ALBUQUERQUE TRIBAL CONSULTATION HEARING

TRANSCRIPT OF PROCEEDINGS

Indian Pueblo Cultural Center
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A P P E A R A N C E S

The Panel:
SMALL BUSINESS ADMINISTRATION
409 Third St., SW, 8th Floor,
Office of Nat. American Affairs
Washington, D.C. 20416
BY: CLARA PRATTE
JOSEPH G. JORDAN
JOE LODDO
JOHN KLEIN

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MR. JORDAN: I just want to take some time this morning to just do a brief welcome, and then I'm going to introduce Lieutenant Governor Frank Lujan from Isleta Pueblo to do our prayer.

MR. SOLIMON: I want just to just extend a special welcome to all of you to the Indian Pueblo Cultural Center. My name is Ron Solimon. I am the president and CEO of the Indian Pueblo Cultural Center, which is a not-for-profit corporation, and then also Indian Pueblo's marketing, which is for-profit corporation. I'm the CEO for both of those operations. Both corporations are owned by the 19 pueblo tribes of New Mexico.

And I just want to welcome all of you that have traveled far to be at this consultation, the focus being primarily on tribal input and for tribal organization input today. I know there's another day for general public input.

I just want to do a special welcome, also, to several individuals from the United States Small Business Administration, Joe Loddo and Joe Jordan, Clara Pratte and John Klein. These are all people that are going to be processing our comments today and any statements that you may have brought, to take into consideration for any changes that might occur here in the future with respect

to the programs that the Small Business Administration has.

And I'll stop there just for the moment and I'd like to call forward, which is our practice here in the southwest, as it is in many tribal communities throughout the United States, to have one of our tribal leaders provide the opening prayer. And if you are able, please stand when he does so, and we appreciate it. I'd like to, at this time, introduce Lieutenant Governor Frank Lujan from Isleta Pueblo.

(Prayer.)

MR. SOLIMON: So when the numbers were given to me, I think we were expecting like 40 people, so it looks like the number has increased substantially. I just want to invite you to while you're here, if you have breaks in the action here, we have a great restaurant facility right below us here, so please take advantage of that opportunity to experience Native in the southwest version and also to take a look at the different exhibits here that we have in the south gallery, which is, in case you're wondering -- of course, you can see the Sandia Mountains here. Those are to the east, and then we have to the south and then west and then north.

So if you'll go to the south galley, you'll see a great exhibit there by a tribal member from Jemez

1 Pueblo, Kathleen Wall. She's got a tremendous exhibit
2 there that reflects on several of the cultures that she is
3 affiliated with or has been in contact with. It's a
4 wonderful exhibit, a likely candidate to be a traveling
5 exhibit throughout the U.S.
6 And then over in another part of our center
7 here, we have an exhibit that is called the Saints of the
8 Pueblos. And the 19 pueblo tribes of New Mexico, of
9 course, were colonized here and also what was part of the
10 colonization process by the Spanish crown was to bring in
11 the Roman Catholic faith. So there's an exhibit there
12 that reflects the patron saints of all the 19 pueblos.
13 Were you to be able to travel to -- and probably a lot of
14 you have, to the 19 pueblos, you would see a Roman
15 Catholic church and each one of those churches has a
16 patron saint in that. We start the celebration with San
17 Ildefonso Pueblo on the 23rd of January this year. So if
18 anybody is anywhere near, please go north to Santa Fe to
19 San Ildefonso on the road to Los Alamos.
20 So that's just a brief glimpse of who we are
21 here. We've got some great facilities. And please take
22 advantage of our gift shop. Gentleman and ladies, you'll
23 have to forgive me, but I'm just a consummate marketer.
24 And I also want to go ahead in the beginning here --
25 there's a cup of flyers. One of my great responsibilities

1 in the past that I enjoyed tremendously was being the
2 chair of the National Center for American Indian
3 Enterprise Development. Every year we have a national
4 conference called RES, Reservation Economic Summit.
5 That's coming up in 2010 at the Las Vegas Hilton, and it's
6 scheduled for February 21st through the 24th. We've got
7 some flyers out there right on the table. So if you look
8 for these two items, that's what they are. And it's a
9 great networking opportunity with opportunities to really
10 get some good business opportunities, get a beat on some
11 good business opportunities and, in some cases, really to
12 consummate deals right there. So I want to extend that
13 special invitation to you.
14 I also want to thank -- I know my little
15 nephew over there, Jeffrey, is in the crowd somewhere.
16 Thank you to the Chickasaw Nation for becoming the tribal
17 sponsor. They're basically the sponsor of the conference
18 as a whole. So if the Chickasaw Nation has taken on that
19 role this year, whereas last year it was the Seminole
20 Tribe. So that's the kind of involvement that I really
21 appreciate. So thank you all.
22 And I guess what I'd like to do, then, is to
23 take advantage of this opportunity in terms of reflecting
24 on the 8(a) Program. Sometimes -- those of you that know
25 me well, sometimes I'm referred to as the grandfather or

1 the godfather of the 8(a) Program, and that came about as
2 a result of my involvement with my home tribe Laguna
3 Pueblo, which finished mining here for about 30 -- we
4 mined for about 30 years. And that's a whole story in and
5 of itself and it still continues to -- it's still a
6 continuing saga in many ways.
7 But we needed jobs and we look to ways in
8 which we could provide jobs. And one of the quickest
9 ways, because of the volume of business we saw at the
10 Department of Defense, was to become an 8(a) contractor.
11 And we discovered that we were not eligible under the
12 current law -- and this was back in the '80s -- to
13 actually be certified as an 8(a) contractor. And so we
14 basically built a pontoon bridge across the Potomac from
15 the SBA over to the U.S. -- well to the Pentagon and
16 created a temporary kind of pathway for tribes to qualify.
17 And I had the opportunity in the past to
18 represent all of us now that enjoy the program and that
19 have seen businesses flourish under the program for many
20 years. But when I was testifying before congress,
21 basically I was like a grand party of one in many cases,
22 thinking of all of you, all of you that were coming up
23 through the ranks. Many of you were probably still in
24 school or doing something different.
25 But when I was asked by the congressional

1 delegations that I was in before, you know, how do I think
2 this might work, one the key provisions -- and I know this
3 is going to be the subject of a comment, the statement
4 that I have here, on behalf the National Center But was it
5 a term. I felt that the term for Native businesses,
6 particularly those that were tribally owned, should be 15
7 years. Because I was thinking already at that time three
8 business cycles, three five-year business plan cycles
9 because of the nature of business operations. I mean,
10 when you're starting out, you're barely getting your feet
11 wet at five years. And, you know, you're making some
12 transitions year six through ten. And then after the
13 tenth year, then, yes, you know, you should be making some
14 transitions.
15 Well, the reality and what happened in all
16 the wheeling and dealing and the nature of politics that
17 occurred was that we could only negotiate nine years. And
18 if you're wondering who agreed to nine years, you're
19 looking at him, because that was the way in which it was
20 presented to me. I tried fifteen. And they said, "No,
21 how about five?" I said, "How about ten?" They said,
22 "How about nine?" And I said okay. We don't want to go
23 any lower than that. So that's how we got the nine-tier
24 program way back when. And when asked how many tribes do
25 you think that are out there that would want to take

1 advantage the 8(a) Program, it was my best guess at the
2 time -- and it was just out of the air -- was 75. So
3 that's what went into in initial memorandum agreement
4 between the Department of Defense and the U.S. Small
5 Business Administration. So that's a little bit of the
6 history of my involvement in that particular program.
7 So I've been, from time to time, an advocate
8 for the program because I think it's a great way to start
9 up in terms of any kind of business economic development
10 enterprise. And I do have a prepared statement. And
11 actually, it was prepared for me late last night in
12 Washington, D.C. and then e-mailed to me, so I'm going to
13 try to do my best to not take too much more time, but then
14 to submit for the record a statement on behalf the
15 National Center for American Indian Enterprise
16 Development. So I'm pleased to be able to do this today.
17 And hopefully, I'll cover some of the bases I think that
18 the rest of you will.
19 This program is integral, I think, to
20 economic development initiatives among the pueblo tribes
21 here in New Mexico, but then also for tribes across the
22 U.S. and Alaska Native corporations. Many times we've
23 been called to the defense of the Alaska native
24 corporations and we've responded positively, saying that
25 they deserve an opportunity to grow. And because of the

1 numbers -- and some people see the number, the contract
2 values that they've been able to negotiate is very high.
3 They've been criticized and been under great scrutiny and
4 all, and we've stood by them side by side. They have only
5 just come out of the chute. They are just starting. Why
6 should they be quashed? Why should their initiatives be
7 quashed in terms of their opportunities? They have a huge
8 responsibility in Alaska.
9 And we down here in the Southwest, also, then
10 the expectation was, and throughout the U.S., is that is
11 that their ability to gain and garner large contracts,
12 then, should probably be spread among some of us as
13 subcontractors. I think that's the expectation among
14 several of us that are sitting out in the audience there.
15 They have done that to some extent and I think we still
16 have that kind of expectation. We've worked hand in hand
17 together and we look forward to continuing to support
18 them. And I'm sure they'll have their own statement here
19 today.
20 But I think I've covered the first part of my
21 statement, so I am not going to reiterate that. I'll get
22 to the background on the National Center for those of you
23 that are wondering what is this. This is the first time.
24 Who's heard of the National Center by the way, so maybe I
25 can cut my remarks further down. Well, that's

1 disappointingly small there, the number of hands that went
2 up. It's the longest survey of Native American business
3 development assistance provider in the U.S. Our mission
4 is to develop the American Indian private sector as a
5 means to help our Native communities become
6 self-sufficient. That's been our mission for a while. It
7 operates a network of Native American business enterprise
8 centers much like the one that's housed here at the Indian
9 Pueblo Cultural Center that's run by Ted Pedro, the Native
10 contracts out of the Department of Commerce Minority
11 Business Development Agency and American Indian
12 Procurement and Technical Assistant Center that we have.
13 I've got two staff members that are here if you care to
14 talk with them more about the center or about anything
15 that I'm going to say. George Williams and Joan Notah, if
16 you would stand. Those two folks are responsible for many
17 of the programs and the successes that we've had at the
18 National Center. Thanks.
19 And we're staffed there in Mesa, Arizona by a
20 predominant number of Native Americans who have business
21 experience. And a lot of the consumers that we serve, a
22 lot of the clients that we serve are in remote areas and
23 also urban areas that exist throughout our country and
24 among Indian country. We also then have represented and
25 also served and worked hand in hand with the Alaska Native

1 corporations that I've mentioned and then more recently
2 with the native Hawaiian organizations and companies owned
3 by those native organizations.
4 Some of our general recommendations to
5 improve the Native Small Business Contracting process are
6 the following: As the federal procurement workforce has
7 downsized and the economic downturn has hit small Native
8 and minority companies very hard, the National Center has
9 stepped in to help our business clients throughout the
10 U.S, SBA and other contracting agencies in matching
11 qualification or qualifications with government contract
12 requirements. We provide advice on federal contract
13 requirements. We've really helped with the mentor-protege
14 relationships, joint venture agreement, subcontracting and
15 formal contracting arrangements.
16 As a special initiative, the National Center
17 has worked closely with the National Congress of Native
18 Americans, the Native American Contractors Association to
19 expand contracting opportunities for and to strengthen
20 performance and compliance by all Native-owned 8(a)
21 companies, and to conduct training, workshops, to
22 facilitate various types of teaming agreements -- and I
23 mentioned those before -- and encourage tribal-owned and
24 ANC-owned awardees of larger 8(a) contracts to develop
25 subcontracting plans for use in conjunction with their

1 efforts in regard to other small businesses.
2 So based on the National Center's experience
3 on all of these fronts, we offer the following general
4 recommendations: One, to expand the SBA office of Native
5 American Affairs. Of course, that's a tall order right
6 now. Everybody knows that there's a compression of the
7 federal budget. We know there's a compression of the
8 state budget. But nevertheless, we feel that the SBA
9 should continue to strengthen its office of Native
10 American Affairs even before enactment of pending
11 legislation. And I'm referring specifically to HR 2352 or
12 Senate bill 1229 to authorize the office formally.
13 Clara Pratte, who is a guest of ours today,
14 the Office of the Native American Affairs National
15 Director, is performing miracles with only limited
16 funding. So here we are. We have a miracle worker right
17 in our presence. So see her. Yet the office should have
18 its own budget and have at least $2 million and be given
19 grant authority to help augment Native American small
20 business assistance provided by NABECs, the AIPTACs,
21 tribes, tribal colleges, ANCs, Native Hawaiian
22 organizations and Native American Community Development
23 Financial Institutions. Such providers can help by giving
24 guidance to contractors so that more SBA personnel can
25 focus on identifying small business contracting

1 opportunities, challenging contract bundling and
2 consolidation actions, and attending to other
3 administration and oversight responsibilities.
4 With more funding support, the ONAA could
5 provide more administrative and procurement support and
6 oversight, engage more with other divisions within the SBA
7 to tailor policies and practices to the needs and
8 complexities of ANCs' and tribes' contracting enterprises,
9 and better facilitate all Native access to SBA's capital
10 programs, including a loan guarantee program and
11 innovative research support.
12 The second recommendation that we have is
13 improve the 8(a) application process. And you know, those
14 of you that have gone through that process, that it is a
15 cumbersome one. And there's some people that have
16 developed businesses off of that. And certainly we're
17 grateful for that consultation, because it can be an
18 arduous process and sometimes bring a very worthwhile
19 endeavor, entrepreneurial effort to a screeching halt.
20 The National Center applauds the SBA for
21 stepping up in its efforts to improve and streamline the
22 8(a) application process. More work is needed, however,
23 including revising the application forms to accommodate
24 the complexity of the Tribal ANC and NHO enterprises
25 seeking participation in the 8(a) Program, particularly

1 for those that create holding companies to oversee their
2 8(a) enterprises. And many of you are probably involved
3 in the creation of holding companies now. The more
4 experience you've had, the more requirements there seems
5 to be to -- or there's at least a trend right now with
6 some of the things that my home tribe is doing. So that's
7 of particular interest, I think, right now.
8 The third recommendation we have is to
9 improve data collection and reporting. The SBA should
10 facilitate the reporting and collection of more
11 comprehensive contracting data from various categories of
12 small businesses, business contracting, to help SBA and
13 other federal agencies to fulfill their obligations to
14 oversee small business contracting and assure attainment
15 of the goals for contracting with small and minority
16 businesses. We've suggested the creation of a Web portal
17 for 8(a) companies to facilitate the reporting on
18 compliance with regulatory requirements and with
19 agreements governing prime contractor performance,
20 limitations on subcontracting and mentor-protege and joint
21 venture agreements, among others.
22 And we have specific comments, then, on SBA's
23 proposed regulations. The National Center intends to
24 submit its final version of the recommendations before the
25 January 28th, 2010 deadline, but today I'll touch on some

1 of the key proposals from the prospective of our center's
2 clients, our client base, including individuals and Indian
3 tribes seeking to form, grow and diversify their
4 businesses.
5 First of all, the 8(a) Program term -- and
6 I've talked to you a little bit about this earlier and my
7 experience and how that came about. So if you think that
8 was a bad deal, I apologize, but that's the best I could
9 do back in the early '80s. And that's really dating
10 myself, too. So it was a difficult experience and there
11 was really no one to confer with at that time. So since
12 then, the SBA has heard and now responded to continuous
13 calls for program extension because far too many 8(a)
14 companies never come close to meeting their goals in the
15 nine-year period before they're forced to graduate, before
16 they're terminated. I hate to say that.
17 The SBA has proposed that a determination be
18 made whether the participant has met its targets and
19 objectives set forth in its original business plan rather
20 than be deemed to have graduated. Such a welcome change
21 would extend some firms participating so as to fulfill and
22 reinforce the original capacity building purpose of the
23 8(a) program and development program.
24 The second specific recommendation we have is
25 regarding the economic disadvantaged determination. One

1 of the things that I experienced early on, just a personal
2 story there for a moment, is when I was asked about how
3 this would work using my -- would I exhaust my 8(a)
4 eligibility as a potential individual entrepreneur by
5 utilizing it for the tribe. And at that time, the
6 decision was no. Because someone is asked to lead a
7 tribal effort if you left the company, say, five or ten
8 years or whatever time, there was that you shouldn't lose
9 your 8(a) eligibility, certification eligibility. And
10 that's something that I dialogued with them quite a bit
11 about, because at that time I was thinking, well, there's
12 a possibility that I might want to start my own company to
13 do something and seek 8(a) certification, so I shouldn't
14 be penalized for doing that.
15 The SBA proposals in this area also bring
16 some needed changes. We applaud the focus of the 8(a)
17 applicant's financial condition and exclusion of
18 additional assets from the calculation of net worth. The
19 spouse's property and financial situation would not be
20 considered except in special circumstances, nor would the
21 applicant have to include the value of his or her
22 individual retirement account or other official retirement
23 accounts. Whatever kind of balance you have after the
24 debacle for the last year-and-a-half, that's what we're
25 talking about, 401(k)s and such and individual IRAs, as

1 long as withdrawal from such accounts could not be made
2 without significant penalty, like the penalty IRS would
3 assess for early withdrawal. And that's something that
4 all of us look at from time to time.
5 Furthermore, income from an S corporation
6 could be excluded and reinvested into the firm or used to
7 pay taxes on S corporation operations. The SBA also
8 proposes a new presumption that an applicant is not
9 economically disadvantaged if his or her income exceeds
10 $200,000 prior to 8(a) approval, and no more than $250,000
11 during program participation. That's a key thing. These
12 new triggers make sense, especially given the new
13 exclusions proposed by the SBA, but it would also make
14 sense to add an inflation adjustment. The SBA's proposal
15 would also provide more flexibility in determining 8(a)
16 eligibility of individuals in the same family.
17 Particularly important, given the National
18 Center's new initiative on Native veterans business
19 outreach, is the SBA proposal for 8(a) program
20 participants who are reservists called to active duty.
21 That's another category of potential entrepreneurs. A
22 reservist would have the option of designating others to
23 control the daily operations of the 8(a) program company
24 or suspend 8(a) participation until his or her active duty
25 is completed.

1 As to Indian tribes, the SBA's current
2 regulations list several factors to be considered in
3 determining economic disadvantage. The SBA wisely
4 proposes no bright line test but seeks comments on two
5 options, a bright line assets test or a net worth test and
6 asks what other ways could be used to determine economic
7 disadvantage. If the SBA could guarantee more expeditious
8 consideration and approval using a bright line test, such
9 a change might be worth considering. Unfortunately,
10 however, a more rigid threshold would more likely have the
11 adverse affect of limiting the SBA's discretion to admit
12 deserving tribally-owned firms into the 8(a) program. The
13 SBA also has requested comments on whether a one-time
14 demonstration of economic disadvantage makes sense, and we
15 think it does. Increasingly, we are seeing longer delays
16 in approval of a new 8(a) subsidiary of a tribal
17 contracting enterprise because an SBA district office,
18 with all due respect, has decided on its own to reassess
19 the tribe's economic disadvantage. Rather than allow such
20 an ad hoc determination, the SBA should establish a
21 one-time demonstration requirement or review that occurs
22 10 years from the time the first tribal 8(a) entered the
23 program and every 10 years subsequently, as long as the
24 tribe has 8(a) subsidiaries in operation. Furthermore, if
25 the SBA decides to go beyond the first-time rule, it

1 should consider ways to determine continuing economic
2 disadvantage of other Native communities that operate
3 enterprises in the 8(a) program.
4 Another laudable proposal would allow a
5 member of any tribe to manage a tribal 8(a) enterprise,
6 presuming he or she has the right qualifications, but such
7 individual need not qualify as economically disadvantaged.
8 That's a key thing there. Some may argue that the
9 proposal could and should go further by allowing any
10 qualified U.S. citizen to manage such an enterprise, as in
11 the case for ANCs. While I might agree, I also think that
12 the existing SBA acceptance of managing mentoring
13 arrangements can help build capacity among capable tribal
14 members interested in gaining more sophisticated
15 leadership and management skills and responsibilities.
16 That's a real touchy area, because I think it's difficult,
17 and I've had that personal experience, too, being thrust
18 into a lead role in a start-up company not having any
19 business experience right up to that point. Plenty of
20 education, a little bit of experience and thrust into the
21 world of defense contracting? Can you imagine that, those
22 of you that have experience now? That was me about 25
23 years ago, I guess. That's why my hair is this color,
24 guys. So to be honest.
25 In an especially important proposal, the SBA

1 provides more flexibility in waiving the "two years in
2 business" rule to prove the applicant's potential for
3 success in the 8(a) program. Specifically, the proposal
4 would deem the applicant to have such potential if the
5 tribe has made a "firm written commitment" to support the
6 operations of the applicant company and the tribe has the
7 ability to provide that support.
8 The third recommendation is with regard to
9 changes to the mentor-protege and joint venture
10 requirements. The SBA's proposed changes in this area
11 track some of the proposals that the National Center
12 submitted during the last SBA 8(a) consultation in 2007.
13 First, the SBA proposes more specificity about the amount
14 of work that an 8(a) participant in a joint venture must
15 perform, that is, at least 40 percent of the work done by
16 the joint venture. This requirement is important for all
17 8(a) participants, not just tribally-owned 8(a) companies,
18 because it attempts to ensure that 8(a) company benefits
19 significantly from its ability to participate in a joint
20 venture and mentor-protege arrangement. Similarly, the
21 SBA proposes that an 8(a) company must receive profits
22 from the joint venture "commensurate" with the work
23 performed by the 8(a). Also picking up on the joint
24 proposals recommended by the National Center, NCAI and
25 NACA, the SBA has proposed that the 8(a) company must

1 report to SBA on contract performance, including
2 percentage of work requirements at the conclusion of the
3 contract performed by the joint venture.
4 As to the SBA's mentor-protege program
5 sponsored by the SBA, the SBA proposes some revisions to
6 make clear that mentors and proteges may joint venture for
7 any small business procurement, not just an 8(a)
8 procurement, but their joint venture agreement must meet
9 all the applicable or regulatory requirements. The SBA
10 also proposes changes to increase its oversight ability to
11 ensure that mentors are providing promised benefits to
12 their proteges and not merely utilizing the relationship
13 to gain access to the 8(a) and small business contracts.
14 Specifically, mentors would have to demonstrate to SBA
15 that they have provided the requisite assistance and that
16 such assistance is consistent with the protege's approved
17 business plan. If they fail to do so, the SBA could
18 recommend that procuring agencies stop work on any
19 contract -- it's pretty harsh -- on which the mentor and
20 protege are performing under affiliation rules. While
21 some may feel that this is too onerous, the National
22 Center applauds the SBA for proposing provisions
23 consistent with the comments that we submitted for the
24 November 2007 consultations. In that statement, the
25 National Center recommended strengthening the

1 mentor-protege program across the board to emphasize
2 mentoring and benefits to the protege. We believe the
3 mentor and protege should conduct an assessment of the
4 protege's needs at the outset of the relationship. We
5 have recommended that the mentor-protege agreement specify
6 the activities that the mentor will undertake to help the
7 protege build capacity in the areas identified during the
8 assessment, and whether the parties contemplate engaging
9 in contract performance together and under what
10 circumstances, including such arrangements as joint
11 ventures. We also recommended establishing milestones or
12 benchmarks that constitute success in developing the
13 protege's capacity, and requiring reporting of progress
14 under the agreement periodically and at the end of the
15 agreements's term.
16 These are really kind of based on our very
17 specific experience. And so please forgive me for the
18 detail here, but I think it's important for -- and I think
19 that's what the SBA is asking for is our perspective on
20 the process. And what was deemed to be a mentor-protege
21 relationship between Laguna and Rathion Corporation way
22 back when has really evolved. Essentially, what happened
23 back then was that we used some money from the ANA, the
24 Administration of Native Americans, to sponsor a learning
25 process, a two-year learning curve for the company, before

1 we were released to get into that. And they also served
2 as a safety net for that time frame when we were first
3 starting up, because it was difficult to know exactly what
4 to do. So that's where that experience comes from, from
5 my own personal standpoint.
6 I am going to move ahead here. I apologize,
7 but I didn't really get to cut down on this. The other
8 proposed changes to the 8(a) and SDB programs. One
9 significant proposed change would address the
10 controversial issue of an 8(a) firm's "primary industry"
11 code by recognizing that a participant may change its
12 primary industry and primary NAICS code designations over
13 time. The SBA proposes that an 8(a) firm could make a
14 formal change from one primary NAICS code to another if it
15 could demonstrate that the majority of its revenues during
16 a two-year period have changed from its former primary
17 NAICS code to another. Another proposed rule would
18 require a firm to remain small for its primary NAICS code
19 or face early graduation. If a firm's size exceeds it's
20 primary NAICS code for two successive program years, it
21 would be subject to early graduation. If adopted, this
22 change could create substantial adverse affects on some
23 8(a) program participants, particularly those in some of
24 the service industries where the size standards have
25 artificially low dollar thresholds. On the other hand, I

1 would agree with another proposal that a firm that is
2 "early graduated" or terminated from the 8(a) program may
3 not continue to self-satisfy as a small disadvantaged
4 business.
5 On the issue of the 8(a) "competitive
6 threshold" above which 8(a) procurements must be
7 completed, the SBA rightly has moved as far as it can to
8 increase the thresholds, proposing $5.5 million for
9 manufacturing contracts and $3.5 million for all other
10 contracts. The National Center has consistently supported
11 increases in these competitive thresholds, but we
12 recognize that the Congress has the ultimate say on this
13 particular point.
14 Another proposed change that would greatly
15 help the 8(a) Program participants is a clarification that
16 work performed under non-8(a) contracts, such as GSA
17 schedule contracts and work performed as a subcontractor,
18 even under an 8(a) contract, may be counted toward the
19 firm's non-8(a) competitive business next targets.
20 Last but not least is SBA's proposed
21 requirement that tribal, ANC and NHO 8(a) enterprises
22 submit information on benefits reaching individual tribal
23 members and ANC shareholders as a result of the 8(a)'s
24 operations. This information would have to be included as
25 part of the 8(a) participant's annual review. We

1 understand the reasons for the proposal, but some
2 flexibility must be permitted. For example, it should be
3 completely acceptable for such an 8(a) enterprise to use
4 some or most of its profits to reinvest in its own
5 operations in order to grow and thrive.
6 So with all this having been said -- and I
7 apologize for kind of trying to cover a whole lot of
8 ground all at once, and I'm sure that a lot of the
9 comments that I've made will be reinforced by others in
10 this room, I really appreciate the opportunity to speak
11 first this morning. And I'm going to have to run to
12 another meeting across town; I'm obligated to do that. I
13 just want to again welcome everybody here, especially my
14 tribal leadership that are shareholders here of these
15 operations, and trust that you have a real productive
16 morning. I think this is scheduled from 9:00 to 4:00,
17 somewhere around there. So it will be good to have you
18 here. It's good to see many of you. And if I can get
19 back between 12:00 and 1:00, maybe I'll get a chance to
20 visit with you some of you that I haven't seen for a
21 while. So thank you very much and welcome again to the
22 Indian Pueblo Cultural Center here in Albuquerque. Thank
23 you.
24 MR. CADENA: My name is Ed Cadena. I'm the
25 deputy district director for the New Mexico District

1 Office of the U.S. Small Business Administration. This is
2 an all-day deal. Ron, thank you very much. Ted Pedro,
3 thank you for sponsoring and hosting us here. I'm going
4 to turn this over to Mr. Joe Jordan, who is the associate
5 administrator for GCBD, Governing Contract and Business
6 Development. He will talk to you about how this process
7 works all day. And we're looking forward. It's good to
8 see all you good folks. We have a lot of success stories,
9 a lot of them. And it's all yours.
10 MR. JORDAN: Thank you. Good morning. I am Joe
11 Jordan. I'm the associate administrator for Government
12 Contracting and Business Development at the SBA. Nice to
13 see so many familiar and friendly faces. I just wanted to
14 quickly run through kind of why we're doing this, put it
15 into context. I don't think I need to emphasize how
16 important this is because just judging by the turnout,
17 you-all realize how important it is. But I do want to
18 emphasize why it's so important to us.
19 We're making -- the SBA is proposing the
20 first set of comprehensive revisions to the 8(a) program
21 in over a decade, really. They fall into three primary
22 categories. One is just some technical clarifications,
23 explaining some things that may not have been as clear.
24 The second is implementing some statutory
25 changes, things that have changed in the law over time.

1 And the third is really some substantive
2 changes, you know, policy-type changes that are all
3 focused on ensuring that the program's benefits flow to
4 the intended recipients. So when you're reading through
5 the regulations -- and I know many of you by this point
6 have -- that's really the lens that I would ask you to
7 look at. Some of the things are quick fixes, but some are
8 pretty substantial changes. And that's why, you know, if
9 you're looking through them, it is atypical that -- there
10 are 10 instances in the regulations themselves where you
11 say, hey, here's the issue we're faced with. Here's our
12 proposed solution, but we're open to other ideas.
13 So, you know, we really want this to be a
14 collaborative process. This public hearing and comment
15 period is by no means a box checking exercise. We're
16 taking this very seriously, and that's why we're holding
17 this. And we have one other tribal consultation tomorrow
18 which is open to the public. I won't be here, but my
19 colleagues will be here again. And that's one of 10 stops
20 that we've made around the country to really reach out in
21 person and gather ideas.
22 Your comments are not limited to today.
23 Anything that you submit on-line or send in -- we read
24 everything and we take it really seriously. So feel free
25 to give us a more synthesized view today and then submit

1 written comments that will be reviewed by our team. And
2 one other thing that I would really like to emphasize as
3 you think about this, obviously, you know, when people are
4 reading regulations -- regulations is a fancy -- I'm not a
5 lawyer, but it's a fancy lawyer-type word that just means
6 the rules. Here's a program that's attended to address a
7 number of issues and it's got certain rules. There's
8 rules of the game. And as we're trying to look at how to
9 make those rules as fair and effective as possible or
10 making some changes. As you're looking at those, it's
11 natural for you to say, "Hey, I like that particular rule
12 the way it is; don't change that," but not comment on the
13 many other places that you may say, "Oh, that's a good
14 change and that's fine."
15 So I would really encourage you to absolutely
16 let us know about the things that you have concerns about.
17 But in addition, let us know about the things that you
18 like. What are the changes that you say, "Hey, that
19 change make sense. These changes make sense. These ones
20 we don't like or I don't like, but these ones make sense."
21 If you give us both, it really helps. Because all too
22 frequently -- we'll put these out for comment. It's
23 usually a 30-day -- like I said, we're taking this real
24 seriously, and it's been extended to 90 days. We then sit
25 down and review everything that was said, everything that

1 we get through transcriptions, everything that you submit
2 in your written, we'll review it all.
3 Too often it's a matter of we've proposed a
4 change, and, you know, in some areas we've got 20 comments
5 saying, "Hey, we're really concerned about this," et
6 cetera. In another post-change we may have five comments
7 that say, "This is something we're concerned about" and
8 none that say, "This is good." So then we say, "Okay.
9 This is going to need some work." But in reality, when we
10 don't change it, then everybody come backs and says, "Hey,
11 that was a good change. Why did you get rid of that?"
12 We're saying, "Because nobody told us you really liked
13 it." So please -- I know I'm kind of rambling. But I
14 can't emphasize enough, because it's really helpful, and
15 John is always harping about it.
16 A couple of other issues. One is, as was
17 raised, January 28th, right, is the end of the comment
18 period? So I really encourage you to go through the
19 regulations as quickly as possible. I hope that today
20 will be very informative and helpful in letting you know
21 kind of what's in there and hearing other perspectives.
22 Very frequently you'll have a set of things that you're
23 concerned about or you want to propose. You'll hear a
24 couple of people talking and saying, "That's a good point.
25 I think that, too." That's fine. Amend it. Send it in

1 later.
2 We've kind of brought out the whole -- not me
3 but the rest of these guys, or really the A team. You've
4 got Joe Loddo who runs the 8(a) program So when you're
5 talking about all the issues about getting certified,
6 ongoing while you're in there maybe in a true business
7 involvement experience, getting access to all the training
8 and the contracting support that you need, he runs that
9 entire team.
10 You've got John Klein who heads up our entire
11 procurement law part. So when you see some unscrupulous
12 bad actors and you want to make sure that this program is
13 as complete as possible, he's the guy who's going to run
14 those suspensions and requirements, as well as helping you
15 think through. His team is really running point on a lot
16 of the -- making these regulations and these rules hold
17 up.
18 And then, of course, Clara, who is frequently
19 highlighted as the superstar. She runs our Office of
20 Native American Affairs and helps ensure that this very
21 important constituency receives it's due consideration and
22 we are not changing something that has unintended
23 consequence.
24 Of the things that I struggle with as I look
25 at the program is -- and I've talked about this at some of

1 my Congressional testimonies -- it's almost like there are
2 two programs operating under the same umbrella. Because
3 really, an individual business development program and a
4 community developed a program, and it's a real challenge
5 trying to write rules to execute this program in a way
6 that serves that entire breadth of constituency. There's
7 always going to be more money in figuring out how just get
8 inside the rules for somebody's own advantage, than
9 there's going to be in my job trying to enforce them.
10 So we need to try to go -- take this effort,
11 like I said, a big comprehensive review, get all the
12 comments and come out with some rules that everybody is
13 going to be happy and this program can really continue to
14 be as successful as its been. We have tremendous numbers
15 of success stories both in the Native communities and in
16 the other socially and economically disadvantaged small
17 businesses. You've got billions of dollars of contracts
18 that go into it, incredible training, and a passionate
19 team that's there to help. So, again, I really appreciate
20 all of your help, and I want to emphasize how important it
21 is for us to get out outside the Washington D.C. beltway
22 and listen directly to people who are going to be most
23 affected and benefit from this program. So thank you.
24 With that, I'll turn it over to Joe Loddo.
25 MR. LODDO: Good morning. Thank you very much

for being here. Joe has done a great job in summarizing what's going on, so my remarks will be very brief. But I do want to point out a very important piece, and that piece of this puzzle is this clearance process that goes on internally at SBA. This has not been easy, and as a result, it's one of the reasons why it hasn't been done in a decade, 10 years.

With administrator Karen Mills and Joe Jordan as the associate administrator for Government Contracting and Business Development and the support that they have given the 8(a) Business Development Program to move these rules and regulations through SBA, they really do need to be applauded. Because just as an example, the Office of Inspector General did not concur with these rules and regulations. And in fact, they gave us a 13-page dissertation as to why they thought differently.

To the credit of Administrator Mills and Joe Jordan, the draft rules and regulations went over to the Office of Management and Budget where they gave us a whole bunch of comments which we responded to, and then they extended it to all the other federal agencies for comments which we, in turn, responded.

The draft rules and regulations that we have for you right now is the comment period, which, to Joe's credit, said, we only have to do this for 30 days but I

want to do it for 60 days. And during the first 30 days, the number one comment, "We need more time. This is pretty extensive and it occurs over the holidays." We immediately extended it for another 30 days. In addition to that, it was Joe's suggestion that we have this listing tour. Besides the tribal consultations in Seattle and in Albuquerque, and we had also done in the previous year in Denver and in Anchorage, we're conducting a listening tour. I'll just give you those cities.

We started off in Washington with two days. We went to New York, Seattle, Boston, Dallas, Atlanta, today Miami and Albuquerque, and then next week Los Angeles and Chicago. We're trying to make this as inclusive as possible because you are our customer. And we need to make these programs important, because as you may know, this program is always under assault and we need to protect the program, and these rules and regulations, besides clarifying, will also help to ensure that the benefits of the program go to the intended recipients.

I also want to point out that Clara and her office have been superb in terms of what I believe to be a seamless delivery, and I'm very appreciative of that. Thank you very much. Let me turn it over to Clara.

MS. PRATTE: Hello, everybody. I'm actually in my own stomping grounds today. I'm from not too far out

of town, about two-and-a-half hours east, so it's welcome. It's wonderful to be back home.

Thank you to everybody for your registration, to your commitment to this process and this program. I am the director of the Office of Native American Affairs. Thank you to Mr. Pedro and his organization for hosting us here and to the Albuquerque District Office for their incredible support in pulling this all together. It's been phenomenal.

I think that both Joe and Joe have covered the major points of the importance of the 8(a) program and the commitment that the Office of Government Contracting and Business Development has in reaching out to the constituency, including the Native American constituency, which I, myself, and the administrator, the administration, as a whole, values and finds very important as evidenced by the renewal of the commitment that President Obama had to Executive Order 13175 to engage in meaningful and early-on dialogue with tribal leadership and tribally-owned entities, to ensure that any programmatic change that we consider, we engage the community early on before we even start going down the path. And I'm happy to say that SBA did just that in 2007. We are continuing that work. In the upcoming year-and-a-half, we will be doing more consultation.

After John speaks, I'll tell you a little bit how we're going to run the show. I'll call on folks that have registered to talk. If they're not here, we'll just move down to the next registrant. We'll revisit it again, those that aren't here. We'll take a break from noon to one. So after John speaks, we'll get underway with the process of the actual consulting statements.

So if you just come up to the podium and state your name, spell it as well, first and last, for our transcriptionist. If you have an electronic copy or a hard copy, you can provide that. If not, you can e-mail it to us later, and that will assist us in having a full and complete transcription. Try and speak clearly, as he's working to make sure he captures everything that you're saying. So with that, here's John Klein.

MR. KLEIN: Thank you. There's not much for me to say at this point. Everyone said everything I was going to say. Let me just say really briefly the process in terms of the rules themselves. As you know, we've gone through the proposed rule process and now we are listening to as many comments as possible. And, really, we encourage you to comment as much as you want. We really want that process to be full so that we understand all the comments that are out there.

I'm not sure if you've seen regulations in

1 the past, but oftentimes in the file rules you'll see a
2 provision that says, "In response to Section" such and
3 such. We received two comments, and because of that, the
4 Agency has adopted the comment and we've gone forward and
5 changed it to say whatever it's going to say. So as
6 little as one comment can make us change our minds
7 regarding one particular section. So don't feel that
8 we're not going to look at what you have to say. We are
9 definitely going to do that. We are going to summarize
10 every comment that comes in. We're going to summarize
11 them by section number so we can look at all the comments
12 together regarding a particular section and make informed
13 decisions regarding what's best for the program based upon
14 the comments that we received.
15 So that process -- again, we'll start the
16 summarizing process as soon as the comment period ends.
17 We expect to have a draft of a final regulation hopefully
18 a month or so after that, and then we'll go through the
19 clearance process again. So it will go through SBA's
20 internal clearance, the O and B process, the interagency
21 comment period, and then hopefully we'll get this rule
22 finalized we're hoping this fiscal year. But again, the O
23 and B process can be longer than we expect sometimes, so
24 we can't say for sure. So, with that, Clara will start
25 the first person.

1 As we go through, the panel here will ask
2 questions of people who are speaking because we want to
3 more fully understand what you're saying. If there's
4 something that you say and we're not sure what it means or
5 what the impact might be, we may have some further
6 questions of you. So just be prepared for that.
7 MS. PRATTE: Thank you so much. So we're going
8 to go in order who registered first, and that is Sarah
9 Lukin. So if you would come up and give your statement,
10 please.
11 MS. LUKIN: All right. Hi, everyone. My name
12 is Sarah Lukin. I am the executive director of the Native
13 American Contractors Association, or NACA. NACA is a
14 national Native organization that advocates for the rights
15 of tribes, Alaskan Native corporations and Native Hawaiian
16 organizations in government contracting and the SBA 8(a)
17 programs.
18 Collectively, NACA's members perform
19 government contracts in all 50 states, several U.S.
20 territories and foreign countries, employing thousands and
21 bringing the benefits back to their native communities
22 serving some of the poorest and most underrepresented
23 people in America. Thank you for the opportunity to speak
24 today for our membership on the SBA proposed rule. NACA
25 appreciates the SBA's responsiveness to our members' needs

1 and to the concerns we have raised regarding the SBA's
2 8(a) regulations.
3 NACA supports the SBA's efforts to modernize
4 and streamline its regulations. And I also wanted to take
5 a moment to thank Ron Solimon for his comments this
6 morning. I know he's not here anymore, but I think he did
7 a great job. And NACA really appreciates the close
8 working relationship we have with the National Center of
9 American Indian Enterprise Development and the National
10 Congress of American Indians. So we look forward to
11 continuing that working relationship in 2010 and beyond.
12 So while NACA welcomes implementation of many
13 of the new rules and a few of the proposed regulations, I
14 will note that a few of the proposed regulations will have
15 an adverse impact on how Native enterprises successfully
16 position themselves to start new companies and develop
17 their existing businesses. NACA urges the SBA to reassess
18 these particular proposed regulations and consider either
19 abandoning them or adopting the alternatives NACA will be
20 proposing today or through our written comments which will
21 be submitted by the deadline.
22 NACA does not believe that the way the SBA
23 determines whether a tribe is economically disadvantaged
24 should be changed. The factors set forth in the current
25 regulation truly capture a tribe's economic disadvantaged

1 status by allowing the SBA to consider whatever available
2 data exists about the tribe's overall economy. Tribes
3 have relied upon the current rule to demonstrate the
4 myriad of challenges that they face developing diversified
5 sustainable economies. A bright line test would not allow
6 the SBA to obtain a clear picture of these challenges.
7 For example, a tribe may have rich natural resources
8 suggesting that a tribe has significant assets. But it
9 may have no capital or infrastructure to allow it to tap
10 into these resources.
11 MR. KLEIN: Sarah, what Ron was saying, once
12 every ten years, does that make sense to you? What do you
13 recommend on that?
14 MS. LUKIN: I'm going to get to that in just a
15 minute. So similarly, a tribe may have high revenues from
16 gaming but still have high unemployment or other social
17 ills that could be decreased by diversifying the economic
18 base for the tribe. Because a bright line test would
19 automatically disqualify such tribes from participating in
20 the 8(a) program even though they may have high
21 unemployment or poverty rates, NACA does not believe a net
22 worth or assets test would serve to meet the true goals of
23 the 8(a) program. It would be extremely difficult to
24 structure a bright line test suited to all tribes, given
25 the vast differences and unique challenges each of them

1 face.
2 NACA believes that tribes should enjoy the
3 same presumption of economic disadvantage as ANCs and
4 plans to work with congress to enact legislation like the
5 Alaska Native Claims Settlement Act to provide for this.
6 In the interim, NACA submits that it makes sense that a
7 tribe should demonstrate its economic disadvantage only
8 once. A tribe's economic condition is not likely to
9 change dramatically after one of its 8(a) subsidiaries has
10 received one or more 8(a) contracts.
11 NACA is opposed to limiting the type of work
12 that an ANC or tribally-owned entity may perform in the
13 8(a) program. Prohibiting an 8(a) from receiving a
14 contract in a secondary NAICS code that is the primary
15 NAICS of its sister entity and the restriction of
16 performing no more than 20 or 30 percent of its 8(a) works
17 in the NAICS code that is the primary NAICS code of a
18 sister entity is detrimental. If the proposed rule is
19 implemented, it would make it much more difficult for ANCs
20 and tribes to start new businesses and build on the
21 existing infrastructure or past performance and resources
22 of sister companies. It is during the developmental stage
23 in the program that growing ANCs and tribal 8(a)s need a
24 contract backlog provided by secondary sources of business
25 to service government contract clients and better compete

1 with large businesses. The proposed regulation makes that
2 transition exceedingly difficult, if not impossible.
3 NACA urges the SBA to consider how the
4 proposed rule will impact the business strategies of ANCs
5 and tribal 8(a)'s that are in the later stages of the 8(a)
6 program. If an 8(a) wishes to pursue work in a specific
7 industry that could limit the inability of a sister
8 company from participating in an 8(a) program in the
9 future, the 8(a) may not pursue opportunities that could
10 further its business development to successfully
11 transition out of the program.
12 NACA suggests one possible alternative to
13 this proposed rule would be for the SBA to simply 13
14 C.F.R. 124.3, which would amend the definition of primary
15 industry classification to specifically recognize that an
16 8(a) may change its primary NAICS code where it can
17 demonstrate that a majority of its revenues during a
18 two-year period have evolved former primary code to
19 another code.
20 The proposed rule would also add a provision
21 to permit an 8(a) to request a change in its primary NAICS
22 code. The change to the definition of primary industry
23 classification would enable the SBA to terminate ANC or
24 tribal 8(a)'s if they start doing too much work in a NAICS
25 code that is the primary NAICS code of a sister 8(a)

1 entity. If the ANC or tribally-owned participant's
2 revenues have evolved from one primary NAICS code to
3 another, it will have to change its primary NAICS code.
4 If it begins to operate in the 8(a) program under the same
5 NAICS code as its sister 8(a) entity, it will be in
6 violation of existing regulations. NACA supports --
7 MR. KLEIN: I'm not sure if I understood exactly
8 what you were saying. The alternative that you suggested
9 didn't make sense.
10 MS. LUKIN: And what I did was I took a bunch of
11 attorney language and tried to consolidate it here. So
12 instead of going into an in-depth explanation that may be
13 somewhat convoluted, can I clarify in a written comment?
14 MR. KLEIN: That's fine.
15 MS. LUKIN: And I may come back to you too
16 during a break and talk about it with one of my attorneys,
17 okay? So to get back to my very lengthy presentation,
18 NACA supports the SBA's proposal to permit any tribal
19 member to participate in the management of a
20 tribally-owned firm regardless of their economic status.
21 We believe eliminating the requirement that directors and
22 officers must make copies of their individual tax returns
23 is also very beneficial to tribes.
24 NACA supports the SBA's proposal to prevent
25 members of any tribe to serve as managers of a

1 tribally-owned concern rather than requiring managers to
2 be members of the tribe that owns the concern. The
3 proposed rule will enhance the ability of tribes to
4 attract the most talented individuals to qualify for 8(a)
5 certification. However, this proposed rule should also
6 allow tribes to hire U.S. citizens, regardless of their
7 race or ethnicity, to serve as managers of tribal 8(a)'s.
8 Empowering tribes to hire experienced and knowledgeable
9 individuals who can assist 8(a) tribal entities in
10 business development would benefit not only the tribal
11 8(a) itself but also the tribal community.
12 NACA supports the SBA's proposal that allows
13 the SBA to determine an ANC or tribal 8(a) has the
14 potential for success where the ANC or the tribe has made
15 a written commitment to support the operations of the 8(a)
16 and has the financial ability to do so. However, NACA
17 believes the SBA should propose similar regulations for
18 Native Hawaiian organizations, as there is no reason for
19 Native Hawaiian organizations to be treated differently in
20 this regard. No other participants are required to
21 demonstrate how they are benefiting from the 8(a) program.
22 However, NACA understands that the SBA is concerned about
23 providing transparency on the benefits of the 8(a) program
24 for lawmakers, stakeholders and the general public.
25 NACA is very worried that lawmakers and the

1 public will view a Native enterprise that cannot provide
2 benefits to their members as a failure or even an abuse of
3 the 8(a) program. Growth takes time. NACA is also
4 concerned that once Native enterprise begin reporting on
5 benefits, it will not be long before the federal
6 government decides it will need to approve what benefits
7 should or should not be provided to our Native people.
8 These very real concerns aside, I want to
9 talk a bit about the systematic way of reporting on
10 benefits. It would be virtually impossible to segregate
11 the benefits that come specifically from 8(a) contracts.
12 We strongly recommend that data be submitted to the SBA
13 annually by the parent organization in aggregate form for
14 all their 8(a) subsidiaries. Some benefits for Native
15 8(a)'s are not easily quantified. Many Native 8(a)'s
16 reinvest their profits back into their company, which
17 enables them to acquire new equipment and other resources
18 and ultimately makes them more competitive in the
19 long-term. Native enterprises also provides dividends,
20 job training programs, scholarships, healthcare clinics,
21 social service programs and cultural programs for they're
22 communities. While these activities positively enhance
23 economic development within our Native communities, it is
24 difficult to report the precise benefits for all of these.
25 NACA requests that the SBA establish a task

1 force comprised of tribal ANC and Native Hawaiian
2 organization leaders and SBA representatives that will
3 evaluate the diversity of our Native communities, of our
4 businesses, and the benefits that we provide, and
5 recommend a reporting mechanism that will gather
6 comprehensive benefits data that honors that diversity and
7 does not limit the type of benefits data collected. This
8 will take time to develop and implement. It will be
9 costly for Native enterprises to gather this data and
10 gather internal systems to track it; therefore, NACA urges
11 the SBA to set a delay effective date for any new
12 reporting requirements on benefits.
13 MR. KLEIN: At one you said that you think the
14 parents should make a statement for all of them. Is that
15 if implementation is delayed? Do you want them to say
16 that specifically or to allow it in some tribes or ANC and
17 not others? What's the better approach to take in that
18 regard?
19 MS. LUKIN: I would like to -- I will say
20 preliminarily, let me say -- tentatively let me say I
21 would like to see it in the regulations, but I have to
22 defer with my legal representation on that as well.
23 MR. KLEIN: You don't think any tribe or ANC
24 would want to do it individually? It's better for them to
25 do it as a group overall?

1 MS. LUKIN: In a Native organization, you have a
2 number of 8(a) subsidiaries, but at the end of the day
3 every dollar that they make flows back up to the parent
4 corporation or the parent organization, and they
5 ultimately, at their board or tribal council level,
6 determine what benefits should be provided back to their
7 Native community and in what form. So it would make
8 sense, from our perspective, that any reporting be done to
9 the SBA at that parent level organization.
10 But again, let me defer to our group. I'll
11 need to go back out to my membership and make sure that
12 there's consistency in that.
13 MR. KLEIN: Maybe in your final comments you can
14 address that.
15 MS. LUKIN: Absolutely. NACA opposes the SBA's
16 proposal to provide that non-Native joint venture partners
17 may not be subcontractors to the joint venture on 8(a)
18 sole source contracts. While NACA understands that this
19 proposed rule is meant to address perceived abuses by
20 large mentors, NACA believes that blanket prohibition goes
21 too far and undermines the utility of the SBA's
22 mentor-protege program. Rather than a blanket prohibition
23 on subcontracting on non-8(a) joint venture partners on
24 8(a) sole source contracts, the SBA could simply increase
25 oversight of JVs and mentor-protege agreements to prevent

1 potential abuses. Increased oversight would deter mentor
2 companies from exploiting their respective partners for
3 their 8(a) status. And I'll note for you here that we do
4 have more additional information on this particular one
5 that we'll submit with some more alternative
6 recommendations.
7 NACA supports the SBA's proposal to exempt
8 Native Hawaiian organizations from the limits on the
9 amount of 8(a) contract dollars that an 8(a) participant
10 may receive on a sole source basis. We support this
11 proposal. This is a positive change that will put Native
12 Hawaiian organizations on par with ANC and tribal 8(a)'s.
13 NACA opposes the proposed rule that states
14 the burden of proof to demonstrate 8(a) eligibility is on
15 the applicant and that the SBA can assume that any
16 information requested of the applicant but not submitted
17 is adverse to the applicant. Applying for 8(a)
18 certification is lengthy, tedious, and a costly process.
19 This rule change will effectively discourage many young
20 Native enterprises from applying to the 8(a) program for
21 fear that they will expend time and expense on their
22 application, only to learn that one mistake has cost them
23 their certification.
24 NACA strongly opposes the requirement for a
25 firm to stay small under its primary NAICS code or face

1 early graduation. Under these proposed rules, Native
2 8(a)'s will need to constantly monitor their growth and
3 work to stay small under their primary NAICS code to avoid
4 early graduation. They will have to set their sites low
5 and check their ambitions. Rather than requiring firms to
6 remain small under their primary NAICS code, 8(a) firms
7 should be encouraged to branch out into different
8 industries and grow into those industries so that they can
9 become more well rounded and able to adapt to the changing
10 marketplace.
11 A firm's success should be based on its size
12 and capabilities upon entering into the 8(a) program. An
13 actual growth of small businesses is a process that should
14 be promoted to increase the industrial supply base,
15 maintain a vibrant small business community and increase
16 competition for federal work.
17 NACA opposes the proposed change to the SBA's
18 mentor-protege program that will allow a procuring agency,
19 upon recommendation by the SBA, to issue a stop work order
20 on each contract awarded to a mentor-protege JV if the
21 mentor is not meeting its goals. NACA fears that
22 procuring agencies will be hesitant to contract with
23 mentor-protege JVs if there is a risk that the SBA will
24 recommend a stop work order and the agency will terminate
25 the contract. This proposed rule effectively harms the

1 protege for the transgressions of the mentor, putting the
2 protege at risk for a default judgment or negative past
3 performance rating.
4 Alternatively, NACA recommends the SBA change
5 its regulations to require that the mentor-protege
6 agreement and JV agreements between mentors and protege
7 contain clauses that allow the 8(a) protege, when directed
8 to do so by the SBA, to unilaterally terminate the
9 mentor-protege agreement and the JV agreements with its
10 mentor, in the event that the mentor fails to provide the
11 assistance promised and where the 8(a) protege affirms
12 that it is capable of continuing performance of its
13 mentor-protege JV contracts on its own. The JVs comprised
14 of only the 8(a) protege could still complete performance
15 of any contract that is awarded while the mentor-protege
16 agreement is in existence.
17 However, if the 8(a) protege cannot affirm
18 that this is capable of performing the JV contracts on its
19 own, the mentor-protege agreement can still be terminated
20 by the mentor-protege JV should be allowed to complete the
21 contracts already awarded so as to not penalize the 8(a)
22 firm for the transgressions of its mentor.
23 While NACA supports SBA's additional proposal
24 to further penalize mentors by restricting their ability
25 to act as such for two years from the date SBA terminates

1 the mentor-protege relationship, NACA believes that the
2 SBA has not gone far enough on this proposal. Mentors who
3 default on their agreements should be permanently
4 prohibited from serving as mentors in the SBA
5 mentor-protege program.
6 I'm going to pause right here and say I have
7 about 10 more minutes to go. I know that there are a
8 number of Native enterprises here. So I would be happy to
9 continue, or if there's time at the end, I can come back
10 and finish on the rest of them.
11 MS. PRATTE: Keep going.
12 MS. LUKIN: NACA strongly opposes the proposed
13 rule to change the location of the SBA's review of 8(a)
14 applications of ANC firms from the Alaska District Office
15 to San Francisco. NACA disagrees that San Francisco is
16 better suited to receive and review applications from 8(a)
17 ANC applicants and questions the SBA's belief that the San
18 Francisco office has knowledge of issues specific to ANC
19 8(a)'s. ANCs just entering the 8(a) program often do not
20 have resources available to make costly trips from Alaska
21 to California. These firms will be unable to receive the
22 advice and support that they need to understand the SBA's
23 requirements and complete their 8(a) applications.
24 To make matters worse, the San Francisco
25 office is already overburdened with 8(a) applications. It

1 is taking many, many months nor San Francisco to process
2 our 8(a) applications. Oftentimes applications are being
3 returned as in complete when the requested information was
4 clearly provided. Requiring even more applications to be
5 processed by the San Francisco office will only exasperate
6 the problem.
7 NACA proposes ANC 8(a) applications should
8 continue to be administered from the Alaska District
9 Office. In addition, NACA requests the SBA to consider
10 designating district offices that only serve Native
11 Hawaiian organizations and tribally-owned firms. NACA
12 also believes the Hawaii District Office should be
13 designated to serve Native Hawaiians and one office within
14 the continental United States should be responsible for
15 tribal 8(a) applications. Adoption of this proposed
16 organizational structure will aid in building the depth of
17 knowledge within each assigned office and promote
18 efficiency within the SBA to better address those issues
19 facing Native 8(a)'s.
20 NACA supports the proposed definitional
21 change which clarifies that for purposes of 8(a)
22 construction procurements, a firm will not be required to
23 have a specific type of industry license in order to
24 regularly maintain an office and have a bona fide place of
25 business in the applicable geographic area. There has

been confusion about this requirement among our membership, and we thank you for the clarification.

NACA opposes the proposed rule to require a contracting officer to protest in order to obtain clarification of the small and disadvantaged business, or SDB, status of a firm that has been terminated or early graduated from the 8(a) program. This proposed rule imposes a punishment that, frankly, does not fit the crime. Because the contracting officer would be unlikely to question the SDB status of that firm based solely on its graduation or termination, it would be unreasonable to require the contracting officer to protest in all cases.

There are already procedures in place to protest the SDB status of a firm if there are questions about its eligibility to receive an SDB contract. Why force the contracting officer to protest when these other channels are available to please this program. Foreseeing a contracting officer to protest the SDB status of these firms would impose significant costs not only on the Native firm itself but on the contracting officers, the procuring agency, and ultimately the American taxpayer.

NACA supports the SBA's once 8(a) always 8(a) practice and welcomes the clarification. Although this guidance may be implicit in the regulations, NACA's members have seen many agencies refuse to follow the

practice. So thank you for that.

NACA appreciates the SBA's clarification on the activities that count towards an 8(a) participant's competitive NAICS requirement. NACA believes that these activities should be as broad as possible, so NACA supports this proposed change.

NACA urges the SBA to also provide more flexibility with respect to the consequences of not meeting competitive business mixed targets. In particular, NACA requests the SBA to consider providing the District Office with more discretion to weigh the sole source prohibition. The stringent criteria required to secure a waive of the sole source prohibition means the SBA often cannot grant these waivers even when there are extenuating circumstances involved that have made it impossible for a firm to meet its competitive NAICS targets.

For example, the recent economic downturn has reduced the number of non-8(a) commercial contracts that are available and, thus, caused many 8(a)'s to depend more heavily on their strengths in the government contracts market. Others, due to their remarkable marketing efforts and high quality performance, have been awarded many unanticipated 8(a) contracts, which resulted in a business mix and balance. Additionally, flexibility by the SBA

will help to curve penalization of healthy and viable firms for failing to meet their required business NAICS through no fault of their own.

MR. KLEIN: In terms of waivers, flexibilities sounds great, but how would we make it consistent? It's hard for me to imagine a reg that says one thing. What do you think that should be? I hate for one district office to do it one way and another one to do it a different way because our regs are standing about it.

MS. LUKIN: I completely understanding what you're saying. Let me give you an answer in our written comments, okay? So we can go back to our membership and vet all of those options, okay.

NACA requests the SBA to more clearly define what qualifies as a contract for purposes of the three and two requirement. NACA requests the SBA to specifically state that a contract is only one awarded and maintained. Otherwise a contract that has been one and then protested and lost will be counted as a contract even when the joint venture does not ultimately perform or ultimately benefit from its contract.

NACA appreciates the SBA's understanding of the significant costs incurred by small businesses in providing audited and reviewed financial statements, and understands that the SBA is proposing to require audited

financial statements from larger firms only. However, NACA believes that the SBA should go even further and state that separate audited reports are not required for Native 8(a) subsidiaries. Native enterprises already provide audited financials at a consolidated level, and it would be a large administrative and financial burden for these entities to submit additional separate reports.

On behalf of the NACA board staff and membership, I thank you for your dedication to America's small businesses and our Native enterprises. I know that each of you work very hard every single day on our behalf. We truly appreciate your willingness to consult with our Native communities to hear our concerns and incorporate us into this process. So thank you very much.

MS. PRATTE: Thank you so much. We'll just go down the line, and next we have Mr. Chuck Singletary.

MR. SINGLETARY: Hello. My name is Chuck Singletary. I'm here speaking on behalf the Comanche Nation, in particular Comanche Nation Construction, which is their first 8(a) venture. My presentation is going to be a lot briefer, and it's more of just a statement of a new 8(a) entity.

About a year-and-a-half ago, the Comanche Nation decided to really try to diversify. They, in the last 10 years, have gone from a very disadvantaged nation

1 to one now with some assets. They've been able to take a
2 percentage of their budget the last two years, put it into
3 a holding company to create an entity to start increasing
4 our economic diversity. The executive committee decided
5 that the way to do that in the beginning would be to
6 create an 8(a) in the construction field, which we were
7 able to do. They canvassed the tribe. There was not a
8 tribal member that had the correct and proper background
9 to get an 8(a) in that entity. And I feel very honored
10 and very excited to have the opportunity, as a non-Native
11 American, to be brought in and to help lead the Comanche
12 Nation into the 8(a) world.
13 So the 8(a) did a waiver of the two-year
14 requirement to allows us to start business as an 8(a). I
15 will say that in our particular case, the process took
16 less than a hundred days. Divine intervention or
17 whatever, it did work. I would specifically thank Clara
18 along the way, advice and various things, and guidance.
19 So we were able to get into our venture very early on at
20 100 days, which happened around September 23rd of this
21 past year.
22 Part of what we did, we wrote a very lengthy
23 development plan to fit the spirit of what we thought the
24 8(a) laws were. The day that I came to work, I had
25 planned obsolescence. My career will probably end in five

1 years. We had an extensive development plan to find
2 someone within the Nation to mentor and bring along or
3 find someone that could replace me. So I think part of
4 what happened in our 8(a) review process is I think our
5 development plan, there was a lot of comments on, and we
6 were definitely on the road to making that happen. We've
7 already added a tribal member to my staff that has the
8 potential over the next couple of years to probably take
9 my place.
10 Part of what we did, we looked at the 8(a) as
11 a method to get this economic diversity. Part of it was
12 the only income our tribe truly has is gaming. We're one
13 of the smaller gaming tribes in the state of Oklahoma, and
14 our casino that generates the majority of the income.
15 It's one mile of the Texas border. Texas is talking about
16 legalizing gaming, which, in turn, we feel would devastate
17 our economic base. So I will give our tribal leadership
18 tremendous thanks for having the foresight to protect the
19 Nation's future economic viability by doing something like
20 this.
21 As we entered this, part of what we did, the
22 tribal status, and as we reviewed the 8(a) rules and
23 regulations to allow communities based 8(a)'s to receive
24 sole source contracts during our 8(a) period. If you're a
25 new entity, very small, very remotely located, kind of in

1 the lower 48, without sole source capabilities of any
2 consequence, it's hard to develop enough to affect 15,000
3 members, which we have. And then like I say, we represent
4 around 15,000 members.
5 Now, what we see is the changes that are
6 changing the landscape of tribal 8(a) ability to have
7 affect on our ability community-based enterprises.
8 Someone has already referred to the meeting on Executive
9 Order 13175. On November 9th, President Obama issued a
10 memorandum directing the federal government to be
11 consistent in the implementation of Executive Order 13175.
12 The Order recognized the special benefits of the tribes
13 within the United States of America. Since that time, the
14 United States Senate has passed the 2010 Armed Forces
15 Appropriation Bill that included Section 811 that
16 specifically singled out Native American government
17 contractors. Well, myself being non-Native American in
18 our tribe, it's kind of a blow to us that the Native
19 American community could be centered out. You know, it
20 was just an odd mentor. So part of the reason we entered
21 the program was due to the special provisions.
22 The senate nominated these changes within the
23 appropriations bill, but they added to this bill -- they
24 made them government-wide. And in our understanding, the
25 regulatory bodies, and specifically SBA wasn't consulted.

1 This change was made late at night, nine or ten o'clock in
2 the evening, came out of the committee. So already in our
3 experience, it's having a very chilling effect, because as
4 we approach contracting officers around the United States,
5 they are having real hesitancy of issuing any sole source
6 contracts to a Native American group because there appears
7 to be this connotation hanging over us that maybe they
8 won't stick, they're just not proper.
9 MR. JORDAN: Chuck, one thing that would be
10 helpful -- and this is a good time for everybody as well.
11 It's separate issue from the 8(a) regs, but at the same
12 time, when you mentioned, hey -- you've already run into
13 some issues there, anything that you have that says, hey,
14 here's a specific example of that that you could send into
15 our office would be helpful. I can't comment directly on
16 my opinion of our esteemed colleagues on the Hill passing
17 this provision. In the executive branch they make the
18 laws. I just have to execute them. But it is certainly
19 part of our charge to ensure that this change fulfills its
20 intent, which is clearly articulated not to harm Native
21 communities. So if it is, in fact, doing so, it's
22 something that's important for me to know.
23 MR. SINGLETARY: Right. And a little bit
24 leading into this is, just very basically, it's just like
25 a step back in time. And so one of the things that we're

1 hoping for is that the SBA is able to clarify regulations
2 and control of these type of things go back to the
3 regulatory agency and not happen on the Hill.
4 When we entered the 8(a) program, we based
5 decisions on existing SBA and federal contracting
6 regulations. As I've discussed above, and now the
7 proposed regulations, it appears that a lot of the
8 provisions that made community based 8(a)'s, the way to
9 move away from being economically disadvantaged to being
10 self-sufficient much harder, which leads to -- I believe
11 that the regulations that you-all are proposing like Sara
12 spoke and we all have agreements and disagreements on some
13 of the rule changes you will see in written comment. But
14 the fact that we can get regulations by regulatory
15 committee that over the years, to me, has done a great job
16 with the 8(a) program.
17 My hope is that the federal government take a
18 look at the 8(a) program, really look at the important
19 role it plays in the lives of Native America and the
20 continuing growth and prosperity of the United States.
21 That would be my comments, short and sweet. Thank you.
22 MS. PRATTE: Thank you so much, Mr. Singletary.
23 We do appreciate the comments as they come in. And please
24 feel free to send them in. Again, the due date is January
25 28th for the 8(a) stuff. But for the Section 811 stuff,

1 at any time you could send that in. Joe Jordan's shop has
2 kind of taken a lead on heading up that.
3 Next on the list we do have Clyde Gooden.
4 MR. GOODEN: My name is Clyde Gooden. Thank you
5 all for inviting us to come down and open dialogue with
6 us. I do appreciate it. I am Clyde Gooden. I am working
7 with NANA Development as the vice president for business
8 development. NANA is one of 13 regional corporations in
9 Alaska. We are in the northwest part of Alaska. We have
10 over 12,000 shareholders. I am happy to say that I am one
11 of those.
12 I was raised in Fairbanks, and although I did
13 not live the subsistence lifestyle as my ancestors did, I
14 was raised to support, respect and offer dignity to our
15 folks that have lived it and to step up to the plate when
16 needed without embarrassing anyone along the way. And it
17 works much like the 8(a) program is working today. It's a
18 hand up, not a hand out.
19 I've had various positions with NANA, serving
20 over 20 years in a number of roles piloting some of the
21 8(a) companies and helping many of our organizations start
22 government contracting, as well as commercial entity. I'm
23 very happy to be working with NANA. I've had some
24 successful events in the government contracting, which is
25 why I'm here today to talk about some of those events.

1 Some of them that I'm concerned about is the shareholder
2 benefit question that comes up.
3 The other thing I'd like to talk about is the
4 process of becoming an 8(a) company and the parody that I
5 see as an issue out there between the Native corporations,
6 Native Hawaiians and Native American tribes. I will also
7 mention at this time that my statement will be sent to you
8 electronically, as well as the seven attorneys that are
9 working some of these issues, that did not trust me to say
10 their comments and that's probably good.
11 As shareholder of our organization -- we have
12 an organization that is governed by our own shareholders.
13 We have directors that are appointed and elected by our
14 own group, and they govern our day-to-day operations.
15 Some of the concerns that we had out there through the
16 Government Accountability Office and the SBA office,
17 Inspector General reviews of the 8(a) questioned aspects
18 of the SBA's oversight of the ANC-owned firms. In
19 particular, there was a concern that SBA did not
20 adequately track the extent to which the benefits of the
21 8(a) program reached individual natives or the native
22 community. We understand SBA's concern and our troubled
23 by the approach the Agency is taking.
24 First, I'd like to address that the benefits
25 from our organization is run by our board of directors,

1 and they distribute the benefits, the dividends out to us
2 as they see the direction of the organization and what
3 would best help us in the future. It's based not just on
4 the cash at hand but the needs of the organization in the
5 future to protect our cultural lifestyle and our land.
6 In any given year, the priorities can change
7 from day to day, which has an affect on the cash
8 distributions to our people. As an example of a great
9 year, 2008, we were able to pay our $35 million to our
10 shareholders. That works out to $24.75 per share. The
11 year before it was $15 a share. And prior to that it was
12 $2 a share. So these cash dividends are very meaningful
13 in our region where our unemployment tops 20 percent, and
14 regrettably our suicide rate is the highest in the nation.
15 MR. KLEIN: Do you think the increase in
16 dividends had something to do with the 8(a) program?
17 MR. GOODEN: It most certainly did, from our
18 perspective. We grew substantially with the help of the
19 8(a) program, as well as the commercial aspect. We
20 doubled our size over the last four-and-a-half years.
21 While these cash dividends are vital to the
22 local committee in Alaska, NANA's profits are used to
23 administer programs to increase job skills of our people,
24 provide internships, scholarships and to help pay for
25 college tuitions and vocational training. Our primary

1 vehicle of doing such is what we call the Accolate Trust.
2 Over the past eight years, we have been able to fund the
3 Accolate Trust with over $13 million. It has helped over
4 290 individuals in their future education.
5 The Accolate Trust doesn't stop with just
6 that effort. They also form cultural camps to help our
7 folks understand their way of life and their heritage to
8 support the elders, et cetera. In 2008, our elders voted
9 to make a distribution to our elders because they did not
10 work in an environment that provided a retirement or
11 Social Security. We wanted to build something for our
12 future, for our elders, to get us where we're at, so we
13 established an elder's trust. Today we've funded over
14 $800,000 towards that trust in an effort to support our
15 600 elders that we have today. In a few more years I'll
16 be one of those.
17 We also support and fund regional search and
18 rescues. If you have not been to Alaska, it's a big
19 state. And having -- a lost individual would perish in
20 our country if we did not have immediate response looking
21 for them and helping them and the family. So search and
22 rescue is a big effort for us to fund resources for that.
23 The Regional Elders Council, Tribal Council are other
24 Native-involved organizations that we support.
25 As a matter of fact, I think it's important

1 that the SBA to understand how 8(a) organizations, and in
2 particular ANC organizations, are operated, and oversight.
3 And in particular, our corporation has over 50 operating
4 companies that we own today. They're not all federal
5 contractors. I believe we have 14 federally contracted
6 companies, and the other remaining 40 are commercial. All
7 of our revenue stream rolls up through a parent company of
8 that organization or that line of business and then up to
9 our parent company. So we would incur extraordinary cost
10 and time in breaking out the revenues to account for the
11 Natives regionally as you're requesting.
12 We further have concerns about the data that
13 is collected and the information, where it would be
14 distributed and how. The question I have is why would you
15 want to collect this and possibly analyze it, for what
16 reason, and at what standard, and what's the consistency?
17 Are we going to be measured against an individual 8(a)
18 company, as an example? Implied in this decision is that
19 you're looking to control how we spend our profits, and it
20 bothers us.
21 While we appreciate the need for
22 transparency, we would respectfully suggest the Agency
23 consider the vague proposition put forward in that draft
24 rule. NANA has always published its benefit information
25 at the parent level, and we are a privately held

1 corporation and provide complete information to our own
2 shareholders. And that information is also readily
3 accessible by our Website. We would encourage all
4 participants in the 8(a) program, including individually
5 owned 8(a) companies, to provide similar disclosure, but
6 we object to the government's proposed collection of this
7 information.
8 The 8(a) application process. Another matter
9 I wish to discuss concerns a proposed rule to remove the
10 initial review of the ANC application from Anchorage to
11 San Francisco. We have heard informally from various SBA
12 officials that this change has already taken place, and it
13 is because individuals in San Francisco have the specific
14 expertise in that area. With all due respect, we believe
15 it's incumbent upon the SBA to ensure that all of its
16 field offices are fully staffed with the capability to
17 provide customer service at the district office closest to
18 the customer. The relationships begun with the SBA during
19 the application stage are critical throughout the
20 application of participation in the program.
21 Rather than move the processing to San
22 Francisco, the SBA should ensure that its Anchorage office
23 can handle the work of the initial review. If there were
24 multiple stages of review and approval, we would be less
25 concerned if the stages were relocated from Alaska with

1 the initial review being kept there.
2 As having steered more than one company to
3 the 8(a) application process, I know how important it is
4 to have ready access to SBA staff. While the forms and
5 questions may seem intuitive to the SBA, to a new
6 entrepreneur, particularly from a remote Alaska village,
7 they are not. Even experienced applicants such as NANA
8 have difficulty completing the applications.
9 While we support the SBA's proposal to add a
10 new paragraph to Section 124.204 which governs the
11 application processing, to clarify the burden of proof to
12 demonstrate eligibility is upon the applicants. We do not
13 support the idea that the SBA should presume information
14 requested. But to not submit it would be adverse.
15 I would respectfully suggest that information
16 would be admitted for a variety of reasons ranging from
17 simple oversight to not understanding the question and not
18 having the data available in the form of a question.
19 Again, proximity between the SBA and the applicant can
20 help through this circumstance.
21 NANA takes great pride in its work to mentor
22 and assist other Alaska village corporations that are now
23 working to enter the 8(a) program. I'm current working
24 with the village of Shishmaref. To get to San Francisco,
25 an individual would first travel by charter to Nome, and

1 then via commercial to San Francisco. And when you add
2 all that up to include some lodging, you're talking over
3 $2,300 for that individual to meet with the SBA, compared
4 to half that cost if it was left in Anchorage.
5 Parody among 8(a) applicants. Another matter
6 I'd like to discuss concerns proposal to provide greater
7 parody among the 8(a) participants. We applaud the SBA
8 for taking recommendations in the proposed rule to create
9 greater parody among the three tribes, Native Hawaiians
10 and Alaska Native corporations. We believe that these
11 changes are long overdue.
12 Specifically, regarding their proposals, we
13 support their recommendation to main status quo regarding
14 information the SBA needs to determine whether a tribe is
15 economically disadvantaged. We do not see how a bright
16 line test would be implemented. More importantly, we
17 fully support the one-time determination of disadvantage
18 that would cover all later applicants by a new subsidiary
19 corporation of the same tribe.
20 Additionally, at 13 C.F.R. 12409, while we
21 support the SBA's position regarding economic disadvantage
22 requirements for tribal members, we take exception to the
23 SBA's proposal regarding management of the tribe's 8(a).
24 We believe that the SBA is heading in the right direction
25 and no longer requiring that the manager be a member of

1 the tribe that owns the 8(a), but believes the SBA should
2 go one step further that a tribe like an ANC should be
3 able to hire the best manager available to grow and
4 sustain the business without regard to the person's
5 ethnicity. It seems unfair to restrict tribes from hiring
6 non-Natives when that restriction does not apply to ANCs
7 or NHOs.
8 Simply put, we believe that there should be
9 parody among the rules for all Native participants and
10 that the additional requirements placed upon tribes such
11 as having a written management plan without developing
12 managerial skills, would be eliminated. Speaking as a
13 Native manager from one ANC, I contest to our corporate
14 desire to grow as many future leaders and managers as
15 possible from among our shareholders. Our financial
16 commitment to education to training demonstrates that we
17 are working hard to create the next generation of Native
18 managers, but it takes time.
19 I would also like to applaud the SBA for its
20 proposal 13 C.F.R. 124,109 that would permit SBA to
21 consider the financial support of the parent ANC or tribe
22 to an ANC or tribally-owned corporation applying for an
23 8(a) program as one of the criteria for success. This is
24 a very positive change.
25 Last, with respect to the parody among Native

1 8(a)'s, we commend the SBA for two proposals that would
2 help NHOs operate in a similar manner as an ANC in tribes
3 with an 8(a) contract.
4 Thoughts about individually owned 8(a)
5 companies. There are many instances in the proposed
6 regulation for changes where it clearly states the SBA is
7 being responsive to the concerns voiced by individual
8 owners. From our perspective, these appear to be
9 significant improvements. Inasmuch as we seek to work
10 with individual 8(a) owners and communities across the
11 nation, these general improvements will only make the
12 program work better overall.
13 I would also like to comment on a matter not
14 specifically contained in the regulation, that is, the
15 length of time the 8(a) business developing program.
16 Currently it is a nine-year venture with the expectations
17 that each year there will be an increasing mix of 8(a)'s
18 set aside and competitive contract wins. For so many
19 businesses, particularly the individually-owned 8(a)'s,
20 the first two years are truly incubation when you're just
21 learning to navigate the system and you figuring out how
22 to bid on jobs.
23 I've heard from many companies just starting
24 to get traction at the end of the nine-year program and
25 many others that have gone through the entire program

1 without successfully being awarded a government contract.
2 Thus, it seems to me that in light of today's economy,
3 serious consideration should be given to extending the
4 nine-year life.
5 In conclusion, thank you very much for this
6 opportunity to speak to you today. As I noted earlier,
7 NANA Development will be submitting more comprehensive
8 comments -- that's a legal term, by the way -- more
9 comprehensive documents by the end of the comment period.
10 We very much appreciate the SBA's outreach to listen to
11 our concerns and positions about the proposed rules. The
12 Agency's willingness to engage in the tribal consultation
13 process is very much appreciated. The 8(a) program has
14 made a tremendous difference in the lives of Alaska
15 Natives and the economy of the state of Alaska overall.
16 But much remains to be done to address the continuing
17 serious needs of our citizens and shareholders. Thank you
18 very much for your time.
19 MS. PRATTE: Do any of the panel members have
20 any questions? At this time, we'll take a five-minute
21 break.
22 (A recess was taken from 10:53 to 11:14.)
23 MR. JORDAN: It is my distinct pleasure and
24 privilege to introduce the next presenter, Elfonzo Nephew.
25 And let me reiterate. Like I said, during Chuck's

1 conversation about the Section 811 provisions, if there
2 are other issues that any individual or group have
3 concerns about outside of the ranks, that you want to let
4 us know about, we'd love to hear more and more comments
5 and dialogue on what's working, what's not working. For
6 me, the 8(a) program is a big part of what I do, but the
7 Office of Government Contracting, which works with all of
8 our sister agencies on ensuring maximum utilization of
9 small business contractors, Hub Zone program, the Services
10 Disabled Veteran program, the Office of Site Standards,
11 the Small Business Innovation Research program, all of
12 these are things that are equally close to my heart.
13 So I'd like to, again, take this opportunity
14 to begin a dialogue on a number of fronts, not just the
15 specific nature of the business today. But because we are
16 here for a specific purpose, I'll turn it over to Elfonzo
17 to talk about. Thank you.
18 MR. NEPHEW: My name is Elfonzo Nephew, and I'm
19 here on behalf of Nova Corporation and its board of
20 directors and our owner Dine Development Corporation.
21 What I'm going to, I guess, provide comment on is just
22 kind of an abridged version of a comprehensive, a more
23 detailed comments submission that we'll be sending to
24 you-all electronically. But again, I guess to start out
25 with, introduction in the Navajo language, meaning you

1 know, hello and thank you in Navajo. Welcome to the
2 Southwest and for conducting this consultation with the
3 Indian nations and recognizing the
4 government-to-government relationship between tribal
5 nations and the federal government.
6 My name is Elfonzo Nephew, and I'm the chief
7 financial officer for the Nova Corporation, a company
8 wholly owned by the Navajo Nation through its holding
9 company, Dine Development Corporation, who we commonly
10 refer to as DDC.
11 DDC was formed by the Navajo Nation council
12 in 2004, in part, to participate in the 8(a) program.
13 Today, DDC has one subsidiary corporation, Nova
14 Corporation. That is an 8(a) certified company. Nova
15 Corporation's mission is to provide much needed jobs and
16 revenues for the Navajo people through federal contracting
17 activities.
18 Through Nova Corporation, the Navajo Nation
19 has just begun to enter the federal contracting arena to
20 create new jobs and generate new revenue streams. Even
21 though this opportunity has existed for many years through
22 the 8(a) program, the Navajo Nation, like most tribes, lag
23 far behind our counterparts, the Alaska Native
24 corporations, in taking advantage of the 8(a) program.
25 Perhaps this is due to concerns of sovereignty issues and

1 because of lack of capital. Whereas the Alaska Native
2 corporations were originally set up in a manner that makes
3 them more conducive to business and they have readily
4 available capital through the Alaska Native Claims
5 Settlement Act.
6 The 8(a) program has been working just fine
7 for these corporations for many years, but many tribes in
8 the lower 48 states like the Navajo Nation, have just
9 begun to create business models to utilize the 8(a)
10 program. In view of this, perhaps we need to recognize
11 that tribally-owned 8(a) companies in the lower 48 need to
12 be treated differently.
13 The following are comments on the proposed
14 changes and regulations that we wish to highlight for you
15 today, and we will submit additional comments by your
16 January 28 deadline. In Section 121.103 on how the SBA
17 determines affiliation, we suggest an award of a total of
18 five contracts to joint venture partners be permitted
19 before the partners are deemed to be affiliated. We
20 believe that this is a more reasonable course of action
21 than the proposed rule of three contracts within a
22 two-year period before the joint venture partners are
23 deemed to be affiliated.
24 MR. KLEIN: The proposal, as it's currently
25 written, doesn't say that you'll be affiliated after

1 three. It just says that after three you must form a new
2 joint venture to bring up three more contract awards.
3 Prior to the change of our current regulation, the size
4 regs used to say a joint venture is something formed for
5 age-specific contract. So one contract only was a joint
6 venture. And every time you wanted to go after a new
7 contract opportunity, you had to form a new joint venture.
8 So we expanded that to say three joint opportunities under
9 one joint venture. But we never intended that you would
10 be affiliated necessarily after that fact. So you could
11 form three more -- I mean, another joint venture to go
12 after three more opportunities and then another joint
13 venture after to go after three more.
14 So currently there is nothing in the proposed
15 reg that would say that you're necessarily deemed to be
16 affiliated just because you've done three opportunities.
17 So, I mean, your comment could be that we suggest there be
18 five under one before you form a new, but the mere fact
19 that you're doing it doesn't necessarily mean there will
20 be affiliation beyond that.
21 MR. NEPHEW: Thank you. And we'll revise that
22 in our written response.
23 In Section 124.102, the size of business
24 eligible to participate in the 8(a) program. The proposed
25 rule of Section 124.102 is too restrictive. Companies go

1 through ups and downs depending on the condition of the
2 economy. In addition, there are many instances where a
3 one- or two-year contract is awarded and a company is not
4 able to grow or sustain a momentum of growth. We believe
5 a better solution in determining the size standard should
6 be based on a three-year rolling average. We further
7 suggest that the review of the contract backlog be
8 completed to ensure that no company is forced out of the
9 program prematurely.
10 Moving on to Section 124.109. Indian tribes
11 in Alaska Native corporations having any special rules
12 applying to the 8(a) BD program. In Section 124.109,
13 subsection B2, we advocate keeping the requirement that an
14 Indian tribe demonstrate its economic disadvantage only
15 once. I'm sure you know that the levels of poverty,
16 unemployment and substandard living conditions on most
17 Indian nations are enormous, and to a large extent the
18 cause of these conditions is the federal government's
19 failure to live up to its obligation to Indian country.
20 These conditions are not going to change overnight. As
21 such, it does not make sense to require tribal nations to
22 continually prove our economic disadvantage status.
23 Moving on, in Section 124.109 --
24 MR. KLEIN: Regarding the economic disadvantage,
25 do you think the current way we do it is the correct way?

1 Again, that's one of the specific things we specifically
2 asked for comments on, based upon unemployment and income
3 levels, all those numbers. Does that make sense to you to
4 keep it that way?
5 MR. NEPHEW: Yeah. I think it's determined on
6 each tribal nation, and I think some of that has been
7 highlighted today that some tribes have some natural
8 resources assets, but the poverty level at the tribal
9 communities still exists. So taking into account the kind
10 of poverty levels based on whatever measure the SBA uses,
11 if it's based on HUD guidelines. So I think taking into
12 account just kind of the tribal communities rather than
13 the tribal nation's assets.
14 Moving on, Section 124.109, Subsection C3,
15 rev an all or nothing position proposed by this section
16 suggests that you consider allowing a secondary workup to
17 50 percent of gross revenue in a NAICS code that was the
18 primary NAICS of another participating entity of such
19 tribe within the last two years. After the two-year
20 period, no limit should be enforced.
21 Thirdly, in Section 124.09, Subsection C4(1),
22 we strongly recommend the removal of the requirement that
23 management of a tribally-owned entity should be limited to
24 the tribal member. To ensure the success of their 8(a)
25 companies, Indian tribes must be allowed to hire whomever

1 they determine is most qualified to operate the company,
2 including nonmembers and non-Native Americans.
3 While we understand that one of the
4 objectives of business development programs is to benefit
5 Indian tribes and their membership, it seems like this
6 proposed rule is a misplaced effort to the extent that the
7 government is inappropriately dictating crucial business
8 decisions.
9 Furthermore, like most tribes, the Navajo
10 Nation has tribal and Indian preference laws and, as such,
11 appointed matters should be left up to the tribes as a
12 matter of policies.
13 And then lastly, Section 124.520, the rules
14 governing SBA mentor-protege programs, the proposed
15 limitations of Section 124.520 concerning protege are too
16 restricted. As long as the protege is within a rolling
17 three-year average period advocated above and not within
18 one year of graduation, the protege should be permitted to
19 continue to enter into mentor-protege agreements. This
20 would place the protege on firmer ground to be successful
21 after graduation.
22 In conclusion, the SBA program can play a
23 vital role in making the Navajo Nation economically
24 self-sufficient. Furthermore, as the U.S. economy
25 continues to recover, tribal 8(a) companies can be a great

1 stimulator to the economy and a great contributor, also,
2 with job creation and further economic development. We
3 urge you not to make changes in the regulation that would
4 diminish the overall effectiveness of the program as it
5 pertains to tribally-owned 8(a) companies.
6 Thank you for the opportunity to providing
7 input on this consultation. Thank you.
8 MR. JORDAN: Thank you so much.
9 MS. PRATTE: Thank you so much. Next we have
10 Ms. Betty Huntington.
11 MS. HUNTINGTON: Good morning. My name is Betty
12 Huntington. I have to say I don't have an attorney
13 in-house, outhouse, whatnot, so my comments are my own. I
14 really appreciate their comments.
15 I'm a shareholder and I'm the CEO for
16 Gana-a'yoo, Limited. It's an Alaska Native village
17 corporation for the villages of Gakona, Kaltag, Koyokuk
18 and Nulato. Our villages are all remotely located on the
19 Yukon River in the interior region of Alaska, which is 300
20 miles west of Fairbanks. We have about 1,100
21 shareholders, many of which devote subsistent lifestyle,
22 and a lot of them still struggle to survive financially
23 with little or no financial resources.
24 I want to thank you guys for the time that
25 allows me to make comments regarding the impact that the

SBA program has for our corporation. We are a relatively small corporation with two subsidiaries that have a total of $13 million in revenue this last year from government contracts. But because of multi-year losses in the 1980s and the early 1990s, we had to work our way out of a situation where we had accumulated losses for several years. The SBA 8(a) program has allowed us to turn that around. Without it, I think we would still have been struggling to survive. I don't think we would have been finally able to achieve positive retained earnings, which was only three years ago in 2007. We basically exist today because of the 8(a) program.

In 2007, when I was hired, we had a near miss -- that's what I call it -- with the management of our subsidiaries walking out on us and starting their own company similar to what we did. We were at risk for losing everything. And in six months, I was the new CEO, and it was like I knew nothing about government contracts and I learned quickly.

Thanks to the guidance and support of the SBA office in Anchorage -- they were wonderful -- and other ANCs such as Doyon, Bearing Straits, ASRC and Afognak, who have government contracting experience, we hung in there and we worked hard and we survived, and we're ready to move forward.

If those ANCs and a few others were not there to provide guidance and advice through their own 8(a) experience and with the spirit of fellow Alaska Natives helping each other succeed, I don't know where we would be today. Though that's not measurable, I think on any scale for those companies I mentioned, Doyon, Bearing Straits, ASRC, Afognak, they can't measure the help they gave me because they did not give me financial help. They were just there for me and there for our nine-member board providing guidance. And SBA can't really measure that, either.

But their successes has helped us tremendously. Gana-a'yoo is small and we want to be around a hundred years from now, and that's for our people. We have to carefully balance our commitments, turning our company around, our desire for growth and shareholder benefits. Though without my attorney, I plan to submit specific written comments about other proposed regulations, by the deadline. I really want you to be careful when you consider how benefits might be tracked. No other 8(a)'s have to report this. And if it's going to be tracked, I think it has to be tracked at the parent level versus by individual 8(a)'s. One rule for all could be a detriment to small companies facing a similar situation that we had. We couldn't have the same benefits

that a larger company could, but if left to grow, we could get there.

I was really proud when one of the Alaska Native companies told me they were working on building a building. I thought good for them. We can't build a building, but we could help run a program. And that seems really small, but for us it's big.

Anyway, if this is adopted, I think it would add an extra level of reporting, especially for small companies. There would be too much room for judgment that we just don't need. I really haven't thought a lot about of the impacts, and I think Sarah and Clyde did a good job talking about that. Some of the benefits that we've had in the past few years is good board development. They have renewed their strategic planning. We're ready for growth in the future. We want to provide jobs for our people.

When you talk about dividends that help people, I heard somebody mention $24 a share and I'm thinking and we pay $1.25? But it's good. We had a half a million dollars go out to our people since our inception, most of that in the three or four years that we've had positive retained earnings. We make regular contributions to our communities, primarily to our schools or the tribes for cultural activities. But we also try to

make contributions in the communities where we have contracts.

We're really proud of our largest donation, which is our educational foundation. Five years ago, we were making a donation of about $10,000 with scholarships running $250. This year our board was really excited about making a contribution of $50,000, with scholarships averaging about $2,100. Again, that may seem small to some, but there's a lot of room for doing more, to doing better, which we look forward to.

I want to end with acknowledging SBA for their work in the efforts you have made to give small disadvantaged businesses the opportunities to succeed. Thank you.

MR. JORDAN: Thank you. I wanted to quickly address the whole issue of tracking of benefits. So I want to put this in a little context about why this is one of the proposed regulations. It's not at all a case, as, you know, clouded, or intimated that might be construed, a question of us trying to dictate how forms are disbursed or spent. You're right. Other 8(a) firms don't get access to unlimited sole source contracts. Other 8(a) firms are subject to affiliation. So these are special potential requests for a special subset set of the 8(a) community.

1 The trick here is how do we gather the data
2 that would help bolster the rationale for why this
3 community development, not individual business owner,
4 Business Development Program is so important without also
5 placing undue or overly burdensome requests or mandates on
6 each firm.
7 You know, I do want to point out, though, I
8 mean, if anybody would enjoy watching me get smacked
9 around by the United States congress, you can go on the
10 Internet and pull down my hearing from July and from the
11 senate. Make no mistake. Like we're trying to get ahead
12 of something. That's going to happen, to some degree,
13 whether it's a constant set of congressional set of
14 one-offer questions for this type of question or what have
15 you. We want to try to figure out the right way to tell
16 this story. It's not about trying to dictate benefits and
17 it's not about trying to place special burdens on tribes,
18 NHOs or ANCs, but, rather, our constant understanding and
19 the things that we are constantly hearing about all the
20 good things that these companies provide to their
21 communities. We need to figure out a way that we can
22 collect that data so that we can tell that story together
23 about how positive this program is, and that's the spirit
24 in which this proposed reg is put out there.
25 Now, the exact way that it would be

1 implemented is obviously of vital importance because it's
2 going to have a real impact on the community, but it's
3 really one where we're trying to tell a positive story,
4 not try to dig up dirt on something that could potentially
5 be negative.
6 So when you're submitting comments, you know,
7 it's absolutely fine and perfectly acceptable to say, hey,
8 this is something we shouldn't have to do. However, it
9 would also be helpful that if you would say, hey, but in
10 the case that for whatever reason this happens, make sure
11 you look out for this or here are some of the proposed
12 ways to accomplish it. I did just want to highlight that.
13 In certain circles, these programs are under attack.
14 There is no doubt about that.
15 So we know how important this program is.
16 And for me, someone coming from the private sector, this
17 is my first foray in the government. I'm a data guy. I'm
18 metrics guy. So this is something that certainly I was
19 really pushing, too, to say I know that there are these
20 anecdotes I'm hearing every trip whether I'm up in Alaska
21 or in Native territories like Hawaii. But how do we get
22 the data that's behind that? And you're right. Some of
23 these things are very, very difficult to quantify.
24 But I did just want to highlight that, that
25 by no means were we intending it to be a negative, and

1 certainly we don't want to implement a regulation that
2 have an undue burden especially on the small village
3 corporations. Thank you.
4 MS. PRATTE: Thank you so much. Next we have
5 Mr. Joe Byrd.
6 MR. BYRD: Thank you, and it's an honor to be
7 here with the A team here and make some comments. I have
8 a list of things I was going to say. I'm a former chief
9 of the Cherokee Nation. I'm doing work for the United
10 Ketubah Cherokee band as their economic development
11 director.
12 I could just say ditto to some of Sarah's
13 comments that she made early on. She covered a lot of
14 area there. And also, Ron Solimon earlier made some
15 really good comments on how to address some issues that we
16 in Indian country have.
17 As I was preparing to give my talks, I looked
18 up and saw how devastated some of our people in our world
19 was going through this morning in the country of Haiti.
20 It reminded me of us people as Indian people how we go
21 through some of those type of situations and trials and
22 how we help each other out in those times of need. So
23 keep those people in prayer and thank the Administration
24 for taking action on that also, I'd like to commend the
25 Administration for taking on the 13175 initiative, and

1 that's why we're here today.
2 In Oklahoma we have 39 federally recognized
3 tribes. Some of them are still in their relatively
4 infancy stage of pursuing 8(a), working with government
5 contracting. The majority of funds, as you know, are
6 derived from gaming operations in Oklahoma. Some of the
7 small tribes I've worked with in northeastern Oklahoma --
8 you have eastern Shawnee, Modoc, Ketubah tribe, as I
9 mentioned, their numbers are anywhere from 250 to 14,000,
10 to the Cherokee Nation with 300,000. My friends here from
11 Comanche tribe, around 15,000. We are now getting the
12 attention on how we must diversify and bringing in other
13 sorts of revenue to our area there and other areas.
14 And with that, we talked about the review of
15 geographics where they might be Philadelphia, San
16 Francisco, Washington, D.C. Everyone would like to have
17 theirs in our own area. We in Oklahoma as well. It's
18 very expensive to make these types of travel, but for our
19 people we will do so. Somewhere like Dallas would be
20 perfect for us in the midwest. Well, we know with the way
21 our economics right now, that's probably going to be
22 unlikely. We would like to give our recommendation on
23 that behalf from some of the tribes from Oklahoma. I
24 don't represent all the tribes, but I did have the time to
25 visit with some of them before I left.

Real quickly, two things that I'm going to point out that was given to me with some of the tribes from Oklahoma that I'd like to address. One is, tribes should be given the same automatic economic disadvantage designation as ANCs. An alternative may be just demonstrate this only once.

Two, we do not agree with the proposed rule that a newly certified tribally-owned 8(a) cannot receive an 8(a) contract on a secondary basis, that is, the primary basis of a sister company. Those two are really that all I was going to propose today. I have a list. In meeting with some of the tribes from Oklahoma, what we will do is get a united statement back in the deadline. It's January 28th. We will get a united statement from most of the tribes who want to have input from Oklahoma and make sure we get it to you electronically in your hands.

MR. KLEIN: When you do that, can you explain as to why is it bad for your tribes? It's always helpful for us to have the understanding. Someone said, "I disagree with this." It's nice, but if you understand the reasoning behind it, it's always much more helpful.

MR. BYRD: And with the great outcome that we have today, I thought I'd limit my talks and get those electronically to you, because we've had such a good

turnout here today, and I'd really like to commend the people and you for taking your time. On the way here, it made my heart feel good to see that Clara Pratte here was in a news article in the Indian Country, in the business section. I was reading about that and saw where she was there in Washington, D.C.

I will commend this administration for allowing some of our Native Americans to serve as the liaison in a different area. Kim Teehee is one of the White House liaisons. She worked for me with the tribe for two years and we're in very good hands, and I think there's a lot of hope for our tribes out there in Indian country with this new administration. They're following through with some of our initiatives. We feel good about another day and we feel good about being here. Thank you for SBA and the consultation that you allowed today.

MR. JORDAN: Thank you very much.

MS. PRATTE: Thank you so much, Mr. Byrd, for your kind words. Next we have Mr. Stephen Benefield.

MR. BENEFIELD: I'm Stephen Benefield. I'm the CEO of the Choctaw Defense, a member of the Choctaw Nation of Oklahoma. We are the third largest Indian tribe in America. We do have 200,000 members. Our company -- and I'm the one to speak for our company. We have three 8(a) companies in our large nation, only three. The Choctaw

Defense is a manufacturing company. We started out in 1988 in a 25,000 square foot building on the third floor, and today we have a little over a half a million square feet of manufacturing space. Robotic welding, one of the most sophisticated chemical finish lines to support our Marine Corps, Air Force and Navy customers.

I want to speak on really only one point today. This is going to be a busy day and a lot of speakers will submit some things in writing. Our company is about one thing and that's jobs. We make a profit. Every penny of our profit rolls right back into our business. In the last year we've invested $4.5 million in infrastructure -- and we're talking about robotic welding -- infrastructure to build a world class manufacturing operation.

We are successful, in that we have -- our employees have been able to -- many examples of guys that started out and ladies that started out as assemblers and welders, have worked their way from near minimum wage jobs up to jobs paying $50,000 a year. We have engineers, machinists, technical writers. It's not just a matter of doing low-end work. We do very high-end work. That high-end work sometimes can be over $20 million in a contract, and that's one thing we would like to speak about is Section 811 is our concern today.

We compete with Boeing, Oshkosh Truck, Lockheed Martin, Rathion, BAE, these big companies. We are successful. We make Chinook helicopter replacement load floors. We are replacing all the load floors in Chinook helicopters. Camel Two program is a unilevel water delivery system that we already have sole source to us that is going to be in excess of $20 million.

What we need is our large programs. That's what we built our company into is to building large programs. We can build wooden creates. We do build wooden crates. We spit out 1.05 wooden millimeter crates -- one crate rate every 55 seconds right now in Hugo, Oklahoma. We have an unemployment employment of over 20 percent. That's the type of job that we have for the work force that's available for us. But in our McCallister operation, we have a world class operation that we want to work on high-end things. And we want to compete with Oshkosh and Boeing and these guys. And that's where being limited to $20 million in a contract value for us would really put a squeeze on us.

I know we're talking about justification and authorization to get there. I'll speed up what effect I think that would have on us. We're a supplier of a Lockheed Martin plant in Philadelphia. This plant a little bit bigger than us. We have about 140 employees.

1 They have about 150 employees. I was talking to the
2 general manager of that plant a while back and he says
3 that Lockheed Martin -- I believe they're the second
4 largest defense contractor in America now. If you were to
5 take their total revenue and split it into 2,080 work
6 hours a year, this plant, which is larger than us, would
7 represent less than four-and-a-half hours of that
8 company's revenue.
9 So here we are. We're looking at contracts
10 that would exceed $20 million, $40 million, $100 million
11 over a four-or five-year period. In the scheme of things
12 in the defense world, it's not that big of a contract.
13 But we need about $3 million every 21 days to keep a 150
14 people employed in our plant and, unfortunately, I'm the
15 guy responsible for getting that. It's very difficult.
16 We have a tremendous amount of trust with our customers.
17 I do know the chilling effect that I believe this would
18 have on our contracting officers that I deal with. These
19 contracting officers have a lot of liability on their
20 part, personal liability.
21 If we say that you're going to have to go out
22 and do this, another level of justification and
23 authorization, that's adding more personal risk to them
24 making it to retirement in 15 years or two years down the
25 road. Are they going to take on that personal risk to go

1 back for us to get us a sole source contract? Even though
2 they want to, even though the program they're supporting
3 is buying for wants to do it, is it really worth us going
4 through all this extra trouble. And that's going to be
5 elevated to maybe -- right now I know some of these large
6 procurements are signed off by a one-star general. Is
7 that going to be elevated down to a two-star or
8 three-star? We're just really concerned with the chilling
9 effect this would have.
10 We support and we understand why and it's
11 hard to argue why you would not want to have justification
12 and authorization for these large contracts, especially in
13 the environment that we're in? And it's hard to argue
14 that. I think our point would be, let's make it clear and
15 let's make it simple and straightforward and transparent
16 for these buying demands to have a set of procedures that
17 they can follow comfortably and they're not sticking their
18 personal necks out to do business with us.
19 MR. JORDAN: Thank you for that. I had a couple
20 of conversations during the break about this very issue,
21 so I did want to -- when this section was put into the
22 Department of Defense, I had my concerns which remain.
23 But one of the things that had tempered my concern was
24 that in talking to the department, colleagues of the
25 Department of Defense, they were saying that, look, a

1 contract over $20 million doesn't limit the ability to use
2 this vehicle outside of a potential perception issue. And
3 that for contracts over $20 million, they already
4 typically go through a committee approval process with the
5 JNA.
6 So it really doesn't even affect the
7 implementation of it. It's just a question of will a
8 contracting officer shy away from it based on a perception
9 that there will be some big brother type looking over
10 their shoulder for any mistakes, scrutinizing it more
11 closely than in the past. So that made me feel a little
12 bit better.
13 But the concern is, one, will that happen,
14 will it dampen their willingness to utilize sole source
15 8(a) contracts; and secondly, while Defense is 72, 73
16 percent of all federal procurements, there are still 25
17 other CFO agencies out there putting out contracts, and
18 it's not uniform in terms of the way that they review
19 justifications for each of those.
20 So I had said earlier in response to this
21 issue, "Hey, let me know where you're hearing about these
22 things." A few people had rightfully come up to me and
23 raised it, said, "Well, look, that's a bit of a naive
24 stance, in that we don't want to get viewed by the
25 contracting officers," that "we need to get these

1 contracts if someone is going around and above, whatever,
2 them and writing them out." So that's actually not that
3 helpful.
4 So I think, you know, where I'm at now,
5 because I think that's really good advice, is how do we
6 problem-solve around coming to a solution that allows us
7 the SBA and others to effectively help you ensure that
8 Section 811 doesn't significantly adversely impact
9 companies through the use, or the lack thereof, of sole
10 source contracts without having a punitive effect on the
11 people who are helping us with -- we can't just go in with
12 anecdotes that are completely anonymous.
13 So how do we make something not punitive to
14 you but effective for us to -- we're not going to answer
15 that today. But again, as I've raised a few of these
16 things that are tangential to the 8(a) regulations and
17 have requested comments and opinions, this would be
18 something where we're really open to you, the people who
19 are utilizing these programs, for any potential
20 suggestions. Now, we're going to do our best, no matter
21 what, but it would be very much appreciated if you had
22 suggestions. Even if you would like to keep those
23 anonymous, et cetera, that would be fine.
24 MR. BENEFIELD: We will be supplying written
25 comments on these and other issues. I appreciate you

1 guys' effort. We watched in July the things that happened
2 in Washington and you guys were great advocates for us and
3 we appreciate you.
4 MS. PRATTE: We were just discussing how we
5 wanted to take in comments for Section 811, separate and
6 distinct from the 8(a) stuff. So if you have comments
7 that you'd like to give to SBA about Section 811 and the
8 defense authorization bill, please send them to me at
9 clara.pratt@sba.gov. I have plenty of cards up here, so
10 you can feel free. I'll put on a filter in my E-mail box,
11 title it something with 811 in it, and it will come to me
12 and we can go through those, and Joe and I can coordinate
13 on how we will get those together.
14 We've got about eight or nine minutes before
15 we break here. We'll take one more presenter before we
16 break for lunch. We'll break for one hour and come back.
17 Trudy Sobocienski.
18 MS. SOBOCIENSKI: My name is Trudy Sobociensk.
19 I just got married a little over a year ago, so I'm
20 struggling with the name myself. I am the president and
21 CEO of Sitnasuak Native Corporation. We're a village
22 corporation located in Nome, Alaska.
23 We've been in federal contracting for
24 sometime. I don't want to go through and repeat a lot of
25 the same types of comments that have been made, but I want

1 to kind of highlight a couple of things fairly quickly. I
2 do have written comments that I'll give to you. I think
3 Sarah was very helpful in outlining a lot of things that
4 we also agree with NACA's position on.
5 One of the things that we've experienced
6 recently is finding new and interesting ways to try to
7 provide shareholder benefits with our profits. So when
8 we're talking about gathering data and whether it's
9 qualitative or quantified, I think it gets very, very
10 difficult in different communities like Nome because we're
11 not a reservation. We do live in a community that's very
12 multi-cultural. One of the things that we've been able to
13 do is provide benefits because we do local fuel operations
14 and have residential facilities that we rent apartments
15 and commercial leases on. So having the federal
16 contracting and the income from that and the profit from
17 that allow us to reduce the price of fuel for residents
18 and the people in our community, and that goes beyond our
19 shareholders. That goes community-wide. So when you get
20 into those types of shareholder benefits, there's a lot to
21 take into consideration that are just beyond shareholder
22 based.
23 So we've been able to reduce our fuel costs
24 in Nome by 40 cents a gallon this winter. And in Nome, in
25 these remote villages -- you know, some villages have fuel

1 that's up to $10 a gallon, so they're trying to juggle
2 whether they can pay for food or get medical care or have
3 some heat. So this is very crucial for us and it's gets
4 to be life and limb in some of the remote villages of
5 Alaska, where federal contracting is able to offset some
6 of the things at the local level.
7 One of the foundational or philosophical
8 things our board of directors had wanted to make a
9 conservative effort toward was not basing all of our
10 business ventures in our own community and, therefore,
11 trying to make a profit off our own shareholders. So that
12 also helps, and that's a benefit of federal contracting
13 for us.
14 The other thing that also gets a little, I
15 guess, interesting is our stocks. You know, we have about
16 600 shareholders in Nome, 2,800 shareholders total. That
17 doesn't include descendents. That doesn't include some
18 that are dual shareholders between King Island Native
19 Corporation or Council Native Corporation or Solomon
20 Native Corporation, and also shareholders of Sitnasuak
21 Native Corporation through inheritance and gifting and
22 other types of classification of stock.
23 So I think there's a lot of complexities to
24 trying to gather data about shareholder benefits. I don't
25 think that it's something we should throw out the window

1 because I think we should celebrate our successes. I
2 think that's the way we should look at instead of being in
3 fear of sharing those successes.
4 I came from a background, I guess, in my
5 career of working at Alaska Native Health Board, which is
6 the statewide advocacy voice for the Alaska Tribal Health
7 System. So our job was to be the liaison between the
8 tribes and the tribal health organizations and the federal
9 government. One of the things that we did well, I
10 believe, was gathering data on the successes of the Tribal
11 Health Compact. And that's permanent self-governance, and
12 self-governance does work and it is helping.
13 Being in this economic development side, I
14 got to work in the health side and the social side and
15 then coming over and being a president and CEO of a
16 for-profit corporation where we can actually put money
17 into these types of initiatives to help our disparities
18 reduce, I guess, and our health and wellness increases.
19 It's been a good fit for me, having come from that social
20 type of background.
21 But getting back to the whole data question
22 that you had asked is, there is a tribal self-governance
23 advisory committee and they work hand in hand with Indian
24 Health Service and they're made up of tribal leaders or
25 tribal executives, and they have work groups like IT work

1 group that does data collecting. They figure out their
2 own IT -- you know, gurus that figure out what kinds
3 of whatever you need to gather whatever data, which is way
4 beyond me, but it's been very helpful, and working in
5 conjunction and partnership with the Agency.
6 I do appreciate that we're having a tribal
7 consultation. I think taking it a step further and having
8 an institutionalized advisory group at SBA would probably
9 bring us to the next level on an ongoing working
10 relationship and partnership. I will provide you the
11 access of an advisory group that can, you know, quickly
12 respond to needs if you have questions and things like
13 that. You have real-time information of what's happening
14 out in Indian country. So that was kind of a long-winded
15 thing toward that.
16 But I do have one offer for a regulation that
17 we hadn't seen. If it is there, I apologize. We hadn't
18 seen that. And I had spoke with our attorney and I kind
19 of explained to him what I was hoping what we could get at
20 and ask him to draft some language. So I'm going to go
21 ahead and read it to you and that will be basically the
22 close of my comments before lunch.
23 What we would like to offer that we hadn't
24 seen a current applicable regulation for is sanctions on
25 non-8(a) firms that take advantage of 8(a) participant

1 firms. SBA needs to establish regulations that penalize
2 non-8(a) firms that take advantage of a participant's 8(a)
3 status without benefiting the participant or whose actions
4 jeopardize the participant 8(a) status or business. Our
5 purpose in proposing that SBA draft such a rule is to
6 ensure that Native and non-Native 8(a) firms obtain
7 beneficial business, development assistance through their
8 relationships with outside firms.
9 Whether through a mentor-protege
10 relationship, teaming relationship, joint venture or
11 otherwise, we believe that there are too many instances
12 where a Native or other 8(a) firms enters in good faith
13 into a business relationship with a non-8(a) firm that has
14 no intention of furthering the goals of 8(a) program or,
15 even worse, has the direct intention of fraudulently
16 manipulating the 8(a) for its own purposes.
17 Because of a lack of regulations of contract
18 with the SBA or procuring agencies, the 8(a) firm often
19 ends up being penalized while the bad actor is not subject
20 to the same sanctions. In approaching this rule, we
21 recognize that the SBA currently does not have
22 jurisdiction over non-8(a) firms who are involved in the
23 participant firms.
24 We propose that non-8(a) firms who are found
25 to have directly furthered the violations of the

1 regulations or participation agreements should be subject
2 to SBA sanctions including, but not limited to,
3 suspension, debarment, fines, termination of agreements
4 with the affected 8(a) firm, revoking of contracts but not
5 to the detriment of the 8(a) firm, repayment of contract
6 proceeds. These measures would aid in ensuring that
7 non-8(a) firms that enter into business relationships with
8 participant firms are doing so because they are working to
9 further the business development efforts of the 8(a) firm
10 and the SBA 8(a) program.
11 MR. JORDAN: Thank you for that, Trudy. One
12 thing that I mentioned in the beginning was one of the
13 three major reasons for going out with this comprehensive
14 set of regulatory revisions is to ensure that the program
15 benefit is going to be intended to the recipients. What
16 you're saying is even a step beyond that, which is there
17 are firms out there who are actively preying on the 8(a)
18 firms.
19 The trick is how do we write regulations that
20 are specific enough -- and to John Klein's comment
21 earlier -- it will be uniformly applied and enforced. We
22 touched a little bit about the JV mentor-protege piece
23 because that's an area where we had seen or there were
24 perceived issues.
25 So one thing that would be helpful,

1 preferably before you submit your written comments, is
2 thinking about examples would include these types of
3 situations. Because at the same time, while there aren't
4 necessarily things -- there isn't one part of these regs
5 that would address that. There's a lot that we can do
6 now, whether it be, you know, suspension or debarment
7 proceeding for something that is egregious, or whether
8 it's just using our bully pulpit to shine a spotlight op
9 some of these issues. I'm unafraid to call out bad
10 actors. There are things that fall under my jurisdiction
11 and things that don't in terms of the punitive measures.
12 But I have no problem telling people, you know, this
13 company acted in this way. Because this program is
14 vitally important and any preying upon the disadvantaged
15 businesses that utilize this program in so many positive
16 ways is completely unacceptable to me.
17 So if there are cases of this happening now,
18 you can go to our Inspector General. You can go to us.
19 Because while there are some things we can't do, there are
20 certainly things we can do. From a solution oriented
21 standpoint, I would rather look at it in the immediate
22 sense what can we do to dissuade anybody else from
23 thinking that this is any way okay. So thank you.
24 MS. PRATTE: Again, thank you also for your
25 comment about the tribal advisory committee model. I just

1 wanted to let you know that that's something that we've
2 been investigating. There's some implications with the
3 Federal Advisory Committee Act that we have to look at
4 before we go down that road. But we are aware that that
5 may be a value added for the agency.
6 So, with that, we're about 10 after. So
7 we'll break and we'll come back about 1:15 and get started
8 again. Thank you.
9 (A lunch recess was taken from 12:10 to 1:25.)
10 MS. PRATTE: So for the next speaker, if we
11 could please have Mr. Kip Richie.
12 MR. RICHIE: Hello. Good afternoon, everyone.
13 Out of respect for everyone's impending food coma, I am
14 not going to go through this entire Attorney
15 General-prepared document. I'm just going to touch on
16 some highlights, and hopefully you still won't fall asleep
17 during that.
18 Again, my name is Kip Richie. I serve as the
19 chief operating officer for the Potawatomi Business
20 Development Corporation. We are owned by the Forest
21 County Potawatomi community in Crandon, Wisconsin. I am
22 an enrolled tribal member and I'm very excited, proud.
23 It's a privileged honor to be here and participate in
24 this. I want to thank the SBA for your time and attention
25 and really giving us this opportunity.

1 I'm going to try -- we are also members of
2 the Native American Contractors Association, so many of
3 the remarks that Sarah made we totally agreed with. So
4 rather than repeat those, I am just going to touch on a
5 few highlights that I think are important to the Forest
6 County Potawatomi, and I believe to many tribes, as it
7 relates to this issue.
8 A little bit about our tribe. We have
9 approximately 1,400 tribal members. We're located in
10 Crandon, Wisconsin, which is about an hour-and-a-half
11 northwest of Green Bay. And up until, I want to say, 20
12 years ago, we were the poorest tribe in the state of
13 Wisconsin. We didn't have anything. Unemployment was
14 probably around 90 percent. And there really wasn't a lot
15 of hope and there really wasn't much for us to do. I was
16 fortunate at the time to be able to -- the tribe was able
17 to obtain some federal grants, so I went through college.
18 The tribe paid for myself and my brother to go to college.
19 And at that point after graduation I really had no idea
20 that I would have an opportunity to come back and work for
21 the tribe. And so I've had different roles within the
22 tribe and have served them for the last 15 years, and it's
23 just been an amazing opportunity.
24 I would say much of our success is a result
25 of the Indian Gaming Regulatory Act and the gaming.

1 Again, we were the poorest tribe to date. We are one of
2 the most successful tribes in Indian gaming. We are
3 probably the most successful for sure in Wisconsin. We
4 are one of the largest employers now in Forest County. We
5 are one of the largest employers in Milwaukee County. We
6 are now the highest taxpayer in the state of Wisconsin in
7 just 20 years. So it's amazing what the change has done
8 for us.
9 But I will tell you that journey. It has
10 been very educational. It has been one that our people
11 have endured through the years, and we're proud to have
12 done things ourselves. One of the things, just to give
13 sort of a brief history in our gaming, is that along the
14 way, in order for us to establish a casino business and
15 get involved in gaming, we've had to negotiate compacts
16 with three different governors. We've had to go through
17 many battles costing millions of dollars with mayors and
18 county executives and legislators. We were attacked by
19 legislators in Supreme Court. We won not one but two
20 battles in the early 2000 decade.
21 And following that, we recognized that even
22 though we had just secured a 25-year gaming compact, which
23 we're five years into it now, this contentious battle,
24 this ongoing engagement with the state is something that
25 we just -- we had to escape. We had to try to find a way

1 to be able to have something sustainable. So we
2 established the Potawatomi Business Development
3 Corporation in 2003, and that is our economic development
4 arm for the tribe. And so along that journey, we finally
5 have had the infrastructure. We finally had the means and
6 the business savvy to be successful and to go out and
7 diversify economically. Because until then, we've gone
8 through types of business liking logging and everything,
9 and it just failed. And it wasn't until gaming that we
10 were successful.
11 So now, through this business development
12 corporation we've been able to go out and, through
13 different techniques, whether it's real estate investments
14 or passive investments, become successful. Now, recently
15 we decided we would get into operating companies and we
16 would go out and start to acquire the expertise needed to
17 be successful.
18 You're going to hear from Advancia
19 Corporation in a moment. Renee Porter is here, our
20 president of that company that we acquired a few years
21 ago. And we said one of the things that we see as an
22 important part of our future is federal government
23 contracting and the SBA gaming program. It is so
24 important to our people. It is so important to having
25 another vehicle, should gaming go away. And I think many

1 tribes acknowledge that eventually gaming is going to go
2 away. It's certainly not going to be the same as it is
3 today. So we are active, we are aggressive. We are
4 trying to teach our own people to be leaders in economic
5 development. So we see this as a really important issue
6 and we know that is going to be important for a long time
7 to come.
8 So one of the areas I wanted to talk about
9 specifically, then, is having to prove our economic
10 disadvantage. As it relates to the Forest County
11 Potawatomi community, we disagree with utilizing a bright
12 line asset or net worth test to measure a tribe's relative
13 economic disadvantage status, as any such test would not
14 adequately measure the true state of tribal community and
15 would be inconsistent with the intent of congress when
16 they authorized tribal participation in the 8(a) program,
17 which was to empower tribal governments to meet the needs
18 of their people through the development of private
19 economic ventures. Consequently, the tribe strongly
20 supports continuing the current methodology for valuating
21 tribal economic condition.
22 20 years ago, by any testing measure,
23 virtually every tribe in the country would have been
24 determined to economically disadvantaged. Fortunately, in
25 the last 20 years, the development of Indian gaming is

1 authorized under IGRA. Some tribes now have revenues that
2 on paper seem substantial. However, they are, in fact,
3 limited in that they are dedicated to a specific purpose
4 mandated by federal law. Specifically, IGRA mandates the
5 use of tribal gaming revenues to fund government
6 operations, provide for the general welfare of the tribe,
7 its members, promote economic development, charitable
8 operations and fund out operations to local governments.
9 Moreover, the challenges that face tribes in
10 terms of community, social and infrastructure deficits
11 left after more than two centuries of failed federal
12 policies remains staggering. These include the highest
13 unemployment rates in the country, the highest infant
14 mortality rates, highest per capita number of homes
15 without running water and alarmingly high incidences of
16 alcoholism and suicide.
17 The Forest County Potawatomi community
18 persistently faces high levels of unemployment, lack of
19 educational attainment, chronic and life-threatening
20 health conditions, and other long-term effects of
21 multi-generational kind. However, in accordance with the
22 Indian self-determination policy initiated by President
23 Nixon's historic message to congress 1972, the Forest
24 County Potawatomi community has undertaken to combat these
25 problems with contracts and grants provided under the

1 Indian Self-determination Act through the use of Forest
2 County Potawatomi's own resources.
3 Consequently, over the last 20 years, Forest
4 County has experienced tremendous success stories,
5 including the construction and operation of a health
6 center -- which, by the way, my brother is a graduate of
7 Marquette Dental School; he's our tribal dental director
8 -- a museum and a library, needed housing, an elder
9 center, child care center, and ongoing services to our
10 tribal community.
11 Nevertheless, these successes cannot mask
12 that there remains much to be done in Forest County and
13 every Indian community in the country. Most tribes to not
14 have fully funded police departments, jails or
15 judiciaries, and many communities lack the most basic
16 infrastructure from roads to sewage. In response to this
17 need, tribal governments develop businesses Because they
18 lack the tax base that other governments have to generate
19 the revenues required to meets the needs of their people.
20 In essence, tribes create businesses and then
21 tax 100 percent of the profits to meet the tribe's
22 governmental needs. Thus, as the SBA examines the tribe's
23 economic condition, it must not only examine the tribal
24 assets, but it must continue to examine the tribe's
25 liabilities and responsibilities, including law

1 enforcement, roads, health, education, courts and sewers.
2 A tribe cannot be economically empowered and
3 self-sustaining without fully functioning sewer systems,
4 roads, courts and police departments.
5 A broad examination provides the SBA with a
6 true picture of a tribal government and whether it has
7 fully met the government needs of its people. For
8 example, the Forest County Potawatomi Tribe has dedicated
9 significant revenues to ensuring that most of its people
10 are not living below the poverty level, which in northern
11 Wisconsin for a family of four is $22,050. While this has
12 saved the federal government and the state of Wisconsin
13 millions of dollars, it has come at a cost to the tribe in
14 not being able to fund a vital police department, maintain
15 roads and develop other much needed tribal infrastructure.
16 The tribe will not intentionally cast its people back into
17 poverty employing these programs, but the need remains.
18 Consequently, the tribe needs additional
19 resources to continue to build a foundation of an
20 economically stable government that is not solely
21 dependent on Indian gaming. The 8(a) program offers this
22 tribe the opportunity to diversify, develop expertise
23 beyond gaming so that it will have the resources necessary
24 to meet all the governmental needs of its people well into
25 the future for generations. However, if the SBA only

1 looks at the tribe's income statements and not the balance
2 of the tribe's responsibility and liabilities, this
3 opportunity will likely be closed.
4 While the tribe supports SBA current broad
5 examination of tribal governments, the tribe is concerned
6 with the SBA's reliance on access to capital as an
7 indicator of economic stability. While access to capital
8 may be an appropriate indicator of economic viability, it
9 is not the case for tribes. Again, 20 years ago, tribes
10 had no access to the capital markets. While the capital
11 markets are slightly more open to tribes today, tribes are
12 still viewed as high credit risks, and in most instances
13 credit is only available for the most viable ventures.
14 Even in those circumstances, tribes are usually required
15 to agree to high interest rates and onerous restrictions
16 and covenants. Tribes accept these terms, as it's their
17 only option, but the SBA should not view the fact that a
18 tribe had some access to capital as a barometer of a
19 tribe's economic statement. Instead, the SBA should look
20 at the type of credit available and whether it would
21 extend beyond the specific venture.
22 Finally, with regard to how the SBA should
23 examine the tribe's economic status, we suggest that once
24 a tribal concern is accepted into the 8(a) BD program, it
25 should be deemed economically disadvantaged for the entire

1 nine-year term of the program. Given the unique status of
2 tribes and the reasons for the participation in the 8(a)
3 program, we believe that only an initial review of the
4 tribe's economic status is appropriate.
5 So just in summary, again, I really
6 appreciate the opportunity to address you today and share
7 on behalf of my tribe. And, you know, again, we've been
8 very successful in gaming and it has really allowed us to
9 restore our respect, allowed us to get our people out of
10 poverty. But it doesn't define a sense of people. It
11 really helps showcase what we're capable of and what we're
12 willing to fight for. And I think there's so much more in
13 terms of nation building that the Potawatomi Tribe can do
14 that many tribes and all tribes in this country can do if
15 we have an opportunity to use the SBA 8(a) program the way
16 it was intended, and to build it together through like
17 what we're doing today.
18 And so I'm excited about it. I'm excited
19 about what the future holds for us to be able to educate
20 more of our tribal members so that they can take over and
21 run our companies, so that they can support their
22 families, so that we can support the communities that we
23 live and work in. And I really appreciate it and I thank
24 you for your time.
25 MS. PRATTE: Thank you, Kip. Thank you

1 particularly for highlighting the limitations of funding
2 as it comes from casinos and IGRA. That's very helpful.
3 Next we have Renee Porter.
4 MS. PORTER: Thank you. My name is Renee
5 Porter. I'm the president of Advancia Corporation located
6 in Oklahoma City. Advancia is one of five operating
7 companies that are, as Kip mentioned, 100 percent owned by
8 the Forest County Potawatomi community, a federally
9 recognized tribe headquartered in northern Wisconsin.
10 For more than 28 years, Advancia Corporation
11 has earned a reputation as a respected, competent,
12 responsive and experienced technical services company
13 dedicated to supporting the critical missions of its
14 federal civilian and defense clients. I offer as evidence
15 the statement that Advancia has been selected by the U.S.
16 Department of Commerce as its national minority service
17 firm of the year. Collectively, our family of companies
18 employs hundreds of people who work at 33 locations
19 nationwide providing engineering, logistics, IT training,
20 environmental and research assistants and analysis
21 support.
22 As a representative of the Forest County's
23 tribal-owned entity, I'm going to focus my comment on only
24 five of the proposed changes to the 8(a) program as they
25 relate to the negative economic impact on the Native

1 enterprises. The first one is 124.109 which has to do
2 with requiring tribes to demonstrate their economic
3 disadvantage. The SBA states in the Federal Register
4 under the section specifically related to sole source
5 limits for NHO-owned concerns, "The SBA believes that all
6 three of these types of firms" -- and in this context,
7 they're referring to Alaska Native tribal-owned, as well
8 as the Native Hawaiian organizations -- "that they should
9 be treated consistently." And the failure to include
10 NHO-owned concerns in the exemption and the current
11 regulation was an inadvertent omission.
12 This specific SBA request relates to how
13 economic disadvantaged should be assessed for tribes.
14 Applying the SBA's belief that all Native-owned firms
15 should be treated the same, the recommendation is to place
16 all Native-owned entities on the same plane, all
17 automatically assumed to be socially and economically
18 disadvantaged. Regardless of whether tribes may have
19 gaming enterprises, these are operated through compacts
20 negotiated with the state. Gaming is neither a long-term
21 solution to economic growth nor provides a diversification
22 of the tribe's economic development and investment
23 portfolio. Keep in mind gaming, as Kit mentioned,
24 operates in a political environment, and what a state
25 government can give, it can take away.

Regarding as to whether a one-time demonstration of economic disadvantage makes sense, if tribal-owned entities are not assumed to already be or automatically assumed to be economically disadvantaged like their Alaska Native brother, the determination should be a one-time undertaking. The reality is that if tribes are required to continually prove economic disadvantage, a tribe must be ordered to enter the 8(a) program headed by state court to continue participating in the 8(a) program. A one-time determination should be sufficient.

The second particular regulation that I'm going to comment on is 124.109 C(3)(II) which has to do with the NAICS code issue. This proposal is unduly restricted for tribal 8(a) firms. Often, multiple NAICS codes are assigned to a contract; therefore, the same level of flexibility should be permitted -- or some level of flexibility should be permitted. The proposed rule discourages tribal-owned entities from accepting work in secondary NAICS codes if a sister company applies for 8(a) certification or uses the same NAICS code as its primary NAICS code. This rule counters the 8(a) program goals to promote the development and growth of all firms. We recommend the SBA place no limits on the type or size of work that can be awarded and performed by the sister tribal firm.

The third area has to do with the management of tribal 8(a) firms. Tribes, like any other company in any marketplace, should have the flexibility, freedom and right to choose its management whether that individual is Native or non-Native. This regulation is highly and unduly restrictive and contrary to accepted business practices. For example, our tribe's membership, which, as Kip cited, was 1,400 men, women and children. For a small tribe like ours, this becomes a seemingly restrictive requirement to meet. Add to this identifying individuals who have interest, inclination and understanding of the highly complex world of federal contracting and are full of qualified candidates, disappears.

This regulation requiring Native managers does not apply to Alaska Native corporations. We recommend it be changed, allowing the board of directors to select qualified managers for the tribal-owned entity and standardize the regulations so it is uniformly applied to all Native-owned enterprises.

The fourth regulation I'll comment on has to do with -- it's 124.204(C). And assuming that the information requested of an applicant submitted would be adverse to them.

The automatic and unconditional assumption by the SBA that an omission is adverse is ridiculous, unfair

and discriminatory. There are numerous unsophisticated small businesses not accustomed to responding to complex rules, regulations and government terminology, and we recommend that this proposed change be abandoned.

The last regulation that I'll comment on is 124.519, which has to do with limitations on the amount of contracting dollars of a firm or sole source. We recommend that Native Hawaiian organizations should similarly be exempt from this limitation.

In conclusion, Advancia has nearly three decades of professional technical expertise in past performance that strongly demonstrates our ability to support federal government requirements. To date, none of our tribal-owned concerns have participated in the 8(a) program. We look forward to doing so with application of common regulations and rules amongst all Native-owned enterprises, even tribal-owned Alaska Native or Native Hawaiian. This powerful economic development tool will help to grow and diversify the economic development complexion of our tribe and the numerous others who are not yet positioned to undertake the complexity of the federal contracting.

Advancia will continue to consistently demonstrate our commitment to our clients and bring a depth of skill and knowledge to the programs we support.

These accomplishments, endeavors and dedication will continue to be the hallmark of this tribal identity's future success and without participation in the 8(a) program. Thank you.

MR. KLEIN: Just one comment. In terms of the economic disadvantage, the differences between ANCs and tribes, that is the statutory provision as it is currently. The ANCs are owned automatically and socially and economically. And the statute as it is currently written says firms can be owned by economically disadvantaged and Native tribes. So that's a constraint that we're under at this point in time. If legislation changes, we would be certainly behind it, but until that, there is a different statutory. Thanks.

MS. PRATTE: Thank you. Next we have John Hopson.

MR. HOPSON: Good afternoon, everyone. My name is John Hopson. I am a member of the board of directors of Olgoonik Corporation, a village corporation from Wainwright, Alaska. Our organization is pleased to have this opportunity to tell you about the importance of the Small Business Administration Alaska Native corporation 8(a) program.

Our involvement in the program has a short history, just 10 years. A decade ago we were an

1 unprofitable village corporation with few prospects for
2 economic advancement; however, the success we have
3 realized from the ANC 8(a) program is, we believe, an
4 excellent example why this program is so valuable to rural
5 Native communities like Wainwright.
6 Today, the 534 residents living in
7 Wainwright, a remote village some 180 miles north of the
8 Arctic Circle, have benefited greatly from our federal
9 contracting efforts. These benefits come in many forms
10 that impact the community through job creation and
11 training, infrastructure development, dividends, and
12 building a growth fund.
13 In considering SBA's proposed changes, we are
14 hopeful you will keep in mind how beneficial this program
15 has been for Olgoonik and the Alaska Native shareholders.
16 I think it is also appropriate to state that the proposed
17 regulations have many positive provisions that will
18 enhance and strengthen the program. We are most grateful
19 for these improvements. Among the positive changes or the
20 proposed rules that, one, allow an additional specific
21 contract for a specific joint venture; clarify that the
22 affiliation exemption for mentor-protege agreement joint
23 ventures would extend to any small business program for
24 any prime contract or subcontract; provide a better means
25 for ANCs to meet the two years in business waiver

1 requirements; eliminate the requirement for tax returns
2 from individual directors and improve the definition of
3 bona fide place of business.
4 Despite these positive enhancements to the
5 program, Olgoonik has some concerns of other proposed
6 changes. I would like to comment on six of them. Number
7 one, first, Olgoonik opposes the limitation on the ability
8 of new companies to obtain work in the same industry code
9 as existing 8(a) companies. Under this provision, a new
10 Olgoonik 8(a) company would not be allowed to receive an
11 8(a) contract in a secondary code. That is the primary
12 code under an Olgoonik 8(a) firm or recent graduate. We
13 do not believe that this rule is either necessary or
14 beneficial.
15 However, if the SBA insists on some form of
16 limitation, it is better to draft one that fits the
17 perceived problem, since driving force of the rule appears
18 to address hand-me-down contracts, a limitation tailored
19 for the specific concern preferred. This can be
20 accomplished by implementing one or more of the following
21 protections that would, one, only apply to sole source
22 contracts; two, apply where potential contract revenues in
23 the primary codes of existing companies exceed 50 percent
24 of the new company's total revenues; and three, only apply
25 when the potential contract revenues in the primary codes

1 of existing companies come from the same program within
2 the same agency.
3 Number two, Olgoonik opposes a requirement
4 that an 8(a) firm must take an early graduation upon
5 exceeding its primary size standard for two consecutive
6 years. This proposal does not recognize the fact that if
7 a company organized under a primary code with a large size
8 standard, accepts and works on a contract with a small
9 size standard and exceeds the size standard in a two-year
10 period. That's a lot of size standards it could be
11 prematurely graduated from the 8(a) program before
12 recouping startup investment costs, earning past
13 performance or properly qualifying itself to complete in
14 the full and open market.
15 Further, the proposed requirement does not
16 take into consideration the need for 8(a) firms to develop
17 diversified capabilities and multiple disciplines.
18 Olgoonik recommends no change to the graduation
19 requirements regulations.
20 Number three, Olgoonik opposes the 40 percent
21 performance requirement for joint ventures. We do not
22 support the proposal that the performance of work
23 requirement be revisited for that 8(a) partner to the
24 joint venture, must be performed at least 40 percent of
25 the work performed by the joint venture.

1 MR. KLEIN: Do you have a recommendation as to
2 what you do like instead there?
3 MR. HOPSON: We'll provide that to you before
4 the deadline is up.
5 There are several flaws in each approach.
6 First, it does not take into account instances where a
7 non-8(a) joint venture partner holds an ownership interest
8 in the 8(a) partner and thereby receives both a direct and
9 indirect benefit for the arrangement. There is also
10 confusion when the performance requirement is combined
11 with a situation where the joint venture has to comply
12 with a prohibition of a joint venture subcontracting work
13 to a non-8(a) partner.
14 Frankly, it is difficult to distinguish
15 between an unpopulated joint venture allocation of work
16 share with a non-8(a) partner and a subcontract to the
17 non-8(a) partner. Olgoonik believes that a better
18 approach is simply to state that the 8(a) joint venture
19 partners must receive the largest portion of the joint
20 venture benefit whether through the direct performance of
21 the work, the direct subcontracting of work, or the
22 proportionate allocation of joint venture work, including
23 benefits through ownership.
24 Number four, Olgoonik does not support the
25 current proposal for the reporting of shareholder

1 benefits. First, let me make it clear that Olgoonik
2 Corporation is proud of its record on providing benefits
3 to its shareholders and welcomes any opportunity to inform
4 the public of our successes in this area. However, we do
5 not support the proposed regulation for reporting
6 shareholder benefits for several reasons. The proposal is
7 cast in terms of each 8(a) subsidiary identifying the
8 specific benefits enjoined by the parent company
9 shareholders. This is a very difficult and costly task to
10 do for each 8(a) subsidiary separately. We believe that a
11 better approach would be for the parent company to provide
12 a single annual statement of shareholder benefits.
13 We are also concerned that the manner of
14 reporting of benefits does not become a limitation of
15 kinds of acceptable benefits that can be offered. We hope
16 that the items stated in the proposed regulation be
17 clearly marked as non-exclusive examples for shareholder
18 benefits.
19 Finally, we are very concerned that the
20 shareholder benefit elements are stated to be an aspect of
21 continuing participation in the program for specific 8(a)
22 participants rather than a reporting requirement. The
23 proposal has no standard for deciding if a company can
24 continue to participate, no process for termination or no
25 appeal rights. A better approach is to make the reporting

1 an annual requirement for the parent company and a
2 provision that a failure to file the report can be grounds
3 for declining to accept new applications for processing.
4 Number five, Olgoonik has concerns regarding
5 the proposed changes to the mentor-protege program.
6 Initially, the mentor-protege program was critical to our
7 success; however, as the program has become more
8 regulated, the difficulty of attracting interest from
9 mentors can increase dramatically for ANCs. Many
10 potential mentors have simply given up because of
11 increased administrative requirements and financial risk.
12 In many cases, the rewards for mentors under the program
13 are not significant enough in today's market to outweigh
14 the investment in time and money.
15 Our key areas of concern include complexity
16 of the application process, length of approval time, and
17 compliance and detailed reporting requirements. We
18 recommend that the purpose of this program be revisited to
19 once again make it an effective business tool. Unless
20 this is addressed, opportunities for new 8(a)'s to benefit
21 from this program will be severely restricted.
22 Number six, Olgoonik requests a rule
23 permitting the acceptance and consolidated financial
24 statements. Olgoonik, as well as the vast majority of
25 ANCs provide audited consolidated financial statements.

1 The SBA has taken consistent positions on this question of
2 whether it will accept the consolidated statements in
3 satisfaction of the 8(a) reporting requirements for the
4 participant. Olgoonik requests that the rule be
5 revisited, revised, so that the consolidated statements
6 will be accepted, provided the consolidating entries and
7 all notes to the statements are included for each 8(a)
8 company.
9 On behalf of Olgoonik Corporation, I would
10 like to thank the SBA for holding this series of public
11 comment sessions. Your efforts demonstrate a commitment
12 to listening to our concerns, an attribute often missing
13 from government these days. We sincerely hope that the
14 facts and thoughts and all our fellow ANCs have presented
15 to you demonstrate how important a strong and workable
16 8(a) program is to the continued financial and social
17 health of the Native peoples. Thank you.
18 MS. PRATTE: Thank you, Mr. Hopson.
19 Particularly thank you for the recommended "in lieu of"
20 things that you didn't like. That was extremely helpful
21 as well.
22 Next we have Mr. Jeff Blackwell.
23 MR. BLACKWELL: Good afternoon, Mr. Loddo,
24 Mr. Klein, and Ms. Pratte and esteemed members of the
25 Office of Business Development. I'm Geoffrey Blackwell,

1 the director of strategic relations and minority business
2 development for Chickasaw Nation Industries, Incorporated.
3 CNI is a wholly-owned federally chartered
4 economic development corporation of the Chickasaw Nation.
5 It is a pleasure to be here in New Mexico among the
6 vibrant cultures of the Native nations of the Land of
7 Enchantment. I'm honored to bring you the greetings of
8 the Chickasaw Nation, its people and Governor Anoatubby.
9 The Chickasaw Nation has almost 40,000
10 members with their historic homelands in the Mississippi
11 and Tennessee river valleys, thereafter removed to south
12 central Oklahoma. I come from a family dedicated to
13 Indian affairs and service to the Chickasaw Nation. I
14 have a lifetime of observing the interrelationship of the
15 United States government and Native America. I also bring
16 the prospective gain from my service as a senior attorney
17 and to tribal governments at the Federal Communications
18 Commission prior to coming to CNI. And although I am not
19 here representing them, I also serve on the board of
20 directors for Acoma Business Enterprises of the Acoma
21 Pueblo located less than an hour west of here, and I also
22 sit on the board of trustees for the National Small
23 Business Association.
24 I'm honored today to provide the Chickasaw
25 Nation's views on the proposed rules in enacting the Small

1 Business Association's 8(a) program because it is so vital
2 to the future well-being of the Native peoples, their
3 governments and economies. With only a small amount of
4 land owned by the tribe, that land being held in trust,
5 and the practical inability to tax its citizens, it is
6 very difficult to effectively create investment revenue or
7 secure borrowed capital for the development of an economy
8 sufficient to adequately meet the needs of our people.
9 The Chickasaw Nation's involvement in the
10 8(a) program over the last 10 years has provided capital
11 to the tribe for development of its economy and
12 empowerment of entrepreneurialism. CNI is increasing
13 opportunities for tribal jobs of the type easily
14 transferable to the non-tribal workplace and providing
15 revenue to the tribal government for its use in supporting
16 the program with the tribe, including education, housing
17 and healthcare.
18 All of our companies are 100 percent owned by
19 the Chickasaw Nation and we proudly self-perform to the
20 vast majority of our federal contracts. The Chickasaw
21 Nation strongly endorses the tribal 8(a) program as a
22 critical tool to the joint federal and tribal goal of
23 tribal self-determination. We intend to submit expanded
24 written formal comments, but today we would like to
25 address three issues or proposed changes that have

1 particularly significant impact from our point of vow.
2 Number one, as an economically disadvantaged
3 tribe, having been determined as such under 15 U.S.C.
4 Section 63784 (a) and the regulations implementing the
5 statute found at Section 124.109 (b), the Chickasaw Nation
6 opposes any requirement to reestablish that status.
7 Alaska Native corporations, Native Hawaiian organizations,
8 economic development corporations and tribes, while very
9 different structurally, are, within the context of this
10 program, functionally similar situated participants in the
11 program.
12 Unlike individuals in the program who seek
13 personal gain through the development of business with the
14 help of the Small Business Administration, ANCs, NHOs,
15 EDCs and tribes are the organizational embodiments of
16 groups of people to whom the participants owe a number of
17 duties. Chief among of those duties is the development of
18 an economy that will create sustainable support for their
19 respective publics. This is achieved, in part, through
20 the creation of jobs, formation of business activities,
21 establish a market demand for skills not otherwise
22 available and the provision of revenue.
23 Given the similar purposes for which each of
24 these organizations was allowed to enter the program,
25 there is no rationale basis to treat one of those

1 organizations differently from the others. While there is
2 statutory authority to require a tribe to establish its
3 economically disadvantaged status at program entry, there
4 is no statutory provision justifying the disparate
5 treatment thereafter. The definition of an economically
6 disadvantaged tribe seems necessary to enable SBA to apply
7 the regulation with some degree of certainty. Arguments
8 about the appropriate data aside, one must ask what
9 definition will be applied to the data by SBA to avoid
10 inconsistent results and even the appearance of
11 unfairness.
12 We do not disagree that the complexity of the
13 question of man's equally complex data to analyze whether
14 or not a tribe is economically disadvantaged. At the very
15 least, data should be divided by the number of tribal
16 members in a tribe when and where appropriate. Obviously
17 it would take more than assets and revenue to support more
18 members. That, however, may be too simplistic an
19 approach. Whatever approach SBA ultimately uses to
20 determine the tribe's economic status, it must recognize
21 the multi-dimensional aspects of tribal economies. It
22 must properly place its understanding of certain modern
23 stereotypes such as gaming revenue being a panacea for
24 every child.
25 The Harvard project on American Indian

1 economic development illustrates expertly the importance
2 of tribes avoiding the mere chasing of dollars. It
3 explains how creating reliable governmental and business
4 institutions provide a path to economic stability through
5 their well known concept of tribal nation building,
6 referred to earlier today. An important value of the 8(a)
7 program is that it helps tribe earn their income. It is
8 not federal large S. The government gets a good product
9 with service on time at a good price. The program helps
10 tribes bring in expert managers and employees to develop
11 business that could not otherwise take route. Thus, the
12 8(a) program helps tribes to develop institutions of
13 economic stability and nation build.
14 As Ron Solomon indicated this morning, it is
15 difficult to develop these economic institutions in simply
16 nine years. We have a good program. Tribes are using it
17 and moving forward. It should be allowed to continue to
18 take route.
19 That brings me to our second point. The
20 Chickasaw Nation opposes the proposed amendment to Section
21 124.109 (C) 32 insofar that it totally prohibits business
22 opportunities that might otherwise be available to a new
23 participant in the early years of its development stage.
24 We understand the SBA's belief that the current rule
25 favors the new participant to the possible detriment of

1 the graduating participant, but we believe that the
2 proposed rule swings the pendulum too far, supporting the
3 graduating participant to the detriment of the new
4 participant. A more balanced approach would better
5 achieve the goals of the program for both participants.
6 We support the opportunity and approach of
7 limiting the new participant's revenue under the secondary
8 NAICS code, that is, the primary NAICS code of the
9 graduating participant, to 25 percent in the first two
10 years after program entry. This alternative achieved the
11 incentive to keep the graduating participant in business
12 while not unduly restricting the new participant's
13 business development. It is our belief that this
14 restriction should only apply to revenue in the secondary
15 NAICS code that is the primary NAICS code of the
16 graduating participant.
17 The SBA's goal in imposing the restriction is
18 to incentify the graduating participant's continued
19 business operations. The only point in time when our
20 participant might consider ceasing operations is at the
21 end of its program term. Therefore, the rule should not
22 apply unless a participant holding a primary NAICS code is
23 in that decision point which we contend would not occur
24 prior to the end of the program term. Prior to
25 graduation, with no motivation to cease operation, no

1 program goal is achieved. Business operations available
2 to the new participant should not be denied unless another
3 program goal is achieved by doing so.
4 Number three, finally, the Chickasaw Nation
5 generally supports the rule changes affecting the
6 mentor-protege program. Our perspectives come from that
7 of a tribal company that anticipates serving in the formal
8 role of a mentor. While the proposed rule shift came out
9 of work to be permitted from the mentor to the protege, it
10 is not so great a shift that it would chill our intent or
11 ability to serve as a mentor. That is the balance a
12 program should strive to find.
13 In this environment here today, it is
14 important for the SBA to recognize an ever growing
15 business value in Indian country, that of Native-to-Native
16 business. Presently, we informally mentor and coordinate
17 with many other tribes and their businesses throughout the
18 nation. We've helped others understand and have helped
19 them apply to the program, and we are constantly vigilant
20 for the shared opportunities.
21 Once again, it is important to strike a
22 balance between the goal of inducing mentors, develop
23 participants and the goal of securing program benefits for
24 participants. We believe that the proposed rules achieve
25 those goals. Our own experience as a protege suggests

1 stronger oversight of the mentor's transfer of knowledge.
2 Annual reviews will be helpful but only if it truly
3 measures the growth of acumen in the protege.
4 Our experience as a protege resulted in some
5 benefit, but it failed to transfer significant business
6 knowledge and processes. We favor a limit on the number
7 of proteges we have, but only if such a limit will
8 facilitate a greater transfer of knowledge to the
9 proteges.
10 In closing, I would like to thank the SBA for
11 this opportunity to provide our views. We appreciate the
12 opportunity to learn from the views of others here as
13 well, and we've learned a great deal today. We believe
14 that through continued shared consultation, this program
15 will continue to improve for Indian country and for all of
16 its participants. Thank you.
17 MS. PRATTE: Thank you so much. Next we have
18 Tina Long.
19 MS. LONG: I'm Tina Long, and I'm the general
20 manager for NTVI Enterprises, LLC. We're a subsidiary of
21 Baan O Yeel Kon Corporation. We're probably the smallest
22 corporation that's represented here. We have under 200
23 shareholders. And I'm a shareholder of the village
24 corporation, as well as a tribal member of the village of
25 Rampart, Alaska, and also a shareholder to the regional

1 corporation. I'm going to try not to read, but it's
2 probably going to happen a little bit.
3 Just to let you know a little bit about
4 myself, before I came to this job, I spent about 20 years
5 working in rural Alaska through several statewide
6 organizations in Alaska, and most of my capacities have
7 been working with small villages and small village
8 corporations and working with rural economic development.
9 So when my village corporation asked me to take this job,
10 I was very excited about it because of the business
11 development aspects of it and because of just promoting
12 our corporation because we were just like other small
13 village corporations, in that we were pretty passive.
14 I sat on the board of Baan O Yeel Kon for
15 over five years and was their past president. We were
16 very passive. We put our money in the bank from the Angst
17 settlement, and we had a few little business interests.
18 But we really didn't take off until the 8(a) Business
19 Development Program and until we started setting up some
20 subsidiaries.
21 So as I said, I'm the general manager of NTVI
22 Enterprises, LLC. Our holding company NTVI Federal, Inc.
23 has three current 8(a)'s. We have five companies
24 altogether. And so I worked -- I came on board as the
25 D.C. regional support manager for Northern Tiaga Ventures,

1 Inc. and have since -- through a management development
2 program that we created as part of the benefit, have since
3 become the general manager for NTVI Enterprises, LLC.
4 The 8(a) program has been beneficial to us,
5 and so I'll just reiterate that. And especially we have
6 developed and established companies that have integrity
7 within the federal arena. We work on both the
8 construction and professional services side of the
9 businesses. Our original 8(a) had both of those involved.
10 We did everything under one company. Since then, we have
11 the two new 8(a)'s. One works with only professional
12 services. The other one works with construction. I work
13 on the construction side of the company.
14 So we have taken a lot -- we have read and
15 re-read the 8(a) proposed changes. And I definitely am
16 not an authority on the 8(a) regulations. We didn't have
17 a lawyer helping us write anything either, but we did
18 collaborate between me and the CEO of the holding company,
19 so we put together our little comments here.
20 First, we would ask you to please take the
21 corporation size into consideration with any decision
22 that's made. We are a very small corporation, a village
23 corporation. There are so many other small village
24 corporations and small tribes. And like you said earlier,
25 there is a whole range of businesses from individuals to

1 communities. And as a very small corporation, we don't
2 have the same resources that a regional corporation with
3 18,000 shareholders has or another corporation with many
4 more revenues and resources available to them.
5 And so changes that are made within the
6 regulations, they're harder for us to implement. They are
7 more costly and they take us more time because we have a
8 small staff. We're still operating as a small company.
9 So we need plenty of lead time if there are proposed
10 changes, and time to plan for the changes because of our
11 limited financial and human capital.
12 Now, we want to talk about if -- for example,
13 if NTVI Enterprises, LLC was prohibited from taking any
14 negotiated contracts in the primary NAICS code, we want to
15 talk about that NAICS code proposed change, probably
16 mostly about that. Because I want to say that our new
17 8(a)'s were able to come in -- like, for example, I work
18 on the construction side of the company. We were able to
19 benefit from the experience and the work that our previous
20 8(a) had accomplished. We came in at a higher entry level
21 than the first company. The first company was finding its
22 way, and so as a result, our potential for success is much
23 greater because of that previous experience that we're
24 able to build upon. Not that we're under the same NAICS
25 code, but that we're able to receive work under that same

1 NAICS code.
2 If we weren't able to -- if we were
3 prohibited from taking any negotiated contracts in the
4 primary NAICS code of the recently graduated northern
5 Tiaga Ventures, Inc. over the first two years of 8(a)
6 operations, the damage to my company and parent company's
7 shareholders would have been devastating. We would have
8 experienced loss of business opportunities and revenues,
9 loss of shareholder jobs and dividends, loss of local
10 employment opportunities, local subcontracting
11 opportunities and local taxes, not to mention political
12 fallout against corporate shareholders and potential
13 customers from such a severe shock to the company.
14 Basically, if the contracting officers were
15 not allowed to give us work under that NAICS code, then we
16 would be kind of put on hold for a period of up to two
17 years, and that would severely undermine our company.
18 Because then they might forget about us. Even though we
19 go there, they couldn't do anything with us because we're
20 not allowed to accept that work. And so we want to be
21 able to accept the work under that same NAICS code.
22 So that's our specific -- this change of
23 adding that statement to 13 C.F.R. 124.109 C3 II where it
24 says, "In addition, once an applicant has admitted to the
25 8(a) Business Development Program it may not receive an

1 8(a) contract in the secondary NAICS code that is primary
2 NAICS code of another participant or former participant
3 that has left the program within two years of the date of
4 application owned by the tribe for a period of two years
5 and the date of the admission to the program." This is
6 the change that will have the largest impact upon our
7 holding company and our 8(a) subsidiaries and other small
8 village corporation 8(a)'s, as well as our employees, many
9 of whom are shareholders.
10 It also has the greatest potential for
11 negative unintended consequences, including dysfunctional
12 business practices whose only intent is to comply with or
13 get around the rules. So the rationale provided in the
14 Federal Register for the change having one business take
15 other work previously performed by another does not
16 advance the business development of two distinct firms.
17 We don't agree with that rationale.
18 Looking at the business success rates of
19 companies and the SBA's goal of advancing business
20 development, we just don't see how that can help us. It
21 seems like it would undermine the proposed -- the
22 availability of additional firms to obtain work. And so
23 we think that would be bad for us, anyway.
24 So I think that we covered that pretty good.
25 Some have suggested that instead of a complete prohibition

1 on receiving an 8(a) contract in a secondary NAICS code
2 that is the primary NAICS code of another participant or
3 former participant that has left the program within two
4 years of that date of application owned by the tribe, that
5 a percentage of revenue from 20 to 30 percent be allowed.
6 Although better than the complete prohibition, it will
7 create additional unintended consequences and add another
8 level of complexity to manage ANC 8(a)s. Again, this
9 hurts the small village corporation that have resources
10 much more limited than the large ANCs because you would be
11 always trying to just have one company stay underneath
12 that 20 to 30 percent rule.
13 So a fundamental management practice is the
14 focused company, and just -- so more and more 8(a)'s would
15 be created to slice and dice the potential work, and
16 you're always working at keeping underneath that minimum
17 and it would probably just be a management headache.
18 Okay. So this change will not accomplish
19 what the Federal Register notice says that it will. We
20 recommend that SBA simply implement a proposed change, 13
21 C.F.R. 124.3 which will allow a firm to change its primary
22 NAICS code thereby eliminating the need for the proposed
23 rule change under Section 124.109 C3 II.
24 Now, we want to comment that we oppose the
25 change number 11 which requires a firm to remain small for

1 its primary NAICS code during the term of participation in
2 the 8(a) program. The rationale stated in the Federal
3 Register is that SBA has reexamined this policy and
4 concluded that if a firm has grown to be other than small
5 in its primary NAICS code, it can reasonably be said that
6 the firm has achieved its goals and objectives. This is
7 like saying, you know, no good deed goes unpunished. It's
8 like you do good in one business and now they want to push
9 it down and you've got to start all over again.
10 And the marketplace is dynamic. Our firms
11 should be encouraged to diversify our revenues, and that's
12 what we are doing. In addition to the 8(a) firms, we have
13 other firms, other subsidiaries established which are
14 non-8(a) which perform in their diversifying, and we also
15 diversify within the 8(a) program as well. And we would
16 like to be encouraged to diversify our revenues into new
17 lines of business rather than graduate with success in
18 only one area. If a firm is successful at
19 diversification, the reward is to be graduated from the
20 program. And if this change is implemented -- we'll do
21 that in writing.
22 Change 16 which allows a firm written
23 commitment from the tribe as sufficient to establish
24 potential for success, we strongly support this change.
25 We think that it would make the ability to create -- to

1 apply for the 8(a) program much more simple and quick. We
2 had to establish two companies that had two years'
3 experience before they could even apply to the 8(a)
4 program. The application process was extremely lengthy
5 for us. I mean, it took like six months to get NTVI
6 Enterprises, LLC certified, and it was a very lengthy
7 process and very detailed, which we do congratulate the
8 SBA for being very thorough in their investigation.
9 But it was kind of taxing, you know, to keep
10 going back and creating more -- well, you know, or
11 finding -- or digging through your files and putting
12 together the information that was required. So we
13 strongly support this change. We appreciate that SBA
14 provides resources out of a very limited budget to oversee
15 and administer the 8(a) program. It's understandable,
16 therefore, that SBA doesn't want to waste their resources
17 on a firm unlikely to survive. It's reasonable to set
18 standards to establish a positive likelihood of survival
19 and success for any firm admitted to the program.
20 As I said earlier, one side seldom fits all,
21 especially when it comes to regulations. ANCs are
22 different. And if an ANC commits firmly and in writing
23 that it will support financially and otherwise a firm
24 entering the 8(a) program, that it increases the
25 likelihood of survival and success to at least if not

1 beyond the current two years in business standard.
2 Now, regarding the change of moving the SBA
3 application, the 8(a) application from Alaska to San
4 Francisco, we oppose that change. We found that it's very
5 nice to be able to go into the Anchorage office and to
6 meet with our business opportunities specialists and have
7 somebody that knows Alaskans and situations that Alaskans
8 face and does an effective job getting to know the unique
9 challenges that are faced by small corporations and, like
10 I said earlier, small rural remote corporations.
11 And there is a particular understanding.
12 There is, in some cases, some bilingual issues. In other
13 cases, there's -- just the -- like what Trudy was saying
14 about having to think about if you're going to pay for
15 your heat or pay for your fuel or pay for your healthcare.
16 You know, just. Balancing small economies is different,
17 and we want the whole SBA process for the 8(a)'s to remain
18 in Alaska, and we would encourage that.
19 We also strongly support, to the extent the
20 exemption from the ceiling on negotiated contracts to
21 Native Hawaiian organizations, and we just strongly
22 support expanding the opportunities for non-ANCs by
23 exempting NHO firms from negotiated contract ceilings.
24 In closing, thank you very much for allowing
25 us to be involved with this tribal consultation. We felt

1 even though we have such a small village corporation,
2 we're doing a lot of work and we're located in several
3 areas. We believe that we help the economies in the state
4 that were doing business, as well as our shareholders and
5 the state of Alaska, as well, with the money, the revenues
6 that are received through the work on 8(a) projects, and
7 we do really support the continuation of the program.
8 Like I said, I've worked with other economic
9 development programs and I see this as a long-term help
10 and a step up, not a hand out, but a hand up like Clyde
11 said earlier. And we like that, and we think that the
12 corporations are thinking long-term and we are, too.
13 We're thinking beyond and outside of the 8(a) program. We
14 don't want to be dependent on one program. We're looking
15 at areas of education and internships. And we do have
16 shareholder benefits.
17 And I guess I do have a personal question. I
18 was thinking how can you compare the benefits that we can
19 provide, being a 200 or 190 shareholder corporation, to
20 one that has 18,000 shareholders? I mean, I just don't
21 see how you can compare those benefits that we can provide
22 because ours -- and not only that, just the amount of
23 shareholders, but if you have a different amount of
24 revenues, you have a whole different amount of balancing
25 there, too.

1 So it's one thing to just provide a static
2 report, but then to have to compare those differences,
3 there's a lot of levels there and -- a lot of different
4 levels of shareholders like was previously stated.
5 There's just a lot of complexity. And we want you to
6 consider that.
7 So thank you, and just we urge you to
8 increase the ceilings for negotiated contracts to be
9 consistent with the proviso, which I forgot to mention,
10 that a contract's value relative to negotiated contract
11 ceilings does not include option years. So that was one
12 thing. And if you want further discussion, it will be in
13 the materials I give you. And allow 8(a) determines to
14 change their primary NAICS code while in the program. We
15 do agree with that. And I also have some other stuff I
16 could read to you if you want.
17 MR. KLEIN: Are you going to submit those in
18 writing?
19 MS. LONG: We'll submit them in writing. We ask
20 you, please, do not remove the initial 8(a) application
21 reviews from the 8(a) Anchorage SBA office. Give them
22 more money. Give them more people and let them do the
23 work there, because we really feel that that's a much
24 better option. And do not require a firm to remain small
25 for its primary NAICS code during its term of

1 participation in the 8(a) program.
2 And finally and most importantly, we strongly
3 object to any restriction on an 8(a) firm receiving a
4 contract in a secondary NAICS code that is the primary
5 NAICS code of another relative related 8(a) tribal entity.
6 This will lead to many negative unintended consequences,
7 including dysfunctional business practices and does not
8 achieve the state objectives of making a change. So thank
9 you. Do you have any questions?
10 MS. PRATTE: We'll take a brief five-minute
11 break. Mr. Solimon's remarks, there's copies of them at
12 the front there. And then lastly, I'm going to list off
13 some names here. If you would like to present and you're
14 not on this list, come see me during this break. We have
15 April Ferguson, Joe Garcia, George Williams, Mike
16 Sandstrom, Joe Tenorio and David Melton. So if you're not
17 on this list and you want to present, come and see me.
18 (A recess was taken from 2:30 to 2:50.)
19 MS. PRATTE: We have six more folks before we're
20 done. Next we have Mr. David Melton.
21 MR. MELTON: We appreciate being here. My name
22 is David S. Melton. I'm a member of the Pueblo of the
23 Laguna, the past chair of the New Mexico Indian Chamber of
24 Commerce, and I'm an alumni of a tribal 8(a), Laguna
25 Industries, who you heard from Mr. Ron Solimon earlier

1 this morning. And we were the recipient of our first
2 contract from a tribal 8(a). That's how we got started.
3 I'm currently president and CEO of Sacred
4 Power Corporation, an 8(a) participant since the year
5 2004. We've been in business since 2001. We call
6 ourselves the largest Native American renewable energy
7 company in the U.S. We say that tongue-in-cheek. We're
8 the only one. We've been headquartered here in Indian
9 country at the Indian Pueblo Cultural Center since 1997.
10 But through an SBA 7(a) loan guaranteed program, we're
11 moving to our new, for us, 50,000 square feet facility
12 across the freeway. You're all invited when we have our
13 grand opening. We're still in a hub zone. We know those
14 things are important.
15 We are a federal contractor. When I worked
16 for LII for ten years, that's what I learned to be in
17 business as, as a federal contractor. And it's also
18 there, but I saw the success of the 8(a) program. So
19 following in the footsteps of my mentor, Laguna
20 Industries, I chose to be that same type of company.
21 That's where we saw the success of the 8(a) program
22 through job creation and economic development. And it was
23 through the spirit of the statutes and regulations that we
24 sought to partner with the SBA ourselves and become an
25 8(a) contractor.

1 We followed the requirements to be accepted;
2 i.e., be a disadvantaged person and economically
3 challenged. We proved that. We were accepted into the
4 program and told go for it, then succeed in the spirit of
5 the program. And that's what I want to talk about, the
6 spirit. I'm not going to talk about the legalities. We
7 did not submit this to our legal counsel that was here
8 earlier. We watched the dollars and the cents. We can do
9 and say something ourselves.
10 And it's true most of our work is not in the
11 8(a) area. We know that there's some companies that never
12 get 8(a) contracts even though they're accepted into the
13 8(a) program. What does that mean? That's telling us
14 that we know that that we are the ones responsible. We
15 are the risk takers. You're just opening the door. The
16 key is about that door. We want to close that door once
17 we're in, which brings us to some of the statutes and
18 regulations that you've brought forth.
19 The number one issue that came to my mind,
20 that's been in the far since as long as I can remember, is
21 the limits for service and manufacturing. I think it's
22 been since 1986. It's been $3 million and $5 million, and
23 you want to move it to 3.5 and 5.5, and that's very, very
24 low. Just looking at --
25 MR. KLEIN: Let me just comment on that a

1 minute. Those levels are also statutory levels. By
2 statute, it says $3 million and $5 million. Another
3 statute two years ago or three years ago authorized the
4 Office of Management and Budget to change those numbers
5 for inflationary purposes, and they have reviewed them and
6 come up with 3.5 and 5.5. The FAR has changed them and
7 now we're following suit. And so again, those are numbers
8 that we don't have the authority ourselves to change.
9 MR. MELTON: Okay. So I'm talking to the wrong
10 crowd. But those numbers are still too low. I'd like to
11 go on record in saying that. And if you want a
12 recommendation, $15 million for manufacturing, $10 million
13 for service.
14 We also look at your issues on page 55699 of
15 your regulation change about the primarily NAICS code. I
16 want to talk to you about the experience of the NAICS
17 code. When we signed up, you said give me a number that
18 defines your business. You look in your book, well, we're
19 not in there. There's nothing about renewable energy. So
20 we have to delay. Sounds like and pick a number, and we
21 did. It's related to semiconductors of photobiotics and
22 electrical contracting. But that's not the same business,
23 so it really doesn't apply, other than we're now on record
24 as having this one number.
25 And theoretically, contracts are supposed to

1 come to us that relate to our number when people look us
2 up on CCR. Well, the reality is that the program
3 contracting office picks those numbers arbitrarily. And
4 the reality is, for the same product, you've seen 10
5 different numbers. You've made it real easy to go into
6 CCR five minutes, add that number. But it's usually a
7 one-time use, because that one contracting program officer
8 picked that number. So it really doesn't relate. That's
9 how we use the NAICS codes. That's how we use them. But
10 you want to put some dollar limits on them and,
11 theoretically, throw us out if we exceed these numbers.
12 It doesn't relate.
13 When I talked about closing the door and go
14 forth and succeed, the number one thing we looked at is
15 the clock, that nine-year clock. It used to be five. Ron
16 changed it to nine. That's what we look at, the time.
17 We're now six years into it. We have three more years.
18 We also know that there's a curve, a bell curve. You can
19 get so many 8(a) contracts and towards your graduation
20 period, you're supposed to be weaning yourself. We can
21 apply to that. So we want to take exception to that one
22 requirement, keep it as is for lack of a better change.
23 We also looked at the economic disadvantage
24 requirements you're looking at changing which we think
25 penalize entrepreneurialship and risk taking. All the

1 risk is on the business owner, the individual tribal ANC.
2 All the risk is on us. But you don't -- you should not
3 penalize us for being successful, for having success on
4 taking those risks. If you want to gauge success you look
5 at the owners of the ANCs for the tribes. You go to their
6 communities and you see how they are. That's how you
7 gauge success. You can gauge success with us through our
8 financial statements.
9 You had one part, page 55,699, 124.104 (C)
10 talking about assets. $4 million in assets to determine
11 success, but you don't look at liabilities. That doesn't
12 make sense. That's half the equation. You could have $4
13 million in assets, $5 million in liabilities, and we would
14 be thrown out of the program, but you would be a million
15 dollars with negative net worth. I don't see that. I
16 don't understand that at all. We think you should keep
17 network as the criteria. The same with adjusted gross
18 income. You want to put $200 million as income.
19 MR. KLEIN: $200,000.
20 MR. MELTON: $230,000. Any of those criteria --
21 we're not rich. Nobody is getting rich on this.
22 MR. KLEIN: You have to understand the purpose
23 behind this. Let me just explain what the thinking was.
24 Again, this is for the individuals, not for tribal, not
25 for ANCs, not for NHOs. The statute says firms may be

1 admitted to the 8(a) program if they're owned and
2 controlled by socially and economically disadvantaged
3 individuals. So SBA must determine economic disadvantage.
4 That's something we must do across the board.
5 In determining economic disadvantage, there
6 are a number of factors we look at today, net worth.
7 Income and assets are also looked at, but then there's no
8 objective criteria. So they're's trying to explain that a
9 little bit better. In terms of income, $200,000 more or
10 less equates to the top two percent of all taxpayers in
11 the United States today. So it's hard for SBA to say that
12 the top two percent of all taxpayers is a number that's
13 economically disadvantaged so we should go higher. If you
14 think of a reason why you think that number should go
15 higher, by all means, tell us what that is. But from
16 middle America out there, they think this is a large,
17 large amount of money and they don't understand why it's
18 as high as it is, just to tell you the story.
19 MR. MELTON: Yes, I read that. But you're
20 saying go forth and succeed, but don't be too successful.
21 So you're pulling me back. You're holding me back. I'm
22 carrying a huge load. You're putting weight on it and
23 making it heavier.
24 MR. KLEIN: That's not true. Again, the purpose
25 of -- we're required to have only economic disadvantaged

1 individuals in this program. If you've gotten to the
2 point where you've exceeded those numbers, by all means,
3 keep going forth and doing what you think is best, but
4 maybe you should do it outside of the 8(a) program at that
5 point in time.
6 MR. MELTON: That's where we disagree. So what
7 we're saying is that you have net worth requirements that
8 initially when we applied, you said yes or no. It was no,
9 so you're in. Now you want to change the rules of the
10 game in the middle of the game. Nobody wants to do that.
11 If you want to play that to new applicants, okay --
12 MR. KLEIN: I'm not understanding what you're
13 saying. Changing the --
14 MR. MELTON: When I applied in 2003 and was
15 accepted in 2004, those requirements were not there.
16 MR. KLEIN: That's not true. They were not
17 specifically in the regulations per se. Assets and income
18 are in the regs currently. There's just no numbers in the
19 regs. However, by case law of the Office of Hearings and
20 Appeals, there currently are limits of $200,000 and $4
21 million in case law today as we speak.
22 MR. MELTON: We object to this. I want to go on
23 record as objecting to those. Like I said, we're not
24 rich. I mean, we're making a living. That's about it.
25 We're no different than you guys. We're all making a

1 living, but nobody is getting rich off the program.
2 Okay. So, basically, those are my points. I
3 appreciate everything that you guys are here. I haven't
4 commented on joint ventures mentor-protege, because I feel
5 I already have one. You are our partner. You are our
6 mentor. You're helping us with your technical assistance,
7 everything that you do to make sure that we succeed, and
8 everything is working very well. We understand some of
9 your political pressures, but hear it from the people that
10 actually participate in the program.
11 I really want to give kudos to your New
12 Mexico Small Business Administration district office.
13 It's probably the best in the country. I would put them
14 right at the top. The same reason you got more people out
15 here than anywhere else in the country is attributable to
16 them. And we've been working with them ever since I was
17 working with the tribal 8(a), and they've been doing
18 nothing but help us all. Here in the state we're all
19 partners and that's why you're seeing the success that's
20 here today. So make sure that goes on record, too. Thank
21 you very much. I appreciate it.
22 MS. PRATTE: Thank you very much, Mr. Melton.
23 Next we have April Ferguson.
24 MS. FERGUSON: My name is April Ferguson. And
25 in listening to all the comments here today, I've modified

1 mine. I will submit written comments. But it's been a
2 privilege to sit here and listen to all of your stories
3 because I think that's a really important component of
4 what we're doing here is we tell our stories to you and
5 you're entrusted then to turn around and tell our stories
6 to congress and to our critics to make this program work.
7 I really appreciated Sarah Lukin's comments.
8 And I would like to go on record. I'm here on behalf of
9 Bristol Bay Native Corporation. We have 8,700
10 shareholders. We represent the business interests of the
11 people of southwest Alaska, our red salmon capital of the
12 world. No roads out there. You get there by air or
13 water. And we, like the rest of rural Alaska, are faced
14 with significant hurdles in terms of fuel and
15 infrastructure. And I'm sure that you folks at least are
16 very aware of that, having been there.
17 I am a little discomforted by the
18 discrepancies or the way the program, I guess, is applied
19 with respect to tribes, Native Hawaiians and the ANCs I
20 don't think it's good for our overall community. It's not
21 good for our relationships, getting along, and there's
22 enough out there for all of us. And so we would certainly
23 support, as does NACA, an equal applications program
24 opening it up for the tribes and Hawaiians on the same
25 standards that it is for the ANCs.

I would like to thank you folks so much for all of your efforts and your support. And in listening today, something that Mr. Jordan said really resonated with me, and he goes back to story telling. He said that his job is to turn around and tell a story to congress. And personally, I think that what you folks are doing in the 8(a) program is working in one of the most cutting edges areas of social reform. This program -- this is one that works.

Indian people are moving into business and taking to capitalism like a fish to water. This is just unusual. I mean, it is unexpected to me as to how well Indian business is sweeping across the country. And there's a story there and it's a story that I don't think has been adequately told. But it's expensive to tell these stories; I realize that. And each one of ours are very individual and different. But it's a fantastic story and it's a success story.

And part of it -- I know people -- I've heard comments such as the tribes look at how well the ANCs have done in the 8(a) program. And being with Bristol Bay region for a while, I've seen how -- we looked over at Mr. Barney Uhart is in the audience -- or was, and he figured it out. You guys figure this out and we watched what you guys are doing and he wanted a piece of it, and

it spread. But you're a visionary, and I acknowledge that. And that's another instance of capturing somebody that knows how to work the program and being able to have them work for you, which seems, to me, very illogical that tribes are restricted to hiring out of their own membership.

I know for us, with our 8,700 shareholders, a certain percentage of them are elders. A large percentage of them are children. A large percentage of them are under 18. A goodly percentage of them have never been to college. So when I look at the reservoir of people that I have to pick from -- really, we track at our main corporate office how many accountants there are, who's graduated from medical school, how many attorneys there are. You could ask me, and I know. I can recite them. I don't have all of their names down, but we know there's talent out there. We've identified them so that possibly you can capture them. They have a horrible time capturing the engineers because Leaska and BP want to steal them away. But that doesn't mean young and up and coming -- I guess we have the field of business leaders to choose from. So like the ANCs, like any business, I think the tribes ought to be able to tribe whoever they want.

I think that you folks are working with corporate anomalies. This is for-profits with a social

agenda, for-profits with a social responsibility, responsibilities beyond profit. And these corporate hybrids are building human capacity and they're teaching new survival skills. Again, this is a great story. It just hasn't been told yet. And in order to effectively understand is to tell these exciting success stories. And to learn how to make this more effective program, we need to understand exactly what you want from us and you need to understand also the context that these stories are coming from.

And I think this point goes directly to why I believe there needs to be a district office in Anchorage and in Hawaii and in Indian country, why it's imperative. Because when I listen to, say, for instance the story that Clyde told earlier and he said one sentence that was seven words long, and I wondered does anybody really realize what NANA is doing there? He goes, "Well, part of our benefits are going to a search and rescue program." Their villages are way the hell out in the middle of nowhere. There is no police or law enforcement throughout all of Alaska, basically. I mean, there is no law enforcement outside of the road system. I'm not exaggerating that some of the villages have VPSOs, and those are wonderful and hardworking folks, but this goes to the program and it goes to benefits.

The VPSOs that I was familiar with are not allowed to carry guns or expected to keep law an order in the villages. When somebody is lost, they're paying for their own gas to go up and down the rivers and to go out in the snow machines to find people. They are paying for their own radios. A lot of the villages, it's common.

It's not an extraordinary mode of travel to go back and forth by way of snow machine. It's a common mode of travel, which I think is part of the circular argument of why it is so imperative that we get members of your department and our critics and, please, to God, IG and her partners to come out to rural Alaska. That's all I would ask. Just bring them out so they have the experience of what it means to fly out to the Chitnics or to St. Paul and try to get back again. Or try to go up and down the river either in the winter or by boat. We are not asking you to do anything that we wouldn't. This is just normal course of business and action out there.

And that's the advantage that our Anchorage people have is that they may not live it day to day, but they've heard about it, they know it, they understand the context, whereas a village corporation comes about and complains about some business item. They can place it in context. They have a way to evaluate the truth of this or the exaggeration of it. They understand what the folks

are talking about. They understand the bilingual concerns.

We had Mr. Hopkins. I'm sure that the San Francisco office may not understand -- and I don't think I'm exaggerating -- when you have your shareholder meetings, I'm imagining that you have a translator there for all of your elders. That's probably just a fact. So Bristol Bay is in favor of an Anchorage district office and a Hawaii district office. I'm sure the same concerns are there for the Native Hawaiians and for the people in Laguna or wherever.

Talking about the benefits again, this is a tricky one for us. We want to provide you all the information that you need to evaluate if we're doing a good job, and I realize that the best way to do that is with columns of figures and with clearly defined metrics. However, as everybody here has mentioned to you, we are all individual. And what my board of directors may consider a priority may not calculate into somebody else's calculations, nor do I want anybody else really to dictate to us what is a benefit.

So, for instance -- and where do we stop what we do at BBNC as being a benefit? We have a land department that manages three million acres of subsurface and helps our shareholders with allotments. I ought to be

able to turn that in to you as saying every expenditure that that land department makes and all of the costs of its employees and every piece of paper that it prints really should be a benefit that goes to the shareholders. And it's not one made that we ordinarily calculate, but -- put that down there, Sarah -- because all of our land departments should be calculated as a benefit.

I've had to write grants. I'm the in-house counsel for the BBNC. How about if I write a grant for an annometer, for a wind project that's going out there? Well, you could calculate the attorney time that is spent on benefits for some of the villages out in the region. Everything that I do related to that company benefits my son, my parents, my cousins, the people that I'm related to. How come every penny of my time can't be attributed in some fashion to a benefit for the corporation and a benefit that's somehow attributable to this program.

I'm now going to read you a little boring part, but this goes to the consolidated financials. 13 C.F.R. 124.602. It addresses a Small Business Administration financial statement requirements, and it says, "Participants with gross annual receipts of more than $5 million must submit to the SBA audited annual financial statements prepared by a licensed independent public accountant within 120 days after the close of the

concerned fiscal year. Smaller entities are required to submit either reviewed or compiled financial statements." Well, historically -- and we've been in the program for a long time, probably 11, 12 years -- maybe an ANC has obtained a audited report on its consolidated financial statements and then we attach schedules or additional information there for each subsidiary. And what we attach then is a balance sheet information and income statement information. This balance sheet and income statement may present much of the same information that would be included in stand-alone financial statements; however, there are differences. No statement of cash flows for each subsidiary, no statement of stockholder equity for each subsidiary, no footnotes for each subsidiary, no separate audit opinion for each subsidiary, and a higher level of materiality is used when auditors opine on consolidated financial statements.

So we know there are differences. What we really need to know -- because in reading this C.F.R., I don't see where it says specifically that we need to give consolidated for each one of the subsidiaries. I would read that differently from you. But it appears at least to me -- and you'll have to clarify for me -- that your objectives are to ensure that the financial activities of all of your participating companies are conducted in

accordance with generally accepted accounting principals, GAP, and ensure that financial statements are reliable. And it's possible, if you want more detailed information, that the individual stand-alone financial statements can provide.

So we would like to know what is the regulation's intent if it was your intent to obtain stand-alone financial statements, then it seems to me that the language could have been worded a little bit differently. It could have said explicitly then with participants with gross annual receipts of more than $5 million must submit to SBA audited annual stand-alone financial statements prepared by licensed independent public accountants.

On the other hand, the regulations also say notwithstanding the amount of the participant's gross annual receipts, SBA may require audited and reviewed statements. It may require that. Therefore, the regulation's intent does not necessarily indicate that stand-alone financial statements are required. It doesn't state it, but it doesn't preclude it, either.

Additionally, for years and years and years, you have never required that. So what is a reasonable intent? We'll give you whatever you want. We do object to this. And if you're going to require this of it, I

1 want to let you know exactly what you're asking from us.
2 Because we have about 15 subsidiaries, and the audit fees
3 for each individual subsidiary run from about $8,000 to
4 $15,000 apiece for a cumulative price tag of about
5 $150,000. That's just the fee. If you add into that
6 cumulative staff time and average from $20,000 to $15,000
7 for each company, that's about $250,000 staff time hours.
8 So for a total -- you're not going to like that, I don't
9 like it -- of about $400,000. This is per year. Now,
10 that may be a high year, so I'll give it a range. From
11 $250,000 to $400,000 a year. If needed, there better be a
12 really good reason for it.
13 Because what our fear is and the fear of my
14 comptroller and my CFO is that -- they said, "What would
15 anybody need with that much information on an ongoing
16 basis? It's going to be mothballed. They'll ask for it.
17 Because they don't need it. They don't have time to look
18 at it. It's going to be mothballed." So I guess I would
19 ask you is if you need it, come ask us for it and we'll
20 give it to you. But don't make it an automatic production
21 that we have to do every year at that amount of cost.
22 Imagine $400,000 a year over a 10-year period
23 is going to be $4 million. What we could do with that in
24 terms of scholarships or investments or anything. Again,
25 there has to be a better way for us to get to you the

1 information that you want from us. So please let us work
2 on this. Let's work on that one a little bit more
3 together besides just implementing that way.
4 I think that as we all go forward drafting
5 these regs -- and again, we will put in written
6 comments -- we are going to ask that you look at the regs
7 with an eye to flexibility and encouraging
8 entrepreneurialship, because we're all just learning how
9 to do this. And in learning how to do this -- and I think
10 this goes to those individual business owners who are in
11 the program that we'll hear from tomorrow, as well as to
12 the ANCs and to the tribes and I know somebody else had
13 mentioned this earlier -- nine years, on one hand, sounds
14 like a long time. When you're trying to figure out how to
15 put this all together, nine years is really not much.
16 You've just about got something built up and then the
17 whole thing is taken away from you. And I think that that
18 has got to have a particularly hard impact on an
19 individual small business owner. Because generally
20 they've put something together. They've hired their wife
21 and the kids, and the only way they're going to make ends
22 meet at the end of that nine years is sell it off to
23 somebody else. If they're really lucky, they'll find an
24 ANC to sell it to or get the wife or kid to enter the
25 program and take it on. Nine years is not enough.

1 And I know for our construction companies,
2 too, in order to survive, especially -- and I'm mostly
3 familiar with the Alaskan economy. But in order to
4 survive as a construction company in an Alaskan economy,
5 you have to get above a minimum threshold size. You don't
6 make it if you're small or just a little bit small. A
7 midsize range is a really very difficult size standard to
8 negotiate. You've got to have enough time to get up over
9 that edge so that you can effectively compete in the
10 commercial world.
11 And just another side, because I know we need
12 to talk about the commercial mix and the 8(a) mix, is
13 we've got a lot of really great CEOs that work for us, who
14 are just top notch in government contracting. But having
15 a foot in the contracting world and having a foot in the
16 commercial world is like putting two different animals
17 together, and there's not a lot of people that can do it.
18 It's not just a different mindset. It's a whole different
19 skill set. We have a couple of them who have managed to
20 do it, but it is not an easy transition. It's almost as
21 if when you get closer to the end, I've got to take the
22 manager from one and either let them go and put them in a
23 different company and pulling in somebody who has -- again
24 it depends on the industry -- but more commercial skills
25 there. It's just a thought to keep there. It is a hard

1 transition, and I don't think nine years is enough.
2 I do also believe for different -- the size
3 standards that are problematic, and we'll probably write
4 about. And the other thing I wanted to mention was the
5 NAICS codes, and especially the construction NAICS codes,
6 because -- I know you can't necessarily do anything about
7 this, but think about this. They're inflexible, they are
8 old-fashioned and there's not enough diversity within
9 them. So I think that in the construction world -- and I
10 realize I may get it a little bit wrong, folks, so just
11 bear with me. But there's only about seven of them, seven
12 general ones. And if you're in the construction world, in
13 just general industrial just can cover -- it's way to
14 brood of an arena.
15 I could have somebody that is doing, say,
16 medical rehabilitation with an AFMOA contract and who
17 could eat up everything in that generalized industrial,
18 whereas over here I could have somebody who does nothing
19 but vertical construction or somebody working on harbor
20 work for the Corps all under the same NAICS code. Really
21 three brilliant companies that I want to nurture up, but
22 they're competing against each other. And that's not
23 fair. We need more flexibility to develop within those
24 NAICS codes.
25 So my suggestion would be to use them as

1 guidelines if you have that prerogative, but not
2 necessarily exclude different companies from using the
3 same primary. Unless the NAICS code system itself is
4 modified, it's not flexible enough. And I think that you
5 may have flexibility to devise something where I can have
6 my Corps of Engineer company working on harbors and that I
7 can do my base rehabilitations without trying to eat each
8 other up and fight internally about who gets to use that
9 NAICS code.
10 And the other point on that, too, is some of
11 the NAICS codes have subdesignations underneath them. So
12 you'll have one -- and I can't think of the specific right
13 now, but -- the specifics may not be exactly accurate, but
14 say something like an aeronautical engineer or
15 aeronautical construction. You could have a subcode
16 designation that is IT where you're doing something that
17 is nothing but aeronautical engineering and then a
18 subdesignation where you're the mechanic tearing the
19 engines apart. Two completely different type industries,
20 but you've excluded from participating in both of them
21 because they are under the same primary. And I think if
22 you were able to be more flexible --
23 MR. KLEIN: I think we understand that one.
24 That's pretty much what I've got. Thank you very much.
25 MS. PRATTE: Thank you, April. Folks, we have

1 the space until about four o'clock, I believe, and it's
2 about 3:30, but we'll continue going down the line. Just
3 be mindful of your time and your comments. Hit your high
4 points. Obviously, we'll be walking around, milling
5 around, if you really need to drive home some additional
6 information.
7 Joe Garcia? I didn't think he was here
8 today. George Williams.
9 MR. WILLIAMS: I'll go last.
10 MS. PRATTE: Joe Tenorio, San Ildefonso?
11 Anthony Edwardson? All right. George, just come on over.
12 MR. WILLIAMS: I'm just going to make some
13 general statements. I don't know that these necessarily
14 need to be on the record or not because, you know, I
15 initially got on the roster to speak because there was
16 some question as to whether Joe Garcia would be able to
17 speak this morning. Thank goodness he was. I appreciate
18 having his wisdom, his tenure in the 8(a) program very
19 invaluable.
20 But since I'm up here, I do want to take the
21 opportunity to say a few things off the record, so to
22 speak. I just want to thank SBA for an outstanding job
23 with what you've done with the 8(a) program. It's been
24 very beneficial. As you can tell from my accent, I'm
25 obviously from a different part of the country than most

1 of you, but the 8(a) program is alive and well in the
2 south.
3 And I want to tell you just a little bit
4 about a company called Muscogee Metal Works. It belongs
5 to the Poarch Band of Creek Indians in Atmore, Alabama.
6 And the 8(a) program has been very beneficial to that
7 small community. Pretty much the only revenue that they
8 had was gaming. And when they came up with this
9 tribally-owned 8(a) machine shop, it offered the members
10 of that tribe some variety as far as a career goes, giving
11 people some meaningful jobs, some high-tech jobs. They
12 not only do machine parts, they also do wiring harnesses
13 and other products.
14 The one thing I just wanted to stress -- and
15 it's just a general statement -- is that the 8(a) program
16 is a very valuable program. We need to do everything we
17 can to preserve it and make the program as easy to
18 participate in as possible. I agree with the majority of
19 everything everyone has said here. I don't need to go and
20 repeat the suggestions that have been made, especially the
21 excellent testimony by NACA. And I just want to also say
22 I would like to thank the Alaska Native companies and the
23 tribal companies that have provided support to the
24 National Center for American Indian Enterprise
25 Development. And I encourage all these tribal-owned

1 companies, whether you be a lower 48 or an ANC -- I'm
2 going to go ahead and be a little selfish here, put in a
3 plug for RES.
4 One of the things we're doing at RES is
5 something called a procurement pavilion. And normally
6 this procurement pavilion has contractors from federal
7 agencies in the private sector. But we're trying to
8 establish the Native-to-Native business relationships
9 here. And what we'd like to see is a good turnout from
10 some of the Alaska Native companies and the lower 48
11 companies. Please come to RES if you can. I know the
12 economy is tough, but we would like to have some of your
13 purchasing representatives there. I think it just makes
14 sense.
15 I mean, a lot of the resistance that we get
16 to the 8(a) program is due to a lack of subcontracting
17 efforts with small businesses. And who better than the
18 subcontractor than the small Native American businesses.
19 It just makes accepts politically. And also if you've got
20 Department of Defense contracts, you take advantage of the
21 DOD five percent Indian incentive. So thank you SBA.
22 Thank you, tribal 8(a) businesses. We hope to see you in
23 Las Vegas. Thank you.
24 MS. PRATTE: Thank you very much, George. Okay.
25 Anthony Edwardson? Joe Tenorio?

MS. GRAHAM: Good afternoon. My name is Jessica Graham. I am the executive vice president for administration and general counsel of Afognak Native Corporation. I've testified several times already, so I just have some cleanup remarks, and wanted to give you a couple of concrete examples and raise some questions for you that I don't think were fully flushed out in some of the earlier testimony. I'll try to just hit the high points.

I also have some questions for you, because I take this in the spirit of a true dialogue and consultation, that it's not just what we have to say to you but we can, in fact, take this opportunity to extract some information and some explanation about some of the theories behind some of the proposed changes.

The first point I want to make is that I think the agency might not have fully considered the harm that can be caused by the combination of the two changes that relate to primary NAICS codes, and that is to say, you've got a change that speaks to exceeding your size standard, your primary NAICS code standard for two years straight and you're out and then you've got the change that you're proposing about not doing work, not allowing a sister company to do work in the same code as another company.

I want to offer that taken together, sort of the harm is greater than some of the parts. That if you impose those two changes together, what you're effectively going to be doing is taking an entire area of work off the table for a company for two years. Because in effect, a company can exceed its primary size standard, be pushed off the program, and then that code is off limits completely because it's been pushed out of the program and its sister companies aren't allowed to work in that area.

And that dovetails with April Ferguson's earlier point, which is these codes, you look at them and you think, oh, there's like thousands of pages of size standards, but in fact, they are not precise. And so, in fact, you are taking off an entire body of work that's no longer available. So I just urge you, as you're going through the process, to think about the interplay of those two together.

The second point I wanted to make is I want to be more precise about the benefits reporting. And the way that it reads right now, benefits reporting comes under a provision that relates to the eligibility of the firm. And I am one of those lawyers, so I can tell you that just including it in a provision that is titled eligibility means that we run the risk that however those benefits may be reported, however they may be evaluated,

that that will eventually be tied back to whether that particular 8(a) participant is allowed to participate. And so I just encourage you to take that out of Section 124.112, make that its own section and don't tie those two things together.

I want to be more specific also about the two years and out provision and what you may end up doing if you move forward with that provision. The first thing is that you are going to push tribal entities towards larger NAICS codes. Because as they were trying to evaluate sort of how to come in and where they ought to play, they're not going to look at those small standard codes, even though, starting out cold, some of those areas are the better areas to get your feet wet and learn what you're doing.

One of the other unintended consequences is that you're going to see a greater failure rate in small businesses, because you're going to see companies come in, do their work, exceed their code, get pushed out of the program, and not have enough time to build their infrastructure, not have enough time to go out and chase other work in areas where they are then strong and they're going to flounder. And I think that's not the intent of the program, and in fact, it's counter-intuitive. I think one of the SBA's long-standing issues that companies go

through the program and then fail, and now what you're saying is, oh, you're going to go through two years and fail instead of nine years and fail.

I think you also create the risk that businesses will pass on an opportunity that may present itself because of the impact of the size calculation. And frankly, none of the tribal entities in this room are big enough or influential enough to influence government procurement spending at a level that sort of changes when opportunities are available. We take what we take because the opportunity presents itself. And you're not doing businesses any favors in their development and success if you force them to decide what to chase based on the size of the procurement rather than whether it fits their capabilities. Whether this is going to push us out of the program really should not, frankly, be part of the calculation. We should be evaluating whether we want to chase work because we can perform the work successfully, use it to build new capacity and make money for our shareholders, not because we're suddenly going to be out of the program.

If that becomes part of the equation, it's going to become part of the equation for many different businesses, and the long-term effect of that is that competition in those areas is going to go down, not up,

1 because many firms will be holding from participating in
2 certain areas of work. So those are the specific
3 comments.
4 Now, I want to ask you some questions, if I
5 may. So there are two things that I think you've received
6 a lot of feedback on, and one of the sayings of my CEO is
7 that we don't want to fight the boogeyman, but I feel like
8 we're fighting the boogeyman, and I don't think that's
9 fair to us. And I don't think we can give you good
10 feedback if we don't know exactly what's going on. And
11 one of those is this adverse inference on materials not
12 provided, the 124.204 (C). Why is it that SBA feels like
13 it needs to draw an adverse inference? What problem are
14 you trying to fix?
15 MR. LODDO: I'm going to offer some observations
16 at the very end, and some of that is going to be directly
17 related to the Office of the Inspector General, the
18 government accountability office, and the issues that
19 we're dealing with with them in order to protect the 8(a)
20 Business Development Program. So what we're trying to do
21 is to get the information so that we can make a decision
22 in terms of eligibility or as part of annual review
23 process so that we can determine the continuing
24 eligibility for the approval into the program.
25 We have had experience that has hit the front

1 page, that has caused us to bring this item to the table,
2 and as a result, it reached the level of congressional
3 inquiry, newspapers. And what we're trying to do is
4 protect the program. And if information is intentionally
5 not provided, it really is putting us all at risk. So
6 it's based off of what happened to us on other 8(a) firms
7 and ANCs.
8 MS. GRAHAM: Can I give you a quick response to
9 that, just for what it's worth? I understand completely
10 everything that you just said and I know exactly what
11 you're talking about. I'll also offer that I am parallel
12 in my head about what we call the dress code problem,
13 which is if somebody comes to work and they're not dressed
14 appropriately, do you send an E-mail out to the whole
15 office or do you go to that person and say you're not
16 dressed appropriately; you need to do something about it.
17 I think your response is overreaching to some specific
18 transgressions that nobody will debate that they were very
19 problematic. But in fact, what you're doing is making the
20 entire community pay the price for that. And I will offer
21 that you can be more specific in your remedy. That's just
22 my quick feedback. The other --
23 MR. LODDO: And we would welcome the language.
24 MS. GRAHAM: And I'll give it to you. Don't
25 worry. The other question I have is -- again, not to beat

1 a dead horse, but the sort of two years and out rule.
2 There is a presumption in the Federal Register explanation
3 that the theory behind SBA proposed rule is that SBA
4 believes that if a firm has exceeded its primary NAICS
5 code for two straight years, that it can be said that the
6 business has met its business development goals. And I
7 think I quoted it in Washington, but I don't have it
8 exactly in front of me.
9 But I understand the theory as it's written.
10 I don't understand sort of how you got to that theory,
11 sort of what is the basis for that?
12 MR. LODDO: The 8(a) Business Development
13 Program is, in fact, a Business Development Program It's
14 not a contracting program. We have currently 7,600 firms
15 in the program. And if you were to look at our 408
16 reports that are on our Website, we list out the number of
17 firms that have graduated, have been suspended and
18 terminated. And if you look at the graduation list in
19 terms of this program, that number is less than 20, and
20 you go back several years.
21 So one of the things that's occurring here --
22 and I'll touch on it again in this observation -- is this
23 program is under attack big time. And what we have to do
24 is to prove that this is a business management development
25 program. And with no graduations as a result, it shines a

1 bright light on us and it's hard to defend. So what we're
2 looking for are ways to protect the program as a Business
3 Development Program and this is one of those ways.
4 MS. GRAHAM: I think that will help us shape our
5 written comments. And last, because I certainly want to
6 give Bob Tomkins his 15 minutes -- I have just a couple of
7 longer-term thoughts, and I just want to plant the bug. I
8 doubt that this is the mechanism by which you can address
9 these. It's probably a whole another rule making process,
10 but nonetheless, I just can't pass the opportunity to have
11 three decision makers right in front of us.
12 The first is that you consider evaluating and
13 measuring your program's success based on a number of
14 owners rather than a number of entities. And if nothing
15 else, perhaps think about tracking parallel information.
16 Because we have a linguistic disconnect. We think of the
17 thousands of owners represented by people in this room and
18 SBA thinks about your 7,800 entities.
19 MR. LODDO: At the hearing in July, I think your
20 representation from Alaska pointed out to the chairperson
21 that the shareholders that benefit from this program is
22 far greater than the number of traditional 8(a) firms. It
23 was a great presentation, and I applaud the comment made
24 in that hearing. But this program, as it relates to
25 giving back to the community, if you were to multiply out

the shareholders that benefit from this program, I'm not sure that that small system goes up that high.

MS. GRAHAM: The second point is for you to consider modifying your standard operating procedures to allow for joint venture applications to be reviewed evaluated and approved short of the actual 8(a) solicitation notice. And we've got sort of conflicting thoughts and interpretations right now going on in Alaska. But as folks move towards more competitive procurements, it is much more beneficial to find your joint venture partner, negotiate your arrangement, sign your paperwork and get that approved by SBA in advance of a procurement hitting the street. Because by the time it hits the street, you have a relatively short window of time to put your proposal together, and there's a lot of work that goes into it before that ever happens. And if you have to submit to SBA and run on a parallel track as you're working your proposal, one, it's just very high stress and you lose some of your negotiation capabilities if you're working on that short of a time line. So, really, that's not related at all to what you're here to talk about.

MR. LODDO: But it's an important point. The joint venture is predicated on mentor-protege being approved. What's important here is that once the mentor-protege is approved by my office, then the ability

of the mentor and the protege to be considered small is going to affect -- any bid prior to that mentor-protege agreement being put in place will find that the firms are ineligible because the mentor-protege agreement has not been in place. So there is some degree of parallel, but any bid that's going to be made has to be made after the mentor-protege agreement is in place. Again, it's about business management development, and one of the benefits for the protege and the mentor is a joint venture.

MS. GRAHAM: Actually, we've run into it not in a mentor-protege situation, but where one of our 8(a) entities wants to partner with another small business. And we're not looking to mentor-protege. We're just two small businesses who want to partner for a particular opportunity. And that's where we found it would be helpful to get all of that ironed out in advance if something -- noted. Okay.

I guess that's it for me. Thank you very much. I reiterate again the comments from others. I think NACA did an outstanding job, and also how much we really appreciate you being willing to sit here to listen here all day to copious notes and consider all our remarks. We really appreciate it.

MS. PRATTE: Okay. We have three more speakers left. We have Joe Tenorio and then Anthony Edwardson. If

you could come up Mr. Edwardson.

MR. EDWARDSON: Thank you. I want to wish everybody a Happy New Year. I had planned to go someplace else besides coming here. My colleague had canceled his trip to come here, so I had to fill in to come in for this warm weather. Today it's like minus 32 below, so I would rather prefer being here.

Otherwise, on behalf of UIC, I am Anthony Edwardson. I'm president of the Ukpeagvic Inupiat Corporation. And within our corporation, we have nine board members and these board members are appointed by all the shareholders. And the shareholders -- we service 3,100 shareholders and cultural economic and ethical background.

The geographic location of where we're at, we're at the farthest north you can go in Alaska. And we're just starting to get more daylight and everything is getting a lot better for us.

Anyway, I just want to be real brief about what I have to share about UIC's overview. Describe economic and business activity of UIC and importance to shareholders and the community. Describe the specific 8(a) activities. We've been in the 8(a) business about 10 years, and we have seven subsidiaries.

Areas of focus: Describe briefly what

specific benefits from 8(a) program such as economic diversity, employment opportunities, scholarship and internship, dividends, cultural heritage and land program support. We thank the SBA for an opportunity in our hard work and encourage further visit to Alaska, Indian country, to see the benefits the program has bestowed.

Discuss special consideration for ANC and tribes in the 8(a) program that makes them different from individually-owned 8(a). This is the set base for comments on specific regulations. We serve a community of 3,100 shareholders with a common heritage and culture, immensive economic and other challenges in our region. Like for example, in our region we don't have road access, so everything is pretty much flown into Barrow. Same with Wainwright. They don't have road access, and that makes it very difficult for our region to get supplies up there. And then the barge gets there only once a year. And it is a harsh environment we live in.

And 8(a) programs has given us an avenue to pursue work based outside our region, but to create employment opportunities in Alaska related to GNA, in some cases direct performance of contracts. While we are profit, our goal goes well beyond the bottom line as with other businesses. Benefits to our shareholders include those described above which we need to operate our

1 companies in different ways and inspire to do more and
2 make more money or even just divvy up a particular
3 business.
4 For these reasons, because we share thousands
5 of their holders in remote and distressed communities,
6 have the ability to penetrate our government contracting
7 business is essential. Become an SBA for recognizing the
8 unique inspiration and the needs of the Native
9 organizations, and that the ADA program has been and will
10 continue to be the cornerstone stone of the United States
11 Indian policy. And that working together, the program can
12 fulfill an even broader purpose.
13 With scope points in mind, we offer the
14 following comments in support of and constructive
15 critiques to SBA-proposed rules. Specific comments are we
16 will provide more extensive written comments but want to
17 highlight the following points of purpose. With tribal
18 consultation, our focus today is on the following areas:
19 A. ANC and its owners will be able to pursue multiple
20 lines of business in 8(a) programs; B, the 8(a)
21 application process should be more efficient and
22 accessible; C, the 8(a) and their owners and not large
23 businesses should not receive the majority of the intent
24 of business of the program on 8(a) contracts.
25 A: Multiple lines of business. We support

1 in part several proposed changes that relate in 8(a) ANC
2 abilities to create diverse growth and multiple
3 businesses. We also have some comments about certain
4 aspects of these changes and some suggestions how to
5 address those concerns. One, first we support the
6 proposed changes to 13 C.F.R. 124-3 to an 8(a) company,
7 the discretion to change its designated primary interest.
8 Two, we oppose any changes such as the
9 proposed to 13 C.F.R. 124.302 that would require 8(a) to
10 graduate from the program. It is the size. It's primary
11 NAICS codes exceed that size standards whether for two
12 consecutive years or any other time. First, the 8(a)
13 program term already limits to nine years and 8(a) is
14 already precluded from bidding on set aside contract if
15 they are not small from purpose that procurements.
16 Second, 8(a) firms already face significant
17 obstacles after graduating from an 8(a) program or
18 becoming large for size purposes. These changes will make
19 that problem worse.
20 Third, the changes will incentify business
21 away from applying for 8(a) programs in the industries
22 that have relatively small NAICS codes. We believe this
23 will have a worse impact on individually owned concerns
24 where their owner has one-third ability for many NAICS
25 codes or other NAICS codes. For example, the facilities

1 support service, NAICS codes require the contractor to
2 able to perform in three or four more different
3 industries, each of which has its own NAICS code. By
4 graduating the 8(a) from the program, which is succeeds
5 the size of a component, facility support service NAICS
6 code, SBA effectively will prevent 8(a) from developing
7 the expertise and experience to pursue facility support
8 service contracts.
9 Third, we agree with 8(a) SBA general concern
10 that Native organization should not engage in practice of
11 allowing the old 8(a) business to die and replace it with
12 the following 8(a) concern simple to retain particular
13 contract. We believe that 8(a), SBA should improve its
14 approach; however, in the last two different eras, even
15 their companies pursued contracts assigned to same NAICS
16 codes that may be pursued by very different markets.
17 Whether we are geographically market or a different
18 customers, also substance of work in the past, of
19 performance, technical capabilities may be very different
20 even though a common of NAICS code is assigned to work,
21 given the NAICS code are often very broad.
22 We respect the 8(a) SBA changes to -- expect
23 the purpose change to 13 C.F.R. 124.109. First, the
24 regulation should be created presumably to primarily
25 industry limitation applies, 8(a) should permit a waiver

1 of this requirement if the 8(a) can show its work for a
2 different program or in a different substansivity or
3 different geographic area from that from different sister
4 companies.
5 Second, we believe that there should be a
6 zero percent limit on current proposed, but that the new
7 8(a) should be presumed to be limited to receive more than
8 49 percent in its revenue in the same NAICS code and the
9 sister company primary code subject to waived provision
10 above.
11 B, application process. First, we support
12 the changes -- I think I got it there. I just want to --
13 I think I finished my presentation. And I just want to
14 thank you guys for giving me this opportunity to speak on
15 behalf of UIC. I'm not only speaking for UIC. There's
16 other partners that we have out there, and I just want to
17 thank all the partners we have here with us. We have the
18 Hawaiian NHOs and we have Olgoonik Corporation. I just
19 want to thank you guys for giving me this opportunity to
20 be here. Thank you.
21 MS. PRATTE: Thank you very much, Mr. Edwardson,
22 for your comments. And of course, you are free to send us
23 written comments prior to January 28th. We appreciate you
24 traveling your very far distance to be with us from
25 Barrow, and I think you like being here. Mr. Tompkins?

MR. TOMPKINS: My name is Bob Tompkins. I'm an attorney with the firm of Patton Boggs. We've had the privilege of working with a number of tribes and ANCs and Native Hawaiian organizations, as well as individually owned 8(a)'s over the years. And thank you very much to the great panel from SBA for all the hard work you've done. Thank you, Anthony, for making that trip. He didn't mention that he took the red eye from Barrow, which I think probably involves four different airplanes at least to get down here. So you should be commended for your effort. I think he speaks for a lot of other people from other parts of Alaska who face similar obstacles in traveling outside the state to get down and be with you, but they certainly appreciate the opportunity.

It does bring up one thing that I want to reinforce, that you've heard a lot about today, which is the application process. I do think from having practiced and working with a lot of 8(a) applications, it would extremely helpful for the people who are actually processing those application and making those decisions to have the opportunity to interface with the applicants and the people they represent. And I know that there are challenges, budgetary, structural and otherwise.

If you can't make that change that's been requested by so many today, I would hope that you would at

least this provision out of the regulations for now. You've noted in this meeting and others that it's only about every 10 years that you get to change the regs. And then to take time to put it into regulation and then decide a couple of years down the road that you've either got the funding or you want to make a shift. And so if nothing else, let's keep it out of the regs. I think you have the discretion to direct those applications where you want right now, but let's not codify it if it's not coming out the right way. So that's one point on the application process.

I also very much support the comments that John Hopson made and Jessica reinformed about the reporting requirements and at least where they ought to be placed in the regulations. I think in the 600 section, maybe a new section 604 would be more appropriate than Section 112 which is an eligibility issue. Clearly not submitting a required report could be grounds for termination. But there ought to be more flexibility in terms of what is reported. And again, I hope you'll engage in further consultation to determine what will be appropriate in the form of those reports. But in terms of where in the regulations they might go, I think that's a more appropriate place, in the 600 section.

This issue of primary NAICS codes, April made

some very good points and others made along the way, and by Anthony, about the diversity within the NAICS code system. And as we all know, the NAICS code system wasn't developed for government contracting and it certainly wasn't developed for the 8(a) program. It's a broader industrial system that's used for a bunch of other different purposes. So it's very artificial and it's very formalistic. I think it's probably better than anything else out there. Obviously, a lot of the size regulations and whatnot are built around it.

But I think it would be well served at the 8(a) program would be well served to recognize the artificial limits and the formalistic nature of the NAICS code program. So than rather than making this primary NAICS code issue an absolute, I think it would serve the interests of the folks represented here today if there perhaps was a presumption that you couldn't have a certain number of contracts in the same NAICS code which is the primary NAICS code as the sister company, but it could be a rebuttable presumption. And if you could show that the new 8(a) performing work, even though it's in the same NAICS code, it's substantively different or it's for a different programmatic purpose, that would be okay perhaps if it's not going to interfere with the business plans of the sister company.

I understand your point about these hand-me-down contracts. That's a very good point. But I think the approach that's in the current regulations that will be fostered by the provisions is kind of a sledgehammer to a smaller problem. So I think you can achieve the stated purpose with a more limited approach there.

By the way, I'm sorry. To back up on this, on the application process, Jessica raised a good question about why this presumption about an omission was in there. I think another benefit of having more face-to-face interaction with the applicants is you'll get a better chance at SBA to see who's really behind these companies. Everything is done on paper. There is rarely a phone call. But when you've got some face-to-face interaction, I think there's just something to be said at looking in the eyes of the applicant and saying is this person really sincere about the 8(a) program? Is it really the Native organization that's speaking to me or is it somebody else. So I think there's some broader purposes to be achieved by having that face-to-face interaction. So thanks for allowing me to back up on that one.

Again, this issue of the two years and out of the NAICS code, I think it's going to have an even worse effect on individual owners, at least an ANC or a tribe or

1 an NHO can wait two years to come and start up a new
2 concern, but the individual is one time at which point
3 you're out. So there's already a nine-year limit to the
4 program. It can't go after contracts and NAICS codes.
5 You're assigning NAICS codes that are too large. So it
6 would be wise to revisit that issue.
7 On the issue of the individual disadvantaged
8 and the net income AGI for the individually owned
9 companies, I think the two percent being the top two
10 percent is clearly a statistic that you guys have spent
11 some time on. I think it would be beneficial to take into
12 account the risks and the capital requirements that go
13 into starting a company. Most folks don't earn their
14 living from a company they own. They earn it from a
15 company where somebody else is taking the risk. And this
16 is a Business Development Program and beyond the -- just
17 the mere fact of how much money somebody makes, I think
18 you also need to take explicitly into account the risks
19 and the capital requirements, especially as contract
20 bundling continues to expand and the requirement to run a
21 business and to carry the cash flow issues and all that.
22 I think those factors deserve to be taken into account as
23 well.
24 I really appreciate the opportunity to talk
25 to you today. I really want to hear what Mr. Loddo has to

1 say. Again, I thank you for all of your hard work, and
2 thanks to all of you in the room for letting me have a few
3 minutes.
4 MR. PRATTE: Thank you so much, Mr. Tompkins.
5 And with that, we'll just have John and Joe provide their
6 wrap-up comments.
7 MR. LODDO: First and foremost, thank you for
8 being with us all day. The comments that we've heard all
9 day have been really well thought out and have been
10 extremely valuable to us. It is not often that we are
11 able to leave Washington and talk to our customer. The
12 listening tour has helped us a lot.
13 I also want to point out that the
14 conversation today, the tone today, was done with absolute
15 respect, and I very much appreciate that. We are trying
16 to improve the 8(a) program together. There is no one in
17 this room that does not believe that this program is
18 giving back to the community. There is no one.
19 Regrettably, when we leave this room, that may not be the
20 same conclusion.
21 For those of you that elect to come to the
22 traditional 8(a) listening tour tomorrow, it most likely
23 will surface there. It will come in the form of ANCs
24 taking work away from 8(a) firms, traditional 8(a) firms.
25 I want to share with you why that's not helpful, in the

1 sense that what's happened in the past year and what we
2 can adopt, what Joe Jordan talked about, or one of the
3 reasons why we're looking for information, is that this
4 program is the most difficult program to deliver at SBA,
5 bar none. The traditional 8(a) program is difficult. The
6 community development side, with the tribal side of the
7 8(a) program, makes it even more difficult to deliver.
8 In the past year, the Government
9 Accountability Office made some decisions, first with
10 service to disabled vets having priority over -- hub zones
11 shaving priority over services to disabled vets. Then
12 with a change of administration, the guns were pointed at
13 the 8(a) Business Development Program and hub zones had
14 priority over the 8(a) program and contracting officers
15 were calling, asking for a waiver to remove the contracts
16 from the 8(a) program. I'm delighted to report to you
17 that not one was approved, not one.
18 And I'm also delighted to share with you that
19 the Small Business Administration, working to support the
20 Office of Management and Budget and the Department of
21 Justice, we were able to present an argument that said
22 that the Government Accountability Office is part of the
23 legislative branch of government and the Small Business
24 Administration and the programs and the rules that we
25 promulgate, are part of the executive branch of

1 government. There is a separation of power. And as a
2 result, the Department of Justice has provided guidance to
3 all of the executive agencies to ignore the Government
4 Accountability Office's decision. This battle is not
5 over, but we are at least positioned better.
6 Now, if that was the only battle, that would
7 be wonderful, but it's not. You're aware of the Office of
8 Inspector General and their reports and some of the
9 discoveries that they have found. You're also aware of
10 the Government Accountability Office on the 8(a) program
11 and some of their discoveries.
12 You may not be aware that the hearing in
13 early July by Senator McGlasgow on the ANCs. They're
14 taking business away from traditional 8(a) firms. The
15 support that we at SBA received from the 13 ANCs, we asked
16 for the same information they were providing to congress
17 so that we could engage in the defense of the program --
18 and very specifically ANCs and all 13 were willing to
19 share their financial information and the benefits of the
20 program. And it is in that regard that we're reaching out
21 to figure out how we can defend this program by showing
22 the benefits of the program both for the traditional 8(a),
23 as well as for the ANCs tribal and Native Hawaiian
24 organizations. If we're unable to show the benefits of
25 this program, we are only increasing the risk that this

1 program will be eliminated. To that end, we're in the
2 water together.
3 Now, to demonstrate how this is a continuing
4 battle, we're going to finish the listening tour next
5 week. On Monday our office will be meeting with the
6 Office of the Inspector General because we have not
7 reached a satisfactory conclusion with that particular
8 office with regards to the ANC issue as it relates to
9 removing work from traditional 8(a)'s. We believe we have
10 the metrics to prove that ANCs are competing with large
11 businesses and that all the program -- all the groups
12 inside the traditional 8(a) program are growing. But this
13 one is going to go all the way to the administrator
14 because the lines are drawn.
15 You may also not be aware that the Government
16 Accountability Office, as they have done to hub zones and
17 serviced disabled vets, are conducting a forensic audit of
18 the 8(a) Business Development Program. The exit
19 interviews is scheduled for a week from next Friday. The
20 most that I've ever witnessed from a GAO report is "A lot
21 has been done but more needs to be done." They're going
22 to come up. They've been looking for fraud, waste and
23 abuse in the program. And when you have a 16 billion
24 program, regrettably there are some people that will take
25 advantage of it. They will identify what they have found,

1 because they've been looking for the past year with a
2 rather significant team to find, discover and will report
3 on their Website about what they have discovered. Of
4 course, my job, along with SBA, will be to mitigate those
5 risks.
6 We talked about why we're doing this. We
7 mentioned that we want to clarify. We want to get
8 existing rules and regulations. We also wanted to get our
9 rules and regulations consistent with statutory
10 requirements. And we also mentioned that we're doing this
11 so that the benefits of this program go to the intended
12 recipients. Part of that last statement is code for the
13 issue of protecting this program as a result of the
14 assaults that are occurring.
15 What I would ask you to do is to think about
16 how we can show the benefits of this program as it gives
17 back to the community. If we're not able to do that, this
18 program is at risk. It is now and it will be at greater
19 risk. The reason why it's in the rules and regulations is
20 because we don't have the authority to ask for it. It is
21 not for any other purpose. It is only to protect the 8(a)
22 Business Development Program. So there's no hostile
23 intent on our side of the equation, but it's also
24 incumbent upon you to demonstrate the benefits of this
25 program. It's costly. I know April mentioned the costs

1 associated with doing that. I would also suggest to you
2 it's far more expensive if you don't do it.
3 With regards to the application process, we
4 have heard consistently today that it should be in Alaska.
5 I do want to point out, for clarification purposes, that
6 the Alaska District Office, their responsibility is to
7 work with applicants and to review their package before it
8 is submitted to any processing center. We currently are
9 processing the ANC applications in San Francisco. We have
10 one of our best business opportunities specialists. In
11 fact, she's the second fastest producer in terms of
12 processing applications.
13 And I am delighted to report to you that the
14 average time for an 8(a) application currently is 82 days.
15 The statutory requirement is 90. That's at a point in
16 time where our applications have gone from 200 back in
17 February of 2008 to significantly over 400 per month. Yet
18 we're able to, as a result of very qualified staff and
19 technology, being able to process the applications within
20 the statutory requirement.
21 Being tested right now are two applications
22 that are very important to you. The traditional 8(a)
23 application is done electronically. We were prevented, as
24 a result of budgets, to be able to do the ANC application
25 and the tribal application, both of which are being tested

1 right now. And as soon as they finish our robust testing,
2 they will be deployed. So I suspect within the next 30
3 days we'll have the electronic applications for ANC and
4 tribal. That will also help us expedite the processing
5 claims.
6 Your comments today are very valuable to us.
7 You have given us a view that only you could give us. I'm
8 excited about being able to get these rules and
9 regulations into the 8(a) Business Development Program
10 because it will help us mitigate the risks that we're
11 facing right now. What I would ask you to do in your
12 written comments is to think of it through a different
13 filter, and that's the filter in terms of the hostile
14 groups, organizations to this program, and why we may be
15 suggesting these particular rules and regulations. And
16 you have better ideas because you've brought some to the
17 table today, many. We would like for you to get those
18 postmarked before January 28th.
19 Again, we're in the water together. This
20 program is so successful, but it's just at the beginning.
21 And what we can't afford to have happen is the program to
22 collapse at a point in time where it's just beginning to
23 give results to the community, to the very people that we
24 intended to comply. Thank you very much for your time
25 today.

MS. PRATTE: John has declined to say anything at this point. I just wanted to reiterate issues about Section 811. Please get those to me via E-mail. And I really, really appreciate all of you making the effort to come and travel out here. I am happy to say that the highest attendant sections of the listening tour have been the tribal consultations, and so far they're the only ones that have gone the full day and plus. So I think that's a testament to the importance of the community and certainly how much thought that each of you have given.

And just to also say that I do truly believe that in this room we're all public servants. We're public servants for the federal government. You are public servants on behalf of the constituency that you serve and the tribal entities that you serve vis-a-vis these firms. So thank you so much for the work that you do and for all of your effort and input into this program. And with that, I just want to wish everybody a safe trip home. Thank you.

MR. SOLIMON: If I could just close it out. Good afternoon again, everybody. I've been to about four meetings since I left you this morning and I just got back. I just want to thank you all for coming down, but especially our guests from the U.S. Small Business Administration from Washington, D.C.

Many years ago I was New Mexico's Small Business Person of the Year. Kind of there's an irony there because I'm not exactly small. But it was great to have that recognition in the past, and I really do still hold it very close to my heart. Because it was after a lot of struggle. And of course, nominations have to come from folks like you-all for that kind of recognition that I received a number of years ago now, and I do appreciate that.

So I'm just going to close it out. Are there any tribal officials here? I'll just close it out, then. If you'll just join me in a prayer. Let me just explain a little bit to you. Anytime we have a meeting like this that's tribal, we ask those in the spiritual realm to come and help us for this kind of event and then we have to relief them at the end of the day. So please join me.

(Closing prayer.)

(The hearing concluded at 4:24 p.m.)

STATE OF NEW MEXICO
COUNTY OF BERNALILLO

REPORTER'S CERTIFICATE

BE IT KNOWN that the foregoing transcript of proceedings was taken by me; that I was then and there a Certified Court Reporter in and for the County of Bernalillo, State of New Mexico, and by virtue thereof, authorized to administer an oath; that the foregoing [] pages contain a true and accurate transcript of the proceedings, all to the best of my ability.

I FURTHER CERTIFY that I am not related to nor employed by any of the parties hereto, and have no interest in the outcome hereof.

DATED at Albuquerque, New Mexico this 8th day of February, 2010.

_____
Christopher R. Sanchez
CCR #217
License Expires: 12/31/10

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