

Significant Reforms to Native 8(a) Are Underway

How Can Congress Support Native 8(a)?

- ✓ Oppose any additional attempts to reform Native 8(a). Substantial statutory and regulatory reforms to Native participation in the Small Business Administration's 8(a) program are already underway to increase oversight, transparency, reporting, and ensure benefits are reaching Native communities. Time is needed to implement these substantial reforms and fully understand their impacts on Native communities and enterprises, and for the government to implement the changes.

STATUTORY CHANGES: Section 811 of the National Defense Authorization Act for FY2010

Concern: Native 8(a) companies can receive sole source contracts without a formal written justification and approval process to ensure best value to the American taxpayer.

- ✓ Section 811 of the National Defense Authorization Act for FY2010 requires contracting officers to provide a formal written justification and obtain approval by the "head of agency" before awarding a sole-source contract over \$20 million to a Tribe, Alaska Native Corporation (ANC), or Native Hawaiian Organization (NHO).

Current Status of Implementation of Section 811: The Federal Acquisition Regulation (FAR) Council, as required under Executive Order 13175, held Tribal consultations on Section 811 prior to drafting the implementing regulations, providing Native enterprises the opportunity to comment on the implementation and potential effects of Section 811. Tribal consultations were completed in October 2010. The FAR Council is expected to publish regulations on Section 811 in the next few months.

REGULATORY CHANGES: SBA 8(a) Regulations

On February 11, 2011, the SBA issued final regulations that provided **significant** reform to the 8(a) program that address concerns that have been raised by some in Congress and the media about the program. The SBA regulations will be effective March 14, 2011. These regulations are a product of years of work, including numerous Tribal consultations held nationwide in 2007, and 2009-2010. In addition to changes to the program overall, the final regulations will increase oversight of Native 8(a) firms, significantly changing how ANCs, Tribes, and Native Hawaiian Organizations participate in the program, and increasing reporting and transparency. The following highlights the most significant changes that will have long-lasting impacts on Native enterprises.

Concern: Benefits are not reaching the Native community.

- ✓ Tribes, ANCs, and NHOs are required to report annually on the benefits provided to their Native communities from 8(a) profits. Examples include: funding cultural programs; employment assistance; jobs; scholarships; internships; subsistence activities; and other services to the community. Implementation has been delayed six months to work with Native communities on how to implement this provision.

Concern: Large businesses are taking advantage of small businesses and doing the majority of the work on 8(a) contracts.

- ✓ The new SBA regulations place additional limitations on Joint Ventures and Mentor/Protégé relationships and increase the percentage of work that must be performed by the 8(a) firm. This change will ensure small businesses, not large businesses, are reaping the benefits of the 8(a) program.

Concern: Native 8(a) companies can continually receive sole source contracts as companies graduate from the 8(a) program.

- ✓ The new SBA regulations prohibit a Tribe, ANC or NHO from receiving a sole source 8(a) contract immediately after another 8(a) subsidiary of the same Tribe/ANC/NHO held the contract.

Concern: Firm management received too much compensation, reducing the benefits of Tribal members and shareholders.

- ✓ Native 8(a) firms are prohibited from “excessive withdrawals” that are deemed not to benefit the Tribe, ANC, NHO, or Native community. This includes non-disadvantaged executive compensation that exceeds specific withdrawal thresholds.

Concern: 8(a) firms hire consultants (aka agents or “marketeters”) that take too much money from the firm.

- ✓ Agents are restricted from receiving unreasonable compensation for services performed such as assisting in obtaining 8(a) certification or 8(a) contracts.

Concern: Native firms in the 8(a) program are not actually small businesses like traditional individually-owned 8(a) companies.

- ✓ The new SBA regulations continue to prohibit any 8(a) firm, including Native 8(a) firms, from exceeding the size of a small business during its participation in the 8(a) program.