result of such sole source awards, agencies improperly using sole sourcing, the inordinate costs of these sole source contracts, and improper administration of the sole source contracts by the agency.

Question: How have these new requirements addressed concerns raised about sole source contracting with tribal and Alaska Native 8(a) companies?

SBA OIG Response: As noted in our response to Senator Akaka's questions, the SBA OIG does not have data to show whether procuring agencies are limiting the size of sole source 8(a) contracts based upon the $20 million limitation in section 811 of the NDAA or issuing justifications to award contracts on a sole source basis in excess of this limit. In our limited experience with reviewing contracting officers' justifications, it does not appear that the NDAA requirement would be a significant deterrent to abusive contracting practices.

Response to Written Questions Submitted by Hon. Daniel K. Akaka to Lance Morgan

Are the graduation requirements the same for Native 8(a) firms as they are for individually-owned Minority 8(a) firms? Can you offer additional perspective on this?

Firms owned by a Tribe, ANC or NHO must follow all of the same graduation requirements as an individually owned firm to be eligible for the 8(a) Program. The firm must remain a small business just as any other firm in the program. And each subsidiary is only eligible to participate in the program a maximum of 9 years, just as any other individually owned 8(a) firm. The only difference is that a Tribe, ANC or NHO may own more than one 8(a) certified firm. And that difference is due to the government's trust responsibility to Native peoples as affirmed in the U.S. Constitution and by numerous treaties. This provision in the Native 8(a) program is not purely a "small business" or "procurement" policy. It is a responsibility of the Federal Government to ensure that Native people have access to economic development opportunities that benefit entire Tribes and their communities.

Some in Congress seem to not understand the difference between an individually owned company with one or two owners and a Tribally owned company with thousands of owners. One contract of $3 million has an average profit margin of 5% which yields $150,000 in profit. That's an impressive sum for one owner to receive. But in the case of Ho-Chunk, Inc., that $150,000 goes towards the support of 4,800 Tribal member of the Winnebago Tribe of Nebraska. Multiple 8(a)s help us generate more income than an individually owned 8(a). However, those combined profits still do not come anywhere close to providing the same amount of income for our Tribal members that it does for that one owner.

How does the Native 8(a) program advance the policy of Native self-determination generally, and then specifically in your community?

After hundreds of years of failed government policy towards Native people, the only effective strategy to lift Native people out of poverty and develop sustainable economies is the policy of Native self-determination. By allowing Tribes, ANCs and NHOs to earn revenue through hard work and skill in managing government contracts, they are able to build successful businesses and stronger communities with decreasing reliance on government "welfare." We have found that we are best suited to build the most effective economic development opportunities to better serve our own Tribal communities.

Ho-Chunk, Inc. for example has seen measurable progress on the Winnebago Reservation. The unemployment rate in 1990 was estimated at 40-60%. The average unemployment rate estimate for the last five years is 12%. The poverty rate in 1990 was 44%. The average estimated poverty rate through 2009 is 35%. The median income in 1990 was $13,000. The average estimated income through 2009 is $33,500. While the rest of the country is seeing increases in unemployment and the poverty rate, we are seeing decreases across the board because of our own economic development strategies. We are making progress but that progress has only been attained through small business development, government contracting and hard work by the Tribe and Ho-Chunk, Inc., not through any government welfare program. We invite you to visit our website at www.hochunkinc.com to take a virtual tour of Ho-Chunk Village, a brand new residential and commercial development on the Winnebago Reservation.

Response to Written Questions Submitted by John Barrasso to Lance Morgan

What considerations should the Small Business Administration evaluate in determining whether a substantial unfair competitive advantage exists?

Both individually owned and Native owned 8(a) companies are able to participate in joint ventures, mentor-protégé agreements as well as in the Department of Defense program. That means that any individually owned 8(a) firm has as much access to partners of larger companies to work on government contracts as does a Native 8(a). New SBA regulations also prohibit Native companies from receiving a follow on contract from a sister company when the original contract holder has graduated from the 8(a) program.

Native 8(a) companies just like any other 8(a) firm or any other government contractor large or small, must prove competence, past performance to complete the work and a fair price to meet the government's demands. There is no advantage for Native 8(a) when it comes to proving their capabilities, effectively performing on the contract and delivering a fair price to the government.

How do these new regulations sufficiently guard against the risks of unscrupulous business partners so that tribes receive the benefits of the bargain?

The 2011 SBA regulations have addressed this issue as well as others in both the entire 8(a) program and the Native 8(a) program to provide significantly more oversight and transparency. One regulation in particular prohibits individuals from receiving a percentage of the gross contract profit as payment for any services. This will effectively eliminate potential for a non-Native executive to take advantage of a Native 8(a) firm. In seeking to protect Native 8(a) firms, the government should ensure that it is not punishing the firm as the victim, but rather the outside partner who might be exploiting the Native business.

How do these new regulations ensure that tribal businesses are not merely "pass-through" companies, where a significant portion of the money is essentially going to the non-Native partner, not the tribe?

New SBA regulations have now eliminated the possibility of "pass-through." Joint venture agreements now require that the small business must complete at least 40% of the work. That applies to all 8(a) firms, Native and non-Native alike. Prior to this any 8(a) firm was only required to perform a "significant portion" of the work.

And as a Prime contractor, the Native 8(a) or any other 8(a) must perform at least 51% of the work. Subcontracting is standard practice through all areas of government contracting with all types of firms. Large multi-national prime contractors, small businesses, non-Native and Native 8(a) firms all use subcontractors. Native 8(a) participates as both a prime contractor and a sub-contractor and they must meet the work requirements of each contract. We are no different than any other firm in that regard. In fact, we have a direct economic incentive to fulfill as much of the contract as possible and welcome the new SBA regulations.

We appreciate the opportunity to provide further comment on the benefits and the newly tightened and increased oversight by the SBA of the Native 8(a) program. We welcome any opportunity to provide additional insight to your Committee on behalf of the thousands of Native people who are beneficiaries of this important program.

Thank you for your consideration.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO JULIE E. KITKA

Question: (Regarding Succession Planning, Education of Native Leadership) Can you discuss the work that is being done for succession planning at the corporations and your approach in Alaska to ensuring Native leadership is prepared to successfully manage your business?

The approach of each Alaska Native Corporation towards succession planning is as varied as our cultures and traditions. Among the Native Community generally and ANCs specifically, there now exists a wide array of approaches, some of which are outlined specifically below, to success planning, mentoring and development of new Native leaders. What is apparent, though, is there is an unprecedented level of training and professional development in ANCs – a level of capacity building in businesses we have not experienced before. For just one example, one ANC, recognizing they needed a long-term strategy for succession planning, created a shareholder development plan, which was reviewed and approved by their Native Board of Directors. The plan included a statistical analysis of the historical employment needs of the Corporation, the demographics of their shareholders, and current shareholder employee skills and their personal goals for growth within the Corporation. The Plan outlined a tiered approach to succession planning by targeting five core groups of shareholders: 1) current and future employees; 2) college students; 3) high school students; 4) small business owners; and 5) adults in career transitions. The plan's ultimate goal is to have a shareholder managed corporation. They are accomplishing this through eleven programs focused on internships, scholarships, employee training, and active recruiting of shareholders working in other industries. Since the implementation of their shareholder development plan they have tripled the number of shareholders in senior management positions. Every quarter the ANC does an in-depth analysis of their outcome measures to ensure they are on track to achieve their goal of being "a shareholder managed corporation."

Other examples include:

Arctic Slope Regional Corporation:

ASRC Federal is a wholly owned subsidiary of Arctic Slope Regional Corporation, which is an Alaska Native corporation owned by approximately 11,000 Iñupiat shareholders. ASRC shareholders use the earnings from the company to help develop and sustain their villages and the Iñupiat way of life. Alaska's Iñupiat culture values honesty, integrity, cooperation and leadership. These cultural values serve as the foundation for every company within the ASRC family. ASRC Federal has integrated traditional Iñupiaq values into the fabric of its business.

ASRC's commitment to developing Alaska Native leadership starts at the top. Rex Allen Rock Sr. has been president and chief executive officer of ASRC since early July of 2010, and oversees all aspects of ASRC's business operations. In this role, he helps to foster a productive relationship with the board of directors and the corporation's Iñupiat shareholders. Rock has served on the ASRC board of directors since 1993. His board service includes work on various committees, to include: Executive, Audit, 401(k) Trustees, Shareholder Hire, Compensation, Investment, and Heirship. He was elected to the position of chairman of the board in 2004, following his service as vice-chairman and first vice-president. Rock previously served as president and CEO of Tikigaq Corporation, and was responsible for the overall strategic

guidance and vision for the village corporation. Under his leadership, the corporation started an educational scholarship program for youth that assists current as well as future generations. ASRC companies are actively engaged in developing the next generation of business leaders for Alaska Native companies.

ASRC Federal and its subsidiaries participate in an array of activities to support schools in local communities. ASRC's collective workforce dedicates time and resources in support of extracurricular activities such as robotics and science Olympiad teams, school bands and work-study programs. In addition to local communities, ASRC supports shareholders and their efforts to increase educational activities on Alaska's North Slope, including providing annual funding to the Arctic Education Foundation for its general scholarship fund.

ASRC Federal provides funding for college interns through the American Indian Science and Engineering Society summer internship program. The selected AISES interns work in ASRC Federal's headquarters office or on a subsidiary contract site. Additionally, ASRC Federal partners with American University's Washington Internships for Native Students program to sponsor college interns who are placed outside with a federal agency, nonprofit organization or commercial entity that best meets the student's career plans.

Doyon, Limited

Another ANC, Doyon, Limited, with 18,000+ shareholders, has a number of strategies to meet goals for successful business operations and to promote shareholder hire, including shareholder outreach programs and the implementation of their internal succession plan.

Shareholder Outreach – Doyon, Limited's goal is to match shareholders with Doyon jobs. This goal is met in part through internship and shareholder training programs (these programs train shareholders for entry level positions and provide opportunities for growth). Doyon, Limited's talent bank is also part of the hiring and outreach process and allows Doyon to match prospective employees and their skills and abilities with the needs of our business operations.

Doyon Management Training Program – This program is designed for Doyon shareholders seeking to expand their management, networking, and leadership skills in general and to prepare them for potential leadership roles in a Doyon company. Graduates of the program have become successful leaders and managers in their communities, professions, and at Doyon.

Internal Succession Plan – Doyon has also developed and is implementing an internal succession plan, which ensures all employees are making progress on their personal development plans. The succession plan has been developed to ensure people are prepared with the necessary skills and abilities to take on leadership roles within Doyon's family of companies. The plan identifies potential employees for middle manager and executive positions from within Doyon, and includes a leadership program where current middle managers participate in a formal leadership development and training program with a well-defined curriculum.

Question: (Regarding Rationale for Deeming Alaska Native Corporations Economically and Socially Disadvantaged) Can you discuss why [deeming Alaska Native Corporations to be economically and socially disadvantaged for small business programs] should be the case, and whether you believe Congress should deem Tribes and Native Hawaiian Organizations in the same manner?

Tribes, Alaska Native Corporations and Native Hawaiian Organizations should have parity for participation in the 8(a) program. There is no question that Tribes and NHOs encounter similar challenges like Alaska Natives to overcome in their Native communities. Perhaps it is because of how each community entity entered the 8(a) program that has driven this discrepancy. ANCs have a presumption of economic disadvantage. Currently no similar provision exists in statute for Tribes or NHOs. Only Congress can provide that parity in statute for Tribes and NHOs. Parity should "lift up" the Tribes and NHOs to the same parity of ANCs, rather than "bring down" the status of ANCs. The goal of the Native 8(a) program is to promote economic development, and Congress should not take steps to inhibit growth in Native communities, but rather should do what it can to empower all Native communities to succeed.

Alaska Native Corporations are 100% owned by Alaska Native individuals and were created to be for-profit businesses. Under the Alaska Native Claims Settlement Act (ANCSA), Alaska Native Corporations were required to be established as for-profit vehicles for the economic and social advancement of their shareholders.[1] ANCs reflect the collective economic interests of a disadvantaged community of Alaska Native shareholders, rather than an individual business owner.

Alaska Natives' continuing economic disadvantage stems from the remoteness of Alaska Native communities and the persistent scarcity of employment and economic opportunity in these remote areas. It is unreasonable and counter to the spirit of social advancement under ANCSA to expect Alaska Natives to leave their traditional lands for employment elsewhere, or to limit Alaska Native Corporations only to lines of business that can be performed in remote areas of Alaska.

The current law appropriately reflects the reality that Native remain economically and socially isolated from the economic mainstream of the U.S. For example, the villages located in most regions of Alaska are remote; there are no roads between the villages, and air travel is often the only means of travel across the region. Due to distance, dispersed population, and high transportation costs, the cost of living in these communities is extremely high. As the basic point of an Alaska Native Corporation is to *facilitate diverse economic activity for the benefit of the disadvantaged Alaska Native community*, the breadth of an Alaska Native Corporation's different businesses should not imply that its Alaska Native community has overcome its economic and social disadvantages.

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[1] Pub. L. 92-203 §2(b); 43 U.S.C. §1601(b).

Through amendments to the Alaska Native Land Claims Settlement Act (ANCSA) and the Small Business Act, Alaska Native Corporations were legislatively recognized as economically and socially disadvantaged. These legislative amendments reflect the unique history of ANCSA as a negotiated land settlement and the historic social and economic disadvantage Alaska Native people have faced and continue to face while developing business opportunities in Alaska's remote regions and across the United States. These provisions have allowed Alaska Native Corporations to gain access to contracting markets and foster the economic development for Alaska Native shareholders. Under the new regulations released by the SBA, the economic benefits to ANC shareholders through scholarship contributions, dividends, and job training programs will be tracked and reported to the SBA.

AFN supports full tribal participation in the 8(a) program, believing the program is an important and appropriate means for promoting the economic growth of America's Native and Tribal communities, not just Alaska Native Corporations. We support of expanding the "economic disadvantage" designation to include all Native American Tribal-owned entities and Native Hawaiian Organizations, on par with the treatment of Alaska Native Corporations in the program.

Response to Written Questions Submitted by Hon. John Barrasso to Julie E. Kitka

Question: (Regarding SBA Criteria for Evaluating Substantial Unfair Advantage) What considerations should the Small Business Administration evaluate in determining whether a substantial unfair advantage exists?

We understand that the SBA is currently studying this issue. AFN, and others, believe it would be best to review the SBA's findings, which we anticipate in 2012.

Question: (Regarding Regulatory Protections Against Unscrupulous Business Partners) How do [the new regulations] sufficiently guard against the risks of unscrupulous business partners so that tribes receive the benefit of the bargain?

As described above, the Small Business Administration promulgated comprehensive regulations this year to improve the 8(a) program. These regulations impact not only Native 8(a) firms but individual owners as well. The regulations ensure greater transparency and oversight of the program including reform designed to address the problem of unscrupulous business partners that may have impacted the Native firm. With slim profit margins, this is a practice that, to an unknowing firm, can have a significant impact on their profits. If seeking to protect Native 8(a) firms, the government should ensure that it not punish the firms, who are victims of these business partners, but rather those that are taking advantage of the Native 8(a) firms. The SBA did that - it produced the positive outcome of addressing issues with the program, without punishing the intended beneficiaries.

For example, in its final regulations, the SBA increased accountability and transparency in the 8(a) program by limiting compensation to ANC agents or representatives to amounts reflective of the value of the services they provide (13 C.F.R. § 124.4) and by requiring public

disclosure of such compensation (13 C.F.R. § 124.112(b)(7)). In addition, the SBA strengthened protections against unscrupulous business partners by including important safeguards in the 8(a) mentor-protégé program. For example, the updated mentor-protégé regulations limit the number of protégés that any mentor can have (13 C.F.R. § 124.520(b)(2)) and provide for penalties for mentors that fail to provide promised assistance to their protégé firms (13 C.F.R. § 124.520(h)).

It is appropriate to seek guarantees that unscrupulous business partners do not benefit from the efforts of the small business, which the new regulations seek to do.

The new rules have addressed concerns regarding unscrupulous business partners and selling agents – banning the practice of having selling agents receive a percentage of the revenue in the contract(s) won by the 8(a) participant. The final rules state that compensation received by agents or representatives must be reasonable in light of the services performed. Compensation that is a percentage of gross contract value is prohibited, and any additional compensation that is a percentage of profits may be found by the SBA to be unreasonable.

Early critiques of the program also cited a failure to provide an appropriate level of benefits to shareholders and communities, stating that the SBA did not track the program benefits flowing to the Native community. Alaska Native Corporations provide numerous benefits to community members and shareholders through direct dividends, scholarship contributions, shareholder development programs, and other helps such as funeral assistance programs. Under the new rules, firms owned by Alaska Native Corporations, Native Hawaiian Organizations, and Community Development Corporations will better report, and thereby assure, that these benefits flow back into the Native community.

In sum, these reforms provide important safeguards, which should be given time to work.

Question: (Regarding Regulatory Protections Against "Pass-Throughs" to Non-Native Partners) How do [the] new regulations ensure that tribal businesses are not merely "pass-through" companies, where a significant portion of the money is essentially going to the non-Native partner, not the tribe?

SBA's implementation of rules is designed to ensure that tribal businesses are not merely "pass-through" companies for work performed by their non-Native partners. For example, under 13 C.F.R. § 124.513(d), a non-8(a) joint venture partner, or any of its affiliates, are prohibited from acting as a subcontractor to a joint venture awardee on an 8(a) contract, and sole source awards to joint ventures above the competitive threshold amounts are permitted only if the participating 8(a) concern directly performs at least 40% of the work under the contract.

There are other regulations in place that dictate how much work must be performed by an 8(a) firm. For example, on an Indefinite Delivery Indefinite Quantity (IDIQ) contract, a small business must perform at least 50 percent of the work for task orders cumulatively. This helps ensure that a small business is not serving as a pass through to a large business.

Lastly, it is important for small businesses to comply with these regulations. Programs such as the 8(a) program are intended to be business development programs. However, it is also important to note that subcontracting is a common practice in procurement, and is practiced by not only small businesses but with large businesses as well. Native 8(a) firms are not the only companies that use subcontracting to meet the customer's needs, and it should not be viewed as such.

These rule changes ensure that Alaska Native Corporations are not merely pass-through companies to larger non-Native corporations, but rather are participating in a program, which develops business acumen and experience.

Thank you for the opportunity to provide this update information of the record. AFN would be please to answer any other questions that you may have.

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