SMALL BUSINESS ADMINISTRATION

8(a) RULES AND REGULATIONS

PUBLIC MEETING

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THE PANEL

Clara Pratte - National Director of Office of Native American Affairs

LeAnn Delaney - Deputy Associate Administrator for Business Development

Lara Hudson - Office of General Counsel

Joseph Jordan - Associate Administrator for the Office of Business Development and Government Contracting

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(Exhibits attached but not marked)

oOo

MS. PRATTE: Good morning, everybody. We're going to go ahead and get started now. So if everybody could settle in, get your seats, get ready to go.

My name is Clara Pratte. I'm the National Director for the Office of Native American Affairs of the Small Business Administration. We have LeAnn Delaney who's the Deputy Administrator for the Office of Business Development. We have Joseph Jordan who is the Associate Administrator for the Office of Government Contracting and Lara Hudson who is with the Office of General Counsel.

For the panel, we'll take -- we'll just go forward, and we'll have you introduce yourselves. Then we'll take the testimony in the order of which you have registered.

MR. JORDAN: Good morning. This is exciting stuff. I'm the one with jet lag. Just kidding.

So this is it. We are really excited about today and listening to you talk about the SBA 8(a) Business Development Program. The bottom line on all of these things, we really want to emphasize what are the goals, why are we doing these revisions, why these revisions, why now.

And second, we want to hear from all of you what's

going to work, you know, what isn't, what are you concerned about.

And so if you look at things like public commentary, sometimes they can fall into the category of box-checking exercises. This is anything but. This is something where, when you've read the regs, you can see that, in addition to the fact that we knew the whole packet was going to go out for comment and we're holding sessions like this, there are times when we say this is our proposed way of addressing this issue, what do you guys think is the best approach or not.

So what are the goals of doing this? This is the first comprehensive regulatory review in over ten years, so it's not focused on any one thing or any one group or any of that stuff. What it is is really three primary goals, one just relatively simple or straightforward technical corrections where there was confusion in what the regs were saying and we're just tightening the language.

Second, in the time that we last updated the regulations, different laws and statutes have been passed that we need to look at.

And third, we want to ensure this program continues to have the highest degree of integrity and the benefits of the program for the intended recipients.

So when you're reading -- I'm not a lawyer, so for me, I think, like many of you who are business people reading through these with an eye of what exactly does this mean, what are the things that are appropriate, all that type of stuff. Those are the three goals that we're trying to achieve.

Then you go to, okay, why are we getting out there and not just interactions with all of the ANC recipients, because I'm a firm believer -- I'm new to the government in this role, and so I'm a firm believer in that there's good ideas in Washington certainly, and when you're forming regulations, in many circles, that has a negative connotation. But what it means is these are the rules by which to implement the laws. These are the rules that we're over going to oversee this program.

The people who live by those rules, the people the program is intended to serve -- I use that word on purpose -- those are the people that should be at the forefront of telling us what's going to work and what's not. At the end of the day, obviously, there's rarely going to be universal consensus in any area when it comes to a government program, but we certainly want to hear both what you guys think about these regulations and what's going to work, what you like, as well as what you have concerns about, why you have concerns.

The one thing I do want to say finally is, as you're making your comments, let us know what you think is going to work in addition to what you think might not.

A lot of times, you know, in talking to LeAnn, a lot of our team back in Washington, when we do these robust -- have robust conversations, occasionally we'll get comments based on, hey, we have concerns about this one aspect, so then we say okay and remove it or whatever. And then all of a sudden we get an avalanche of people saying, oh, no, we love that, why did you take that out. We only heard from, you know, the set of people who thought it was a bad thing.

So in addition, the things that you have concern about we certainly want to hear about. That's why we're holding sessions like this. Please tell us about the things that you think would be helpful to us. That's an important part of your comments as well.

At this time, I'll turn it over to LeAnn.

MS. DELANEY: Thank you, Joe. My name is LeAnn Delaney. I'm the Deputy Associate Administrator for Business Development which really means that I'm the deputy for the 8(a) Program, a little English there.

First of all, I want to definitely thank Joe Jordan, and through him Ms. Mills, for getting these rules out in the first place. I mean, this was an ongoing process,

probably about four years in the making. So the fact that there's actually something out for comment is a tribute to Mr. Jordan's interest in the program, the fact that, you know, people in high places in the SBA are talking about the 8(a) Program which is a really exciting place to be right now.

I also wanted to let you know how pleased we are that Seattle is the first stop on our regulations road trip out of Washington, DC. We had a couple of meetings in Washington DC last Thursday -- or last Wednesday and Thursday. And so we're pleased to be out here in Seattle for the first stop outside of Washington, DC

It's especially important to me as I actually started my career with SBA in Region 10, and so a lot of people in the Seattle area I'm familiar with, and I want to take a couple of seconds to recognize some of the SBA people from the Seattle area who are here today beginning with Julie McFarland; Jason Lang with the General Counsel's Office; Diana Drake who everybody knows as (applause), Gary McNeil; and last but certainly not least, our friend from the government contracting part of the Office of Business Development and Government Contracting, John Bosmin. Thank you.

And the way we've structured this hearing here in Seattle is, the first day is our tribal consultation. So

I would ask that if you're not a tribal member or an individual representing tribal members, that you hold your comments until tomorrow. Tomorrow is going to be for every other person who's interested in having some conversations about these proposed regs, but today is the tribal consultation.

I would also ask that when you do speak -- and we have a couple scheduled speakers and then we're going to open it up to anybody who has any concerns or comments that they'd like to raise -- that you come to the microphone, state your name clearly, and that you also spell your first and last name and also mention what organization you're representing or what company you're representing.

And now Lara Hudson.

MS. HUDSON: Welcome everybody. We appreciate you being here. My name is Lara Hudson. I am an attorney with the Office of General Counsel.

This is the vision that we're working on (inaudible) issues. We're focussing on support for the Office of Business Development and the 8(a) Program.

To follow up with what Joe said, this comment period is very important to the SBA so that we can issue regulations that have the best impact. So your comments and concerns, negative as well as positive, are very much

encouraged.

These comments that you share will be cataloged. They will be categorized by the specific section of Title 13 as being affected. And we'll go through and look through each and every comment and do an analysis of that comment to decide what we can and cannot do in regard to that comment. So when you're submitting your information, don't hesitate to address each and every section of the rules you have an opinion about, whether it's positive or negative.

And I may ask some questions to clarify things. This is an opportunity for you to tell us what the practical applications are of the implementation of this proposed rule. Thank you.

MS. PRATTE: With that, we will start taking testimony. As I mentioned earlier, the tribal consultation is a very important piece of what we want to accomplish as a government agency. We are doing this tribal consultation as well as one in Albuquerque because of the unique government relationship, and the administration's renewed commitment to tribal consultation is a very important part of the process.

So please feel free to speak your mind, you know, give us the opinions that you need. Obviously all of it's captured via court reporter here, and we will be

reviewing all of your comments and questions in detail.

So with that, what I would do is go for it and call forward to the mic first those who have preregistered. And if you have not registered, that's fine, we will take you after. We are here until 4:00, so we have plenty of time.

The first person registered is Amanda Henry. Is she here today?

MS. HENRY: I am, but we're not presenting testimony.

MS. PRATT: Maver Carey?

MS. CAREY: Thank you. I thought I'd be last. It's nice to see you again. My name is Maver Carey. I'm the president and CEO of the Kuskokwim Corporation.

MS. DELANEY: Could you please spell your first and last name?

MS. CAREY: M-A-V-E-R, C-A-R-E-Y.

So I've been with the Kuskokwim Corporation for 17 years. I am a shareholder. The Kuskokwim Corporation was formed in 1977 when ten Alaska Native Claims Settlement Act Village Corporations located along the middle region of the Kuskokwim River decided to merge together. The villages are Lower Kalskag, Upper Kalskag, Aniak, Chuathbaluk, Napaimute, Crooked Creek, Red Devil, Georgetown, Sleetmute and Stony River.

The ten villages pooled their cash resouces and land entitlements together which allowed TKC to focus on many opportunities. We are grateful to our leaders for merging, but we still struggled financially for many years while trying to diversify our investments and grow the company for our shareholders. In the last year and a half, TKC has taken the lead on the formation of the Alaska Native Village CEO Association, the CEO Association of Village Corporations. I am the founder of ANVCA and currently the Chairman of the Board. Our board is comprised of eleven village corporation CEOs.

With very little resources, we have created an organization that provides services and promotes the positive development and sharing of our village corporation successes. ANVCA is a nonprofit organization that provides services that will improve the efficiency, profitability and stability of our member corporations. We are building a network of mutual support and technical assistance that help village corporations succeed.

We currently provide webinars, newsletters, lunch presentations, biannual conferences and workshops specific to village corporation issues. ANVCA works cooperatively by sharing knowledge and resources, and by collaborating on issues we have in common.

Our association covers a variety of village

corporations from those who have been in the SBA 8(a) program for years and those very small corporations who haven't entered into the program yet.

While we don't speak to every corporation's experience with the SBA's 8(a) program, I can speak on behalf of TKC, being a midsize corporation and being a smaller corporation based on our recent experience.

There are many proposed changes to the Small Business Development Program that have recently been announced. There are over 200 village corporations, many of which have offices in some of the poorest rural villages in the State of Alaska. Several are struggling to survive financially and have limited access to resources.

The 8(a) program was established to benefit the most socially and economically disadvantaged. Many village corporations struggle with land management, subsistence rights, and oversight of their shareholder records and are seeking ways to grow financially to benefit their shareholders. They struggle with financial for-profit growth, and this program is still an avenue that can be used to help their village corporations succeed.

We understand SBA needs to take into consideration all 8(a) participants. ANVCA has a diverse membership of over 43 Alaska Village Corporations. Some are larger corporations with a multitude of companies. Many others

are small village corporations who haven't even participated in the program. Some of these regulations would negatively impact village corporations.

The Kuskokwim Corporation is located in one of the poorest regions in the State of Alaska. The median income in one of our underprivileged villages, Stony River, is only $20,000 per year for one individual. The current population is 53 people while there are only 13 jobs available, although about half of those jobs are only seasonal jobs such as firefighting during the summer months. The percentage below poverty in the village is 38.7 percent. Many families often live together in the small cabins, smaller than this room that we're in today, two or three families and small children. They are living together due to the financial setbacks in the villages.

In Stony River, which has about 30 homes, only one home has a flush toilet. Only one home has running water. And in the middle of the winter, in minus 25 to 45, this is a challenging burden for the families. Children assist their parents in preparation during the subsistence season to prepare and store food for the harsh winter months. Water also needs to be stored from any source such as the river, rainwater and/or snow. It's very challenging in the middle of winter.

Unfortunately, we see a very high suicide rate, teenage pregnancy and alcoholism in our region, and it places additional weight on our board of directors' role in managing the corporation's financial success and giving back to our shareholders.

If you walk into the grocery store, if that village has one, you might be able to purchase stable items such as milk and bread and maybe some sort of fruit that has survived the travel. The cost of these items is more than double or triple that in the City of Anchorage. The only way to get items out to the villages is by barge or by several costly plane rides into rural Alaska during harsh weather. There are no roads connecting our villages. Travel is either on the river, by boat or in the winter months by the ice road. Recently, it costs more for one person to travel to Stony River from Anchorage than it is to travel to Hawaii.

One other misperception is that all Alaska Native people are shareholders of Native Corporations. The Kuskokwim Corporation is one of the few that opened up enrollment to descendants.

When ANCSA was established, enrollment was for those born prior to December 31, 1971. In doing so, we have tripled our shareholder base, so we have grown from 1,100 shareholders to 3,100 today. So what does that mean to

the corporation? That means that we are sharing more of the wealth with more of our shareholders. We are dedicated to supporting our shareholders through educational, scholarships, education and training opportunities, dividends and employment all while striving to develop successful businesses. We paid over $9 million in dividends to our shareholders over the years. We have provided over $25,000 a year in scholarships to 20 to 25 recipients each year and hope to see this grow with continued benefits from our investments. And we're very proud of that, but we're hoping that the 8(a) program will help us continue to grow these scholarships.

While reporting on the benefits that corporations provide back to shareholders is great information, it would have been more difficult during initial growth stages while we were establishing mandatory compliance programs, fulfilling client expectations obviously, reporting and establishing policy programs to ensure management of our new 8(a) companies. Perhaps there is a timeframe established for reporting this information during the second phase or later phases of 8(a) development, although I do know that many of the services that benefit our people might not be the same with other corporations, so I'm still not sure as far as if you have

apples to apples and oranges to oranges as far as what those requirements are, so we're still not sure what those requirements should be.

My final comments are regarding the changes to control requirement. We do agree that the disadvantaged owner should reside in the U.S. to maintain control. That's obvious to us.

Changes to the ANC managing office, TKC strongly disagrees with the changes in the location for SBA's ANC application process to San Francisco. During the initial stages of 8(a) participation, it was helpful to walk into the Anchorage SB office to speak with Karen Forseland and/or a business development representative regarding the application process and compliance. Unfortunately, for the smaller village corporations, we don't get that opportunity because it's down in San Francisco.

Regarding small disadvantaged business determinations, we do believe that the tribes should allowed the same automatic statutory economic disadvantaged designation as ANC's.

Regarding the effect of early graduation, TKC disagrees with the early graduation or termination resulting in the inability of a firm to certify itself as a small disadvantaged business. ANC-owned companies by definition are small disadvantaged businesses. Status in

the 8(a) program should not be allowed to change that.

Requiring independent audits rather than allowing consolidated roll-ups may be a very expensive proposition for new firms. Again, this could be tempered by allowing such reporting to become mandatory in later phases.

So while some of the changes are in-house cleanup, it seems others are making the program much more complex in that it becomes more expensive for companies to understand the rules. Small village corporations are trying to get their feet on the ground. The 8(a) program was established to see small businesses develop, succeed and grow.

We hope to see other ANSCA village corporations enter into the program so they can successfully grow.

Thank you.

MS. PRATTE: If you do have hard copies of your testimony that you're able to provide, please give us those. If not, we'll get it via e-mail to make sure we have those.

Next we have Amanda Henry. Harris Teo. Brent Misner. April Ferguson. Robert Tompkins.

MR. TOMPKINS: I may wait until all the folks who are either tribal members or shareholders have had an opportunity to testify, also in part because my testimony seems very technical and boring, so it's probably best at

the end.

MS. PRATTE: Thank you for that. I appreciate that. Chris McNeil.

MR. MCNEIL: Thank you very much. Good to see you.

My name is Chris McNeil. I'm president and CEO of Sealaska Corporation. We're an Alaska Interregional Corporation. We're owned by 20,000 Tlingit, Haida and Tsimshian tribal member shareholders.

MS. PRATTE: Could your please spell your first and last name?

MR. MCNEIL: C-H-R-I-S, M-C-N-E-I-L. And we're in the southeastern part of Alaska. Our tribal shareholders also live throughout the Pacific Northwest. We represent 12 villages within our region as well.

We have had an open enrollment as a consequence of the passage of amendments, and that's one of the reasons why we have 20,000 shareholders and growing.

As we look at the 8(a) program, it's really very critical to Sealaska, because it provides us with the opportunity for great capacity building in our corporation among our people, and that means for us several things. One is that it has provided us with enterprise opportunities that would otherwise not be available to us. Certainly, the 8(a) program has lowered

the entry into the programs in areas that just wouldn't be possible otherwise even for the size of our regional corporation.

One of the very top benefits that we have been able to achieve and continue to focus on is the capacity building for our tribal shareholders. That has been a direct benefit that's allowed us to be able to hire tribal member shareholders in management positions in the 8(a) program. We have done that on a very deliberate basis, and I think we've achieved a certain amount of success, and we've found even to our own surprise that the tribal member shareholders are a lot more flexible than even we had anticipated.

For example, one of our construction people was hired as a contractor -- a construction contractor in Ketchikan. And I happened to see him recently, and I said, well, you know, we have a contract in Kyrgyzstan. How about that? And much to my surprise, he said, sure, yeah, we'll give it a try. So we're in Kyrgyzstan right now.

And I think that, if you put the program together and you post questions correctly, you can actually get your own Native American people to really get out there and look at other opportunities; not only within the United States but also overseas.

Of course, the key benefit is the dividends. Dividends are very important. Sealaska has been very fortunate to distribute dividends over the years and has a dividend policy which requires us to pay out about 35 percent of our earnings on an annual basis as well as money that we've accumulated in a permanent fund that has been distributed to tribal member shareholders. These are very important for us. We also have numerous programs that I'll outline those as well.

We do understand the tone of those regulations. Some of them are seeking increased restrictions. And from our perspective, we think that some of these restrictions are unnecessary. While I think the requirement of accountability remains very important, we concur very much with the accountability restrictions of the SBA program. It's federal money, and we understand the equation there.

And so we believe that it's important for development in a responsible way that doesn't provide a great -- a whole bunch of overhead on this program, and I will give some examples of that.

I will provide -- in short form, we'll provide in written form our specific comments. And I have done some editing, but in particular, we've looked at several of these things; for example, the provision prohibiting a

tribal 8(a) firm from receiving a contract in a secondary NAICS code that is the primary NAICS code of a sister 8(a) program, we don't believe that -- that is unnecessary because we think that, as long as there's diligence in maintaining the separation, that the intent of the program was to provide simultaneous opportunity.

As you know, in our case, the math is so simple because, if we make $20,000 of income, you know, that means our shareholders maximally can get $1 out of that. And given our dividend policy, basically it takes $60,000 in order to distribute $1 to shareholders -- tribal member shareholders.

So that is part of the math, and I don't think it makes sense to require -- I mean, there needs to be a cap on the dividends, but to mandate that it's to be distributed in some way on a formula that's mandatory doesn't make sense, because corporations need to be able to accumulate cash in order to be able to expand business opportunities. As a matter of fact, I think you're probably a lot more acquainted than we are about the requirement for corporations to have a very strong balance sheet, especially in the construction areas.

One of the key items that you have in here is the proposal to require an annual ANC review provided to the SBA to include information on the extent to which

benefits are reaching individual Alaska Natives or the Native community, and the same would apply to the Tribal, Native Hawaiians and NHOs.

We have looked at this; and I think that, from our perspective, it would make sense to have an accountability of achieving a goal, but I think they also have to be reasonable.

Let me give you several examples. One is an accountability for employment of government shareholders. From our perspective, it's simple. We do it internally. It's not necessarily the reporting requirement. We do this on a monthly basis, so we understand exactly how many tribal shareholders are being employed in the program. And we believe that's an important goal of the program, you know, a good use of the public's money in order to create employment among Native people.

On the other hand, to give you an example, at Sealaska, we provide a number of very important benefits on an annual basis, and we have done so for many, many years. That includes the scholarship program which there's -- we think it's a program that, no matter what condition the corporation is in, we try to find a way to fund our scholarships. We've been able to -- fortunately been able to fund about half a million dollars a year to our tribal member shareholders, and so we structured

that, and we've been able to accomplish that. We have an institution that we created called the Sealaska Heritage Institute with the principal goals to include the enhancement of our culture-retained language and to promote the art education of our people from a cultural perspective. The corporation has funded that, and it has a cash flow of about $1.3 million a year, and that is a very, very important benefit to our tribal member shareholders no matter where they live, because there's a very strong tie and belief in our culture in being able to sustain that.

So additionally, we provide internships every year for about 15 interns, and we've created a system where it's become really quite well known that, if you're able to achieve a scholarship and you later become an intern, there's a pretty good chance that you've qualified yourself to ultimately become an employee at least in middle management of the Sealaska Corporation. And it's provided -- essentially it's a process in which our tribal members can ultimately be employed.

Now, while we provide a benefit, the question is, what would the accountability of tracking be on something like this, which I think is really important, because we have to be able to do this. If we had to track all of the dollars of these benefits, it seems to me that it

1 does not make sense, but it would make sense if you're
2 able to say that, well, we have the program, and
3 inferentially the funds came from our participation, at
4 least partially, in the program.
5 But if it turns into an accounting system where we
6 basically have to follow a dollar from the 8(a) program
7 all the way down to the scholarship, I think it's just as
8 important to say that we have X numbers of scholarships,
9 we have our contribution to our Heritage Institute, we
10 have an internship program, they have this, we spend
11 money on it every year. It seems to me that should be
12 sufficient to clearly demonstrate that tribal member
13 shareholders are benefitting from our presence in the
14 program.
15 So if we're on that basis, if it turns out to be this
16 huge accounting thing, then we're lost. It just does not
17 make sense.
18 MS. DELANEY: Just a point of clarification.
19 On that issue, we completely recognize that a
20 dollar -- one 8(a) dollar turned into this, we understand
21 that's not reasonable. So with the intent of this
22 language, we were trying to address a criticism that
23 we've historically received that SBA doesn't track
24 benefits to shareholders and members, but at the same
25 time the intent, just as a point of clarification, is not

to get into whole $1 equals this, just to clarify.

MR. MCNEIL: I very much appreciate that. And if this is reduced to regulation, I would hope that the regulation makes exactly what you said clear, because we've all had enough experience with the GAO and anybody else about this question, so we wanted to be very clear about that, in fact, by the presence of these kinds of benefits including dividends that, in fact, this -- these benefits do, in fact, exist.

There was the question of -- we'd also wanted to address the question of the review of the 8(a) application. It's historically been in the Anchorage office, and we would certainly like to keep it that way. And I think a significant part, in addition to the comments made of the extraordinary expertise that that office has developed over the years -- and I emphasize "over the years" -- because I think, if there's any argument about this program is that it takes years to kind of figure out some of the twists and turns. And you really need people who are very knowledgeable about the program, what it means within the region.

So we would prefer that, if the decision of the SBA is to just continue to increase the funding for the Anchorage office -- which you can do, it's a decision of the administration to be able to accomplish that -- and

we'd like to be able to see that it does that.

Additionally, the one provision that is the possibility for early graduation, you know, we don't support that. We think it makes more sense to try and to achieve that. We were discussing, how do you measure and achieve the benefit rather than focusing on pushing it out of the program.

We support a number of provisions in the rules, and we will provide the written indication of those areas that we are supporting. I think that some of these regulations do make a lot of sense, and we'll provide that as well. Certainly, if you have any questions, I'm here to answer them, and we can also provide any further commentary on this as necessary.

MS. PRATTE: Thank you.

MR. MCNEIL: Okay. Thank you.

MS. HUDSON: What I'd like to point out to everyone too is that we have extended the comment period on this rule for another 30 days, so that's until January 28th. So between now and that time, anything that you would like to address additionally, we welcome the comments and encourage you to go ahead and supplement what you say today. Or if you read something that you have issue with, if you hear things that are commented on during the testimony that's being provided, you have a

different take on it, and you'd like to provide information to that, please do so either in this venue or in the written comments, so I would encourage both.

MS. DELANEY: Lara just brought up a really good point that I actually didn't touch on.

What you're probably asking yourself is, logically, so what happens after the comment period closes; you know, what happens next in this process.

Well, let's just say, in the spring, Lara, myself, John Cline and probably a few other people are going to sit down and read a lot of comments, and we're going to look at those comments with an eye to what did we hear on the road tours, what did we see in the comment, and what is the final rule going to look like. We anticipate -- not to be overly optimistic here, but we anticipate that sometime before the end of the summer, we should be done with that process and be well on our way to a final regulation.

And then the process is, as it was with the proposed rules, it is reviewed by the clearance process in the building, and then the O and B clearance process. And then we anticipate that shortly thereafter something would appear in the Federal Register as a final rule, so just to clarify that.

MS. PRATTE: Thank you. Thank you for those

comments.

The next person we have is Al Olson. James Ginetto. Matthew Nicolai.

MR. NICOLAI: Good morning. I speak loud. So my name is Matthew M-A-T-T-H-E-W, last name Nicolai, N-I-C-O-L-A-I.

Good morning again. My name is Matthew Nicholai. I have the privilege of being president of my company, Calista Regional Corporation for the past 15 years, and also I'm -- as a regional corporation, I'm the longest serving employee. I've been an employee of Calista since 1975. So I've seen changes within our Native corporations irregardless of -- not just in our company.

We represent 13,300 shareholders in western Alaska in the Yukon delta. A majority of our people, by the U.S. Census Bureau, we have the most impoverished region in America. The district is considered the poorest, and we represent that district. And I will explain the benefits that we've been addressing through the SBA programs, because our company today is contracted in six states and Guam, also in Afghanistan and also in Iraq.

The privilege that we've had, in a contract, we served the largest Army contract down in Huntsville, Alabama. It started as $1.4 billion set-aside for a ten-year project that turned into to date $1.9 billion by

the time we add on contracts to that Army contract. We employ 436 locally in Huntsville. And the contract for that facility was a joint venture with a small business, under 1,000 people, very successful.

Calista operates 51 percent of the contract. Many of the subcontractors are big companies to us, Boeing, Lockheed, Raytheon. It's a digitized facility -- the largest digitized facility under an SBA contract.

Alaska Native corporations, you've heard our neighbor Carey explain the 203 villages that are under the Alaska Native Claims Settlement Act and 13 regional corporations that do have the facilities to do the majority of the contracts to the federal programs. And because of these privileges that we've had, many of our programs that were explained by Chris McNeil is the same within our companies.

Yesterday, we contributed $1 million to the Calista Scholarship Fund, and our kids need the scholarship funds that are derived from the profits from the contracts that we have. We've additionally awarded $500,000 a year. We didn't have this until we acquired contracts in Calista.

In 1994 when I became president, Calista was only a $6 million company. Last year, our contracts went up to $220 million. Fortunately or unfortunately, it depends on the media. The media will say we're evil people when

we send 94 percent of that contract funds to the federal government. To us, to our people in our region, especially when we send dividends out to our communities -- as an example, in Mountain Village, $75,000 in that community has a huge impact than those moneys that are derived from the dividends that we send out. Locally individuals in that -- the shareholders that we have in Mountain Village are able to buy food, fuel, heating fuel, and also gasoline for their fishing and hunting needs.

So the programs that we contract on from the federal government do definitely have a huge positive impact that reaches out to many communities the size of New York. So the -- when you do talk about the joint venture changes that, you know, you want, as an example, the three-two-one rule, we have a joint venture partner which is a -- you know, a created partner that we have, SES. There are several SES's. That one would challenge the SBA program, the people that were associated.

We will be submitting our -- you know, whether we have created programs or not, we'll be forwarding the written comments to you by the deadline, because we've asked the joint venture partners that we have to make sure that the impacts are not going to be negatively impacted.

Locally, as an example, in Huntsville, the corporate giving between the two joint venture partners, especially from our JV side, is $150,000 a year. To Huntsville, that's a very good positive impact on our local economy, the charitable giving. That's an excellent program that we've had.

Some of the programs, as you've heard, have internship programs. Every summer for the past eight years, we've had interns within our companies, and we're seeing success in the scholarship program. Because of the programs on scholarships, our interns are connected. We choose -- many of the young that we choose for the scholarships to make sure that we try to find employment for them.

Ten years ago, we only had one doctor. Now, you know, we've had three doctors graduate from the program. Ten years ago, we had only one district attorney. Now we have seven that graduated through the program.

So the changes that you're proposing that we hear in Congress, that we hear in SBA, will have a huge impact to us, because the programs that we try to address are basically -- we're attacking poverty on the local level. The moneys that arrive have a huge positive impact, and that's what we want to protect.

So we invite you -- I know you came to Seattle. We'd

love for you to come to see Alaska and see the impact locally in the communities that we serve to the people -- the very people we serve. We have asked the same with some of the congressional leaders to come up to Alaska to see the programs that are involved.

The intent of the 8(a) program is basically, you know, we truly enjoy the procurement policies, and those programs have definitely -- not just in Calista, but also has positive impact to basically all of the contract associates of Native America. Each program is very unique. All of us talk to each other to make sure that we work congruently, and sometimes we compete for the same projects, you know. We truly enjoy competition of the 8(a) contracts. It lowers the price down for the federal government.

If you look at the contracting privileges we have today, many of the projects we choose and deliver for the federal government, we do it at lesser cost than some multinational corporations, so these contracts that we had have excellent economic success stories.

Something that we want to share with you, since the contracting has started, is we want to make sure that you distinguish your policies (inaudible) is very much different. We -- you heard from the other individuals talking here, and the privileges that we have definitely

has impacted positively to many of the owners that we have.

The joint ventures, again, in our company, a lot of times you read it in newspapers that joint venture partnerships that have 51 percent ownership, we're the ones that are doing the work. We're not upfront. We do excellent service in the contracts that we have. And we truly enjoy reaching out to the local contracting, and we've made every audit that comes to us, every procedure that we've met with the federal guidelines. When we're audited, we come out clean.

Congress sometimes, you know, looks at us, and they say -- if O and B goes out and audits us and says we've done something wrong, 99 percent of the audits are clean, and you get that one percent. Then you've got the media saying we're all wrong people. And these are changes to make sure that -- you know, the media sometimes attacks us.

This program we have is very successful for Native America. And you're the people that sit and make the policies that do affect us, and we're reading those to make sure that -- you know, we want to understand the very impact of what you're proposing.

And I think you will see Native America speak when we submit the changes that we want to see. And not just

from what you're proposing; we want to make sure -- we want to protect the programs that are in existence today.

These are some of the basic comments I want to share with you today. They're not long. You know, a lot of times, I hear from many, many individuals that comment that the 8(a) program is a giveaway. It is not. It is not to Native America. The majority of us are very proud of who we represent. We're very successful in what we do. And we're NAICS. Calista is NAICS. If it weren't for the 8(a) programs, Calista would still be poor.

We're very fortunate today. We're -- last year our -- we wrote -- and I was sad to see a $17 million check direct to the federal government in income taxes. That's a big chunk. And it's because of this program you have. And in fact, when you look at Native corporations paying taxes in good amounts, the federal government should be -- should like that, so I wish you could lessen those taxes for us.

But I appreciate the time you've given me. We will be submitting all of the proposed changes that you're sending out point by point. Thank you.

MS. PRATTE: Thank you. Thank you so much. Next we'll go to Lynn Owsley. Robert Hamilton.

MR. HAMILTON: I don't have anything prepared.

MS. PRATTE: Okay. No problem. Patricia

Holmes. Mike Blair.

MR. BLAIR: I have no comment.

MS. PRATTE: Jessica Graham.

MS. GRAHAM: I didn't know that I signed up to testify.

Good morning. My name is Jessica Graham, J-E-S-S-I-C-A, G-R-A-H-A-M.

Good morning. I'm the executive vice-president for administration and general counsel of Afognak Native Corporation. It's good to see you again.

I don't have prepared remarks, but I do have a couple of points that I just want to put out there for your thought and conversation and perhaps the time for conversation among the others in the room.

The first is to echo Mr. McNeil's comments on the reporting on benefits. One phenomenon that I suspect you're all aware of -- if you're not, I'll throw it out there -- most of the benefits come from the parent corporation level, and you are writing regulations for 8(a) entities. And certainly at Afognak, all of our 8(a) companies and the money that they make roll up to the parent corporation level, and our nine-member board of directors decide what funds go out, to whom, in what form, how much it will roll back and so on.

So whatever you decide to do, I urge you to be

cognizant of the fact that it is a parent company in most cases that makes that decision. It is appropriate for the parent company to make that decision as opposed to SBA or anyone to decide where the benefits of all that hard work goes; and that, however it gets reported, it gets reported in a uniform method so that you can use the information for the purposes for which you were trying to gather it, because if it's a free-for-all in how we report, you're no better off than you were six months or a year ago.

So for that, I just offer, be thoughtful about how you put it out and the category that you use and the methods, and be clear with the participants about exactly what you will require.

I guess also echoing Mr. McNeil's comments, the effective date for that provision will matter. If you roll out these regulations and say as of September 1st, 2010 this is now what is required, you could cause massive effort on the part of 8(a) companies and all tribal entities who will suddenly have to go back and redo their systems to try to gather the information that you're talking about. So I encourage you to think about adding some kind of graduating limitation period for that provision.

The second point I want to raise speaks to the

Mentor-Protégé Program, and I sort of want to caution you, I think there's a little bit of revision history that goes on now that suggests that perhaps the problem is simply an A, B, C or tribal program, but it's not. I think the ID report clearly shows there are other 8(a) entities that have struggled with this problem when dealing with an overbearing mentor, and perhaps they're too aggressive in their approach to the 8(a) company.

And to that end, in the section of the Federal Register on Page 55705, you speak to how you're going to penalize a mentor for bad behavior and sort of what you're going to do when a mentor hasn't stepped up to its obligations and so on. I think the appropriate section is 13 CFR 124.516(1).

One of the things that you put out there is perhaps that you would step in and cancel a contract that was awarded to a mentor-protégé JV. I think, in that situation, the person you're going to hurt is the protégé, not the mentor, because typically what happens when your mentor hangs you out to dry is that the protégé has to continue to perform and try to save their reputation and do everything that they can to make that contract a success even in spite of the fact that your mentor is not there providing all the benefits that you're hoping for. And if SBA steps in and cancels the

contract, you have sullied the reputation of the protégé which will take a long time to correct.

So I will offer that that is the point at which the SBA ought to be stepping in and coaching the protégé, here, find someone else to help the protégé complete the contract like that, or find another mentor to get to the conclusion. But simply cancelling a contract awarded to a JV under those circumstances hurts the wrong person.

Also, in that same section where -- that I just quoted is 124.520(d)(1). I'll offer that you might consider putting an "or" at the end of that section. I realize that's a little technical, but you're getting into what SBA's options are when a mentor has failed to step up to its obligation. And your protégé in that situation, you're talking about what happens, you're going to want to know, is the SBA doing to do X or Y or B, or X, Y, B, so I think an "and/or" perhaps. But either way, clarity would be good. I'll keep rolling here.

I agree with the proposed change in the 13 CFR 124.504(d) which I call "once 8(a), always 8(a)." We have certainly seen in the past situations where, for political reasons, because of media reports or other things, suddenly agencies who are getting a very good performance at a good price that they negotiated suddenly

want to do something else. And frankly, I think the ANC ought to be prepared to step in and advocate on behalf of 8(a) contracts in those situations, so that's a good change. Thank you.

Next point --

MS. HUDSON: Let me just ask a couple of questions here.

One thing I want to make sure is that all of these proposed changes have an effective date. There are some items of the rules that are in effect now. The issue of agencies changing their appearance from 8(a) or non-8(a) is something that SBA takes the position that we've always had, that once it's an 8(a), it remains an 8(a). We are clarifying something that we are doing currently in practice, which is through our partnership agreement with those agencies where we delegate the contract execution to those agencies. But I encourage you to please in your comments, when you put them in, reference that specifically.

I'm going to step back a couple comments back to what you said with regard to the reporting requirements. Any proposal that you all have with how those reporting requirements can occur, there's been specific discussion about dollar for dollar, and LeAnn clarified that's not exactly what -- that's not what we want to see. What we

want to see is how are the benefits in the program flowing to the beneficiaries of the program, so we need any comments that we can get from you all because you are doing the reporting internally for your organization or not.

Again, I go back to the practical implications of what we're doing with this rule. The idea is not to make it more burdensome but to achieve a goal, and the goal right now is how those benefits flow.

So again, I encourage you in your comments with regard to that, don't hesitate to get into that. Please go on.

MS. GRAHAM: Along with the good-change bandwagon, I will offer that your proposed change to 13 CFR 124.509(a), which offers clarification of what counts for competitive business mix requirements, is also a very good proposed change.

Finally, again, I'm jumping on the bandwagon. This notion that 8(a) processing for the Alaska Native Corporations ought to be done in San Francisco, I think, is a mistake. I also think SBA should be training parents about what's going on here and why that change is being proposed, because I can tell you, most people would speculate that that's being driven by the IG.

And frankly, I think most organizations deserve to

have in-person conversations with the folks that are going to be working with them, serving them and helping them understand what's going on. And the need is in Anchorage, so you should put the people in Anchorage.

I know, Joe, you're about to jump on me.

MR. JORDAN: I appreciate the comment. I just did want to address our thinking behind the San Francisco partially because that's already happening. So you should know, this is not necessarily a change in practice. That's how it's done right now, but also to just kind of say here's why. So first, a small clarification.

The Anchorage district office will still not only have the great business volume that it has now, just not -- our field operations have already gone over increasing the number of business development specialists there.

In terms of a one-to-one interaction, there will still be that person in Anchorage. Karen can still help you get through an application as can her team. The difference is in terms of processing the applications themselves. And from -- it's not so much IG driven. They were helpful pointing out the fact that there's probably a need for the Anchorage -- DBS's in Anchorage to be rewritten and forwarded. But it's more of a --

just a simple business efficiency standpoint. We want to make sure that, because there are differences between tribal/ASA and AA/BD applications, the traditional individually-owned firms, that we have a trained staff that is used to dealing with these applications, knows how to do it effectively and efficiently. And why that isn't just a business efficiency but the way it benefits you is because what we've heard in the past was there were concerns about the speed with which applications were processed because the staff processing them were spread out and therefore didn't deal with as many of these applications, and therefore had to do more back and forth question and answer.

By concentrating in the two processing centers, we feel that -- certainly for these applications, we feel that the staff is therefore much more focussed in the training they have services to deliver, and so you get the applications processed more effectively, both in terms of the quality of processing and the speed of the process.

But all that one-to-one interaction that you have with the great City of Anchorage, those people in Anchorage will still be there and even more of them.

So I did want to somewhat bifurcate the issue of what we're intending. We're not saying, if you want to have

the conversation either on the application or during your firm's program you need to get to Seattle, no, absolutely not. We want to give you even more opportunity within Alaska to have these conversations.

But in terms of the team technically processing them, we, through a long series of reviews, felt this would be actually better for everyone. But if that is not the case, we certainly want to hear, but that's kind of the thinking behind it.

MS. PRATTE: Thank you. We definitely want to be transparent and let you know why -- and I hope succeeded -- it wasn't an IG-driven decision, but it was a management decision to go ahead and do that.

MS. GRAHAM: And I apologize in advance if I'm stepping on any toes by saying this, but the perception is that the folks in San Francisco processing those applications are not friends of ANC, that they were slowing down the applications, that they will take any opportunity in order not to admit an 8(a) into the program.

So fair or unfair, I'm just -- I want you to know that that's part of what's going on here.

MS. DELANEY: Well, and just to follow up on that, I am the Deputy Associate Administrator of the Office of Business Development. I supervise the people

who supervise those two processing units, San Francisco and Philadelphia. And if you have any information at all that something like that is happening, I want you to let me know personally. Okay?

MS. GRAHAM: Deal.

MS. DELANEY: Anybody.

MR. PETERSON: Excuse me. See what the timeframe is for processing and approving an application. I believe that's where most of us get frustrated, because -- let's see.

I'm an administrator for the company I work for. I do those applications for our company, KCORP Technology Services. And it's not a simple, 15-minute process, fill out some paperwork, submit it, a couple of days. We're talking over a year. We're talking up towards two years. And most of us for the most part are simple folks who don't have law degrees. We aren't in the business of doing 30-page packages just to start a little company.

So your comment was this was supposed to fast-track or speed things up. From the field, from the people that do this, we're seeing the opposite. I agree with you. We feel ostracized, left out, from the feeling between what we had in Anchorage and what we have in San Francisco. The person that we used to have in Anchorage that did these was wonderful, was compassionate

and understood the limitations of a lot of folks who do these applications. We don't get the same feeling in San Francisco.

So please keep that this mind.

MS. DELANEY: I appreciate that very much.

One of the things that, you know -- I'm talking too much. I don't know if everybody knows this. It is my perception that I frankly am not sure how many applications come in that don't go back to somebody requesting additional information. One of the things we're doing in the context of that is a review of the checklist that goes with the application. Something is messed up if the majority of applications go back requesting additional information.

In my view, it shouldn't be the majority of the applications that go back requesting additional information. There are going to be times, given the strenuous review that we do, that has to do with the credibility of the application process itself, if we do go through it with a fine-tooth comb, occasionally there will be information that we need to go back and clarify, but in my view those should be occasional circumstances, not the rule.

So we're going at the base problem which is, why are we getting so few complete applications from the

beginning. Okay? From that point, once we have -- we have some statutory timeframes here. Upon receipt of the application, we have 15 days to screen the application. It then goes back to the applicant either in whole -- if there are probably at least 10 or more items that need to be addressed, the entire thing would go back to the applicant.

If that's not the case, we would keep it in-house, and it would go back to the applicant. The applicant has about 10 days or so to respond with the information. If we don't get it within that timeframe, then the whole thing does go back to the applicant.

Once we receive a completed application, the processing time is 90 days, but I highlight once we receive a completed application. So that process of getting the completed application is, in my view, what the major challenge is right now, and we are taking a look at how we can address that.

MR. BRAWINGTON: Can I go out of turn? I'd like to address some of these specific comments.

MS. PRATTE: Sure. Do you want to step to the podium? Give your first and last name and the spelling, please.

MR. BRAWINGTON: My name is Daucey Brawington, D-A-U-C-E-Y, B-R-A-W-I-N-G-T-O-N. I'm the program

manager for the Native American NAMAC which stands for Medical Assistance Center. Our region covers Washington, Oregon, Idaho, Western Montana and Alaska.

We get involved with multiple tribes and ANC business corps with the certification. I personally have worked on -- I don't know -- a couple of dozen tribal 8(a) applications support for 15 days. Some of the perceptions we have is the information is sent back with a checklist of things needed simply to delay the start of that 90-day clock. I've seen them come back with a list for up to 14 additional items. Review of the package, 12 of them were already in there, going back to having a local certification in Anchorage or Seattle for Tribal A and C versus San Francisco.

The perception in America is all Indians are rich. Whether it's the media or some of the highlights -- the high profile contracts, there's a lot of folks that think Natives have a lot of money, so they're reluctant to talk about certifications, and they're reluctant to give contracts, and this is from the standpoint of contracting officers.

If you look at the initial legislation for 8(a), it talks about up to 10 percent of the federal procurement budget. If you go back and look across the board, every year, the totals are closer to 4.9 or 4.8 of the budget.

So even these high profile 500, 600 million direct award contracts to A and C does not push the 8(a) limit above what's statutorily available.

When it comes to capacity building, that's one of the problems with the lower 48 tribes. You look at their locations, their backgrounds, the schools that are available, the history, one of the things that my program strives to do is, how do we help the tribe to develop the capacity to perform the federal contracts. The easiest quickest way is through mentoring, joint ventures, subcontracting, other types of arrangements, so that they can leverage their tribal status to get the confidence, capabilities, skills, knowledge and ability of a larger company to work with them to transfer some of that technical knowledge back into Indian country. Some of the joint venture agreements, mentor-protégé agreements, should have some very defined language as to what the protégé can expect and what the mentor has to provide.

There have been cases, both tribal and individual, where the mentor wants to come in and take the largest part of the contract. I've seen proposals put together, if you read through them and look at the numbers, at the end of the day, 95 percent of the proceeds of that contract goes to the mentor even though it's a 51/48 split with the protégé.

So where was I on my comments? I'll get back. But it was the perception of the delay in Indian country. I have worked on a tribal 8(a) application from start to finish which went to San Francisco, came back three times and got the final approval in 72 days. I have worked on ones that took in excess of 28 months.

So the checklist would be good, but I would love to see a checklist which when it was sent back has this already been submitted.

MS. DELANEY: You and I just met in person today but we are going to have a lot of conversations.

MR. BRAWINGTON: That's why I wanted to speak, because I've been working around -- there's been a lot of regulation changes since -- I had my own 8(a) company back in '91, '89, '90, in that timeframe. I've been working with tribes ever since '98, and I've seen a lot of different things.

I'll just digress one quick moment on the perception of rich. In my position as program manager, I get probably two calls a week from snake oil salesmen who come in with ideas, can you help me take this to a tribe, I only need $10 million. Well, which tribe? Any of them. They've all got money. And that happens at least twice a week.

That's why, when I go to a tribe and I talk about

trying to set up a mentor or a capacity-building relationship, I emphasize, let's plan a divorce at the same time we're planning the wedding. Let's find out what's going to happen if the contract is cancelled for nonperformance. Are we sitting here holding the bag?

Thank you for your time and letting me go ahead of someone else, but I did want to follow up with what he said. And I'd like to talk with you later. Anybody that's interested in what we do, ask myself.

MS. PRATTE: Thank you, Daucey. Next up we have Ron Perry.

MR. PERRY: Ron, R-O-N, Perry, P-E-R-R-Y. I'm president and CEO of the National 8(a) Association, and I also have the privilege of running a village corporation, the Village of Teya near Anchorage, Alaska.

I'm going to jump right in to some things. First and foremost, I would request -- and I don't have a lot of requests -- to see all your smiling faces in Alaska before the end of the hearing period. What do you guys think? (Applause)

We are willing to help with that. We'll make sure there's donuts and make sure there is whatever SBA people like. Okay? It will all be there. So we're going to make sure that's taken care of. We don't want any excuses. We're going to have a great time. Right after

the holidays is a great time to be there. So with that said, I appreciate you guys listening to that.

Just to jump right into a few of the things that we've got, I'll just go over a little bit of the list.

As far as the tribes are concerned, for the nontribal hires, that should be allowed. I mean, I've got a small tribe in the village. In Alaska, some of the smaller villages don't have a lot of brain trust. They may not have very many members. Most of the folks are blue-collar workers, fishermen and work in the woods, or you may not have even gotten to high school and whatnot. That might be true of some tribes down in the Lower 48 as well. If you can hire the best and the brightest of those folks, we should do that. That's just the right thing to do.

So an agreement with -- you know, comments as far as that's concerned, the best and the brightest will help get these folks there. It's going to take a couple two or three generations to have in some cases the tribes in villages to get people to help support their tribal village. But if we don't start soon, you know, when will we start? So I'm in agreement with that.

I agree with Chris and Jessica and everybody else on the measuring of the benefits back to the shareholders. You've got some large ANC tribes that are represented and

smaller ones. The one I represent, this is our third year. We haven't done any distributions yet to our shareholders because we're just not large enough. We have to get the cash flow going.

So if I take a look at a firm that has X number of millions of dollars and the ones that haven't gotten to the million dollar profit range yet, and then to have to try to quantify what I'm doing for my folks, I have it right down to nothing. You know, that's going to -- you know, that's kind of an empty feeling in the stomach when you have people say, keeping all the money for yourself, Ron? Well, no. I would dress better if I would.

So I agree with them when you guys start to quantify those. You'll have to be careful because you're going to have some people that have nothing and other people who have a bunch. And so if you go to a smaller village or tribe and they say, hey, what are you giving back, what am I giving back. And if I have to put nothing because I haven't given anything back, you know, now that I am on the black list, Ron, you know, isn't performing in the business, that's a comment on that.

The Native Hawaiians should have the same ability as we do.

Going down to economic disadvantage for the tribes, the bright line there, you should have databases for the

census that show the economic disparity in the villages and the economic disparity of the Lower 48 tribes. That has to be -- some of that is very obvious.

Have you ever been to a reservation? Very economically disadvantaged. If you've got generations worth of folks that have been sitting on these reservations for generations, that's something that you're determining that they're economically disadvantaged and socially disadvantaged. And should they have an improvement one time, it's going to take generations for that to change. I mean, we'll all be dead. Most of us will be dead before this major -- these major changes come.

So as far as the Lower 48 tribes, once they get their one time, and you've taken a look at the census and what takes place, they shouldn't be -- have the burden to do it again and again. One time should be enough. And the number will dictate for itself. And education and the care they'll get, that's years out. So make it easier, instead of putting barriers in the way and having somebody having to do that each year or each time they apply. Once should be enough.

Tribal ANC's with the -- having the same (inaudible), that I don't agree with, and the reason for that is, the construction -- now I'm going to give you a real-life

example in construction. Right now, to give you an example, the village I represent, they have no debt. They're in great financial shape. They're not real big, but getting bonded is like pulling teeth right now. The surety companies take a look and say, no, you're different. That's fine. We understand that. But they want you to start out small, so a half million, million, two million dollars. I get into the 8(a) program in construction. It takes me nine years to build up to a major bonding capacity. I'm going to get to $20 million. I finally have something where I can go build a barracks or a cafeteria or a facility by myself, and I graduate from the program. Is that long enough for me to get enough of a construction background to be able to build a meaningful, you know, Kiewit granite construction structure, something that I can give back to my shareholders on as a real base? Or now you've graduated from the program.

I get a light base coating of a second company, and I'm going to be limited to 20 or 30 percent of what I could do. Now I've taken all of this time to make sure my partners are good, to make sure that my references are good, make sure that my surety company is good. I have $12 million on the line now. I can't wait to do a $50 million project or a $100 million project, but now I

can't because I've just been limited by this proposed regulation. That needs to be relooked at.

And if you take it a step further -- let's say you own another specialty in construction. Is it going to be you folks? Who's going to be interpreting that rule? I'm a GC now, and then I get into a special contract. So now I still have to have that bonding package.

So keeping in mind that, when you propose to say, hey, this is it, you get one shot, one bite of this apple, and that apple happens to be in construction with a lot of stimulus dollars, and you limit me to $10 million with bonding, you might as well not get into construction.

The mentor-protégé, in favor of the additional -- any additional help that takes place having more than one mentor-protégé, that's a good deal, and that makes sense. How many -- do you guys know within the last two and a half years, how many tribal mentor-protégés have been approved? Can anybody answer that for me? I have heard one in two and a half years, one ANC mentor-protégé was approved. I'm kind of curious. That's why. That's a very powerful tool.

MS. DELANEY: We can look into that. What I do know is that the approval rate of mentor-protégés in our office is 98 percent, 95 to 98 percent. So what appears

to be happening is they're not making it past the district office level review, and that's what we're going to look into.

MR. PERRY: Okay. I've heard of plenty of individually owned mentor-protégés. I'm just curious as to why a $5 million limit.

MS. PRATTE: Well, you know, I think that's an interesting question. And I've been wondering if it's not perhaps the approval of the mentor-protégé but the lack of actual applicants going through the process with mentor-protégés.

And I think -- well, I know in the Lower 48, that's certainly the case; there's just a lack of applicants. I don't know if that's the case in Alaska or not.

MS. DELANEY: We have isolated the fact that they're not getting to my office for some reason. My office does have the final approval authority on that. We're going to check to see if they're getting stagnated in the district offices, so that's the next step in that review process.

MR. PERRY: Thank you. Being able to change the NAICS codes, I see that as a positive thing. If there's something that, if you have the ability -- flexibility for some small changes, it will help them out. Giving the small business more leeway and latitude, that's a

good thing. I want to make sure that's -- I let you know the -- I mean, you said make sure that we're happy with that. We're happy with that.

The 3 in 2 Rule, with the JV, as far as us going after partners, I might be deviating with the tribal lingo a little bit, but this also affects us.

JV, there's a couple different things happening here pertaining to JV in significant portion. I want to talk on the size thing again. When you say "significant portion" of something, we have to be conscientious in once again where each of us is at, how long each of us has been in the program. I mean, if I were a tribe or a village that's been in the program for 20 years, and I have massive capacity, a significant portion, you know, I don't have the resources of smaller villages, smaller tribes, a significant portion. When you start out with potentially two employees, you know, you're going to be a little -- there's got to be a little bit more definition and clarity as far as the significant portion is concerned.

MR. JORDAN: And Ron, that striving for clarity is why we put that in there. That's one of the examples. When all is said, significant portion, that's what it says now. But what is a significant portion? I mean, if I polled this room and nobody talked to each other, I'll

get 50 different answers. So that's one of those areas where -- again, it's there for program integrity to make sure of disclosure of the program in terms of the participants. We were having contracts where it was 51 percent, and then of that 51 percent, the protégé did 20 percent maybe, and the mentor did 80. And it was one of those contracts where, you know, the mentor was doing $10 million and the fill-in-the-blank business was doing $90 million. The whole $100 million counts as a small business contract. So nobody was really complaining except for the people saying, well, that's not the intent. That's not what we're set up for.

So when we talk about JVs, you mentioned two things. One is, you know, you originally had to form a new JV every time you bid on a contract, so it was changed to three bids. Then there was the significant portion piece to try to define what that is. And then there's a third piece which you can't sub back the remaining -- you know, the JVs do 100 percent. They have to because -- but whatever it does, between 51 and 100, the remaining portion cannot be subbed back to the mentor. It can be subbed back to another business but not that one.

And so when you look at those three things in totality, to your point, about, hey, as you mentioned earlier, if you have an affirmative here's what we think

it should look like, that would be really helpful. We sat down and said, what is a fair level of significant portion that covers -- you know, that would pass the smell test of, yes, that's fair because, again, it's a significant portion, 51 percent potentially. But we want it in the day -- that's kind of defensible when we think there's something fishy going on, but they're also not punishing or excluding people from entering into the mentor-protégé agreements with JV's.

So I'm supporting what you're saying in terms of, hey, there may be other ways to do this. But I would encourage someone who says this may not be the right answer, here's what I think would be, so that we have alternative things to discuss. Sorry.

MR. PERRY: As soon as you stick a firm number on something, that's all they think. That's all they see. They do a multiple of that, and the next thing you know, you've graduated from the program and you say, you didn't do this or you don't do that. Any time you have -- in the small business world, you're going to have leeway. You're going to have movement forward and backwards and up and down, especially in a small business.

So as soon as you start sticking hard numbers -- I agree with what you're saying because people have abused

the program. And if they're abusing it, the law should take care of them. I'm a firm believer in that. If you do it wrong, if you're stupid enough to be thrown under the bus, that's your problem.

That's the delicate portion of my talk. So I totally agree with that.

The proposed rule -- lastly, the proposed rule, then I'll put the rest of it in writing, there's a whole bunch of stuff on the individually owned 8(a)'s, but that's best addressed tomorrow.

Fast-tracking the applications on individually-owned 8(a)'s, that's brilliant, I mean, if they've got the background. To be able to streamline it instead of having to go through this program and ask for a future waiver and other concessions, that's a great idea. Thank you.

MS. PRATTE: Thank you so much. Let's take a quick five-minute break. Then we'll come back.

(Break taken 10:51 a.m.
to 11:14 a.m.)

MS. PRATTE: Okay. Everybody let's get started. Next on our list -- well, let's discuss how we're going to proceed. We're going to run until noon, and then we'll break from noon to 1:30 because it was originally

noon to 1:00. But there isn't anything close by so you'll have to all go outside and come back, so it's an extra half hour.

So we've got about, 15, 16 more speakers that have signed up. We'll just go down the list, and at the end -- at 12:00, in about 45 minutes, we will say who's going to be the next speaker, and that person needs to be here at 1:30 so we can get started on time again.

Okay. So Harris Teal. Okay. Brent Meisner. April Ferguson. Mr. Araya.

MR. ARAYA: We'd like to defer. We'll have a presentation at the Albuquerque.

MS. PRATTE: No problem. Jaeleen, did you want to -- Alice Olson. James Janetta. Ron Philemonoff. George Samuels. Jessica Graham.

MS. GRAHAM: I have more.

MS. PRATTE: Patricia Holmes, Robert Hamilton, Marvin Adams. Gail Schubert.

MS. SCHUBERT: My name is Gail Schubert, G-A-I-L, S-C-H-U-B-E-R-T. And I'm the CEO of the Bering Straits Native Corporation. I've been on the Bering Straits Native Corporation board since 1992. In 2003, I became an employee of the Bering Straits Native Corporation and was recently promoted to CEO.

Bering Straits Native Corporation is an Alaska Native

regional corporation located on the northwest coast of Alaska. We have 15 villages and about 6,300 original shareholders. And we do plan on opening our enrollment -- we plan on discussing opening our enrollment to those born after 1971.

Our region, unfortunately, has the distinction of having the highest per capita rate of suicide among young Native American men in the country, and that's something that you hear that in Alaska a lot of the villages struggle with social issues, and that's something that we have been trying to address.

So a little bit of history about the Bering Strait Native Corporation. In the 1980's, the Bering Strait Native Corporation went through bankruptcy, and there were a number of reasons for this, and they included inexperience and mismanagement. For example, we had some folks who went from being corrections officers in the prison system to setting up our investments, so they really didn't have the experience at that time to take over the money and the land that was given to us. Fortunately, we've done really well with the land.

We also had an inexperienced board and this lent to in part the board and staff being easily led to invest in nonperforming assets because of the performances that were represented to them showing a huge potential for

profits. And so when you see something on paper, you believe it. Unfortunately, that turned out not to be the case.

Beginning in about 2000 to 2003, we at the Bering Strait Corporation began to experience four years of consecutive multimillion dollar losses. And in part, this was due to the stockmarket crash that you all remember. We had a lot of stockmarket losses, and then we also began to experience operating losses.

And we also had during that time a bad experience with an 8(a) contract on the East Coast, and we ended up at a time when we really couldn't afford to do so terminating our subcontractor and taking the work over. And we did it because we really felt that we had to ensure that customer got the service that they deserved. And so although we were not well prepared at the time to take the work over, we did take the work over. We performed, and we ended up losing money in doing that.

I can honestly say that starting the ANC corporation, the 8(a) program, was really responsible for helping to turn us around. We've grown from, in 2005, having revenue of about $7 million in 8(a) contracts to contracts valued at about $145 million as of the 2008 fiscal year end, and I strongly believe that, were it not for the 8(a) program which currently comprises about

88 percent of our revenue, that we would be going through another bankruptcy period. And I know that that would really have discouraged our shareholders and the shareholders' dependents and the folks in our region.

So I'm really glad that the 8(a) program has been there to help us turn this around.

We've been able to grow our Alaska operations, and most of those hired have been shareholders.

And I'd like to point out that, when you hire shareholders, you're not just hiring the shareholder but you're really benefitting the family as well. So the benefits of providing a job and funds largely through the 8(a) program though shareholders has a ripple effect through the family, and it's just like the ripple effect that is experienced in the villages when A and C participate in the 8(a) program. Our shareholders benefit from us being able to participate in the program. And as you've heard earlier, a lot of us have thousands and thousands of shareholders.

In additional to -- some other benefits from the 8(a) program, a couple of years ago we were able to do our first ever strategic planning session for the board, and we're going to do our first staff strategic planning session, and we're continuing to do board development as well.

We've also been able to provide funds for scholarship. And like Matthew, we have many, many professionals who have been able to get degrees because of funds provided through the 8(a) program. We have doctors, lawyers, MBAs, engineers and so on.

In conclusion, I'd like to say that we're not immune from issues faced with rapid growth, and this includes issues with the mentor-protégé program. And we'll provide specific comments about the regulations.

One comment I'd like to say about the mentor-protégé program is what was alluded to earlier by the one who testified from the Afognak, and it's not a need of proposed regulation. I believe there should be a mechanism to notate the contract to the 8(a) participant assuming that the 8(a) participant is able to undertake the work when the mentor is not fulfilling its obligations under either the mentor-protégé agreement or the joint venture agreement.

And so rather than having them terminated or being stuck with a mentor or joint venture partner that maybe causes issues as opposed to trying to help you get the work done, there should be a mechanism to notate that work to the 8(a) participant.

Finally, I'd like to say that the SBA has worked very, very hard to develop these proposed regulations.

We really appreciate it. And I would not be standing here before you today were it not for the 8(a) program. So thank you very much.

MS. PRATTE: Thank you. Sarah.

MS. LUKIN: Hi, my name is Sarah, S-A-R-A-H, Lukin, L-U-K-I-N. I'm the executive director of the Native American Contractors Association, a DC-based Native American organization that represents five Alaska Native Corporations and Native Hawaiian 8(a)'s in government contracting.

I'm not going to provide a lengthy formal testimony today. We will be doing so in Albuquerque. I do just want to briefly note for you and urge the SBA to consider holding five tribal consultations, three in the continental United States and one in Hawaii. I know you guys have limited funding, but I think it's absolutely critical.

I think the feedback you've gotten today has been great. I look forward to hearing additional comments from everybody. Thank you.

MS. PRATTE: I don't think any of us are opposed to going to Hawaii. Mr. Henrichs.

MR. HENRICHS: You've got this set up backwards. You should never turn your back on the people that -- my name is Bob Henrichs. I'm president of the Native

village of Eyak. I have been for the past 16 years. And Eyak is a tribe of 500 located on in --

MS. PRATT: I'm sorry to interrupt. Could you please JV your last name for the court reporter?

MR. HENRICHS: H-E-N-R-I-C-H-S. And Eyak is a tribe of 500 located on the eastern edge of Prince William Sound and the western edge of the Copper River Delta.

I'm not going to get into specifics on the proposed changes to the SBA regulations today. I was notified about this meeting on the 11th, and they said you have to register by the 10th which that's normal, so we will have a letter next week with our concerns.

However, I will tell you that we are a tribe, and we are -- we have 80 joint ventures going on right now.

In 1993, my friends and relatives came to me, and they asked me to run for the Ju-Dash Alaska Board and the Tribal Council. And at that time, I had two crab boats in the Bering Sea that I was operating, and I had no idea why they wanted me to get involved, but I found out real quick that Ju-Dash had filed bankruptcy, and they were afraid of losing the land. And the tribe -- there was nothing there. The office had been ransacked. The bank accounts were gone. I had to personally pay the light bill and the telephone bill to get the things going.

So we worked our way -- I spent 12 years on the Ju-Dash board. We worked our way out of bankruptcy. And when I left there, I think they were doing revenues, mostly 8(a)'s, between $60 million and $100 million.

And our tribe -- there was nothing there, absolutely nothing there when they asked me to take over. And today, our budget is $6 million. We operate a community health center for the entire community, and we have many contracts that we do, and that doesn't count our for-profit money.

I wrote this on the plane this morning, and I can't hardly read my own writing. But we -- our tribe has never intended to ever pay a dividend with 8(a) revenues to the tribal members. Right now, I know our 65 elders will have a much merrier Christmas because of our 8(a) revenues. We do $50,000 in scholarships for our young people a year, and we're going to jack that up by another $30,000 because that's the best investment we could make.

We are in the process of putting together a 20-unit low-income housing through -- the Coast Guard was going to demolish some units, and we intervened. And with the help of our congressional delegation, they decided it would be a good idea to donate them to us. All we have to do is move them. And the four units are 48 by 100, so

when you guys have any spare time, you can come up there and give us a hand.

But we're doing housing, elder programs, scholarships for the kids, and none of that would have been possible without 8(a) profits. And when we started our 8(a), even though our regional had some very successful ANC corporations in that field, we never got any help. But my dad always told me, if you want something done, you do it yourself, so we went and did it ourselves. And we must be doing it all right because, when the inspector general announced they were going to investigate these ANC corporations and 8(a)'s in Alaska, we thought hum, and the next day he was knocking on our door. So they investigated us, but, you know, it was no big deal because everything we did was approved by the SBA, so they were investigating you guys.

Let's see. Some day I'm going to learn how to write a little better.

That's about it though. The 8(a) program has made a huge difference in the lives of our tribal members. And we invite you to come up and visit us any time you'd like. That's all I got.

MS. PRATTE: Thank you. Thank you so much. Let's see. We have Mr. Tompkins.

MR. TOMPKINS: Thank you, Clara. I'm Bob

Tompkins, that's T-O-M-P-K-I-N-S, and I'm an attorney with the law firm of Patton and Boggs. I'm based primarily out of the DC office, but I spend a good amount of time in our Anchorage office as well, and I've worked with a lot of the folks in this room and other ANC's and tribes over the years, and I'm very proud to have done so.

I do have some somewhat similar technical comments and questions to offer for the record to the extent that the distinguished panel feels they are responsive. And I understand that this is a consequence of the process, and we're going to provide all these things with the tribal rule.

I think about the only thing worse that being a lawyer speaking right before lunch is one who speaks right after lunch, so I appreciate the opportunity to get here before the lunch bell. I'm also sorry that Ron Perry didn't have any fishing stories to share with us. We'll get those later.

I'm going to paraphrase from some of the written comments that I submitted a few days ago. As I said, there are three technical -- somewhat technical questions that I've proposed to you that I'm going to put on the table. Then there are broader questions for a couple other folks to speak to in a general sense as well.

The first specific issue was in regard to mentor-protégé joint ventures under small business set-asides. The current rule's literal reading seems to potentially exempt such mentor-protégé joint ventures from the requirements of 13 CFR 121.103(h)(3)(iii) which is the regulation set forth by most joint venture agreements. The proposed rule of that language would effectively plug this perceived loophole. I have some specific questions about the way it's phrased. In particular, in the proposed rule, there's a phrase that says, "If the size status of the joint venture is protested," that to me, I think, unintentionally might create the perception of the requirement only if there's a protest as to the structure of that mentor-protégé joint venture under small business set-asides. Could there be a problem? And to me, that phrase seems unnecessary.

So the specific questions I had about that are, first of all, in the preface of the rule, as SBA states, "This is not a change to how SBA has interpreted this regulation." So the first question is, would such language be the right of a protest now. The mentor-protégé joint venture on a small business set-aside for whatever reason appears not to be following the requirements of Section 513 which include all those

provisions in the joint venture agreement that are defined in 17A. Is a provision something that could be protested at this point based on SBA's statement, "This is not a change to how SBA has interpreted this regulation."

In general, at the previous meeting in DC, John Cline suggested there are certain things preferred in the rule today, so I don't know that this is an appropriate time to respond to that, but it's something that's concerned us frankly in the context of the individually-owned 8(a)'s with large business mentors going after small business set-asides.

In one case, under one of those arrangements, the profit was perceived over a billion dollars in contracts, and it was pretty clear to us that individual was not doing any of the work.

So first question is, is that something -- am I reading that right, that 513 applies to all joint ventures between the mentor-protégé for any set-aside?

MS. HUDSON: You'll love my answer.

MR. TOMPKINS: Go ahead.

MS. HUDSON: I can't speak to that right now, but I understand the concern. And what I can say is, when we're at the point where we're issuing the rule, we will address specifically what the timeframes are. I

1 think this is an issue that's come up before in terms of
2 how are we interpreting our current processes as opposed
3 to what we're going to do and what the effective change
4 date will be.
5 I heard someone say that, with regard to the
6 reporting, what is the effective change date for that
7 particular reporting requirement because it is something
8 that is new. I can't speak to whether or not this
9 protest issue is currently in place. I don't know what
10 the answer is. But we would want to flush out concerns
11 that are coming in now currently so that we can either
12 address them beforehand or address them in the final rule
13 on this issue.
14 So I'll say that for any of the other specific
15 questions. Go ahead and ask the specific question, and
16 we will address them as we can in the future.
17 MR. TOMPKINS: Thank you very much for that.
18 That's very helpful.
19 The other concern I have on this particular rule is
20 that we typically represent ANC's and 8(a)'s in
21 mentor-protégé agreements, and we found on a number of
22 occasions where large business mentors were arguing in
23 the course of negotiations that, when we're going off a
24 small business set-aside, we can do whatever we want.
25 And we pushed back and said that's -- you know, you may

have a technical reading of Section 513, but that's clearly not the spirit of the program, and we've pushed back on that.

It would be great to have something more affirmative from SBA right now if this is, in fact, an SBA change to push back some of those overly aggressive mentors.

MS. HUDSON: Understood. And I think some of the issues that we're dealing with are interpretations that may have come out of offering the appeal decision that may or may not have been consistent with what our agency's regulatory interpretation is, and we're contemplating how to address the perception of what the spirit is of what we're trying to do.

MR. TOMPKINS: Right, excellent. And related to that point, I think within the context of the Federal Register Notice is some discussion of the contemplation of perhaps SBA might approve all joint venture agreements which would mean mentor-protégé and whether it's for an 8(a) contract or not. I can see the pros and cons to that approach. The cons, of course, are that's one more item that the overtaxed SBA staff has to worry about -- underfunded, understaffed has a lot of other stuff to worry about.

The reason I think it's important is because, as soon as this rule becomes final and in place today, in the

protest process, if you don't have SBA approving your joint venture, only the two parties will know it's a mentor-protégé, so you're going to create a situation where either you don't -- other interested parties in those procurements aren't going to have a basis to protest because they don't have enough specific facts that it's a mentor-protégé, so they're going to be making a general assertion, we think this large business is going after this small business contract which is violating the joint venture rule 513. The response to that is not specific enough as of now.

If you don't have that level of specificity which is provided when you create that situation where it's never protested, I think having the SBA approve any such joint ventures related to small businesses may take a bit of time, but it will save you a lot of trouble in terms of the taxing and the burden of these protests, so just a thought on that particular issue.

As we've been going through the proposed rules, there are a number of things like that. And frankly, in the practice over the last several years, we've encountered a lot of these things. I think you've done a great job picking up on a lot of these fairly technical points where there are loopholes. And what we're really trying to do is throw out some of these technical issues, and we

1 appreciate the efforts you guys have put into this
2 process.
3 The second technical question I've got relates to the
4 percentage of work requirements in joint ventures. The
5 Federal Register Notice says, when you set up a joint
6 venture, it must be populated. The other requirement
7 that's being clarified in the proposed rule is that the
8 8(a) participants in the joint venture must do at least
9 40 percent of the work as other employees. To me, that's
10 very positive, because a populated joint venture has to
11 have its own employees. And so it's unclear to me under
12 the new proposed rule how you would make up that
13 40 percent requirement with your employees in the 8(a)
14 when the joint venture's got no voice.
15 MS. HUDSON: I'll speak to that too because we
16 need -- well, with regard to populated and unpopulated,
17 there is also an impact in our other programs with what
18 the requirements are for this program. So the rules on
19 the joint venture agreements right now is that we will --
20 when we look at the formal and informal agreements, we
21 don't have to form separate legal entities for that joint
22 venture. There has to be some form of agreement that
23 identifies what the parties in the joint venture are
24 going to do.
25 We have not taken the position to date that that

joint venture needs to be populated. And so the proposed change, we want to hear what impact that has with regard to populating the joint venture itself. There have been issues with regard to reporting requirements for the federal status system in terms of joint ventures and if they're a legal entity or if there is an informal agreement, so we're trying to address in terms of gathering comments as to what the impact is of having that populated joint venture, and one of the issues is what happens to the work requirements for the ASAS.

MR. TOMPKINS: Good. That's one of the issues we talked about is what happens after the rules went into effect. The third issue is one that's been touched on.

MS. HUDSON: Bob, let me interrupt you for a moment.

MR. TOMPKINS: Certainly.

MS. HUDSON: So it's been pointed out that -- questions as to what's populated versus unpopulated -- and I apologize, two attorneys here in the room speaking a different language -- "populated" means that the joint venture entity itself has employees of that joint venture. The joint venture is paying and providing benefits to the employees of the joint venture.

"Unpopulated" means that employees of 8(a) firms and its joint venture partner are performing the work, not

employees specifically of that joint venture. And so currently, we don't have a requirement that joint ventures must be populated. We don't specifically state that it doesn't have be unpopulated.

But one of the issues that's come up is whether or not that joint venture entity that's created between the 8(a) protégé and their non-8(a) mentor have to have employees.

MR. TOMPKINS: Thank you for interpreting our strange language.

The third issue I wanted to speak to involves the limitation on joint ventures. And I think in one respect, the proposed rule goes a little too far in achieving the same purpose.

In discussing proposed changes to Section 124.506 of the regulations, the SBA discusses the perception that "Large business may be unduly benefitting from the 8(a) program." That's at Page 506 of the Federal Register Notice.

The discussion is confined to the contracts in the context of the joint ventures, but the actual change in the language speaks to -- it says as follow: "A joint venture between one or more tribally-owned, ANC-owned or NHO-owned participants and one or more non-8(a) business concerns may be awarded sole source 8(a) contracts above

1 the competitive threshold amount, provided that no
2 non-8(a) joint venture partner also acts as a
3 subcontractor to the joint venture awardee."
4 So in one respect, as I said, it seems to go too far
5 to achieve the purpose of keeping the large business from
6 getting too much of the pie. In others words, it seems
7 too narrow.
8 In the first instance, it seems to me the change as
9 it's written would preclude not only a large business
10 mentor from engaging in subcontracting with the 8(a)
11 joint venture but would also preclude a small business
12 partner to a joint venture from subcontracting with the
13 joint venture; and yet the stated purpose in the Federal
14 Register Notice is whether the SBA should extend the
15 prohibition also to small business partners, so it's just
16 a question whether those two things lined up.
17 So in that respect, I think the rule may be a little
18 too broad, at least from the perspective of what the SBA
19 is trying to achieve. I think the rule is too narrow, it
20 seems to me, with respect to ANC-owned, tribally-owned
21 and NHO-owned, and so it wasn't clear to me why it would
22 just be in the context, first of all, of a Native-owned
23 8(a) that that the prohibition would apply.
24 And secondly, it didn't make sense to me that, under
25 current regulation, individually-owned 8(a)'s are just as

much at risk of exploitation by a larger business mentor as are Native-owned 8(a)'s.

I think it's been pointed out earlier, related to the mentor-protégé arrangement, I think 70 to 80 percent of the contract value going to large business is certainly possible. We've seen that happen. Unfortunately, we've seen it go beyond that. We've taken into account the fact that the large business can subcontract with the joint venture. They may be charging a higher margin. Their fee may be higher, so they may get a disproportionate share of the profits than the subcontractor may be getting.

But potentially they could also own 40 percent of the 8(a) with the mentor-protégé relationship so they can get up to 40 percent of the 8(a)'s profits. And again, it's been suggested that certain large businesses want to come into the program because of the potential to receive as much as 95 percent of the profits. You may think that's certainly not the spirit in practice. We generally have seen the SBA not permit a mentor to take that ownership percentage when they're also engaging in a joint venture, so at least, as a matter of practice, the mentor has to choose -- you can't be one fits all sizes.

But I think that the proposed change, with those modifications I suggested, would go a long way to fixing

the problem.

Again, there are a lot of other specific issues that we'd identified. We'll mention those in our written submissions.

There's one broader issue that I want to bring out, and that is the oversight and enforcement in the SBA programs, not just the ANC participants but the business partners who engage in unscrupulous activities. First of all, many of the recent criticisms of the program focussed on the 8(a) participants and their owners not receiving a sufficient level of the intended benefits of the program. These breaches occurred essentially through nondisadvantaged ownership, undisclosed management agreements, failure to abide by limitations on subcontracting requirements and so on. These are not issues that permeate the whole 8(a) program. I agree these are valid concerns clearly creating the possibility for the spirit of the program to be (inaudible).

So we commend the action that you guys are taking for the proposed rules that you've put forward. But again, we're concerned that there's been too much focus on the investigation of 8(a) participants themselves and not so much on the unscrupulous business partners who really have benefitted when things go sour. That's just something that I encourage you guys to continue to

consider in practice.

With that, we will be submitting written comment. Thank you very much for the opportunity.

MS. HUDSON: I'd like to just remind everyone that the comment areas for the rule has extended another 30 days. I'm not sure if everybody was in the room when I said that earlier, but now we're extending comments to January 28, 2010. Anyone who feels they want to follow up on what they've heard during the course of today and the future hearings or what happened in Washington last week, please don't hesitate.

MS. PRATTE: With that, we've got about, I believe my last count, five more speakers. We'll break for lunch. Be back here at 1:30. So I have our list. I don't know if they're here, but we certainly want to give everybody an opportunity to speak. We are scheduled to run until 4:00.

If you did not register but would like to speak, please feel free to do so. We would like everybody to have the opportunity to voice their concerns or thoughts and ideas. Again, this is all becoming part of the record which we'll review thoroughly upon our return. So be back here at 1:30. Thank you.

(Break taken 11:55 a.m.
to 1:41 p.m.)

MS. PRATTE: Folks, we're going to go ahead and get started. We're already about ten minutes behind schedule here. I just wanted to give people an opportunity to get back after lunch. Hopefully everybody was able to find someplace nearby.

So we'll just go ahead down the list again. Is Mr. Harris Teal here? Mr. Brent Meisner. April Ferguson. Allen Olson. Ron Philemonoff. Great.

Again, just to clarify, if you could just state your name spelling your first and last name, thank you.

MR. PHILEMONOFF: My name is Ron Philemonoff. I'm an Alaskan Native hailing from St. Paul Island, one of the Alaska Native Village Corporations.

MR. JORDAN: Ron, could you JV your name, please?

MR. PHILEMONOFF: P-H-I-L-E-M-O-N-O-F-F.

MR. JORDAN: Thank you.

MR. PHILEMONOFF: Thank you for squeezing me in. I appreciate it.

Again, I'm from St. Paul. And just to tell you briefly about St. Paul, I'll try to respond to your public record that's posted. And there was some questions and answers that I found to kind of give us guidance, so I'll try to follow that too. So hopefully,

I won't be stepping all over it.

But anyway, St. Paul is a remote island village on the Bering Sea. We're about 4,000 miles due west of Washington DC. We're halfway between Russia and Alaska, and I tell everybody, you still can't see it from there.

Unfortunately, a couple hundred years ago, the Russians showed up and enslaved our community and our people. Their purpose was to hunt seals and the sea otters. And over 100 years of Russian dominance, our culture suffered. And then eventually Alaska was sold to America, and in that sale, it required that the United States would honor the surviving tribes. Unfortunately, this clause for the rights of the civilized tribes got lost for 100 years. That was the basis for the Alaska Native Settlement Claims Act, and eventually, in 1971, our Congress did settle our sovereign rights and in its wisdom decided that reservations wasn't a very good model for the future moving forward and mandated Alaska Native Corporations, and the Native tribes formed what they call Alaska Native Corporations versus reservations.

So that's the difference between us and the tribes. Other than that, we are originally the first Americans here in America.

We were eventually American citizens. It wasn't until 1964 that the Aleut people were recognized full

citizens, so it had been a long struggle for us. And the land claims have been a very important tool for us, and the Settlement Claims Act was a very important step in that direction to move the Native people forward into American society and the cash economy and maintaining a self-reliable community and self-respect for our people.

Along with the programs through the Small Business Administration, Congress in its wisdom again saw the need to recognize Alaska as a (inaudible) based partly on social citizens and governance of the tribes, but it also forced the Native community to move forward into the American system of cash and economic development. And that's why we're looking into the amendment of the SBA Act to allow for additional benefits specialized to Native Americans and Alaska Natives.

Again, I'm trying to run through here. These rights and laws are above and beyond the usual minority small business set-aside rules that SBA is dealing with. These Tribal rights are recognized by the fact that SBA is holding these consultation meetings with the ANC's and Indian Tribes. Only Congress can change these laws.

We're proud to be Americans and participating in the system, but we're also concerned about wanting to protect our resources and our land and our homes. It took us 250 years to finally get our homelands back and to

finally move forward as part of the American system.

We are told to adopt the civilized ways to become civilized tribes. We were told we would have equal access like the rest of America. We were told we'd have voting rights. We were told that we would again have the bounty of America. But we've seen our land taken away. We've seen our seals, our birds, being over-fished and over-hunted. We've seen the gold ripped from our land. We've seen our oil being taken. So even with all the promises, we've seen all those benefits being taken away.

And today, unfortunately, I see these rights being attacked again by the powerful political machines that are out there wanting to take it all for themselves. So despite all the wrongdoing and hardship, we're not trying to blame anybody. We just want to remind everybody that our Congress, in its wisdom, passed laws and special programs for the Native Americans, the first Americans.

The benefits have been multiple. Not only were we a for-profit organization; we were also mandated with social and economic welfare responsibilities. We do not measure success in profits or jobs, but we bundle them together as a group of benefits that we tried to enhance and provide for our community and our people.

Employment, of course, is important. Social programs, elder benefits, educational benefits, and then

there's dividends. Dividends is an American way. In our eyes, it's the way to share the wealth. We're fearful that having a reliance on dividends create a hardship or a dependency on social welfare programs. We would rather teach our young to go to college, to get a degree, to learn to be fishermen, learn to be hunters, or learn to be the engineers or the business managers and run these corporations.

All these goals are important, but to balance them is part of our benefits and purposes.

Again, like I said, St. Paul is one of the participants in the 8(a) program. We've had two of them graduate. We have two more in the process of the various business projects.

Like I said, we're about 4,000 miles from Washington, DC, from the mainland, but we've learned the fundamentals of business. We've learned contracting and how to negotiate business with the outside world despite the fact that we have no timber, no oil, and no real businesses in our small little communities.

But we are now here in Seattle at this meeting, from San Francisco. We're on Google, so we are moving beyond the subcontracting, but it was the SBA that taught us that. It wasn't something that we learned in school back when we were hunting seal. It was something that we

1 learned through the 8(a) program. It's critical that we
2 maintain the benefits of the 8(a) program and understand
3 why some of the changes will be detrimental to us, and we
4 urge you to check some of the changes.
5 Many of the program's alleged abuses, particularly as
6 they relate to ANC's or other Alaska-based tribes, are
7 the direct result of us not understanding the process,
8 and being also partially because of not having adequate
9 staff at the Anchorage office. Some of our work wound up
10 in San Francisco to alleviate some of the burden there,
11 but the lack of staff at the administrative level leads
12 to multiple problems including potential abuses that can
13 happen.
14 Some of the successes, in particular the regional
15 corporations, they are big multidisciplinary companies,
16 but they are minority Indian companies nevertheless. But
17 there's only twelve nations, and only nine of them
18 participate in the 8(a) program. There's 200 some other
19 villages out there that have yet to crawl to learn the
20 business way. 95 percent of the village corporation
21 ANC's have not fully participated in the 8(a) program
22 yet. So we caution you not to throw out the baby with
23 the bath water because some of us are still struggling.
24 Many of us are struggling.
25 Going now to Section 124.109(c)(3)(ii), I think this

speaks to the limits on the type of work an ANC or tribe can do. The point I'm trying to make here is that, for a small corporation like ours, it takes us a long time to learn the ropes. It takes us a long time to land the contract and hire the right people. One of our 8(a)'s took a whole eight years before we saw a contract. And so by the time (inaudible) comes along, we're graduates supposedly, and yet they're supposed to be fully knowledgeable, functional small businesses. In reality, we have just learned to crawl.

So we caution you on making these changes and to, as you try to curb abuses and prevent firms from going too big, to remember that there's 95 percent of the villages in Alaska that haven't even started this process.

So we would recommend placing no limits on the type of work an ANC can perform but recommend instead that success and competence be defined such that disadvantaged status no longer be granted in a given NAICS once said success has been achieved.

Again, we recommend no limits on the type of work that the ANC can perform, and work on the success and defining of the success roles that we're trying to achieve.

The next section is 124.109(c)(4). This deals with economic disadvantage requirements for tribes. As I

1 started my discussion earlier, I mentioned that the ANC
2 statute is based on tribal law. And unfortunately, the
3 Lower 48 tribes have been in the reservation system for
4 200 years, and it's tough for them to move beyond the
5 focus that we have been on for the last 200 years. The
6 reservation system was modeled after the U.S. government.
7 They were taught to manage their communities and their
8 villages, and the focus on economic development wasn't
9 there, so this is the difference between us and the
10 tribes. And we believe the tribes do have a right to be
11 independent just as Alaska Natives do.
12 On Section 124.109(c)(6), Potential for Success, we
13 agree that adding a fourth factor allowing SBA to make a
14 potential for success termination has merit and should be
15 included in the regulations, so we agree with Section
16 124.109(c)(6).
17 124.112(b) deals with requiring annual review to
18 include reporting on Native benefits. We believe this
19 creates a significant burden on each of the firms, as
20 well as SBA, in unnecessary regulations and red tape. We
21 believe it is the responsibility of the corporate
22 directors of the ANC's, NHO's and tribal members to
23 determine the benefits and participants, how they should
24 delegate the resources and the benefits to their
25 membership. We view this type of regulation as cultural

imperialism, the notion that the program manager of a federal system small business -- excuse me, I lost the spot -- we view this as cultural imperialism, the notion that program managers of a federal small business program, or the program itself, can find objective standards for judging whether the tribe or ANC is sharing its benefits. We believe it's the prerogative of the owners and the managers or the board of directors who should decide, and we will properly manage and allocate benefits to our members. But again, we don't believe it's within the responsibility and the process and the timeline that SBA has to get into micromanagement of our affairs.

For example, we may choose to expend its profits in expanding its business reach through acquisitions before paying some dividends, so once we know that a dividend was more important to you versus us, we may invest in a new product that would give us ten times more dividends. So how we invest our dividends is an important step for us.

One of the questions you've asked is, what has the SBA done to shore up its oversight of Alaska Native Corporations? And I'm not sure who asked the question or why it was there, but to me this question verifies that this rule-making is being driven by the small vocal group

that has pushed SBA and Congress to beat up on the ANC and tribal participation in the 8(a) program. In fact, these are hyped-up allegations that have forced us into a corner here.

I'd like to remind you that the big business and the establishment of bidding on government contracts has been ongoing for a long time. Big businesses like Boeing, Enron and other companies have been bidding for years, and they are very good at it. But some of these companies have been pushing the SBA rules away from the government. They've been pushing for bundling of contracts, and the small businesses cannot compete in the business world. Some of these big contractors you see over in Iran, Iraq and Afghanistan are getting hundreds of millions of dollar set-aside contracts; yet our $10 million set-aside contract is being scrutinized.

In reality, we're just doing the service just like Boeing is, but the set-aside is tenfold, a hundredfold more followed than what the Native community is doing.

And so I urge you to understand that there's pushing and shoving going on. There's name-calling and accusations that have no bearing behind them. And this oversight hearing needs to be aboveboard. It needs to focus on truly refining the intentions of the SBA rules rather than beating up on different groups.

Section 124.506(b) deals with changes to the joint venture requirements. We are puzzled about the purpose of limiting subcontracts to JV partners on 8(a) sole source awards to an SBA-approved JV.

We ask, why must such entities face limitations on subcontracting that are any more restrictive than the requirements for the sponsoring 8(a) to do the required work. I would remind you that not all SBA-approved joint ventures are made up of small businesses fronting for big businesses.

We ask you about the situation when the joint venture is made up of multiple small business entities to have combined their resources to seek to qualify for some of these larger bundling contracts. So there are times when some of us are actually joint venturing the small businesses together, and the rules need to take that into consideration rather than making the (inaudible).

In our case, we did have such a joint venture. We were forced by SBA to stand up and populate the JV even before we had the contract. Again, we fail to understand why the sponsoring entity should be barred from subcontracting within prescribed performance limits applicable to the contract, particularly when we already have the small businesses together.

Again, what we've been trying to get is that the

joint venture program gives us the ability to compete, particularly in the area of bundling contracts. It's a tough hurdle to get over. These contracts are hundreds of millions of dollars, and there's just no way that we can do it on our own. And if there were several JV's and other 8(a)'s formed into a midsize company, we could compete with the Boeings of the world.

So we would ask for exemption from affiliation in JV's between 8(a)'s and large businesses operating under the mentor-protégé programs to be continued.

We feel the 3 in 2 Rule is very confusing. It seems to be both restrictive and maybe even discriminatory and anticompetitive, so we ask that it be abandoned and not to overinsure the business proposals of the 8(a) and the joint venture program.

Section 124.204(c) is permitting SBA to assume that requested information that is not submitted by a disadvantaged applicant is automatically assumed to be adverse to the applicant. It seems both unfair and discriminatory to less sophisticated small businesses. It appears to be mean spirited and again should be abandoned.

A question I have always possibly in this area on the website was, is the proposed regulation an attempt to keep companies from participating in the 8(a) program.

You didn't have an answer. My comment is, it may not be intended to be that way, but the end result sure looks that way. We see the opposite when it comes to rule-making for big business. They get more beneficial rules and more relaxed rules. For example, we don't see anyone beaten up to change the rules on limiting sole source contracts to big non-8(a) companies. We see no pushback on the bundling rules that's been going on for the last five years.

So I think, if we want to be fair, we need to look at both the small and the big business and try to amend the rules to benefit our services rather than trying to allocate portions of the rules through bundling of big business versus small business.

Section 124.204(a), this is an administrative change directed at ANC's. We ask why we're singled out, and we believe that this could be discriminatory. It places a significant financial burden on the 200 some Native corporations in Alaska without any reason behind it. No other participating tribal group or NHO faces this extra hurdle being placed on them. It is again primarily discriminatory against the smallest and the most disadvantaged groups in America. We need help. We believe we provide service. We provide quality service. And I assure you that Native Americans in Alaska aren't

rich. We don't have oil in our backyard. We don't have timber growing in our frontyard. A lot of our villages are struggling and have not yet even participated in the program.

Another question I was asked, are these regulations focused on Alaska Native Corporations. The answer was, absolutely not. This could be true but the end result again appears to be the opposite. Many of these bigger changes have more of a negative focus on the ANC's. That mirrors the hysteria that's been raised by some of the big businesses and certain congressional staff, whereas there's little focus on how big business has eroded the intent and spirit of the 8(a) SBA statutes.

So I caution you, when you make the change, to look at how they are focusing on the ANC's. And it may not be intended that way, but the end result is pointing in that direction.

Administrative change on 124.204(a), I think this was a last-minute proposed rule that notes that the location of the SBA's talking about moving our final application approval process to San Francisco. It wasn't in the original proposed rules, I don't believe.

But my understanding is it was temporary -- this move to San Francisco was temporary. It was in recognition of our SBA office being overwhelmed, and at that time, it

made sense to have San Francisco step in and help. But in my experience, I had an application in the SBA process. I started it in Anchorage. It gets bumped to San Francisco and bumped around in San Francisco for almost a year.

I'm not saying anything bad about San Francisco or the people down there, but they did not understand the Alaska Native Corporations. They didn't understand them at all. And so we have a lot of questions going back and forth, and so there is a little bit of a cultural difference between us and San Francisco. There's a learning curve.

But on top of that, just the shear distance, for me to have to fly to San Francisco is almost 3,000 miles. I just came from there today. And if you come from our village just to Anchorage, some of us have to pay $1,500 just to get to Anchorage. Then you throw on the trip to San Francisco, you're talking almost $3,000 just to get our application in and answer the questions in person. It is important for us to meet with the SBA office on a regular basis. When your application is stuck someplace, you want to know -- you want to meet with the representative from the SBA.

And so it's an injustice for us to have to fly to San Francisco to meet with the SBA, so I urge you to

reconsider the San Francisco as a permanent solution.

Another thing, earlier was the requirement for stand-alone audits for ANC subsidiaries, even over $5 million in revenue. Needless to say, this is an undue burden, particularly on small villages. In our experience, the cost of a certified audit for ANC's are close to $200,000 a year just to have a certified consolidated audit. We have been doing consolidated audits for the last nine years for the SBA. It is the most cost effective and meets the intent of the law.

So I ask you to reconsider the interpretation that we must have stand-alone audits, because we've done it. It creates an undue financial burden on corporations. If you think about it, a $5 million corporation with just a ten percent return is $500,000. If we're paying $200,000 in audit fees, that's an undue burden, so it's an unnecessary expense. I urge you to reconsider that rule.

Thank you again. I'm glad to be here from my village which is about 2,000 miles away. I do have some written testimony I'll submit and hope that my verbal testimony that's recorded will also be submitted into the record. I'll be able to answer questions later or not. Thank you.

MS. PRATTE: Thank you so much. Great comments there. We appreciate your comments, Mr. Philemonoff.

And we will record everything for the record.

And does anybody have any followup? The consolidated audits versus the financial statement was an issue that we've been discussing internally, so we will be clarifying that portion.

MR. PHILEMONOFF: Thank you.

MS. PRATTE: Thank you. Mr. George Samuels. Mike Blair. Patricia Holmes. Lynn Owsley. And let me see. After that we had some folks that raised your hand that hadn't registered that wanted to testify. Please come up.

MS. STEPHAN: Good afternoon. My name is Michaelene Stephan, M-i-c-h-a-e-l-e-n-e S-t-e-p-h-a-n. I'm the president of Tyonek Native Corporation, an ANSCA village corporation for Tyonek which is located in the south central region of Alaska. The village is about 45 miles from Anchorage across the Cook Inlet and about a 30-minute ride on a small airplane.

Tyonek started with an original enrollment of 302 shareholders and had opened the enrollment to now include over 700 shareholders. This has instilled pride in our descendants knowing that they are included in and benefit from TNC. Thank you for allowing me to deliver my comments to you regarding the importance of the SBA 8(a) program to my fellow shareholders. TNC also requests

more sensible methods of making changes to the program without threatening the benefits to Alaska Native corporations. Not only has the current threat cost TNC and others a lot of money in travel and legal fees which would normally go to dividends or other shareholder benefits; it is taking time away from us tending to our business.

Tyonek started in the SBA arena in 1998, and it grew to include 12 subsidiary companies, although all are not 8(a) certified. Our companies are in 12 different states.

TNC further has provided benefits to its shareholders and management experience for shareholder directors and non-director shareholders.

TNC has grown so much in the last three years that the board of directors elected to make the president of the board a full-time working position. I would like to say that I am one of those gaining this on-the-job experience with the mentorship of our CEO, serving my second year as a full-time president in the last three years. We have also created 21 shareholder jobs in the Anchorage home office with three additional internships in lands, IT and administration.

TNC has increased its annual scholarship funds to over $100,000 and the board was able to create a

nonprofit foundation to take over this fund from the regional nonprofit. The Tebughna Foundation will administer the scholarship program and other benefits to TNC shareholders.

TNC has issued over $1.5 million in dividends since its beginning and most recently has paid out a dividend of $12 per share this past week.

TNC has created an insurance program for its shareholders -- more commonly known as a death benefits program. With the cost -- burial costs, this takes a tremendous burden off of our shareholders and their families. TNC annually contributes approximately $80,000 to the program. Shareholders may also contribute if they wish to increase their benefits.

TNC has made contributions to the community for such items as the Chief Chickalusion annual celebration, the Native Youth Olympics, and end-of-the-year school field trips. These benefits are made in the villages and in Anchorage.

In addition, TNC has contributed as a major donor to the Alaska Federation of Natives annual convention for the past two years. AFN is a statewide advocacy group for Alaska Natives.

We have also donated over $46,000 for Project Grad out of Houston to help our children reach their yearly

progress under the No Child Left Behind Act, which is a great success in Tyonek. This program funds educational activities in the village school.

At this time, the Native Village of Tyonek is experiencing financial difficulties. TNC has endeavored to assist the Native Village of Tyonek while not overstepping the bounds of its tribal governance.

There is now a potential of $18 billion of business development on the West Cook Inlet and with the financial strength that we have experienced from our participation in the SBA 8(a) program, we can participate in the development projects and also help in protecting our land from trespass. This protection will allow our shareholders and tribal members to continue with our sustenance way of life.

And on the subject that Ron brought up this morning on small village corporations versus large corporations, I learned last week that there is a book up there that is about 400 plus dollars that has every tribe listed, and it gives all the information that you'd like to know about those tribes.

We will submit more detailed and technical comments later. Thank you for allowing us to make these comments.

MR. JORDAN: Thank you.

MS. PRATTE: Thank you so much. Anybody else

that would like to comment come forward, please.

MR. CART: Good afternoon. My name is Jason Cart, spelled J-a-s-o-n, last name Cart. First, I'd like to read a prepared statement. Then I'll answer questions.

I'm the director of the business development for the Kotlik Yupik Indian Corporation. We represent the Village of Kotlik in Alaska.

(Mr. Cart was reading from his Blackberry and looking down the entire time. Rather than stop him, I elected to ask him for his statement later. I gave him my card and asked for him to e-mail me his statement. I have heard nothing from him. I haven't been able to locate him either. I didn't hear his statement well enough to include it in this transcript.)

MS. PRATTE: Thank you for your comment. Is there anybody else that did not register that would like to submit comment for the record? Do we have any other questions or concerns that you'd like to ask?

MS. GRAHAM: Can I come back?

MS. PRATT: Sure.

MS. GRAHAM: Jessica Graham. I have actually a couple very specific comments that go to some of the

provisions, and then I'll throw in a couple additional comments which is the equivalent of saying, yeah, what she said.

To begin, I'm focusing on section -- the changes to Section 13 CFR 121.103(h). This is the section where you're talking about how you will ascertain whether a joint venture is eligible for that third contract, and you're going to -- you can now have three contracts as opposed to three offers, great change. And to determine eligibility as of the date that there was the initial submission to the price, also that makes a lot of sense, so I'm good with that.

My concern that I want you to think about is that the language that you used is, the joint venture has received two or fewer contracts as of the date it submitted one or more additional offers. And what I'll offer to you is that, in this day and age, a joint venture can be awarded a contract but the contract can be protested, and so you could have a long period of ambiguity about whether you really have that award or not. And so when you are looking at that key question as to whether a joint venture is eligible for that third or fourth or fifth contract, the question is, what do you have in the bank right now.

I will say to you that determination -- that

eligibility determination should be made at the close of the protest period when you really do have that contract, not that it's been awarded and nothing's been signed, but it's languishing before GAO and/or the federal government for months at a time. So just put that as a note to self, and we'll put that in our written comments as well.

Another specific question that I have, you note in the definition section in 124.3 that the ANC entity now will have the ability to change his own primary NAICS code. And at the risk of looking stupid in front of the group, does SBA have that independent authority itself right now? Can you change a primary NAICS code?

MS. HUDSON: I'll state there is still explicit regulatory discussion right now in terms of a firm being able to change its NAICS code. The change in the rules is that we took away from the provision but we didn't put in the process for making that change. So the proposed rules puts in place what that process is in changing the primary code.

MS. GRAHAM: Okay. So now I'll just add a couple of additional issues.

Like you've heard before, the requirement for the certified financials, I'll offer that that threshold right now that you've got is too low. Afognak has obtained every year certified outside financials at the

parent company level. We pay several hundred thousand dollars a year for that. And when we got wind that the district office in Anchorage was going to start requiring that on the subsidiaries, we looked to get a price quote, and we may end up paying several hundred thousand dollars more for individual certified financials.

What I'll offer to you is that the process at the parent company level is extensive, it's at times painful, but certainly thorough enough that whatever SBA or any outside third-party stakeholder may be trying to gain in terms of transparency or numbers, you can obtain that from consolidating the financials. So you said that you were willing to -- you were thinking about that. I would encourage you -- that is a significant financial burden to these entities.

MS. PRATTE: And one of the things that John Cline and I were discussing on this matter is that there's been no formal changes to what we have always accepted versus now. There's been no formal process other than we are now going to do this instead of this. So we're just trying to get clarification with the Alaska district office about some of the -- because this has come up quite often.

MS. GRAHAM: Okay.

MR. PETERSON: May I interrupt for a second?

Are you saying that rule has not been established? Because our district office is saying you will start next year, and they gave us a break this year. He said next year you will comply.

MS. HUDSON: It's an issue that just came to our attention, being individual financials as opposed to dealing with consolidated. So we're trying to identify what they feel that they're not getting in the consolidated statements compared to what they have been able to get historically.

But our position has been the consolidated financial statement should suffice. However, if there's additional need for clarification, then get that if there's something that's not being provided or if they need specific financial data. But literally, this came to our attention within the last two weeks, so that is something that we want to address.

So the consolidated financial statement issue, we will be talking to the district offices and getting an understanding what of they're trying to do there and address that specifically. For purposes of the rules and the financial reporting, whether it's audited or not audited, I would encourage you to please put into what you submit in your comments as to what the processes are of getting those audited financial statements and make

recommendations as to what the threshold should be based on (inaudible). That certainly puts it into perspective in terms of understanding the potential burden that that proposed rule would make on the firms, and it goes to our evaluation.

But we have thresholds that have been on the books now for at least ten years, if not longer. I think maybe it went back to 8(a). We want to make sure that we adjust the threshold accordingly, and we need that information to do that.

MS. GRAHAM: Last but not least, I know I raised this issue last Thursday but I'm going to raise it again. That's the notion to the change proposed for 124.102 about firms essentially being pushed out of the 8(a) program after two years when you succeed in your primary goal.

And the perspective that I wanted to give you on that, over and beyond the general points that you think that's enough of a change, is that there's a lot of talk about Alaska Native Corporations and about successful firms in the 8(a) program, and there are big numbers. But my CEO says, effectively what this change would do is push the ANC's out of the 8(a) program if it has high revenue numbers, but at the end of the day, what matters is how much money the firm has actually made. And I

encourage you to do some information gathering, and we can certainly provide marketing in the contracting industry. A $100 million contract sounds like a lot, but at the end of the day, there's not a lot left over. Because of your direct costs, your overhead, the GAO, your taxes, everything that we've got to cover, there's not a lot left over.

And so the conclusion that is submitted in the regs is that SBA says, after two years, you have what appears to be irrebuttable presumption that you have met your business goals, but you clearly could have lost money and ended up those two years in a negative position. Yet, you'd still be kicked out of the program.

Then this is a nosey question because my sense is that there's a general dynamic that everyone wants to know what everybody else is going to say on the website, but perhaps we're all a little bit nervous to be the one to go first. And so in that vein, we can check regulations.gov to see what public comments had been received. But the last time I checked, there was nothing up there. Do you know when those are going to be loaded up?

MS. DELANEY: There's about -- I think about seven or eight on regulations.gov. The total we received is less than 30. Because we extended the comment period

now for an additional 30 days to January 28th, my speculation is that the comments will start flooding towards the end of the comment period.

So I wouldn't -- everybody is constantly asking me how many comments we have to date like that's some sort of barometer of something which it's not. But, yes, after the close -- to your specific point, after the close of comment period, the comments will be available upon request.

MS. GRAHAM: I want to reiterate the comments of others. I think all of you in some way, shape or form, I found, to be incredibly gracious and helpful. I truly appreciate your willingness to come out here. I do wish that you would come to Alaska.

But in general, our experience with SBA has been very, very positive, and we appreciate your time and dedication to those issues. Thank you.

MS. PRATTE: Is there anybody else that would like to make follow-up comments?

MR. TOMPKINS: Bob Tompkins again. Just two followups on the comments that were made.

First of all, the proposed 124.102 about the two-year graduation, I think that's likely a paradox and will drive people away from SBA for smaller business loans. Why would you choose to do that knowing that you're going

to move out of the program very quickly? And I think that will especially impact on (inaudible) where you have one-time eligibility, so I think there's potentially a very paradoxical (inaudible).

The second thing is the consolidated financials, which to many of us is terrible. It will drive up costs. If there's 8(a) small business accounting, I think in terms of the impact on ANC's and tribes, we have heard from many of our clients that this is difficult. It eats into the profits of the ANC's.

As I recall from your current regulations, there's a provision that asks for a waiver. If it's not in the regulations, it's in the SOPs. You may also recall the issue with the waiver that might be granted was not explicit. The factors that should be considered in that waiver was not explicit.

And so for that (inaudible) purpose, I think it would be useful to let folks know there is a formal waiver process which is being utilized today and perhaps consideration and some guidance as to what the consideration of the process would be, so that the folks can avail themselves of the process.

And if the rules (inaudible) are not going to grant them presumptive exclusion or permission to consolidate financial statements, at least consider spelling out the

details in the regulations what the requirements might be so it's very clear.

I promise I will not say anything more until later. Thank you very much.

MS. PRATTE: Thank you. Do you want to make any other comment?

MS. HUDSON: Again, having to repeat myself a couple hundred times over the next couple months, but please, please, please, make sure that your comments as you submit them contain both positive and negative concerns that you have with regard to proposed rule changes. Don't hesitant to submit information to us if you feel that you need to submit your information under circumstances to keep the information private, please do so. I don't think that's something that we talk about doing. I repeat that again.

But we really do look at the information that you submit. We will consider all of it. It will become part of the record and help us to decide what the final rules will look like.

The comment period was extended another 30 days so to January 28th. Thank you.

MR. JORDAN: I want to just, first of all, thank all of you for coming out and spending the day to help us better formulate the rules. We're very, very proud of

this program and all of the great benefits it provides. And the overarching spirit is to design a structure that works for the intended recipients, also to ensure the integrity of the program which is under constant attack by congressional or whatever remains as positive as possible for a long, long time.

So the point about the written comments, the issue of the written comment, I've two quick points. One is, don't be like me and delay your homework until the night before. You have a 30-day comment period. We went out knowing it was a robust set of regulations, and we wanted to get around and talk to you. It was originally 60 days. It was extended to 90 days. We didn't want you to have to choose between enjoying the holidays or giving us comments.

But that being said, you know, I don't want to get all sorts of requests on January 27th saying please. So we really want to get these -- you know, get the regulations or whatever in the final version of the regulations out and into the program so that the program can be further beefed up and effective.

So don't just say, well, I'm sure somebody will comment on X, Y or Z, so I probably don't have to. No, tell us. If it's good or bad, don't wait and look for whatever other people said. Just tell us your thoughts.

Tell us what works because we really are sincerely interested in what you think.

We appreciate it, and I look forward to seeing many of you again in New Mexico.

MS. DELANEY: I just wanted to echo Joe's comment. Thank you very much for coming out.

On a personal note, nothing makes me feel better in working in the program than hearing people talk about how important it is to them, and it is a feeling of job satisfaction that I wish everybody could experience. I thank you for that.

MS. PRATTE: Thank you all. And thank you everybody for coming out. The tribal consultation process is something we're very committed to. We will be looking for a lot of you on January 14th for another tribal consultation which will be also, as it was here, ANC's the first day and the second day for general public comments.

I do want to say that we have a list of cities that we will be going to, and there are only two formal tribal consultation cities. The process will be very similar to what it is here. So if you're unable to make the tribal consultation or you know others that are unable to make the tribal consultation, we will be in Los Angeles, Chicago, Boston, New York, Atlanta and

Miami.

There's a Federal Register Notice. I don't know if all of them have these listed down.

Any other questions? Thank you.

(Proceedings ended at 2:48 p.m.)