

Statement of Kevin J. Allis
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Board Chairman, Potawatomi Business Development Corporation

Good Afternoon, Honorable Chairman Tester, Vice Chairman Barrasso, and Members of the Committee. My name is Kevin Allis, and I am a tribal member of the Forest County Potawatomi Community located in the State of Wisconsin. I come from a family whose mother grew up on our reservation, and whose grandfather and great-grandfather served as the Chairman of our tribe. Today I proudly serve as the Executive Director of the Native American Contractors Association, and the Board Chairman of the Potawatomi Business Development Corporation. In both capacities, my goals are to ensure that Native Americans are able to enjoy the many things this great nation has to offer, while still being able to preserve their traditions, languages, and customary ways of life. It has never been lost on me, and I'm certain my ancestors, that every minute we live that is dedicated to improving the lives of millions we will never meet is tremendous. I know that each of you understand and experience everyday this same kind of responsibility, and go to bed each night knowing that the hard work of the day will make someone else's life a little better.

I would like to thank you for holding this hearing, and allowing for me to testify. Economic development within Indian Country is an important issue, and regular dialogue and consideration of the issue is absolutely necessary. The present day era of self-determination was birthed in large measure by President Richard Nixon, who in a special message before Congress on July 8, 1970 stated, "The first Americans, the Indians, are the most deprived and most isolated minority group in our nation on virtually every scale of measurement; unemployment, income, education, health—the condition of Indian people ranks at the bottom."

Although conditions have greatly improved since 1970, much work remains to be done. Efforts and programs that exist today must be improved, and at the very least, remain fully intact, so their intended designs, which are to improve the lives of Native Americans and ability to control their own destinies, is realized. Today's hearing looks at "Economic Development: Encouraging Investment in Indian Country." There is no doubt that Indian Country, like other minority communities, has challenges with respect to access to capital. However, unless there are other viable programs to put such precious investment of capital to use, accomplishing long-term sustainability is difficult. The existence of time tested and proven programs, in which Native communities can invest, and thus parlay the value of such capital is critical in the achievement of Native sustainable self-determination. Two extremely effective federal Indian programs have been Native participation in the Small Business Administration ("SBA") 8(a) Business Development Program ("SBA 8(a) Program"), and the Indian Incentive Program ("IIP"). It is here that Native communities, large and small, rural or urban, have been able to move closer to achieving the goal of self-determination.

SBA 8(a) Program

The SBA 8(a) Program was enacted during the 1960s to assist eligible small economically and socially disadvantaged business concerns to compete in the American economy through federal contracting. Recognizing that small businesses are critical to our economy, the SBA is charged with assisting and protecting their interests. Congress found that by providing access to the federal procurement market, the business development of small business concerns of the disadvantaged could be achieved. America has a

long history of using its purchasing power as a means to further the business development of various individuals and groups who would otherwise be excluded from the huge government contracting market. This not only furthers important social goals, but fuels increased competition, thereby expanding and diversifying the sources of supplies and products. Native enterprises are starting to use these procurement programs just as the government intended, and in doing so, are developing business approaches and models that are building strong Native economies; thus fostering the realization of self-determination.

In fact, in hearings held by this Committee in 1987 and 1988, it was found that including Indian tribes and Alaska Native-owned firms in government contracting was a wonderful way to address the important needs of Native communities. This Committee relied upon President Ronald Reagan's, "Commission on Indian Reservations Economies," which had documented that the government's procurement policies were significant obstacles to economic development, yet if crafted correctly, could provide attractive benefits for both the Native American population and the federal government. In 1983, President Ronald Reagan commissioned this report to determine how the economies of Indian reservations could be improved. The Commission produced a report in 1984 that provided several recommendations to improve reservation economies, based on parameters established by the President's statement on American Indian policy. One of the key recommendations made by the Commission was to create avenues to increase the participation of Indian tribes (including Alaska Native Corporations) in the federal contracting marketplace through the SBA 8(a) Program.

The Commission provided several reasons to open federal contracting opportunities to Native Americans. First, it was determined that the increased use of Native business concerns in federal procurement would not require any new federal funds. It would draw upon the existing budgets of government agencies for the purchase of goods and services. Importantly, it would be an effort that simply does not just give money to Indians, but instead, improves access of Native-owned firms to the federal marketplace, and allow them the opportunity to earn their way. This is the classic "hand-up" approach, instead of one that is merely of a "hand-out" methodology. This situation creates a "win-win" scenario for both the federal government and the Native community. It results in an extremely efficient use of valuable taxpayer dollars, which in these times is extremely important. In addition, the Commission found that federal agencies would not be disadvantaged because the Native American suppliers would have to meet the quality, delivery, and cost requirements dictated by the missions of the agencies. While these two quotes are only a snapshot of the commission's report, they capture the reasoning behind the Commission recommending that the government allow Native American participation in the SBA 8(a) Program, as it was seen as logical and cost effective way to meet the needs and challenges of Native Americans across the country.

During the 1988 hearing, Chairman Inouye stated that, "directing the purchasing power of the federal government to accomplish social goals such as assisting disadvantaged members of society is well established," and he then noted that unfortunately, "this public policy goal has not been achieved with respect to the participation of businesses owned by Native Americans." This fact, in tandem with recognition of the unique trust obligation the federal government has with Native Americans acknowledged in the Constitution, federal laws, and by the Supreme Court, led Congress to enact legislation that opened the federal contracting marketplace to Indian Country. Today we refer to this program as the Native 8(a) program.

By creating unique Native 8(a) provisions, Congress recognized the special needs and its obligations to Indian Tribes, Alaska Native Corporations, and later Native Hawaiians Organizations. Like other 8(a) firms, Native business concerns can only participate in the SBA 8(a) Program through small businesses that are subject to stringent program entry eligibility requirements. Native enterprises have two key unique 8(a) provisions: (1) the competitive thresholds that limit the amount of sole-source awards do not apply; and (2) Native enterprises can participate in the SBA 8(a) Program through more than one company. This was the intent of Congress, and makes sense in light of the economic and social disadvantages with which Native communities must contend, and the number of Native Americans in need within these communities. The disadvantages suffered by Native Americans encompass entire communities and villages, as opposed to individuals who are socially and economically disadvantaged. The ability to operate more than one company, and perform on larger contracts, provides the necessary level of resources, through net profits, that can make a difference in changing large Native communities.

For years Native enterprises have provided quality services and cost effective products to the federal government. This has translated to resources being made available to Native communities that not only are used to fix systemic problems that have plagued Indian Country, but allows for these communities to preserve their culture, traditions, languages, and customary ways of life. However, in recent years, this all has been threatened. With unfair scrutiny, and devastating new provisions and regulations, Native contracting has seen a sharp decline over the past five (5) years. Section 811 of the 2010 National Defense Authorization Act (“Section 811”) has unfairly stigmatized and thus discriminated against Native federal contractors. Once again, a hurdle of the kind the Reagan Commission identified as a problem to Native participation in the federal marketplace is alive and well, and causing much disruption.

Section 811 requires a justification and approval process for direct awards greater than \$20 million that are awarded to Native contractors. Apparently it was designed as an additional process to ensure value in these contracts. The Government Accountability Office (GAO) released its report titled, “Slow Start to Implementation of Justifications for 8(a) Sole Source Contracts.” The findings in this report are extremely important to Native communities, because as mentioned, their involvement in the SBA 8(a) Program, through community-owned businesses, provides critically important financial resources that fund the distribution of needed benefits and services.

So why is the GAO report so disturbing to Indian Country? The report clearly shows that the implementation of Section 811 is shattering Native communities. Because of the inherent inequity of the provision, coupled with the confusion and inconsistency of its implementation, indispensably needed benefits and services for some of the poorest communities in this nation face the real possibility of inadequate funding. The report indicates that between FY2010-FY2011, 8(a) contracting dollars valued greater than \$20 million decreased sixty percent (60%) decrease in a single year.

As mentioned, and just as troubling, was the discovery that certain agencies were employing Section 811 incorrectly and/or inconsistently. As an example, the report mentioned that an Army Corps contracting official understood Section 811 as a “cap” on the size of 8(a) awards. Consistently throughout the rule making process it was explained that Section 811 was NOT a cap, but simply a threshold that triggers a process to further ensure value. Right from the beginning NACA was worried that despite the explicit acknowledgment that Section 811 is not a cap, it would be interpreted as such. The report validates this concern. In addition, the report identified instances whereby agencies had established their own threshold

limits, in a nonsensical manner, and without any consideration to the entities and the communities served by such entities, not to mention that such policies are inconsistent with federal law.

The 8(a) program for many Native Americans instills pride in communities that aspire to gain the business acumen essential to compete in the federal marketplace. Disadvantaged small businesses such as those owned by Tribes, Alaska Native Corporations, and Native Hawaiian Organizations may not be able to compete with other contractors without the business development tools provided by the SBA 8(a) Program. Section 811 is obstructing the growth of Native community-owned small businesses, which unlike “individually” owned entities, have more than one family to provide needed benefits and resources. The result of Section 811 is that millions of dollars have vanished from significantly needed services, benefits and programs for the national Native community with numbers over 4.5 million individuals. Up to this point in time, the SBA 8(a) Program has achieved success in boosting Native economies across the country where other programs have failed. Although Indian gaming may have some success in a few populated areas, federal contracting, through the SBA 8(a) Program, has consistently fueled rural and very poor Native communities. Section 811 threatens this success, and has now become a new highlight on the 200+ year history of unfair burdens cast upon Native Americans.

This Committee and others should take a good look at the devastating impact Section 811 has inflicted upon Native communities. It is imperative that this matter be corrected, so that the intent of Congress with respect to Native enterprise participation in federal contracting is realized to its fullest extent.

Indian Incentive Program

A second and equally valuable program in the federal contracting marketplace has been the Indian Incentive Program (“IIP”). This program, just as the SBA 8(a) Program, not only create jobs across the country, it also represents an efficient use of taxpayer dollars. As noted, building and maintaining tribal economies through federal contracting programs is a sensible substitute for a welfare program that no doubt would be an expensive proposition. Just as important, like other programs aimed at helping Native Americans, IIP is based on the government-to-government relationship and federal trust responsibility to Native Americans.

Congress authorized the IIP in 1988 as an amendment to Indian Finance Act. The IIP was created to increase the utilization of Native American owned businesses into the federal contracting supply chain, by incentivizing larger businesses to use the valuable goods and services provided by Native-owned contractors. The program provides incentive payments of up to five percent (5%) when a prime contractor, or a subcontractor at any level in a procurement, utilizes a Native owned business as a subcontractor. When enacting the law, Congress explicitly left the program’s funding decisions to the Appropriations Committee. Recognizing this program’s value, Appropriators have funded the IIP, without interruption, since 1989.

The program has increased revenue for Native contractors, thereby successfully and efficiently leveraging a small line item many times over. Between fiscal years 1999-2010, the IIP leveraged cumulative program funding of \$122 million into more than \$2.5 billion in subcontractor revenue for Native businesses. According to the Department of Defense, the program has been utilized by more than 300 prime contractors, and more than 500 Native American subcontractors. It has been a successful tool to

promote Native economic development, and again, is a program that represents the efficient and cost effective use of valuable taxpayer dollars.

The impact of this economic activity in Native communities has been significant. Native communities are often located in some of the most rural and isolated areas of the country, and lack access to any measurable amount of economic opportunity. Revenue generated through participation in the IIP provides a meaningful injection of capital into these communities in need. However, despite the program's success, some wish to see its progress halted. During consideration of FY13 appropriations, an amendment was filed to strip the modest \$15 million available for the IIP.

We are keenly aware of the fiscal challenges faced by the federal government. While reducing wasteful spending in the defense budget is a widely shared goal, eliminating a program that has positively impacted Native-owned small businesses is not the way to achieve this goal. As mentioned, the program represents a brilliant use of taxpayer dollars in a way that fuels the economies of some of the poorest communities in this country. Efforts to eliminate such programs unfairly impacts small businesses that benefit from the modestly funded program, when much larger savings opportunities exist elsewhere. We ask that you support the IIP's funding of \$15 million, and greatly appreciate your efforts in speaking to your colleagues in the Senate on the need to preserve this program.

Conclusion

In sum, the communities which Native enterprises serve remain some of the poorest and most underserved groups in the United States. There is still tremendous work to be done in effecting positive and sustainable benefits for these communities. Approximately one percent (1%) of the federal contracting that Native community owned entities now receive is enabling the communities to create jobs and opportunities that are desperately needed. Through our self-reliance and business ingenuity, Native peoples are starting to provide for the self-sufficiency of our communities, thanks in large measure to programs like Native 8(a) and IIP. Keeping these are viable investment opportunities that Native communities can with confidence invest available capital is critical to the long term sustainability of Indian Country. The continued economic success and positive move towards self-determination require investment, access to capital, and the Native 8(a) program and IIP to remain intact as intended. We respectfully ask for this Committee to take a hard look at these programs, and the great value that both the federal government and Indian Country receive from their existence. The mere safeguarding of these two federal Indian programs is an investment in the Indian Country economic development.

I thank the Chairman, and the entire Committee for the opportunity to speak before you all today. I welcome any questions your Committee may have.

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Forest Country Potawatomi Community Members