

**Written Testimony of  
Matthew Thomas Schoonover**

**U.S. House of Representatives**

**Committee on Natural Resources Office of Insular Affairs**

**Hearing on**

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

**Feb. 17, 2022**

Chairman Grijalva, Vice Chair Sablan, Ranking Member Westerman, and esteemed Members of the Committee:

It's my privilege to join you today to discuss H.R. 6504 – Native Pacific Islanders of America Equity Act. I'll discuss the specifics of this legislation momentarily, but first I'd like to tell you a little about myself.

I am the Managing Member of Schoonover & Moriarty LLC, an Olathe, Kansas-based law firm that counsels small business federal contractors. In my practice, I work with clients on a broad range of issues: from complying with the myriad of federal laws, regulations, and contractual provisions covering their work with the federal government; to complying with the U.S. Small Business Administration's small business and socioeconomic program regulations; and representing them in performance disputes and bid protests.

My clients provide vital services and products that keep our government functioning. And, as I mentioned, they are almost exclusively small businesses. One of the best parts of my practice is that I see firsthand the benefits that small business federal contracting dollars generate: these business owners provide quality, stable jobs to employees, that generally allow freedom to remain involved in their communities. Without exception, each takes pride in the work they perform for the government.

Some of my clients are participants in Small Business Administration's (SBA) 8(a) Business Development Program. Still others are qualified as HUBZone small businesses. And though today's hearing implicates these socioeconomic designations, I wish to make clear at the outset that my testimony is mine alone: I am not here to advocate on behalf of any client (or other organization), nor am I here to advocate for (or against) any particular position relating to H.R. 6504; rather, I wish simply to explain the importance of these socioeconomic programs, as context for your deliberations.

SBA’s 8(a) Business Development Program is, in many respects, the “granddaddy” of its socioeconomic programs. Participation is limited to businesses that are at least 51% owned and controlled by individuals that have been subjected to social and economic disadvantage, to right wrongs that have hampered the ability of certain individuals (or groups) to fully participate in the American economy.<sup>1</sup> SBA generally presumes that individuals belonging to certain ethnic groups have been subjected to such disadvantage: including Black Americans, Hispanic Americans, Native Americans (including Alaskan Natives and Hawaiian Natives), and Asian Pacific Americans (including persons with origins from Guam or the Northern Mariana Islands), among others.<sup>2</sup> Even if not a member of one of these presumed-disadvantaged groups, however, an individual still may be able to establish social disadvantage through another characteristic or trait.<sup>3</sup>

Social disadvantage, however, is not alone enough to qualify. Additionally, a person must show that their social disadvantage has led to economic disadvantage – in other words, that their economic, employment, or educational opportunities have been stymied as a result of this social discrimination. A person may do so by meeting three benchmarks: first, that their average annual income falls below \$350,000; second, that their net worth (excepting the equity in their primary home and their business, and the value of qualified retirement plans) falls under \$750,000; and third, that the fair market value of their assets (excepting qualified retirement plans) is less than \$6 million.<sup>4</sup>

Admission to the 8(a) Program is not easy – or fast. Establishing eligibility requires that a business provide (and SBA to scrutinize) a trove of business and personal records. And

---

<sup>1</sup> Cf. 13 C.F.R. § 124.1.

<sup>2</sup> 13 C.F.R. § 124.103(b)(1).

<sup>3</sup> 13 C.F.R. § 124.103(c).

<sup>4</sup> See generally 13 C.F.R. § 124.104.

considering that SBA receives approximately 3,000 applications annually,<sup>5</sup> it can take several months for a company's application to be processed.

Once admitted to the 8(a) Program, the benefits for a small business can be significant. In Fiscal Year 2020, the federal government awarded a record amount of contract dollars to small businesses – totaling nearly \$146 billion.<sup>6</sup> 8(a) Participants – bolstered by unique contracting preferences and the increased ability to be awarded non-competitive contracts – earned nearly \$59 billion in contract awards, far outpacing any other socioeconomic designation.

Unfortunately, Historically Underutilized Business Zone (HUBZone) companies were at the other end of the contracting spectrum. They earned few contracts (by dollar value) than any other socioeconomic program, and continued to fall short of their Congressionally-mandated 3% contracting goal. In 2020, HUBZone businesses earned only about \$13.6 billion in federal contracts – a paltry increase over 2019.

Personally, I view the federal government's continuing failure to meet its HUBZone contracting goals as indefensible. The point of the HUBZone program focuses on lifting entire communities through the influx of targeted dollars.<sup>7</sup> These communities are, definitionally, underutilized: they include areas whose populations fall under certain economic metrics; represent communities that have suffered through economic pitfalls (like military base closures) or natural disasters; or are rural areas or exist within Indian reservations.<sup>8</sup> Under SBA's latest HUBZone maps, both Guam and the Northern Marianas Islands fall within a HUBZone.

---

<sup>5</sup> See Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business-Certification, 84 Fed. Reg. 21256, 21258 (May 14, 2019).

<sup>6</sup> SBA publishes scorecards for the federal government's small business subcontracting performance annually. The results discussed in this testimony are published at <https://www.sba.gov/sites/default/files/2021-07/GW-508.pdf> (last accessed Feb. 15, 2022).

<sup>7</sup> 13 C.F.R. § 126.100.

<sup>8</sup> 13 C.F.R. § 126.103 (definition of *HUBZone*).

If a business is owned by a citizen and located within a HUBZone, SBA's regulations give it a chance to qualify for HUBZone status. That business must also show that at least 35% of its employees reside in a HUBZone—a standard that, thankfully, SBA has made easier to meet over the last couple of years.<sup>9</sup>

Along these lines, and to its credit, SBA is trying to make proving HUBZone eligibility (and keeping that status) easier on small businesses. Still, more work should be done to improve HUBZone contracting. Recommendations from the HUBZone Contractors National Council<sup>10</sup> include:

- I. **Apply the HUBZone Price Evaluation Preference to Task Orders.** The HUBZone price evaluation preference helps to level the playing field for HUBZone firms in full-and-open competition and allows federal agencies greater opportunity to devote federal spending to HUBZone firms. Regrettably, federal agencies have interpreted FAR 19.1304 as prohibiting the price evaluation preference to task orders when, in fact, it only prohibits commodities. We urge Congress to direct federal agencies to amend their interpretation to follow the law as Congress intended. As the federal government increasingly drives its spending through IDIQ contracts, such as the “Best in Class” (BIC) contracts, a significant opportunity for HUBZone spending is being lost because the HUBZone price evaluation is not being applied in the award of task orders. Included in the House-passed version of the FY2021 National Defense Authorization Act (NDAA), applying the price preference would significantly benefit SBA, federal agencies, HUBZone firms and the communities they serve.

---

<sup>9</sup> SBA's general HUBZone eligibility requirements are found at 13 C.F.R. § 126.200.

<sup>10</sup> I am currently proud to serve as a board member of the HUBZone Contractors National Council. But as I've stated, I am not appearing in my capacity as a board member.

**II. Redefining the Workspace in the Age of Telework.** In the last two years, we have seen how crucial it is for government programs to adapt to changing realities, and the HUBZone program should be no exception. Therefore, flexibility should be established around the principal office requirement in the program. To account for the large percentage of contractor employees teleworking due to the COVID-19 pandemic, the Council recommends embracing telework by allowing employees to count toward the principal office requirement if they are teleworking in a HUBZone and report to the principal office. One of the objectives of the principal office requirement is to build wealth in HUBZone communities by having HUBZone employees spend money locally. Modifying the requirement to embrace telework satisfies this intention.

**III. Change Reporting Requirements to Accurately Reflect Contract Set-Asides.** Each year, SBA issues a procurement scorecard, which indicates how agencies performed in meeting their small business goals. The governmentwide goal of contracting with HUBZones is 3%. Despite this small number, the federal government has never met its goal – in FY2020, only 2.44% of prime contract dollars went to HUBZone certified businesses. The Council believes that even fewer contracts have gone to HUBZone businesses due to inaccurate reporting. Agencies often count the same dollar value towards multiple socioeconomic program goals, even though the contract was not explicitly a set-aside for more than one program. For example, if a contract is set-aside for the WOSB program, and the winning company is also a certified HUBZone and SDVOSB, those contract dollars count toward the agency’s goals in each of the three programs. This practice ultimately inflates the data reported on small business

contracting awards. The Council recommends agencies report progress toward small business based on how the contract was solicited. In other words, if an agency set a contract aside for the HUBZone program, then the dollars should only count as a HUBZone award.

- IV. Expand Sole Source Contract Opportunities for HUBZone Companies.** As government buying continues to trend toward buying through large contracting vehicles and moving away from direct contracts, the ability for small companies to win sole source awards is more crucial than ever. The Council supports eliminating option years for sole source contracts to allow for \$4.5/\$7.5 million each year, instead of over the life of the contract – as changed in House-passed H.R. 190 during the 116<sup>th</sup> Congress. The Council also believes that creating parity among SBA socioeconomic contracting programs, as it relates to sole source contracts, would incentivize agencies to increase their awards. Additionally, SBA’s Office of Government Contracting and Business Development (GCBD) should develop guidance to clarify how the acquisition workforce can award sole source contracts.
- V. Increase Utilization of Small Businesses to Counteract the Impact of Category Management.** The Council continues the effort to minimize negative impacts of category management on small businesses. These efforts resulted in a requirement in the FY2020 NDAA of annual reporting of small business participation on BIC vehicles and governmentwide reforms issues by the Administration in December 2021. The Council remains dedicated to finding opportunities that ensure maximum participation of HUBZone businesses, as the government has never met its 3% goal.

We are encouraged by the guidance recently issued by the Office of Management and Budget (OMB) which directs agencies to consider the effect of category management and contract consolidation on small businesses.

- VI. Align the Rulemaking Processes of SBA and the FAR Council.** Pervading inconsistencies exist in government contracting due to discrepancies between final rules issued by the SBA and the Federal Acquisition Regulatory (FAR) Council. This causes confusion for both companies and federal agencies on which guidance they should ultimately follow. Many in the acquisition workforce do not follow changes in small business rules unless it is in the FAR, despite that final rulemaking by SBA is sufficient. In addition, the time lapse between FAR Council action and final rules promulgated by the SBA can span many years. To remedy this problem, the Council suggests requiring the FAR Council issue its rulemaking simultaneously with SBA.
- VII. Expand Highway Trust Fund to include HUBZone Small Businesses.** Presently, HUBZone small businesses are excluded from competing for opportunities funded under the Department of Transportation (DOT) Trust Fund, which is approximately \$2.3 billion dollars annually. Allowing HUBZone firms to compete would invest many of these dollars back into underutilized communities.

It is against this backdrop that I join today to discuss H.R. 6504. This bill includes two amendments to the Small Business Act— first, it amends the Act’s definition of “socially and economically disadvantaged small business concerns,” relevant to the 8(a) Program, to include businesses that are wholly owned (or, in some cases, partially owned) by Native CHamoru Organizations or that are wholly owned (or, in some cases, partially owned) by Native



Northern Marianas Organizations; second, it makes the same amendments to the definition of “HUBZone small business concerns.”<sup>11</sup>

H.R. 6504 purports to allow Native CHamoru Organizations and Native Northern Marianas Organizations to qualify for the 8(a) Program and HUBZone certification. But as I’ve testified, these Organizations already qualify for this status: people whose origins trace to Guam or the Northern Marianas Islands are currently presumed to be socially disadvantaged under SBA’s 8(a) Program Regulations, and both Guam and the Northern Marianas Islands fall within a HUBZone.<sup>12</sup>

Given these abilities, the immediate impact of H.R. 6504 seems limited. However, SBA’s regulations can always be amended to *remove* this presumption, or its maps may change in a way that eliminates the islands’ HUBZone designations. The primary impact of this legislation thus seems to be to enshrine this status within federal law – thus making it more likely for these Organizations to continue to qualify for 8(a) Program eligibility and HUBZone status in the future. Moreover, this statutory enshrinement may make it possible for SBA to view Native CHamoru Organizations and Native Northern Marianas Organizations on par with Alaska Native Organizations or Native Hawaiian Organizations. This latter impact may take further legislation, but it is not without possibility.

Thank you for the opportunity to testify today. With this background, I am happy to answer any questions the Committee may have about small business federal government contracting.

---

<sup>11</sup> The Small Business Act’s definition of “socially and economically disadvantaged small business concerns” is codified at 15 U.S.C. § 632; the definition of “HUBZone small business concerns” is codified at 15 U.S.C. § 657a(b)(2).

<sup>12</sup> I’m informed that of the 765 businesses located in Guam that are registered in *SAM.gov*, 132 are HUBZone certified.