

Testimony of Mr. Joseph G. Jordan  
Associate Administrator for Government Contracting and Business Development  
U.S. Small Business Administration

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For:  
U.S. Senate Committee on Indian Affairs

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.<sup>1</sup> 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.

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<sup>1</sup> 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.

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 entity-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 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% 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.