



**To:** House Committee on Natural Resources Republican Members  
**From:** Republican Committee Staff; Ken Degenfelder  
([Ken.Degenfelder@mail.house.gov](mailto:Ken.Degenfelder@mail.house.gov))  
**Date:** February 14, 2022  
**Subject:** Full Committee Legislative Hearing on H.R. 6504, the “*Native Pacific Islanders of America Equity Act*”

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The Committee on Natural Resources will hold a Full Committee Legislative hearing on H.R. 6504, the “Native Pacific Islanders of America Equity Act,” on **Thursday, February 17, 2022**, at **4:00 pm EST online via Cisco WebEx**.

Member offices are requested to notify **Ken Degenfelder** ([Ken.Degenfelder@mail.house.gov](mailto:Ken.Degenfelder@mail.house.gov)) **by 4:30 p.m. EST on Monday, February 14, 2022**, if their Member intends to participate from his/her laptop in 1324 LHOB or from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at [HNRCDocs@mail.house.gov](mailto:HNRCDocs@mail.house.gov). Please contact David DeMarco ([David.DeMarco@mail.house.gov](mailto:David.DeMarco@mail.house.gov)) or Everett Winnick ([EverettWinnick@mail.house.gov](mailto:EverettWinnick@mail.house.gov)) should any technical difficulties arise.

## **I. KEY MESSAGES**

- Under longstanding rules of the House of Representatives, the Natural Resources Committee has no jurisdiction over the Small Business Administration’s disadvantaged business (“8(a)”) or Historically Underutilized Business Zone (HUBZone) contracting programs as it is under the jurisdiction of the House Committee on Small Business.
- Section 8(a) of the Small Business Act of 1958 contains the statutory authority that provides opportunities to socially and economically disadvantaged small businesses with federal contracting opportunities.
- With the approval of the Small Business Administration (SBA), firms in this program (“8(a) firms”) are eligible to receive federal contracting preferences in the form of set-aside and sole-source awards.
- Since 1986, small businesses owned by Indian tribes, Alaska Native Corporations (ANCs), and, since 1992, Native Hawaiian organizations (NHOs) may participate under the rules governing all 8(a) firms with a few exceptions.

- In FY 2020, federal government contracts with 8(a) firms totaled \$34 billion and HUBZone-certified awards totaled \$13.6 billion.<sup>1</sup>
- Native CHamoru people are the Indigenous people in the U.S. territories of Guam and the Commonwealth of the Northern Marianas Islands (CNMI). Small businesses owned by CHamoru people are not considered 8(a) firms.

## II. WITNESSES

- **Mr. Joshua Duval**, Shareholder, Maynard, Cooper & Gale, P.C., Washington, D.C.  
*[Republican Witness]*
- **Mr. Matthew Schoonover**, Managing Member, Schoonover & Moriarty LLC, Olathe, KS. *[Republican Witness]*
- **The Hon. Lou Leon Guerrero**, Governor of Guam, Hagåtña, Guam
- **The Hon. Therese Terlaje**, Speaker, 36<sup>th</sup> Guam Legislature, Hagåtña, Guam
- **Mr. Arden Sablan**, Director, CNMI Small Business Development Center, Northern Marianas College, Saipan, MP
- **Mr. Robert Salas II**, President, Pacific Federal Management, Tumon, Guam

## III. BACKGROUND

Prime contracts with small businesses to fulfill governmental functions date back to 1942 when Congress passed the Small Business Mobilization Act to aid in the war effort.<sup>2</sup> In the early 1950's, Congress continued to support government contracting with small businesses as the country transitioned into peacetime.<sup>3</sup> In 1958, through the Small Business Act ("the Act"), the Small Business Administration (SBA) was created to be a permanent, independent agency, which would assume certain federal contracting authorities.<sup>4</sup> The Act includes section 8(a), which authorizes the SBA to establish a business development program to assist small business concerns or others.<sup>5</sup> Assistance from the program came in the form of training and technical assistance. At its inception the 8(a) program was not limited to small businesses owned and controlled by the socially or economically disadvantaged.<sup>6</sup>

The 1978 amendments to the Small Business Act gave the SBA express authority to operate the 8(a) program for minority owned businesses and authorized the SBA to only subcontract with socially and economically disadvantaged small business concerns or

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<sup>1</sup> CRS. SBA's "8(a) Program": Overview, History, and Current Issues at 1. <https://crsreports.congress.gov/product/pdf/R/R44844>, and Small Business Administration HUBZone Program at 1. <https://www.crs.gov/reports/pdf/R41268>

<sup>2</sup> P.L. 77-603.

<sup>3</sup> P.L. 83-163.

<sup>4</sup> CRS. SBA's "8(a) Program": Overview, History, and Current Issues at 1. <https://crsreports.congress.gov/product/pdf/R/R44844>

<sup>5</sup> P.L. 85-536.

<sup>6</sup> CRS. SBA's "8(a) Program": Overview, History, and Current Issues at 3. <https://crsreports.congress.gov/product/pdf/R/R44844>

businesses which are at least 51 percent owned by one or more socially or economically advantaged individuals.<sup>7</sup> 8(a) approved firms were then eligible for federal contracting preferences in the form of set-aside and sole-source awards. A set-aside award is a contract in which only certain contractors may compete, whereas a sole-source award is a contract awarded, or proposed for award, without competition.<sup>8</sup>

The Act defines socially disadvantaged individuals as “those who 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>9</sup> Economically disadvantaged individuals were defined as “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 or similar line of business who are not socially disadvantaged.”<sup>10</sup> Economic disadvantage is determined by examining the applicants personal financial condition, access to credit and capital, financial condition and access to credit, capital, and markets.<sup>11</sup>

The SBA has the discretion to recognize additional groups or individuals as presumed disadvantaged through the criteria promulgated in regulations.<sup>12</sup> The SBA established a three-part test to determine whether minority groups not mentioned in the 1978 amendment’s findings are disadvantaged. The SBA recognized black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans (Including Guam and CNMI), and Subcontinent Asian Americans as racial or ethnic groups socially disadvantaged for 8(a) purposes.<sup>13</sup> The regulations also established standards of evidence to be met by individuals demonstrating personal disadvantage and procedures for rebutting the presumption of social disadvantage accorded to members of recognized minority groups.<sup>14</sup>

In the 1980s, Congress continued to expand the program to include small businesses owned by four disadvantaged groups, in addition to individuals.<sup>15</sup> The first group included was Community Development Corporations (CDCs), which are defined as nonprofit organizations responsible for residents of low-income areas.<sup>16</sup> In 1986, Indian tribes and Alaska Native Corporations (ANCs) became eligible for the 8(a) program.<sup>17</sup> Native Hawaiian Organizations (NHOs) were added to the program in 1988.<sup>18</sup>

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<sup>7</sup> P.L. 95-507.

<sup>8</sup> CRS. SBA’s “8(a) Program”: Overview, History, and Current Issues at 3. <https://crsreports.congress.gov/product/pdf/R/R44844>.

<sup>9</sup> 15 USC 637(a)(5).

<sup>10</sup> 15 USC 637(a)(6)(A).

<sup>11</sup> SBA, “Minority Small Business and Capital Ownership Development Program: Final Rule,” 54 Federal Register 34719, August 21, 1989.

<sup>12</sup> P.L. 95-507 section 201, H. Report 95-949 at 9.

<sup>13</sup> 13 C.F.R. §124.103(d)(2)(i)-(iii)(1980).

<sup>14</sup> 13 C.F.R. §124.103(c)(2) (standards of evidence for showing personal disadvantage); and 13 C.F.R. §124.103(b)(3).

<sup>15</sup> 42 U.S.C. §9802.

<sup>16</sup> 42 USC 9801.

<sup>17</sup> P.L. 99-272.

<sup>18</sup> P.L. 100-656.

### *Program Qualifications*

To be eligible for the 8(a) Program, a business must be a small business which is unconditionally owned (at least 51 percent) and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States, and which demonstrate potential for success.<sup>19</sup> Indian tribes, ANCs, and NHOs (Native 8(a) companies) however, are afforded certain exemptions that are not available to other 8(a) companies, such as an exemption from the competitive threshold that applies to individually owned firms, and the ability to have multiple 8(a) companies. ANCs also have a specific designation that they are the only presumed economically disadvantaged group. All applicants must provide evidence that they are economically disadvantaged.

With the approval of the SBA, section 8(a) firms can benefit from a variety of SBA services including:

- Efficiently compete and receive set-aside and sole-source contracts.
- Receive one-on-one business development assistance for their nine-year term from dedicated Business Opportunity Specialists focused on helping firms grow and accomplish their business objectives.
- Pursue opportunity for mentorship from experienced and technically capable firms through the SBA Mentor-Protégé program.
- Connect with procurement and compliance experts who understand regulations in the context of business growth, finance, and government contracting.
- Pursue joint ventures with established businesses to increase capacity.
- Qualify to receive federal surplus property on a priority basis.
- Receive free training from SBA's 7(j) Management and Technical Assistance program.

### *HUBZone*

In 1997, Congress amended the Small Business Act and authorized the Historically Underutilized Business Zones (HUBZone) program within SBA to help small businesses in urban and rural communities gain preferential access to federal procurement opportunities.<sup>20</sup> The HUBZone program is “a place-based contracting assistance program whose primary objective is job creation and increasing capital investment in distressed communities.”<sup>21</sup> Preferences go to small businesses that obtain HUBZone certification in part by employing staff who live in a HUBZone.<sup>22</sup> Participating small businesses are located in areas with low income, high poverty, or high levels of unemployment with contracting opportunities in the form of set asides, sole-source awards, and price-evaluation preferences. Currently there are six HUBZone types that currently exist: qualified census tracts; qualified nonmetropolitan counties; qualified Indian reservations; military bases

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<sup>19</sup> 13 C.F.R. §124.101

<sup>20</sup> <https://www.sba.gov/offices/headquarters/ohp/spotlight>.

<sup>21</sup> Small Business Administration HUBZone Program at 1. <https://www.crs.gov/reports/pdf/R41268>

<sup>22</sup> <https://www.sba.gov/offices/headquarters/ohp/spotlight>

closed under BRAC; governor’s designated covered areas; and qualified disaster areas. According to the SBA HUBZone map, both Guam and the CNMI are qualified HUBZones.<sup>23</sup> In addition, Indian tribes, ANCs, and NHO’s have received HUBZone classification.<sup>24</sup>

### *Native CHamoru people*

The CHamoru or Chamorro people are the native people of Guam and the CNMI. The history of the CHamoru people dates back 3,000 to 3,500 years, when seafaring peoples migrated from Island Southeast Asia and settled in the Marianas.<sup>25</sup> Much of the history of the CHamoru people comes from historical accounts from European expeditions dating back to the 16th century. In 1521 explorer Ferdinand Magellan, dubbed the islands “Islas de los Ladrones,” a phrase meaning “Islands of Thieves” that stemmed from the explorer’s encounter with the indigenous population. Landing in Guam, Magellan’s expedition used the stop to rest and replenish his crew’s food supply. The islanders took items from Magellan’s ship including a small skiff. Magellan retaliated by attacking the islanders.<sup>26</sup>

During WWII, many CHamoru people were forced into helping Japanese forces during the Guam and CNMI occupations. Today, CHamoru people or their organizations do not hold any specific special status under federal law.

### [H.R. 6504, the Native Pacific Islanders of America Equity Act \(Rep. San Nicolas\)](#)

This bill would amend the Guam Organic Act<sup>27</sup> to establish a CHamoru Registry Program under the office of the Governor. A person who submits a request to the office must be able to provide evidence that documents they, or a direct ancestor, were residing on Guam on or before August 1, 1950. Not less than every three years, the Guam Office of Public Auditor is further required to ensure the database of Native CHamoru registry program is accurate and in compliance with necessary evidence needed.

The bill also seeks to codify several benefits of the 8(a) program currently extended to the CHamoru through SBA regulation. The bill would amend the Small Business Act to define the term “Native CHamoru Organizations” in Guam and the CNMI and make them eligible for the 8(a) program. While CHamoru Organizations are eligible for the 8(a) program through the SBA regulations, memorializing these organizations in statute removes a “rebuttable presumption”<sup>28</sup> that a CHamoru organization is disadvantaged.

Secondly, the bill would amend the Small Business Act to include CHamoru organizations in Guam and the CNMI as a small business concern for the purposes of the SBA HUBZone

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<sup>23</sup> <https://maps.certify.sba.gov/hubzone/map#center=39.828200,-98.579500&zoom=5>.

<sup>24</sup> 15 USC 657a.

<sup>25</sup> <https://www.guampedia.com/chamorros-a-people-divided/#:~:text=The%20history%20of%20the%20CHamoru,and%20settled%20in%20the%20Marianas.&text=Wh at%20the%20explorers%20viewed%20as,continues%20to%20be%20practiced%20today.>

<sup>26</sup> *Id.*

<sup>27</sup> 48 U.S.C. 1421 et seq.

<sup>28</sup> 13 CFR 124.103.

program. While CHamoru organizations in Guam and the CNMI currently reside within HUBZone's, memorializing the status in statute would ensure future regulations would not exclude CHamoru organizations.

#### **IV. SECTION-BY-SECTION ANALYSIS**

Section 1. Provides the short title.

Section 2. *Subsection (a)*. Amends the Organic Act of Guam to establish under the Office of the Governor a CHamoru Registry Program, a database to verify CHamoru ancestry.

*Subsection (b)*. Requires the Office of Public Auditor to audit the database at least once during a three-year period to ensure accuracy.

*Subsection (c)*. Defines "Native CHamoru" as an individual who can document at least one ancestor who resided in Guam before August 1, 1950. Stipulates that no residency or blood quantum shall be required to qualify as a Native CHamoru.

*Subsection (d)*. Stipulates that the Superior Court of Guam shall have jurisdiction over proceedings with respect to the CHamoru Registry Program and database.

Section 3. *Subsection (a)*. Amends section 3 of the Small Business Act to define Native CHamoru Organizations as one that is a nonprofit corporation, controlled by Native CHamoru, and whose business activities principally benefit Native CHamorus in the U.S. territories of Guam and the Commonwealth of the Northern Marianas Islands.

*Subsection (b)*. Amends section 8(a)(4) of the Small business Act to add Native CHamoru Organizations in Guam and the CNMI as eligible for the 8(a) Business Development Program as a socially and economically disadvantaged small business concern.

*Subsection (c)*. Amends section 31 of the Small business Act to add Native CHamoru Organizations as a small business concern within the SBA HUBZone program.

#### **V. COST**

Unknown.

#### **VI. ADMINISTRATION POSITION**

Unknown.

#### **VII. EFFECT ON CURRENT LAW (RAMSEYER)**

[H.R. 6504](#)