

**Written Testimony of**

**Joshua B. Duvall  
Shareholder, Maynard, Cooper & Gale, P.C.**

**United States House of Representatives  
Committee on Natural Resources  
Full Committee Hearing On:**

***H.R. 6504, “Native Pacific Islanders of America Equity Act”***

**Thursday, February 17, 2022**

**Written Testimony of**

**Joshua B. Duvall  
Shareholder, Maynard, Cooper & Gale, P.C.**

**United States House of Representatives  
Committee on Natural Resources  
Full Committee Hearing On:**

***H.R. 6504, “Native Pacific Islanders of America Equity Act”***

**Thursday, February 17, 2022**

Chairman Grijalva, Ranking Member Westerman, and Members of the Committee:

I express my sincere appreciation for the opportunity to appear today to submit testimony regarding H.R. 6504, “Native Pacific Islanders of America Equity Act,” and to provide an overview of the U.S. Small Business Administration’s (“SBA”) socio-economic programs, and H.R. 6504.

My name is Joshua Duvall and I am a shareholder in the Washington, D.C. office of the law firm Maynard, Cooper & Gale, P.C. and member of the firm’s Government Solutions Group. I advise large and small civilian and defense contractors on the complex legal and regulatory framework for doing business with the federal government, including issues related to SBA’s socio-economic contracting programs. I champion small business success and I am active in the community. I am the Co-Chair of the AFCEA International Small Business Committee, a Member of the Small Business & Other Socioeconomic Programs Committee of the American Bar Association’s Section of Public Contract Law, and a Member of the GovCon Club (formerly, The American Small Business Coalition).

I am testifying today on my own behalf, as a citizen and attorney with knowledge of the relevant subject matter. I am not here to advocate for any policy outcome. My testimony represents my own views, not the views of Maynard, Cooper & Gale, any of its clients, or of any organization in which I maintain membership.

**Small Business Contracting**

The federal government has a long history of supporting small business. In 1953, Congress passed the Small Business Act (P.L. 83-163, the “Act”), which established the SBA. The policy that Congress set forth in the Act was that the federal government:

should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts

for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.<sup>1</sup>

A series of programs designed to support small business developed from that policy declaration. For example, SBA maintains loan assistance programs, disaster assistance programs, small business management and technical assistance programs, and small business contracting programs.<sup>2</sup>

Today, the SBA provides four prime contracting programs to aid small business: 8(a) business development program, historically underutilized business zone (“HUBZone”) program, women-owned small business (“WOSB”) program, and service-disabled veteran-owned small business (“SDVOSB”) program.<sup>3</sup> As the Congressional Research Service explained, SBA’s four prime “contracting programs allow small businesses to compete only with similar firms for government contracts or receive sole-source awards in circumstances in which such awards could not be made to other firms.”<sup>4</sup>

SBA measures the efficacy of its socio-economic contracting programs through its small business contracting goals.<sup>5</sup> Currently, the small business contracting goals, expressed as the total value of all prime contract and subcontract awards, are:

- Governmentwide goal – 23%
- SDVOSB goal – 3%
- HUBZone goal – 3%
- Socially and economically disadvantaged (“SDB”) (including 8(a)) – 5%<sup>6</sup>
- WOSB goal – 5%<sup>7</sup>

SBA’s fiscal year (“FY”) 2020 Small Business Procurement Scorecard shows that the small business goals were largely met, with the exception of the HUBZone program, which fell a touch short.<sup>8</sup> In terms of dollars, FY2020 data showed the following contract dollars to small businesses (without double counting): small business – \$145.8 billion; SDB – \$59.0 billion; WOSB – \$27.1 billion; HUBZone – \$13.6 billion; and SDVOSB – \$23.9 billion.<sup>9</sup> This was out of a total of nearly \$560 billion in eligible contracts in FY2020.<sup>10</sup>

---

<sup>1</sup> 15 U.S.C. § 631(a).

<sup>2</sup> See, e.g., SBA Loan Programs, available at <https://www.sba.gov/funding-programs/loans>, SBA Disaster Assistance Programs, available at <https://www.sba.gov/funding-programs/disaster-assistance>, and SBA Contracting Assistance Programs, available at <https://www.sba.gov/federal-contracting/contracting-assistance-programs> (last visited Feb. 15, 2022).

<sup>3</sup> See Cong. Research Serv., R45576, *An Overview of Small Business Contracting (2022)*, available at <https://crsreports.congress.gov/product/pdf/R/R45576> (last visited Feb. 15, 2022).

<sup>4</sup> *Id.* at 15.

<sup>5</sup> See 15 U.S.C. § 644(g) (Goals for participation of small business concerns in procurement contracts).

<sup>6</sup> See 13 C.F.R. § 124.1001(b) (stating that “[a]ll current Participants in the 8(a) BD program qualify as SDBs.”).

<sup>7</sup> 15 U.S.C. § 644(g)(1)–(2).

<sup>8</sup> See *supra* note 3 at 30; see also SBA FY2020 Small Business Procurement Scorecard, available at <https://www.sba.gov/sites/default/files/2021-07/GW-508.pdf> (last visited Feb. 15, 2022).

<sup>9</sup> *Id.* at 30.

<sup>10</sup> *Id.*

Notwithstanding SBA’s “A” procurement grade for FY2020, in December 2021, the Biden-Harris Administration announced a set of reforms aimed at providing more assistance to SDBs (e.g. 8(a) concerns) because “[i]ncreasing federal spending with underserved businesses not only helps more Americans realize their entrepreneurial dreams, but also narrows persistent wealth disparities.”<sup>11</sup> To accomplish that effort, President Biden set a goal for awarding 15% of federal contracts to SDBs by 2025.<sup>12</sup> The net effect would “result in the award of 11% of total eligible contract spending to SDBs,” which as noted above, includes 8(a) small businesses.<sup>13</sup>

Thus, given the amount of dollars that flow to small business concerns that participate in one or more of SBA’s socio-economic contracting programs, it should be no surprise that a vast body of statutes, regulations, and jurisprudence cabin these programs – and those lucrative contract dollars – to small business concerns that meet certain requirements.<sup>14</sup> Without this framework, SBA’s socio-economic programs would hardly aid their intended beneficiaries, thereby frustrating the very purpose of the programs’ existence.<sup>15</sup>

### **8(a) Business Development Program Overview**<sup>16</sup>

While the federal government’s history of providing contracting assistance to racial and ethnic minorities can be traced to even before the SBA was established in 1953,<sup>17</sup> Congress passed amendments to the Act in 1978 to provide that SBA may subcontract with “socially and economically disadvantaged small business concerns.”<sup>18</sup> The 1978 amendments also established definitions for both socially and economically disadvantaged individuals:

---

<sup>11</sup> See FACT SHEET: Biden-Harris Administration Announces Reforms to Increase Equity and Level the Playing Field for Underserved Small Business Owners (December 2, 2021), *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/02/fact-sheet-biden-harris-administration-announces-reforms-to-increase-equity-and-level-the-playing-field-for-underserved-small-business-owners> (last visited Feb. 15, 2022).

<sup>12</sup> *Id.*; Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum M-22-03, Advancing Equity in Federal Procurement (2021), *available at* <https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-03.pdf> (last visited Feb. 15, 2022).

<sup>13</sup> OMB Memorandum M-22-03 at 2.

<sup>14</sup> See, e.g., 13 C.F.R. Parts 124, 125, 126, and 127 (respectively, SBA’s 8(a), SDVOSB, HUBZone, and WOSB program regulations). To be sure, there are other SBA regulations that govern small business contracting.

<sup>15</sup> Because H.R. 6504 references the 8(a) program and HUBZone program, the following sections will not cover the WOSB program or the SDVOSB program.

<sup>16</sup> The SBA 8(a) program is a nine-year program to help small businesses that are owned and controlled by socially and economically disadvantaged individuals. See 13 C.F.R. § 124.2; see also 8(a) Business Development Program, *available at* <https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program> (last visited Feb. 15, 2022).

<sup>17</sup> For a history of the SBA 8(a) program: Cong. Research Serv., R44844, SBA’s “8(a) Program”: Overview, History, and Current Issues (2021), *available at* <https://crsreports.congress.gov/product/pdf/R/R44844> (last visited Feb. 15, 2022).

<sup>18</sup> *Id.* at 5; see P.L. 95-507, An Act to amend the Small Business Act and the Small Business Investment Act of 1958, Section 202 (amending Section 8(a) “to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts.”).

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual.<sup>19</sup>

As it stands today, the Act provides that the term “socially and economically disadvantaged small business concern” includes a small business concern that is at least 51% unconditionally owned by:

- (1) one or more socially and economically disadvantaged individuals,
- (2) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or
- (3) an economically disadvantaged Native Hawaiian organization.<sup>20</sup>

SBA drafted a regulation to comply with the statutory provisions in what is known as “8(a) program.”<sup>21</sup> In the section “Who is socially disadvantaged?” individuals are “socially disadvantaged” if they have been “subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities.”<sup>22</sup> That regulation also provides a list of designated groups where the individuals in those groups have a rebuttable presumption that they are socially disadvantaged:

Black Americans; Hispanic Americans; Native Americans (Alaska Natives, Native Hawaiians, or enrolled members of a Federally or State recognized Indian Tribe); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated

---

<sup>19</sup> *Id.* at Section 202. The 1978 amendments also made certain findings, including that socially and economically disadvantaged groups included, for example, “Black Americans, Hispanic Americans, Native Americans, and other minorities.”

<sup>20</sup> See 15 U.S.C. § 637(a)(4). Notably, the term Indian tribe includes any Indian tribe, band, organization and any Alaska Native village or regional or village corporation. 13 C.F.R. § 637(a)(13).

<sup>21</sup> See 13 C.F.R. Part 124 (8(a) Business Development/Small Disadvantaged Business Status Determinations).

<sup>22</sup> 13 C.F.R. § 124.103(a).

from time to time by SBA according to procedures set forth at paragraph (d) of this section.<sup>23</sup>

Furthermore, in the section “Who is economically disadvantaged?” socially disadvantaged individuals are also “economically disadvantaged” where their “ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.”<sup>24</sup> In determining economic disadvantage, SBA considers a number of factors, including net worth, personal income, and fair market value of assets.<sup>25</sup>

With that brief background, SBA’s 8(a) program describes the following basic requirements for entry into the 8(a) program: “a small business which is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of and residing in the United States, and which demonstrates potential for success.”<sup>26</sup> Ownership and control are defined terms.<sup>27</sup> Further, while a concern must be a small business, as defined under 13 C.F.R. Part 121, there are different rules for calculating the size of (1) tribally-owned concerns, (2) concerns owned by an Alaska Native Corporation, (3) concerns owned by a Native Hawaiian Organization, or (4) concerns owned by a Community Development Corporation.<sup>28</sup>

At bottom, SBA’s 8(a) program regulations are robust and complex. And, as shown above, socially and economically disadvantaged individuals are terms found in both statute and regulation. Indeed, as discussed below, H.R. 6504 seeks to introduce new language to 15 U.S.C. § 637(a)(4) to include Native CHamoru Organizations and Native Northern Marianas Organizations to be statutorily defined as “socially and economically disadvantaged small business concern[s].”<sup>29</sup>

### **HUBZone Program Overview**

Unlike the 8(a) program, the HUBZone program is a “place-based” program.<sup>30</sup> It was authorized by Congress through the HUBZone Act of 1997 to “provide for Federal contracting assistance to qualified HUBZone small business concerns.”<sup>31</sup> The HUBZone program seeks to promote the economic development in economically distressed areas and thus provides

---

<sup>23</sup> 13 C.F.R. § 124.103(b)(1). The regulation concludes with “Being born in a country does not, by itself, suffice to make the birth country an individual's country of origin for purposes of being included within a designated group.”

<sup>24</sup> 13 C.F.R. § 124.104.

<sup>25</sup> *Id.*

<sup>26</sup> 13 C.F.R. § 124.101.

<sup>27</sup> *See* 13 C.F.R §§ 124.105 (ownership) and 124.106 (control).

<sup>28</sup> *See* 13 C.F.R. §§ 124.109, 124.110, and 124.111.

<sup>29</sup> *See supra* note 20.

<sup>30</sup> For a history of the SBA HUBZone program: Cong. Research Serv., R41268, Small Business Administration HUBZone Program (2021), *available at* <https://crsreports.congress.gov/product/pdf/R/R41268> (last visited Feb. 15, 2022).

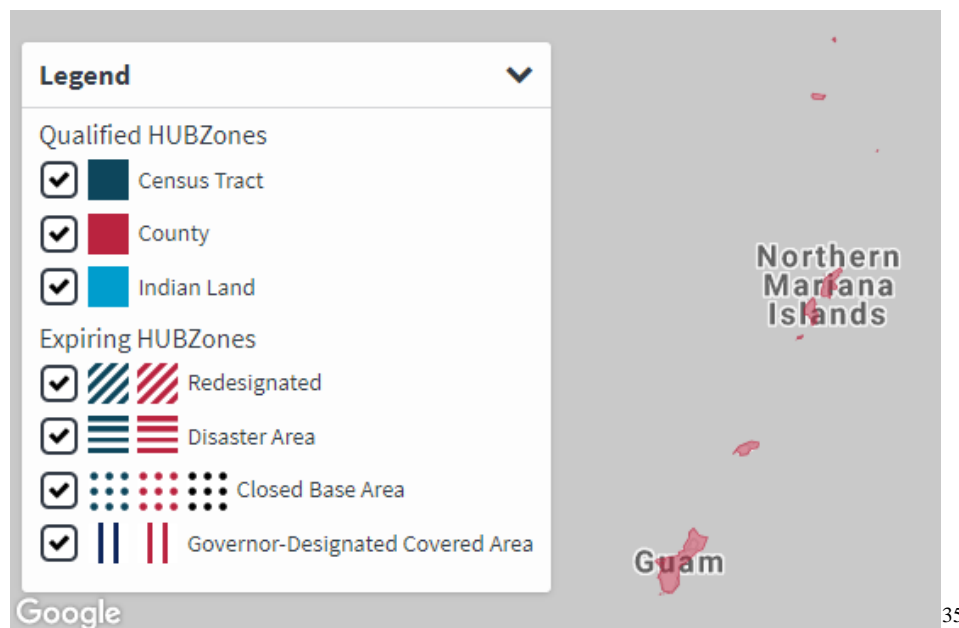
<sup>31</sup> *See* P.L. 105-135, the “Small Business Reauthorization Act of 1997.”

definitions for what constitutes a HUBZone.<sup>32</sup> To begin, a HUBZone is defined as an area that is:

- qualified census tracts;
- qualified nonmetropolitan counties;
- lands within the external boundaries of an Indian reservation;
- redesignated areas;
- base closure areas;
- qualified disaster areas; or
- a Governor-designated covered area.<sup>33</sup>

Even further, the statute also provides that the definition of a “HUBZone small business concern” is a small business that is (1) 51% owned and controlled by U.S. citizens; (2) an Alaskan Native Corporation owned and controlled by natives (including direct or indirect subsidiary corporations, joint ventures, or partnerships); (3) wholly owned by one or more Indian tribal governments; (4) wholly owned by one or more Native Hawaiian Organizations; (5) owned by a community development corporation; or (6) a small agricultural cooperative.<sup>34</sup>

Notably, while not listed above, both Guam and the Northern Mariana Islands are designated as “qualified nonmetropolitan counties” on SBA’s HUBZone map:



Beyond those threshold requirements, to qualify as a HUBZone small business, the concern’s principal office must be located in a HUBZone and not fewer than 35% of the

<sup>32</sup> 15 U.S.C. § 657a. The statute also includes a price preference in full and open competitions.

<sup>33</sup> *Id.* at § 657a(b)(1).

<sup>34</sup> *Id.* at § 657a(b)(2); *see also* 13 C.F.R. § 126.200(a).

<sup>35</sup> The Northern Mariana Islands includes other islands not shown in the screenshot of SBA’s HUBZone Map, which the author cropped to fit in this document. *See* SBA HUBZone Map, *available at* <https://maps.certify.sba.gov/hubzone/map#center=15.726170,145.294189&zoom=7> (last visited Feb. 15, 2022).

concern's employees must reside in a HUBZone.<sup>36</sup> Notably, for the principal office requirement, there is an exception for Indian Tribal Governments.<sup>37</sup> And, further, under the employee requirement, the regulation provides flexibility regarding the employee residency requirements, such that, under certain circumstances, an employee may be treated as living in a HUBZone area even where they subsequently move outside of a HUBZone area.<sup>38</sup>

At bottom, like the 8(a) program, SBA's HUBZone program regulations are robust and complex. And, as explained above, the purpose of the HUBZone program is to provide federal contracting assistance to qualified HUBZone small business concerns "to increase employment opportunities, investment, and economic development in such areas."<sup>39</sup> Indeed, as discussed below, H.R. 6504 also seeks to introduce new language to 15 U.S.C. § 657a(b)(2) to include Native CHamoru Organizations and Native Northern Marianas Organizations as "HUBZone small business concern[s]."<sup>40</sup>

### **Small Business and H.R. 6504**

H.R. 6504 addresses Native CHamoru Organizations and Native Northern Marianas Organizations by adding language at 15 U.S.C. § 632 (definitions), 15 U.S.C. § 637(a)(4) (8(a) program), and 15 U.S.C. § 657a(b)(2) (HUBZone program).<sup>41</sup>

H.R. 6504 seeks to amend 15 U.S.C. § 632 to define Native CHamoru Organizations and Native Northern Marianas Organizations under new subsections "(gg)" and "(hh)."<sup>42</sup> These new sections generally provide that a Native CHamoru Organization and a Native Northern Marianas Organization are nonprofit organizations filed either with the Guam Department of Revenue and Taxation or with the Commonwealth of the Northern Mariana Islands Department of Commerce, are controlled by either Native CHamorus or persons of Northern Marianas descent, and whose business activities principally benefit either Native CHamorus or persons of Northern Marianas descent.<sup>43</sup>

For the 8(a) program, H.R. 6504 seeks to amend 15 U.S.C. § 637(a)(4)(A) to include Native CHamoru Organizations and Native Northern Marianas Organizations as "socially and

---

<sup>36</sup> 15 U.S.C. § 657a(d)(1); *see* 13 C.F.R. §§ 126.200(c) (principal office) and 126.200(d) (employees).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at § 126.200(d)(3) ("An employee who resides in a HUBZone at the time of certification (or time of recertification where the individual is being treated as a HUBZone resident for the first time) shall continue to count as a HUBZone resident employee if the individual continues to live in the HUBZone for at least 180 days immediately after certification (or recertification) and remains an employee of the concern, even if the employee subsequently moves to a location that is not in a HUBZone or the area in which the employee's residence is located no longer qualifies as a HUBZone.").

<sup>39</sup> 13 C.F.R. § 126.100.

<sup>40</sup> *See supra* note 34.

<sup>41</sup> H.R. 6504 also seeks to amend Section 4 of the Organic Act of Guam, 48 U.S.C. 1421 *et seq.*, to establish a CHamoru Registry Program.

<sup>42</sup> H.R. 6504, Section 3.

<sup>43</sup> *Id.* Furthermore, H.R. 6504 includes a rule of construction, which says "The [SBA] Administrator shall, to the extent practicable, determine whether an organization is a [Native CHamoru Organization or Native Northern Marianas Organization] in the same manner as such determination is made under section 8(a)(15) with respect to Native Hawaiian Organizations (as defined in such section)."



economically disadvantaged small business concern[s].”<sup>44</sup> It also seeks to change 15 U.S.C. § 637(a)(4)(B) to provide that a small business concern that meets the requirements of that subparagraph if the “management and daily business operations” of the small business are controlled by one or more Native CHamoru Organizations or a Native Northern Marianas Organizations.<sup>45</sup>

For the HUBZone program, H.R. 6504 seeks to amend 15 U.S.C. § 657a(b)(2) to include Native CHamoru Organizations and Native Northern Marianas Organizations as “HUBZone small business concern[s].”<sup>46</sup>

At bottom, H.R. 6504 seeks to amend several statutes to include Native CHamoru Organizations and Native Northern Marianas Organizations as part of SBA’s 8(a) program, as socially and economically disadvantaged concerns, and its HUBZone program, as HUBZone small business concerns.

\* \* \* \* \*

Again, I would like to thank the Committee for inviting me to testify during today’s hearing regarding small business federal contracting, SBA’s socio-economic programs, and H.R. 6504. It was a pleasure to join my distinguished panelists in testifying and I am looking forward to answering any questions that you may have.

---

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*