S. HRG. 106–90

HUBZONES IMPLEMENTATION IN INDIAN COUNTRY

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING TO RECEIVE TESTIMONY ON TITLE VI OF THE SMALL BUSINESS REAUTHORIZATION ACT OF 1997

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OVERSIGHT HEARING ON HUBZONES IMPLEMENTATION IN INDIAN COUNTRY

WEDNESDAY, MAY 12, 1999

U.S. SENATE,
SENATE COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room 485, Russell Senate Office Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Dorgan, and Bond.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The Indian Affairs Committee will come to order.

Today we will receive testimony on Title VI of the Small Business Reauthorization Act of 1997, better known as the HUBZones Program. As those who live in the Metropolitan Washington area know, the Federal Government employs hundreds of thousands of people and contracts for literally millions, billions, in fact, of dollars in goods and services.

For a generation, these contracts were let to firms in and around the "Beltway." The Nation's most oppressed areas simply didn't benefit from the program.

In 1997, the Small Business Committee, under the leadership of Senator Bond, charted a new course for Federal procurement policy by targeting Federal contracts to the most distressed communities in the Nation, the historically under-utilized business zones.

The Native lands certainly are among these areas of the most depressed and economically stagnant in the Untied States. Though some well-situated tribes are benefiting from gaming and natural resources, most people that live on Indian reservations still live in abject poverty.

The HUBZone program includes Indian reservations as a targeted area, but because of the definitional problems in the Act and enabling regulations, ambiguities remain.

This morning I have to announce to the people that will be witnesses that we have a vote at 10:30. Rather than keeping everybody sitting here for a long period of time and reconvening, we're going to try and limit the testimony and get through all the witnesses before. All the written testimony will be included in the

record. But we would ask you to observe these lights for your spoken comments, so that we can get out in a timely manner.

With that, we'll start with Richard Hayes, the Associate Deputy Administrator, Government Contracting and Minority Business Development Programs, from the Small Business Administration. Welcome, Mr. Hayes.

Mr. HAYES. Good morning.

The CHAIRMAN. If Senator Bond comes over, we may ask him to sit with you, the first panel.

STATEMENT OF RICHARD HAYES, ASSOCIATE DEPUTY ADMINISTRATOR, GOVERNMENT CONTRACTING AND MINORITY BUSINESS DEVELOPMENT PROGRAM, SMALL BUSINESS ADMINISTRATION

Mr. HAYES. Good morning. My name is Richard Hayes, and I'm the Associate Deputy Administrator for the Office of Government Contracting and Minority Enterprise Development at the Small Business Administration.

I'm appearing today on behalf of Aida Alvarez, the Administrator, who unfortunately was not able to be with you today. I want to thank you for giving me this opportunity to discuss the implementation of SBA's HUBZone program. I would also like to discuss some of our initiatives to promote economic opportunities for Native Americans and Indian reservation communities.

Since the HUBZone program was launched on March 22 of this year, we have received more than 1 million hits on our web site. Also as of today, we have received 105 applications, 42 of which have been approved. I'm also pleased to inform you that of the 42 firms that have been approved, 5 are owned by Native Americans. I can list them briefly for you: Dailey Construction of Lodge Grass, Montana; Short Hop Construction of Evans, Washington, which is also a member of the 8(a) program; Lightning Excavation, which is also a construction firm, located in Libby, Montana, also an 8(a) firm; Arrow Technology Group, which is an information technology programming firm located in Hugo, Oklahoma; and Door Electric Company, which is located in Onamia, Minnesota.

Mr. Chairman, I want to say that Aida Alvarez and I both feel strongly that the HUBZone program will be a big success in promoting job opportunities on Indian reservations and in economically distressed urban and rural areas. I would like to briefly explain a little bit about the program's history, its basic elements, and discuss our initiatives to implement the program.

The act was signed into law by the President on December 2, 1997. As you know, the program's intent is to provide private sector investment and employment in distressed communities by expanding Federal contracting opportunities. A key aim is to foster community renewal in the short run and help achieve and sustain the viability of HUBZone firms over the long haul.

After enactment of the law, SBA worked diligently to begin implementing the program to achieve its overall goals. We wanted to build upon the President's empowerment contracting initiative and other important activities in the Administration, including HUD and the Department of Agriculture's Empowerment Zone/Enterprise Communities programs. We wanted to do so without dimin-

ishing its impact on other important programs, like the 8(a) program.

On April 2, 1998, SBA promulgated its proposed rules, and we established our web site. We published our final rule on June 11, 1998, which became effective September 9, 1998. These rules outline SBA's responsibility for administering the program. In addition, an interim rule was published by the FAR Council, which is the group that publishes procurement regulations, on December 18, 1998. Those rules became effective January 4, 1999. We hope to have a final FAR rule published shortly.

The implementing legislation for HUBZone sets a goal of 3 percent of Federal procurement phased in over a 5-year period. In fiscal year 1999, that equates to approximately $2 billion. This number is expected to rise to $6 billion by fiscal year 2003.

Qualified HUBZones will have the opportunity to participate in a variety of Federal contracting opportunities and receive various preferences in the process. These firms can also qualify for higher Government guarantees under SBA's surety bond program for construction and service contract bids.

Eligible HUBZone businesses located in Empowerment Zones and Enterprise Communities may also qualify for a variety of employer and investment tax credits, as well as tax-free facility bonds.

In implementing the program, we wanted to do so in an efficient and customer friendly manner. We decided to make use of technology. All the information about the program is located on our web site, which is at www.sba.gov/hubzone. The site has two unique technical features that were added after the program began on March 22. The first is a geo code mapping system that allows a firm to enter in an address, and tell instantaneously whether it is located in a HUBZone.

The other is an electronic application, which firms can fill out online or download to print. This is an easy to follow, straightforward application. We estimate that most firms can fill out the application within an hour. Our staff works very quickly to approve them once they reach the Small Business Administration.

In an effort to provide information about firms in the HUBZone program, all the firms, once they are approved, are listed in our Pro-Net database, which is our national database of small business contractors. In this way, agencies that are looking for small businesses or HUBZone firms can go into Pro-Net and find those firms.

The criteria for HUBZones, areas as well as firms, is straightforward. HUBZones are basically defined by either unemployment data, income data, or census tract information for the country. Currently there are about 7,000 qualified census tracts that are eligible in urban areas, qualified non-metropolitan counties that meet specific income or unemployment tests, 310 Indian reservations and 217 Alaska Native villages are qualified areas for the program.

In order for a firm to qualify for the program, the firm must be a small business. Its principal office must be located within a HUBZone. It must be owned and controlled by one or more persons of whom is a United States citizen. And at least 35 percent of its employees must reside in a HUBZone.

Although the eligibility criteria for HUBZone firms is straightforward, there is one unique feature that affects tribally-owned

firms. As stated above, the requirements in the statute is that the business must be owned and controlled by one or more persons, each of whom is a United States citizen. After looking at this, a legal issue has arisen as to whether a tribally-owned business is considered a U.S. citizen.

In talking to our lawyers, we think that to make the issue absolutely clear that we need clarifying language to make sure the tribally-owned business can in fact be involved in the program. We're prepared to do that as part of our fiscal year 2000 incentive package, which will be coming to the Congress shortly.

In the remainder of my testimony, I would like to briefly identify some of the other activities we're doing with respect to promoting economic development on Indian reservations. Despite the overall soundness of our economy, the vitality of Indian reservations is not what it could be. For these reasons, the Administration has embarked upon a new markets initiative, which is designed to highlight and emphasize assistance to areas that have been traditionally under-served.

As part of our effort to reach out to under-served communities, we have provided funding and support to 14 Tribal Business Information Centers, or TBIC's, to promote economic development on Indian reservations. In August 1995, we entered into a memorandum of understanding with the Bureau of Indian Affairs [BIA] to establish the TBIC demonstration program. The objective of this effort was to promote accessible and cost-effective business development resources to Native American entrepreneurs on reservations.

Currently there are 17 TBIC's, 14 of which are funded by SBA. They're located in Arizona, California, Minnesota, Montana, North Carolina, North Dakota, and South Dakota. These projects continue to be very successful and they serve as an invaluable resource in an effort to enhance and foster development on Indian reservations.

The TBIC's provide a variety of counseling services and other forms of assistance to existing and new businesses in an effort to help them expand their business opportunities or enroll into other new areas.

In fiscal year 1998 the HUBZone program provided $350,000 to be used by TBIC's in their effort to actively encourage Native American clients to become HUBZone participants. To make sure that the TBIC's can in fact expand their activities, the administration has requested $1 million for our fiscal year 2000 budget, which we hope the Congress will in fact approve.

Our assistance to the American Indian community has not been limited only to counseling and training. In fiscal year 1998, we provided more than 462 loans totaling $76.5 million. Through May of this year, we have approved 266 loans for a total of $42 million.

Additionally, our Office of Native American Affairs is in the process of establishing a Native American Task Force which will be consisting of elected tribal officials and other advocates to offer insights on how we can best deliver SBA services to Native Americans.

In concluding, I want to say that the HUBZone program will provide jobs and capital to under-utilized areas, including Indian reservations. We feel that the economic multiplier effects of this infu-

sion will provide long term infrastructure development in these areas. In the final analysis, the HUBZone program will serve as a key component of this Administration's initiative to develop these communities.

I want to thank you for inviting me to discuss the HUBZone program, and I'll be glad to answer any questions you might have.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Hayes appears in appendix.]

The CHAIRMAN. You were moving pretty fast on those numbers, let me ask you a couple of questions.

Currently there are five Native American HUBZones, is that what I understood?

Mr. HAYES. There are five, that's correct, sir.

The CHAIRMAN. How many Native-owned business have actually applied for participation in those HUBZones?

Mr. HAYES. At this point, we have the five that have been approved, or seven that have applied so far, five have been approved.

The CHAIRMAN. Seven individual businesses?

Mr. HAYES. That's correct.

The CHAIRMAN. Have you tracked the success ratio to see how they're doing? Or have they been involved long enough to do that?

Mr. HAYES. They have only been just recently approved. The program began officially March 22. We've just recently approved those five.

The CHAIRMAN. They were all new businesses?

Mr. HAYES. No; they're ongoing businesses.

The CHAIRMAN. Does the SBA coordinate with agencies in Commerce or other departments, for instance, to promote Native American exports or trade or something of that nature?

Mr. HAYES. Yes, indeed. The Minority Business Development Association has an office of Native American——

The CHAIRMAN. Who does?

Mr. HAYES. Minority Business Development Agency in the Department of Commerce has a Native American office. It's geared toward trying to promote different kinds of opportunities. We work very closely with our sister agency in a variety of different areas.

The CHAIRMAN. Do you work at all with the military, as an example, they're the procurer of huge amounts of goods and services, the U.S. military. Do you work at all with them in trying to access the sales of any Native American companies to military or to any other agency, for that matter?

Mr. HAYES. The Department of Defense is a very key partner of the Small Business Administration. I know that the agencies are going to be very active in identifying procurements that can be set aside for Native American businesses. We recently signed an MOU with the Air Force to basically establish an office, in this case, in Texas, to really direct HUBZone contracts and procurements to local businesses. We're going to be actively working with the other service entities to do likewise.

The CHAIRMAN. I'm just reminded that one, the Fort Peck Reservation, had a small factory that started out really with an opportunity to sell camouflage goods to the U.S. military. That was one of the things that helped get that little tribally-owned enterprise off the ground. It seems to me that if your office did work with some

of the military agencies, they're huge buyers. They've been wonderful in some areas.

Thank you, Doctor, for appearing. If you have any further comments, please submit them for the record.

Mr. HAYES. Thank you very much.

The CHAIRMAN. Our next panel will be Stanley Pino, Chairman of the All Indian Pueblo Counsel; Sophie Minich, Vice President of Operations, Cook Inlet Regional Corporation; and Pete Homer, President and CEO of the National Indian Business Association in Washington. And I would also remind the panel, because of our very limited time this morning, with the votes being called, if you would abbreviate your written comments and submit all of your testimony, I would appreciate it.

We'll go ahead and start with Stanley Pino, please.

STATEMENT OF STANLEY PINO, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL, ALBUQUERQUE, NM, ACCOMPANIED BY EDWARD LITTLE, DEVELOPMENT DIRECTOR

Mr. PINO. Good morning, Senator. Honorable Senators, my name is Stanley Pino, I am Chairman of the All Indian Pueblo Council, which represents the 19 Pueblo Tribes in New Mexico. I am pleased to be here today to address the success or non-success of the implementation of HUBZones in Pueblo Country.

The HUBZone Act of 1997 has had very little impact on business activities within Pueblo country. Though the law was enacted in 1997, the implementing regulations were not published until 1999, so we have had little time to judge its impact in our Pueblo communities.

It should be noted that the intent behind the legislation of inducing businesses to develop in areas that are removed from large cities, have a large work force, and have households with low incomes and high unemployment would fit the profile of many of our Pueblo communities. Less than 5 of the 19 Pueblos are within a close proximity to a major city, yet almost all are in close proximity to Federal facilities such as Los Alamos laboratory, military bases, Government schools and forestry and BLM activities.

The implementation of such a business inducement could have a dramatic impact on employment within Pueblo communities, but it appears to be too early to make that assessment. However, we already know that the possibility of a future enthusiastic assessment has been diminished by the restrictive interpretation SBA has given to their own regulations concerning its interpretation of HUBZones. SBA's interpretation of HUBZones actually eliminates any type of tribally-owned businesses at a time when tribally-owned businesses are looking to grow in New Mexico. As a very tight communal society, many of the Pueblo groups prefer to foster tribally-owned businesses rather than individually-owned businesses. This is not a stifling of individual entrepreneurship, but merely a preference in doing business that has extended over hundreds of years. You might say that it is an elaboration on the "mom and pop" way of doing business.

The concept behind HUBZones seems to address the needs of many Pueblo communities. But it could address even more of those needs if tribally-owned enterprises were allowed to participate. The

intent of moving people off the welfare rolls forever and increasing job opportunities for rural communities should not be limited because a Government agency refuses to believe that tribally-owned enterprises are established to address those same community needs.

I believe we would be very short-sighted to pin our hopes on developing businesses within Indian country only on the abilities of individual entrepreneurs when tribally-owned businesses not only have the same characteristics, but provide existing and enthusiastic business mechanisms for filling the long range goals of this Congress.

Thank you, Senator Campbell and other members of this committee, for allowing us this valuable time.

[Prepared statement of Mr. Pino appears in appendix.]

The CHAIRMAN. Thank you. We'll go on with Ms. Minich.

STATEMENT OF SOPHIE MINICH, VICE PRESIDENT OF ADMINISTRATION, COOK INLET REGION, INC.

Ms. MINICH. Good morning, Mr. Chairman. Thank you for inviting me to participate in today's hearing.

My name is Sophie Minich. I am an Alaska Native of Athabascan descent. I am also the Vice President of Administration of Cook Inlet Region, Incorporated, otherwise known as CIRI, an Alaska Native corporation based in Anchorage, AK. I am a shareholder of CIRI.

CIRI is one of the 12 Alaska Native regional corporations established by Congress under the Alaska Native Claims Settlement Act of 1971, otherwise known as ANCSA. CIRI is owned by approximately 6,900 Alaska Native shareholders of Athabascan, Tlingit and Haida Indian, Yupik and Inupiat Eskimo and Aleut descent.

CIRI is recognized as one of the most successful corporations under ANCSA and is a critical part of Alaska's economy. CIRI's investments include nationwide businesses such as wireless telephone communications, heavy equipment distribution, tourism, real estate and construction services. CIRI also supports a number of non-profit organizations that provide educational scholarships, employment training and referral, health care, housing, and social services for CIRI shareholders as well as other Alaska Natives.

Today I am here to testify on Public Law 105–135, Title VI, HUBZone Implementation. The idea behind the HUBZone empowerment contracting program is to foster the growth of rural areas afflicted with high unemployment and to encourage business growth and development for Native Americans. I applaud Congress for recognizing and wanting to assist American Natives in the development of our lands.

Under the act, rural areas for Native Americans are defined as Indian lands or reservations. Unfortunately, because of the definition in the bill, specifically the term Indian lands, 99 percent of Alaska Natives are prohibited from participating in the HUBZone program. The Alaska Native Claims Settlement Act did not create reservations. Rather, in a purposeful alternative to the reservation system, Congress settled aboriginal land claims of Alaska Native people by providing for conveyance of land to the 12 regional corporations and 222 village corporations.

Only two villages opted out of the ANCSA settlement, and are considered to be reservations, namely Venetie and Metlakatla. Other than these two minor exceptions, all Alaska Native lands are owned by ANCSA corporations and thus are excluded from the current HUBZone definition of Indian lands.

The ANCSA settlement was designed to promote economic self-determination and success for Native people. The HUBZone law generally furthers this goal. For CIRI and the other Alaska Native regional and village corporations to participate and take advantage of the HUBZone program, however, we would respectfully offer two suggestions.

The first recommendation is that the land received under ANCSA by the regional and village corporations be made eligible. The second is to eliminate the requirement that ANCSA corporations' principal offices be located within the HUBZone.

Alaska is a vast State that is more than twice the size of Texas. The lands owned by Alaska Natives are in excess of 44 million acres. The vast majority of this acreage was selected because of the importance to Alaska Natives for its resource development potential and preservation of traditional lifestyles and culture.

The correlation between the regional corporations' land ownership and their business enterprises is not the same as for the lower-48 reservation economies. Reconciling ANCSA with the HUBZone program's geographical focus is very difficult. One of the major aspects of the HUBZone program is to make job opportunities available for Native Americans. This program may work well on Native lands in the lower 48 States. However, because of Alaska's uniqueness, its vast area of land, but with many Alaska Natives living in urban areas, the majority of Alaska Natives are currently ineligible from participating in many of the opportunities this program has to offer.

The lands which make Alaska Natives qualify for HUBZones are often far from the urban areas of Anchorage, Fairbanks and Juneau, where tens of thousands of Alaska Natives live. These areas are also where the Native corporations' headquarters or principal offices are located. The requirement that the headquarters or principal offices be located in the HUBZone would automatically disqualify the majority of the Alaska Native corporations.

We understand it was not the intent of Congress to disqualify Alaska Natives from the program, but under the current law, many Alaska Native corporations are disqualified from fully participating because of the location of their headquarters and principal offices.

Therefore, CIRI respectfully asks the committee to make the above changes that I have recommended, specifically that the definition of Indian lands be expanded to include ANCSA lands. Finally, CIRI recommends the prerequisite that the headquarters or principal offices be located in a HUBZone not be required for ANCSA regional and village corporations.

Mr. Chairman and members of the committee, thank you for allowing me to appear before you. I appreciate the opportunity to be here and voice CIRI's support in the support of HUBZone implementation.

In addition to my oral comments, I would like to offer you the written testimony of another one of our sister regional corporations,

the Arctic Slope Regional Corporation. CIRI endorses and supports their views and I thank you for your time.

[Prepared statements of Ms. Minich and of the Arctic Slope Regional Corporation appear in appendix.]

The CHAIRMAN. I was jotting some notes down, I want to ask you a couple of questions when we get back to it.

Maybe before we go on I could ask if Senator Bond had any comments. I didn't know how tight your schedule was, but since you did the original work on Public Law 105–135, maybe you'd like to comment.

STATEMENT OF HON. CHRISTOPHER S. BOND, U.S. SENATOR FROM MISSOURI

Senator BOND. Yes; thank you very much, Mr. Chairman, Senator Dorgan and our witnesses. I very much appreciate the chance to be with you today. In fact, I had to kick off a hearing in the Small Business Committee, in which we talked about the SBIC program and the micro loan program, and talked about the similar problems that we're facing over there. It's a great opportunity for us to work together on these two committees to do something that I think can make a real difference on reservations and native lands, in trying to bring jobs and hope and opportunity.

The whole idea behind the HUBZone program was to bring jobs and job opportunities to areas where there had not been those job opportunities. Our good friend Pete Homer testified back in April 1997 on the prospects for the HUBZone program. With the help that he gave us, on a bipartisan basis, the Senate unanimously approved the HUBZone law. It was adopted by the House and signed into law by the President.

We feel that it is a great opportunity to bring jobs not only to blighted inner city neighborhoods, but isolated rural communities, Indian reservations, Native Alaskan villages was our intent in that program. Because we realize the biggest problem in these areas is a lack of jobs. Without jobs, people can't earn incomes, without incomes, they can't spend money to support new businesses. And without new businesses, we can't get new jobs. It's a vicious cycle that feeds on itself.

So the HUBZone program essentially was set up recognizing that small businesses are the dynamic economic engine that drives growth in our economy. But in too many instances, they needed extra incentives to get them to move into distressed areas, because they couldn't always find a strong customer base. Without customers, the small businesses wouldn't be able to operate.

That's where the HUBZone program comes in. Small businesses in HUBZone areas will have competitive advantages in getting Government contracts if the businesses are willing to hire 35 percent of their employees from the HUBZones. That helps keep money in the local area to jump start the economy, ensuring the creation of new jobs, providing incomes to residents and helping them become regular customers. Without customers, you can't have a successful business.

So the HUBZone program is not designed to impose new mandates, regulations or burdens. It isn't about grants or subsidies or tax abatements. Instead, it merely says that the Federal Govern-

ment, with its tremendous need for goods and services, will be purchasing goods and services from distressed areas. And under the HUBZone program, the Federal Government is to be the customer.

When we drafted the legislation, we said that participating small businesses should be 100 percent owned and controlled by persons who are U.S. citizens. But that gave rise to unintended consequences. How many times have you heard of a Federal Government program that had unintended consequences? [Laughter.]

Well, unfortunately, we're in keeping with that. As the Small Business Administration developed the rules, it said that citizenship requirement implied that all business owners must be flesh and blood persons, or natural persons, as the lawyers called it. Because only human beings have the right to citizenship.

SBA's interpretation of the language is probably accurate. Even though that was not what we intended in writing it, and I look forward to working with you, Mr. Chairman, and the minority members of the committee, in developing appropriate legislation to ensure that tribally-owned small businesses will be eligible. Because on many reservations, tribal resources are the only significant resources available. If we exclude small businesses that rely on those resources, we accidentally exclude the entities that are most likely to be able to help.

I'm also concerned that our use of the term "reservation" might inadvertently exclude lands owned by Alaska Natives, since the lands are not considered reservations. But the Alaska Native Claims Settlement Act called for Alaska Natives to be able to participate in Indian programs on the same basis as other Native Americans. We need to ensure that Alaska Natives in distressed areas have the opportunity to participate.

There are just a few important points that I think are necessary, and I would offer these, Mr. Chairman, so that our staffs can work together. Number one, we need to ensure that we maintain the geographic focus of the HUBZone program. It asks, where do we need the jobs? Then it encourages small businesses to create jobs in those areas. Corrective legislation or administrative changes for tribally-owned enterprises and Alaska Native businesses should be consistent with that approach.

Second, we need to ensure that we keep targeted on areas most in distress. I think $6 billion in contracting dollars can make a real difference if it is targeted appropriately to need. Alaska, for example, is a huge State that could probably swallow all $6 billion and not even feel it. But if we focus on the areas that most need help, the money can make a real difference. I say that as one who has had many, many visits to Alaska and enjoyed my visits there and the many friendships I've made in Alaska quite well.

Third, we also need to keep the Small Business Act's emphasis on competition. That means we want as many small businesses on the reservation, on the Native lands, as we can get. The reservation economy will then offer numerous different employment opportunities instead of just one or two large employers. I think competition not only keeps prices low, thus benefiting Indians and Native Alaskans as consumers, it reduces costs to U.S. taxpayers and it also provides competition in the work force.

Finally, and fourth, we need to keep our solution as simple as possible. Small businesses need to do what small businesses do best, create jobs. And they can't do that if business owners are spending all their time and resources on Government paperwork.

Too often we have great ideas and we put them all in the statutes. So you wind up having to read what all our good ideas are. We need to develop something that provides the framework and lets the entrepreneurs, the people who are creating the jobs, spend their time thinking about what creates jobs.

Mr. Chairman, I appreciate very much being with you. I'm sorry I missed the first part of the testimony. I'll be able to stay for a few more minutes, but we have a couple of balls up in the air. We're all working in the same direction, and I thank you very much for holding the hearing and allowing me to join you.

The CHAIRMAN. Thanks for being here. Did I understand part of your proposal is to move some of those highly successful Branson, Missouri entrepreneurs to Alaska? [Laughter.]

Senator BOND. Actually, we want to make them very good businesses so that our successful entrepreneurs in Missouri can visit the tribal reservations and Alaska Native villages, and similarly, people on those reservations and those Alaska Native villages can come down to Branson and enjoy the country music capital of the world.

The CHAIRMAN. Well, Wayne Newton is an Indian. Maybe we can get him to go up there, anyway.

Senator Dorgan, did you have any comments before we hear our last witness?

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Mr. Chairman, briefly, we have an Energy Committee hearing on the Chinese espionage, or alleged espionage, at the national lab. So I have to be back over at that hearing. But I did want to stop by and thank you for holding the hearing.

Senator Bond, I think, has given us a good review of how this concept originated. I think this is an awfully good idea. But as he indicated, there are often unintended consequences. We have, for example, in North Dakota, some wonderful tribally-owned businesses that are providing very important jobs on the reservations. But they are precluded because of definitional problems with HUBZones from being able to be advantaged by this concept.

So we need to make some adjustments. We have a tribal chairman in the back of the room, Richard LaFromboise, from the Turtle Mountain Reservation. Richard, you might stand up.

His tribe has, just to give you examples of the practical problems here, Turtle Mountain Manufacturing, a wonderful facility, and Uniband Information Processing facility, which are tribally-owned businesses. They provide a lot of jobs. But they are systematically at this point prevented from taking advantage of HUBZones.

So that's the purpose of this hearing, to try to figure out, how do we make adjustments to make this work the way it should. This is an awfully good idea. If it's allowed to work well, I think it will do all the things Senator Bond suggested and perhaps more, allow-

ing market forces to move contracts to areas where jobs will be available to people who desperately need them.

This country is doing well. We're in a period of economic expansion, but not everybody is experiencing that economic growth. That's the purpose of some of these initiatives, like HUBZones.

So Mr. Chairman, thank you for holding the hearing. I regret I can't stay for all of it because of the Energy Committee hearing. But we'll make these changes, working together on a bipartisan basis, and have HUBZones working the way they should work. Thank you very much.

The CHAIRMAN. If you have any questions you'd like submitted, we'll do that for you.

We'll now go to Pete Homer to finish up this panel.

Pete.

STATEMENT OF PETE HOMER, PRESIDENT/CEO, NATIONAL INDIAN BUSINESS ASSOCIATION

Mr. HOMER. Thank you, Mr. Chairman and members of the Senate Committee on Indian Affairs.

On behalf of the National Indian Business Association, I would like to thank you for the opportunity to testify today on Public Law 105–135, HUBZones implementation. We are here today seeking legislation that will ensure that American Indian tribal businesses, enterprises and Alaska Native corporations are eligible to participate in the Small Business Administration's HUBZone empowerment program.

While we believe that Congress clearly demonstrated its intent that tribal enterprises and Alaska Native corporations could participate, SBA's interpretation of the Act is that tribal enterprises are excluded. We are hopeful that this unfortunate misunderstanding will be cured by Public Law 105–135 HUBZone implementation that will explicitly address the eligibility of the tribal enterprises and Alaska corporations.

My name is Pete Homer, and I'm an enrolled member of the Colorado River Indian Tribe in Arizona. I serve as the President and CEO of the National Indian Business Association, a national trade organization established in 1992 to promote Native American Indian business development through education, communication and advocacy.

NIBA was one of the earliest supporters of the HUBZone legislation. We were extremely pleased when the Congress granted HUBZone Act designations to all Indian reservations as historically under-utilized business zones. We were optimistic that the pre-designation of reservations as HUBZones would dramatically reduce the amount of time and redtape it would take for reservation-based businesses to participate, and that the increase in Federal contracting opportunities for Indian businesses across the country would stimulate economic activity and create jobs.

Our early optimism was fueled by the clear direction Congress provided in the legislation, the President's strong commitment to Indian economic development, and his orders directing all Federal agencies to consult and work with tribal leadership. But as the committee is aware, catch-22 situations frequently arise in the implementation of new programs. Indian programs in particular are

often fraught with such difficulties, especially where an agency has limited experience in implementing Indian programs.

In the case of the HUBZones implementation, the catch-22 is the agency determination that tribal enterprises are not eligible to participate in the program, excluding some 1,200 tribally-owned businesses from participation. Of the 558 American Indian and Alaska Native tribal governments, approximately 190 own at least one tribal enterprise, and 48 own more multiple enterprises.

Laguna Pueblo, New Mexico, for example, has 13 tribal businesses, creating more than 800 jobs. The Turtle Mountain Tribe in North Dakota has 9 tribal businesses creating over 500 jobs. The Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana have 8 tribal businesses creating 400 jobs. Alaska Native Corporations have an estimated 205 different businesses, employing approximately 2,000 workers.

It is simply illogical to conclude that Congress intended all reservations and tribal communities to constitute historically underutilized business zones, yet intended to exclude from participation those very enterprises with the best and in some cases only capacity to participate and effect the results intended in the act.

The problem with the definition arises out of SBA's interpretation of a provision of the Act that defines the term, HUBZone small business concern. Under this provision, only those small business concerns owned and controlled by one or more persons who are citizens of the United States are eligible to participate in the program. Although the drafters included Alaska Native corporations as entities owned and controlled by one or more persons, they did not come to the same conclusion in relation to tribally-owned enterprises.

Tribal enterprises, like Alaska Native corporations, are in fact owned by all tribal members, who are natural persons. SBA's attorneys were unpersuaded. Accordingly, we appear here today urging the committee to pass Public Law 105–135 to ensure the eligibility of tribal enterprises and Alaska Native corporations. The exclusion of tribal enterprises virtually nullifies the possibility that the HUBZones program will have a significant impact on reservations.

Tribal enterprises will lose the following opportunities. For example, if 100 tribal enterprises were to receive 1½ percent of the fiscal year 1999 $2 billion funding level available for contracting and subcontracting, the result would create $300 million creating approximately 5,000 jobs. Indian country, where 35 percent of the reservations have unemployment rates of 67 percent, and where the remaining 65 percent have unemployment rates ranging from 18 percent to 45 percent, the creation of 5,000 jobs is dramatic.

Tribal enterprises not only create jobs, experience and training of workers, but a deepening awareness of what can be. Tribal enterprises deserve all the support, encouragement and assistance we can provide. For they are critically important agents of economic growth and expansion.

Let me close by thanking you for this opportunity to discuss this important matter with you today. Again, we urge you to favorably consider the request for enactment of Public Law 105–135, HUBZones implementation, to clarify the eligibility of tribal enter-

prises and Alaska Native corporations for participation in the HUBZone program.

Thank you.

[Prepared statement of Mr. Homer appears in appendix.]

The CHAIRMAN. Thank you. Let me ask you each a couple of questions, I'm sure Senator Bond might have some, too.

Since you finished last, Pete, you spoke of the 13 tribal businesses. Did I understand you to say they employ about 1,300 tribal members?

Mr. HOMER. Eight hundred.

The CHAIRMAN. How is the capital raised to start those businesses? Was that loans from the tribe or individual capital or done through some partnerships?

Mr. HOMER. At Laguna Industries New Mexico, it was partnerships with a Fortune 500 company the tribe and bank loans.

The CHAIRMAN. What are some of the industries they do? Are they natural resources or gaming? What is the major one?

Mr. HOMER. There's manufacturing for Department of Defense materials, was the way Assiniboine Sioux manufacturing Co. got involved.

The CHAIRMAN. So you've learned how to get involved in the procurement process with the military?

Mr. HOMER. Yes, sir.

The CHAIRMAN. Good. Also, what do you see as the largest difficulty to self-sufficient economies? As you've stated, you seem to be very successful at Laguna? What was the most difficult thing you faced when you were trying to start some of the tribally-owned businesses?

Mr. HOMER. I don't represent Laguna, but I speak for many tribal enterprises and businesses. The biggest obstacle and barrier is getting bank loans.

The CHAIRMAN. I should have asked Stanley that. I got my notes mixed up. I apologize for that.

Let me also ask Ms. Minich, I'm not sure I understood it right or not, but you recommended that we eliminate the requirements of having an office for the HUBZone in the area the HUBZone would service?

Ms. MINICH. What I asked for was that the requirement that the principal office of the business be in a HUBZone, I asked that that be eliminated for Alaska corporations.

The CHAIRMAN. Does that mean that, if there was a business at Cook Inlet or Barrow or something that you would allow the office to be in Anchorage?

Ms. MINICH. For CIRI, for example, our corporate offices are not located in a HUBZone. The principal corporate office of CIRI is not in a HUBZone. If you look up the zip code, it does not lie within a HUBZone.

The CHAIRMAN. But the object of it, of course, is to try to provide jobs within that HUBZone. If you don't have the office in the HUBZone, wouldn't that detract from trying to provide the jobs in this area?

Ms. MINICH. We have within the Anchorage area alone, and within the State of Alaska, we have several locations of our business. Our tourism, for example, resides throughout the State of

Alaska. Our natural resource development is throughout the State of Alaska. So it's not all just in one zip code. As well as in the lower 48.

The CHAIRMAN. Senator Bond, did you have any questions you would like to ask?

Senator BOND. Thank you, Mr. Chairman. I might just add with respect to the principal office, in other Government set- aside programs, we've found that when you didn't say that when the principal office needed to be in the HUBZone, you wound up with an awful lot of the businesses with the best salaries locating in areas of well, to be quite frank, in underserved needy areas like Bethesda and McLean.[Laughter.]

That's where the jobs went. And we wanted to see people who were, the leadership of the HUBZone businesses actually working in the area. So it is a change, it would be a significant change in the concept of HUBZones to say that you could be located in other areas.

I would hope that there would be a way that perhaps corporations with headquarters out of the HUBZone might be able to work with groups who would actually have headquarters in the HUBZones. Because if somebody is going to be the executives and the leaders of these successful businesses, it does a lot more for the area if they are actually working there. That means, when they go out to lunch, they buy lunch from other people in the HUBZones.

So I just raise that as a concern.

I might ask my friend Pete, you know, if tribally-owned enterprises are excluded from the HUBZone program, in many instances I guess that excludes the businesses most likely to be able to compete for contracts. I guess that was the gist of your statement.

Mr. HOMER. Yes; it was, very much so. On some of those Indian reservations, they're the only businesses that create jobs for the members of that reservation.

Senator BOND. Chairman Pino, I read your testimony, I'm sorry I didn't get to hear it. You talked about, in there you said almost all the Pueblos are located near Federal facilities. To what extent have you been successful in contracting with Federal facilities?

Mr. PINO. Basically, I guess the success would be just based on one Pueblo, Laguna Pueblo. They are located 40 miles west of Albuquerque, and Albuquerque is the center of economic activity in New Mexico. One of the things they've done is they've been able to contract some of the military stuff, regarding communications, through partnerships with Raytheon and other parties. They've been successful and they've been moving forward.

However, I don't think they benefit from the full impact of what we're talking about here. They're a tribally-owned business, they're not necessarily owned by one individual. I know Mr. Homer touched on the work force. But when you look between Grants and Albuquerque, you have a large pool of untapped labor. And yet they haven't been able to benefit.

Other than Laguna, I don't know if any other Pueblos have any contracts with the military or any of the governmental entities.

Senator BOND. Mr. Chairman, I'd like to ask any member of the panel to comment. One of the things that's going on in the Small Business Committee, we're having round table discussions with

small business investment companies. They are the ones who put equity investment into small businesses. We're talking about the need to provide incentives or even direction to those SBIC's and a related program, the micro loan program, which makes very small loans from the SBA to focus on HUBZone areas, including Indian reservations and Alaska Native lands.

To your knowledge, do any of the three of you know of any SBA assisted small business investment companies, or do you know of any micro loans that are involved in the areas that you represent and that you are discussing?

Mr. HOMER. When I was with SBA, I pulled together a group of well-to-do Indian tribal governments to put together a Native American small business investment company [SBA] a investment and loan program like the Hispanics were doing for their clients. We took the SBA staff to Albuquerque, NM to meet with four tribes. We couldn't get through the regulations or the banking laws and the percent of the money that had to be invested to work out. It was too much of a risk for the four Indian tribes. So they decided against putting up the money to create a Native American SBIC.

We set up meetings in Oregon and we could not get the tribes in the Northwest to develop an SBIC. The regulations that are in place need to be amended. We noticed, that during the time, in Albuquerque, NM the Hispanic SBIC had gone into bankruptcy and was in a lot of trouble. So the tribes shied away from developing an SBIC program.

Senator BOND. Again, it wouldn't necessarily have to be, the SBIC would not have to be physically located in there. What we're trying to do, and this is an area where we need your help around the corner, Cordell is on my small business staff. We would like to work with you as we try to develop incentives or encouragement or even requirements we have.

We put in a requirement that 20 percent of SBIC investments need to go into the smallest of the small businesses. I think there are some proposals on the table to get SBIC's to look at HUBZones or Indian reservations or Native Alaskan lands. We'd like to work with you, Mr. Chairman, this committee and the witnesses as we try to figure out a way.

In Albuquerque you've got our good friend, Pete Domenici. Watching him work, he's a center of economic activity all by himself. As we watch the investments he makes in New Mexico, some of us are jealous. Of course, nobody beats our Alaska colleagues, Senator Murkowski and Senator Stevens, in doing that. But we'd like to get some of the SBIC's involved in that as well.

So we'll look forward to working with you. Mr. Chairman, if you will excuse me, I'm going to go on to others. I really appreciate having the opportunity to participate. I thank the witnesses, and we look forward to working with you on this.

Mr. HOMER. Senator Bond, one more comment before you leave. In the last two years, nine tribes have bought local banks.

The CHAIRMAN. They have bought local banks, nine tribes?

Mr. HOMER. Yes; in the last 2 to 3 years.

Mr. PINO. Mr. Chairman, I'd like to also add, your question about whether any loans were given out, the answer is no. Number one, because we are in the middle of doing the development, 46 acres

in downtown Albuquerque. It's considered trust land, it was transferred to the 19 Pueblos, so it's owned as a group.

One of the things we've done is, we've put together a Section 17 Federal development corporation. One of the difficulties we've had over the last 15 years is finding the capital to actually move forward beyond the master plans and the site plans and all the planning that goes into development.

So I know we've been trying to work with the Department of the Treasury. They've come out and asked us some questions regarding some of the loans, or the potential for loans. But that's where we're at.

The CHAIRMAN. Chairman Pino, the acreage you mentioned in downtown Albuquerque, is that jointly held by all, is it 19 Pueblos, that belong to the All Indian Pueblo Council?

Mr. PINO. Yes, sir.

The CHAIRMAN. Is it near the current location of the All Indian Pueblo Council?

Mr. PINO. Actually, it used to be the former Albuquerque Indian School campus. Right across from the campus is the new Pueblo Cultural Center. That's also owned by the 19 Pueblos. But as far as any development or activity from the banks, we've had a difficult time on both projects.

The CHAIRMAN. You're a member of Laguna Tribe and the Chairman of the All Indian Pueblo Council?

Mr. PINO. No, sir; I'm not with the Laguna Tribe. I'm with Zia Pueblo. As a matter of fact, Chairman, we speak the same language. It's no problem.

The CHAIRMAN. The All Indian Pueblo Council, do they have any kind of an "incubator system" to help individual Pueblos?

Mr. PINO. Mr. Chairman, I'd like to at this time allow Mr. Edward Little, who's our development director for the development corporation, to at least address that.

The CHAIRMAN. That will be fine.

Mr. LITTLE. Thank you, Senator.

Basically our section 17 Federal development corporation is going to serve as that, as a community development corporation basically. We hope to do that very thing, create that incubator system for small businesses, as we develop the property there on the 46 acres there in Albuquerque.

But we have had a lot of difficulty. We've been able to work with the BIA as well and we're entering into some negotiations now to house about 300,000 square feet of Federal offices on the property. We'll be leasing it to them. So that's one of the things we've been able to do.

But basically, without the help of any banking institution, and most of them are afraid of the recourse with Federal property, don't want to take any exposure. We know sometimes we're faced with BIA loan guarantees with a 10 percent exposure that a lot of our tribes can't come up with. So there's a lot of problems trying to do that.

The CHAIRMAN. Maybe you can also clarify something for me. The theory behind the HUBZone legislation is it would help Indian-owned businesses. The Pueblos, for instance, they're very well-known, worldwide, for their home crafts, pottery, jewelry, things of

that nature. Many of the individual craftsmen, they are their own businessmen, they belong to a tribal cooperative. Would a tribal cooperative also be able to avail themselves of the resources under the HUBZone? Does that qualify as a business, a cooperative?

Mr. LITTLE. Yes; as far as we're concerned it would. Not all our tribes are fortunate to have those cooperatives. We probably have one or two that have been fairly successful. But unfortunately, we don't have that everywhere. Most of them kind of have to fend for themselves as entrepreneurs.

The CHAIRMAN. I see.

I have no further questions. But Senator Murkowski did have several. He couldn't be here with us today, but he'll send those to you in writing, and if you could get back to him, provide him with some answers, I would appreciate it.

Just a final note, the record will stay open for 2 weeks, if there is any additional comments from either anybody in the audience or the panel. If you can get it to us in the next couple of weeks, that will be included in the record.

With that, I appreciate your being here today, and this committee is adjourned.

[Whereupon, at 10:29 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF STANLEY PINO, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL

Honorable Senators, my name is Stanley Pino. I am the Chairman of the All Indian Pueblo Council, which represents the nineteen [19] Pueblo Tribes of New Mexico. I am pleased to be here today to address the success or non-success of the implementation of HUBzones in Pueblo country.

The HUBzone Act of 1997 has had very little impact on businesses activities within Pueblo country. Though the law was enacted in 1997, the implementing regulations were not published until 1999, so we have had little time to judge its impact in our Pueblo communities.

It should be noted that the intent behind the legislation of inducing businesses to develop in areas that are removed from large cities, have a large work force, and have households with low incomes and high unemployment would fit the profile of many of our Pueblo communities. Less than 5 of the 19 Pueblos are within a close proximity to a major city, yet almost all are in close proximity to Federal facilities such as Los Alamos laboratory, military bases, government schools, and forestry and BLM activities.

The implementation of such a business inducement could have a dramatic impact on employment within the Pueblo communities, but it appears to be too early to make that assessment.

However, we already know that the possibility of a future enthusiastic assessment has been diminished by the restrictive interpretation SBA has given to their own regulations concerning its interpretation of "HUBzones". SBA's interpretation of "HUBzones" actually eliminates any type of tribally owned businesses at a time when tribally owned businesses are looking to grow in New Mexico. As a very tight communal society, many of the Pueblo groups prefer to foster tribally owned businesses rather than individually owned businesses. This is not a stifling of individual entrepreneurship, but merely a preference in doing business that has extended over hundreds of years. You might say that it is an elaboration on the "mom and pop" way of doing business.

The concept behind HUBzones seems to address the needs of many Pueblo communities, but could address even more of those needs if tribally owned enterprises were allowed to participate. The intent of moving people off the welfare rolls forever and increasing job opportunities for rural communities should not be limited because a government agency refuses to believe that tribally owned enterprises are established to address those same community needs.

I believe it would be very short sighted to pin our hopes on developing businesses within Indian country only on the abilities of the individual entrepreneur when tribally owned businesses not only have the same characteristics, but provide existing and enthusiastic business mechanisms for fulfilling the long-range goals of this Congress.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

STATEMENT OF

RICHARD L. HAYES
ASSOCIATE DEPUTY ADMINISTRATOR
FOR
GOVERNMENT CONTRACTING
AND MINORITY ENTERPRISE DEVELOPMENT
U.S. SMALL BUSINESS ADMINISTRATION

BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

May 12, 1999

Federal Recycling Program Printed on Recycled Paper

Good morning Mr. Chairman and Members of the Committee. My name is Richard L. Hayes, and I am the Associate Deputy Administrator for the Office of Government Contracting and Minority Enterprise Development at the U.S. Small Business Administration (SBA). I am appearing on behalf of SBA Administrator Aida Alvarez, whose schedule does not permit her being with you today. I would like to thank you for giving me this opportunity to discuss the implementation of SBA's HUBZone Empowerment Contracting Program (HUBZone Program) and SBA's initiatives to promote economic development opportunities for Native Americans and within Indian reservation communities. I will also be discussing other SBA programs that support economic development on Indian reservations.

Since the HUBZone Program was launched on March 22, 1999, SBA's HUBZone Website has already had more than 1 million hits. As of today, we have received 105 applications and 42 applications have been approved. I am pleased to inform you that of the 42 HUBZone firms approved, five are Native American-owned. Now, let me tell you a little about each of these firms.

- Dailey Construction of Lodge Grass, Montana, is a general construction firm that was established in 1978.
- Short Hop Construction is a general construction firm located in Evans, Washington. Short Hop was established in 1996 and is a participant in SBA's Minority Enterprise Development Program.

- Lightning Excavation is a general construction firm located in Libby, Montana. Lightning Excavation was established in 1998 and is also a participant in SBA's Minority Business Development Program.
- Arrow Technology Group is located in Hugo, Oklahoma, and the firm was established in 1998.
- Door Electric Company is located in Onamia, Minnesota. The firm was established in 1986.

Mr. Chairman, let us say that Administrator Alvarez and I both feel strongly that the HUBZone Program will be a big success in promoting business and job opportunities in economically distressed urban and rural areas.

Now, let me summarize the program's brief history, cite the purpose of the HUBZone Empowerment Contracting Program, discuss the basic elements of the program, and then identify specific initiatives we have undertaken to implement the program.

On December 2, 1997, President Clinton signed into law the Small Business Reauthorization Act (P.L. 105-135), which authorized the HUBZone program. This program is designed to promote private-sector investment and employment opportunities in distressed communities by expanding Federal contracting within these communities. The HUBZone Program will fulfill its purpose by not only fostering community renewal

in the short run, but also by helping to achieve and sustain the long-term viability of HUBZone small businesses.

After enactment of the law, SBA began working on how to implement the program to accomplish its objectives. We wanted to build upon the President's Empowerment Contracting Program and other Federal programs targeting community renewal, such as the U.S. Department of Housing and Urban Development's and U.S. Department of Agriculture's Empowerment Zone/Enterprise Communities Programs, without diminishing or infringing upon other important Federal initiatives such as the 8(a) program.

On April 2, 1998, SBA issued the proposed regulations for the HUBZone Empowerment Contracting Program. On that same day, SBA established a HUBZone home page within SBA's Website. While preparing the proposed rule and establishing a Website, SBA consulted with a number of Federal agencies including: the Bureaus of Census, Labor Statistics and Indian Affairs, the U.S. Department of Commerce, and various other Federal agencies represented on the Federal Acquisition Regulation Council. SBA published the final rule for the HUBZone Program on June 11, 1998, and the final rule became effective on September 9, 1998. This final rule outlines SBA's responsibilities for the administration of the program. In addition, an interim rule that provides contractual guidance for the program was published as an amendment to the Federal Acquisition Regulation (FAR) on December 18, 1998, and became effective January 4, 1999. The final FAR rule is expected to be published shortly.

The purpose of the HUBZone Empowerment Contracting program is to provide Federal contracting opportunities for certain qualified small business concerns located in selected urban and rural areas. The implementing legislation set a goal for the HUBZone Program of three percent of Federal procurement phased in over a five-year period. In FY 1999, that equates to approximately $2 billion. This number is expected to rise to $6 billion a year by FY 2003. Additionally, the legislation provides for HUBZone contracting opportunities through restricted competitive, sole-source, and full and open competition. Small businesses will have the opportunity to participate in restricted competition limited to HUBZone firms and in negotiated sole-source contracts. Also, small companies located in HUBZone areas will be allowed a ten percent price evaluation preference in full and open competition. The program promotes private sector investment and employment opportunities in these communities. Eligible HUBZone businesses who locate in Empowerment Zone/Enterprise Communities may also qualify for a variety of employment and investment tax credits. Fostering the growth of Federal contractors in these areas and ensuring that these contractors become viable businesses for the long term, will help to empower these areas without adversely affecting recent efforts to streamline and improve the Federal procurement process.

In an attempt to implement this program in the most cost effective, efficient, and customer friendly manner possible, SBA has made extensive use of technology. All information about the program is available on the HUBZone Website, including descriptive materials, SBA's role in administering the program, frequently asked

questions and a library which contains full text copies of program legislative and regulatory documents. The Website address is www.sba.gov/hubzone.

The Website also has two very unique technical features that were added after SBA opened the program on March 22, 1999. The first is a geo-code mapping system which allows a firm to determine whether it is located in a HUBZone by simply typing in an address. The system also provides detailed maps of HUBZone areas, including eligible census tracts, non-metropolitan counties and reservations. The second feature is an electronic application form. The electronic application is straightforward and easy to complete. We estimate that most firms can complete it within one hour. The electronic application is supported by a complete application guide and context-sensitive help screens, which provide plain English explanations and reference material to assist the applicant. Our purpose in creating the HUBZone homepage was to provide small business firms easy access to all relevant information necessary to understand and apply for the program.

In order to ensure maximum utilization of this program by Federal contracting agencies, ensure that this program is both user friendly, and ensure that Federal agencies have easy access to a listing of eligible firms, we are using Pro-Net (SBA's national database of small business contractors), as a gateway to the database of approved HUBZone firms. Utilizing Pro-Net in this fashion is consistent with recent procurement streamlining initiatives, which encourage the use of centralized databases to identify prospective contractors. Through this process, contracting officers are able to use Pro-

Net to identify firms for both small business and HUBZone set-aside opportunities. Essentially, the HUBZone database serves as a subset of the overall Pro-Net database.

Next, I would like to outline the criteria for HUBZone areas and individual firm eligibility. HUBZone areas include the following: designated census tracts that are primarily located in metropolitan areas, qualified non-metropolitan counties that meet a specific income or unemployment test, and lands within the exterior boundaries of Indian reservations. Individual firm eligibility is based upon four specific criteria as follows: (1) the firm must be a small business, (2) its principal office must be located within a HUBZone, (3) it must be owned and controlled by one or more persons, each of whom are United States citizens, and (4) at least 35% of its employees must reside in a HUBZone.

Although the eligibility criteria for firms appears straightforward, there is one unique issue that affects tribally owned firms. As stated above, the statute requires that a HUBZone small business concern be "owned and controlled by 1 or more persons, each of whom is a United States citizen." Thus, a legal issue has arisen concerning whether a small business concern owned and controlled by a Tribe, as an entity, rather than the individual tribal members, is owned and controlled by a person, who is also a U.S. citizen. After looking at the issue, we feel that there is a need for clarifying language to make it absolutely clear that tribally-owned businesses are eligible for the program. We are prepared to do that as part of our FY 2000 legislative package that will be transmitted to Congress shortly.

I would now like to identify other SBA efforts to support economic development on Indian reservations. Despite the overall soundness of our economy, there are areas of our country that are suffering. The economic vitality of Indian reservations is not what it could or should be. For these reasons, the Administration has embarked upon the "New Markets Initiatives" which is designed to highlight and emphasize assistance to areas that have been traditionally underserved. These initiatives, proposed in the President's FY 2000 budget, include programs to infuse these areas with equity capital, debt financing, and technical assistance, and we expect that Native American tribes will be able to utilize these tools to enhance and foster the economies of Indian reservations.

In addition, as part of SBA's strategy to reach out to traditionally underserved communities, we provided funding and support to 14 Tribal Business Information Centers (TBICs) to promote economic development on Indian reservations.

In August of 1995, the SBA entered into a Memorandum of Understanding with the Bureau of Indian Affairs (BIA) to establish the Tribal Business Information Centers (TBICs) demonstration project. The objective of the project, a partnership arrangement between a tribe or tribal college and the SBA, was to provide accessible and cost effective business development resources to Native American entrepreneurs living on or near Indian reservations. This objective was to be accomplished by establishing reservation-based TBICs. Currently, there are a total of 17 TBICs, 14 of which received SBA funding, participating in the project located in seven states: Arizona, California,

Minnesota, Montana, North Carolina, North Dakota, and South Dakota. The project continues to be very successful with the TBICs serving as invaluable resources in the effort to enhance and foster economic development opportunities on Indian reservations. We regularly receive requests from Tribes to establish new centers.

Since the inception of the project, the TBICs have assisted approximately 6,700 clients, provided approximately 11,353 hours of business counseling, held approximately 455 work shops, assisted in the completion of approximately 326 business plans and 200 loan packages, and were instrumental in the startup of approximately 315 businesses. Also, as testimony to the productive work of the TBICs, I would like to bring to your attention a story that is representative of their hard work. The Salish & Kootenai Tribal Business Information Center, located in Pablo, Montana, was instrumental in assisting Mr. Wayne Knutsen, the Owner of Knutsen Enterprises, in his efforts to start a landscaping business. The Salishy & Kootenai TBIC assisted Mr. Knutsen by helping him draft a business plan, loan application and company profile brochures. Additionally, Mr. Knutsen is utilizing business-related software that was provided by the Agency (QuickBooks) to learn how to control and manage his business. Today, Knutsen Enterprises, a successful landscaping business, employees three tribal members and is seeking to expand in the very near future.

TBICs offer community access to business related computer software technology, provide one-on-one business counseling services, and hold business workshops on an on-going basis. In an effort to further enhance economic development on Indian

reservations, the SBA provided extensive training to TBIC managers/facilitators. Each TBIC manager/facilitator received detailed training in the Agency's lending, Entrepreneurial Development, 8(a) Business Development, Small Disadvantaged Business and HUBZone Empowerment Contracting Programs.

TBICs can help a new business or an existing business. TBICs provide access to the tools and advice necessary to evaluate and improve marketing or sales techniques and product pricing. TBICs also offer invaluable guidance and counseling in market research and on obtaining business capital and credit. Using TBIC resources can result in a well-crafted, comprehensive business plan, which can assist new businesses to obtain capital, or expand the product line or services of existing businesses. SBA in its FY 2000 budget requested a funding level of $1.0 million for the continuation of the TBIC project.

In fiscal year 1998, the HUBZone Empowerment Contracting Program provided $350,000 to be utilized by the TBICs in their efforts to actively encourage, counsel, guide and direct Native American clients seeking to participate in the HUBZone program.

In December of 1998, SBA's Office of Native American Affairs held a TBIC Training Conference in Albuquerque, New Mexico. Respective senior Agency program representatives provided extensive training on SBA's entrepreneurial, lending and business development programs, and specifically on the HUBZone Empowerment Contracting Program.

Each TBIC manager/facilitator was required to attend at least one training seminar to enhance their knowledge of the regulatory requirements of the HUBZone program. Each of the fourteen TBIC managers/facilitators received extensive training and resource materials detailing the requirements and benefits of the HUBZone program. Additionally, a senior representative from the HUBZone Program office provided an extensive overview of the program's policies, procedures and guidelines. Since October 1998, cumulatively the TBICs have held nine HUBZone workshops with approximately 165 participants, and provided individual HUBZone counseling to approximately 200 individuals.

Furthermore, the Office of Native American Affairs has scheduled a second TBIC Training Conference to be held in Montana on June 22 - 23, 1999. A specific session is being scheduled to cover the HUBZone program in more detail. The Office of Native American Affairs is currently in the process of designing and implementing a database to capture HUBZone specific information.

SBA assistance to the American Indian community has not been limited to counseling and training activities. In Fiscal Year 1998, the SBA approved 462 business loans totaling $76.5 million to Native American-owned businesses. Additionally, SBA's Office of Native American Affairs is in the process of establishing a National Native American Task Force (NNATF). The task force will be comprised of elected tribal officials, individuals associated with economic development associations and organizations, and individuals involved in the promotion of economic development. The

NNATF will offer culturally tailored insight, guidance and advice as to how best SBA may deliver its programs in Indian country. Also, the NNATF will provide SBA with much needed input and guidance in understanding the unique economic and cultural barriers confronted by reservations in their efforts to enhance and foster economic development

In conclusion, the HUBZone Empowerment Contracting Program will bring jobs and capital to underutilized areas, including reservation communities. The economic multiplier effect of this infusion will help provide the basic infrastructure necessary for long term, sustained community development. The HUBZone Empowerment Contracting Program will serve as a vital component in the Administration's Empowerment Zone "arsenal of weapons" initiative to empower underutilized areas and promote community self-determination and long term economic development.

Thank you for inviting me to discuss with you the HUBZone Empowerment Contracting Program. I will be happy to answer any questions you might have.

Additional Questions Posed by Chairman Campbell
For Richard Hayes

Senate Committee on Indian Affairs
Hearing on HUBZone Implementation in Indian Country

1. You indicate that SBA is prepared to submit language to include tribally-owned firms in the HUBZone program. Is SBA also in support of modifying the definition of "Indian reservation" to include Native lands in Alaska and Oklahoma?

Our definition of Indian reservation refers to a Bureau of Indian Affairs (BIA) regulation, 25 C.F.R. ¶ 151.2(f), that defines "Indian reservation" as including that area of land over which the tribe is recognized by the U.S. as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, Indian reservation means that area of land constituting the former reservation of the tribe as defined by the Secretary of the Interior or his authorized representative. We have worked with BIA and the Department of Interior (DOI) to obtain the Secretary's definition of former Indian reservations for these purposes. Just recently the Department of Interior issued a proposed rule defining "former reservation" to include lands within the jurisdictional area of an Oklahoma Indian tribe and within the boundaries of the last reservation established by treaty, Executive Orders, or Secretarial Orders. This definition is identical to the definition provided in IRS Notice 98-45, issued in August 1998, that defines "former reservation in Oklahoma" for purposes of Section 188 (j) (6) of the Internal Revenue Code. According to the preamble of DOI's proposed rule, the Department believes that by defining the term as the IRS has, they will provide greater certainty in establishing these former boundaries, and congruity in coordinating the Department's land acquisition program with other federal programs. Once this final rule is issued, assuming it is the same as the proposed rule, SBA will broaden its HUBZone Empowerment Contracting Program definition to include Native lands in Oklahoma.

The aforementioned Bureau of Indian Affairs regulation defines an "Indian reservation" as including that area of land over which the tribe is recognized by the U.S. as having governmental jurisdiction. The BIA regulation states that "Tribe"' includes any Alaska Native Village or Alaska Native Group which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs. The HUBZone Empowerment Contracting Program recognizes this definition; and has included Alaskan Native Villages in the program as eligible Indian reservations.

2. Currently, five Native American HUBZone applications have been approved. How many Native owned businesses actually applied to participate in the HUBZone Program?

Currently **18** Native American firms have applied for the HUBZone Program.

3. How does the SBA coordinate with agencies in the Commerce and other Departments--for instance to promote Native trade and exports? Is SBA limited statutorily or otherwise from branching out to include such inter-agency efforts?

SBA is not limited statutorily from coordinating with the Department of Commerce and other Departments to promote Native trade and exports. In fact, we currently have a cooperative relationship with the Department of Commerce to staff and administer 19 U.S. Export Assistance Centers (USEACs) to support small business exporting, including Native trade exports. In addition, SBA funds fourteen Tribal Business Information Centers (TBICs) that provide counseling and training to Native American entrepreneurs. This training includes all aspects of business management and marketing, including opportunities available through exporting. In addition I will recommend that the National Native American Task Force (NNATF), that is currently being formed by SBA, consider Native American export opportunities as an issue to be discussed when the task force is formally established.

Additional Questions Posed by Senator Dorgan
For Richard Hayes

Senate Committee on Indian Affairs
Hearing on HUBZone Implementation in Indian Country

1. Given the fact that much of the economic development activity within Native American Reservations is generated by Tribally owned businesses, what steps, either legislative or administrative, need to be taken in order to allow them to participate in the HUBZone program?

As you are aware, the Small Business Reauthorization Act of 1997 (P.L. 105-135), which authorized the HUBZone Program, defines a HUBZone small business in part as a firm "that is owned and controlled by 1 or more persons, each of whom is a United States citizen". This statutory requirement raises the issue as to whether a small business owned and controlled by a tribe, as an entity, rather than individual tribal members, is owned and controlled by a U.S. citizen. The legislative history is not helpful in answering the question one way or another and so that issue is under active review in the Office of General Counsel. The General Counsel has advised me that there is a need for clarifying statutory language to make it absolutely clear that tribally owned businesses are eligible for the program. We are prepared to submit such language as part of our forthcoming FY 2000 legislative package.

2. With so many government contracts rising above the $5 million mark, is it realistic to expect that this program can achieve its goals of sending 3% of government contracts to HUBZone areas and still retain the cap on contracts?

The statutory cap on contracts awarded through the HUBZone Empowerment Contracting Program only refers to sole-source contracts. The statute provides that a contracting officer may award sole-source contracts when the anticipated award price will not exceed $5,000,000 for manufacturing contracts and $3,000,000 for all other contract opportunities. There is no dollar limit to contracts awarded through HUBZone set-aside competition or by application of the ten percent price preference in full and open competition. Based upon the expected number and unlimited value of HUBZone competitive set-aside contracts, and full and open contracts awarded through application of the price preference, we feel that the 3% goal is realistic and will be achieved.

3. Rural North Dakota is sparsely populated. Because of the way in which the program rules are written, the urban HUBZones in North Dakota are very small. Of the two, the largest consists of seven city blocks. The average rural HUBZone population in North Dakota is only 6,700. What steps can SBA take to ensure that the HUBZones are designed to encompass the "critical mass" in terms of number of people and geographic space necessary to create a viable economic base for these rural areas?

The program rules did not establish the HUBZone areas. The statute set forth the criteria for HUBZone eligibility for metropolitan, non-metropolitan areas and Indian reservations. The SBA final rule implemented the criteria. Further, SBA does not have the authority to change or affect the design of eligible HUBZone areas. However, we will take the necessary steps to ensure that information about the program and its benefits reach the "critical mass" of small businesses in North Dakota. SBA is committed at both the Headquarters and local district office level to conduct an effective marketing and outreach campaign to provide maximum access to all small businesses that are eligible to participate in this program.

4. North Dakota continually faces the pressure of out-migration. Opportunities have become severely limited. So, when individuals finds themselves faced with a job loss in rural North Dakota, they do not go on unemployment and look for another job, they move. Therefore, the statistics of unemployment and poverty used to establish HUBZones will not reflect the economic devastation that these areas have undergone. What can the SBA do to adequately meet the challenges that out-migration represents through the HUBZone program? Do you have the regulatory flexibility to introduce out-migration as a criteria for HUBZones?

We recognize and are sympathetic to the "out migration" problem that exists in North Dakota. However, the eligibility criteria (income or unemployment) for non-metropolitan counties is statutory and SBA does not have the regulatory authority to modify existing eligibility standards to add "out migration" as a criteria for the designation of a HUBZone.

TESTIMONY OF SOPHIE MINICH

VICE PRESIDENT OF ADMINISTRATION, COOK INLET REGION, INC.

SENATE COMMITTEE ON INDIAN AFFAIRS

HUBZone ACT of 1997
P.L. 105-135

Good Morning Mr. Chairman:

Thank you for inviting me to participate in today's hearing. My name is Sophie Minich. I am an Alaskan Native of Athabascan descent. I am also the Vice President of Administration of Cook Inlet Region, Inc. (CIRI), an Alaskan Native Corporation based in Anchorage, Alaska, and a shareholder of CIRI. CIRI is one of the 12 Alaska Native Regional corporations established by Congress under the Alaska Native Claims Settlement Act of 1971 (ANCSA). CIRI is owned by approximately 6,900 Alaska Native shareholders of Athabascan, Tlingit and Haida Indian, Inupiat and Yupik Eskimo and Aleut descent.

CIRI is recognized as one of the most successful corporations under ANCSA and is a critical part of Alaska's economy. CIRI's investments include nationwide businesses such as wireless telephone service, heavy equipment distribution, tourism, real estate, and construction services. CIRI also supports a number of non-profit organizations that provide educational scholarships, employment training and referral, health care, housing, and social services for CIRI shareholders and other Alaska Natives.

Today, I am here to testify on Public Law 105-135, Title VI, HUBZones Implementation. The idea behind the HUBZone empowerment contracting program is to foster the growth of rural areas afflicted with high unemployment and to encourage business growth and economic development for Native Americans. I applaud Congress for recognizing and wanting to assist American Natives in the development of our lands.

Under the Act, rural areas for Native Americans are defined as Indian lands or reservations. Unfortunately, because of the definition in the bill, specifically the term *Indian lands*, 99% of Alaska Natives are prohibited from participating in the HUBZone program. The Alaska Native Claims Settlement Act did not create reservations. Rather, in a purposeful alternative to the reservation system, Congress settled aboriginal land claims of Alaska Native people by providing for conveyance of land to the 12 regional and 222 village corporations. Only two villages "opted out" of the ANCSA settlement and are considered Indian reservations, namely Venetie and Mettlakatla. Other than these two minor exceptions, all Alaska Native lands are owned by ANCSA corporations, and thus are excluded from the current HUBZone definition of Indian lands.

The ANCSA settlement was designed to promote economic self-determination, and success, for Native people. The HUBZone law generally furthers this goal. For CIRI and the other Alaska Native Region and Village corporations to participate and take advantage of the HUBZone program, however, we would respectfully offer two recommendations:

The first recommendation is that land received under ANCSA by the Regional and Village corporations be made eligible.

The second is to eliminate the requirement that ANCSA Corporations' principal offices be located within the HUBZone.

Alaska is a vast state that is more than twice the size of Texas. The lands owned by Alaska Natives are in excess of 44 million acres. The vast majority of this acreage was selected because of its importance to Alaska Natives for its resource development potential and preservation of traditional lifestyle and culture.

The correlation between the Regional Corporations' land ownership and their business enterprises is not the same as for lower-48 reservation economies. Reconciling ANCSA with the HUBZone program's geographical focus is very difficult.

One of the major aspects of the HUBZone program is to make job opportunities available for Native Americans. This program may work well on Native lands in the lower 48 states; however, because of Alaska's uniqueness (vast areas of land, but with many Alaska Natives living in urban areas) the majority of Alaska Natives are currently ineligible from participating in many of the opportunities this program has to offer.

The lands which make Alaska Natives qualify for HUBZones are often far from the urban areas of Anchorage, Fairbanks, and Juneau, where tens of thousands of Alaska Natives live. These areas are also where the Native Corporations' headquarters and principal offices are located. The requirement that the headquarters or principal office be located in the HUBZone would automatically disqualify the majority of the Alaska Native Corporations.

We understand it was not the intent of Congress to disqualify Alaska Natives from the program, but under the current law, many Alaska Native Corporations are disqualified from fully participating because of the location of their headquarters and prinicpal offices.

Therefore, CIRI respectfully asks the Committee to make the above changes that I have recommended, specifically that the definition of *Indian lands* be expanded to include ANCSA lands. Finally, CIRI also recommends the prerequisite that the headquarters or principal offices be located in a HUBZone not be required for ANCSA Regional and Village Corporations.

Mr. Chairman and members of the Committee, thank you for allowing me to appear before you today. I appreciate the opportunity to be here to voice CIRI's support of the HUBZone program.

June 1, 1999

Honorable Ben Nighthorse Campbell
Chairman
Committee on Indian Affairs
United States Senate
Washington, D.C. 20516-6450

VIA FACSIMILE: (202-224-5429) AND MAIL

Dear Chairman Campbell:

I am writing in response to your letter of May 13, 1999.

Thank you for inviting me to appear before the committee to testify regarding HUBZones Implementation. CIRI appreciates the Committee's consideration of our comments.

In response to the questions posed in your letter:

1. CIRI's recommendation includes all lands received under the Alaska Native Claims Settlement Act, both by regional and village corporations.

2. Yes. CIRI's recommendation is to not limit HUBZones to the areas where regional corporations are headquartered, but rather to extend HUBZones to the areas where Native lands are located. Most of the regional corporations are headquartered in Anchorage, in non-HUBZone areas. By exempting the headquarters from this requirement, it will help Congress meet its challenge of economic development in "Bush" areas, since this is where the majority of Native land is.

3. CIRI would definitely take into consideration lands that are designated HUBZones in developing and starting up new business operations. However, the greatest impact we foresee is in assisting smaller village corporations in developing their lands. This amendment will make their lands more attractive to develop, thus helping provide job opportunities to underdeveloped areas.

Again, thank you for your consideration of our views.

Sincerely,

Sophie Minich
Vice President, Administration

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Statement of Pete Homer, President/CEO
National Indian Business Association

United States Senate Committee on Indian Affairs

P.L. 105-135, HUBZones Implementation
May 12, 1999

Thank you, Mr. Chairman and members of the Senate Committee on Indian Affairs. On behalf of the National Indian Business Association, I would like to thank you for the opportunity to testify today on Public Law - 105-135, HUBZones Implementation.

We are here today seeking legislation that will ensure that American Indian Tribal Enterprises and Alaska Native Corporation are eligible to participate in the Small Business Administration HUBZone Empowerment Program. While we believe that Congress clearly demonstrated its intent that tribal enterprises and Alaska Native Corporations could participate, SBA's interpretation of the Act is that tribal enterprises are excluded. We are hopeful that this unfortunate misunderstanding will be cured by P.L. 105-135 HUBZone Implementation that will explicitly address the eligibility of tribal enterprises and Alaska Native Corporations.

My name is Pete Homer, I am an enrolled member of the Colorado River Indian Tribes of Arizona. I serve as the President and Chief Executive Officer of the National Indian Business Association (NIBA), a national trade organization established in 1992 to promote Native American Indian business development through education, communication, and advocacy. NIBA represents 24,000 American and Alaska Native owned businesses nationwide.

Our mission is to work to stimulate business development, job creation, and economic activity within the American Indian and Alaska Native communities. NIBA is founded on the principle that increased economic and commercial development in Indian Country and the expansion of American Indian and Alaska Native business ownership is the single most important step toward a better, more prosperous future for American Indians and Alaska Natives.

It was in furtherance of these goals and principles that NIBA was one of the earliest supporters of the HUBZone legislation. We were extremely pleased when the Congress in the original Act granted HUBZone status to all reservations in the Act in recognition that all Indian reservations constitute "Historically Underutilized Business Zones. We were optimistic that the pre-designation of reservations as HUBZONES would dramatically reduce the amount of time and red tape it would take for reservation based businesses to participate and that the increase in federal contracting opportunities for Indian businesses across the country would stimulate economic activity and create jobs.

Our early optimism, fueled by the clear direction Congress provided in the legislation; the President's strong commitment to Indian economic development, his orders directing federal agencies to consult with tribal leaders; and SBA's establishment of an office specifically charged with handling Indian issues, has since given way to a high degree of disappointment. As this committee is aware, catch-22 situations frequently arise in the implementation of new programs. Indian programs in particular are often fraught with such difficulties, especially where an agency has limited experience in implementing Indian programs and whose institutional machinery has limited exposure to the intricacies of federal Indian law and policy. This is one of the reasons behind the President's directives to agency heads requiring full and effective consultation with tribal leaders whenever the agency undertakes activities, including rulemaking, which affect tribes and tribal interests.

In the case of HUBZones implementation, the Catch-22 is the agency's determination that

tribal enterprises are not eligible to participate in the program, excluding some 1,200 tribally-owned businesses from participation in the HUBZones program. The irony is that Tribal enterprises represent the single most important category of reservation based businesses with the capacity to meaningfully participate in the HUBZones program.

Of the 558 American Indian and Alaska Native tribal governments, approximately 190 own at least one (1) tribal enterprise and 48 own more multiple enterprises. Laguna Pueblo in New Mexico, for example, has 13 tribal businesses, creating more than 800 jobs. The Turtle Mountain Tribe in North Dakota has 9 tribal businesses, creating over 500 jobs. The Assiniboine and Sioux Tribes of the Ft. Peck Reservation in Montana has 8 Tribal businesses creating over 400 jobs. Alaska Native Corporations have an estimated 205 different businesses, employing approximately 2,000 workers. It is simply illogical to conclude that Congress intended all reservations and tribal communities to constitute historically underutilized business zones, yet intended to exclude from participation those very enterprises with the best, and in some cases only, capacity to participate and effect the results intended in the Act.

The problem with the definition arises out of SBA's interpretation of a provision of the Act that defines the term "HUBZONE Small Business Concern." Under this provision, only those "small business concerns" owned and controlled by one or more persons who are citizens of the U.S. are eligible to participate in the program. Although the drafters included Alaska Native Corporations as entities" owned and controlled by one or more "persons" they did not come to the same conclusion in relation to Tribal-owned Enterprises. Although NIBA and others commented specifically on this point, emphasizing tribal enterprises, like Alaska Native Corporations, are, in fact, owned by all tribal members who are natural persons, SBA's attorneys were unpersuaded. Accordingly, we appear here today urging this Committee to pass P.L. 105-135 to ensure the eligibility of tribal enterprises and Alaska Native Corporations so as to resolve this matter with finality.

The exclusion of tribal enterprises virtually nullifies the possibility that the HUBZones program will have a significant impact on reservation economic activity and unemployment. This is particularly distressing given the fact that properly implemented its impact could be substantial, particularly where there are established enterprises with a demonstrated production capability. If, for example, 100 tribal enterprises were to receive 1 ½ % of the $ 2 billion available for contracting and sub-contracting at the FY-99 funding level, the resulting $300,000,000 would create approximately 5,000 jobs. In Indian Country, where 35 % of the reservations have an unemployment rate of 67 % and where the remaining 65 % have unemployment rates ranging from 18 % to 45 %, the creation of 5,000 jobs is dramatic. Projecting ahead, their will be an increase of $1 Billion in each subsequent year to about $6 Billion in 2003.

There is no question that American Indian and Alaska Native areas, in virtually all cases, fall into the category of "Historically Underutilized Business Zones." This is why Congress included Indian Country provisions in the Act in the first place. While our nation has enjoyed economic prosperity for nearly a decade, improvements in economic conditions, while steady, have been slow in Indian Country. Tribal economies continue to lag far behind the rest of the nation. The proliferation of Tribal enterprises has been one of the bright spots in an otherwise uninspiring snapshot of the reservation economic growth. Tribal enterprises create not only jobs, experience, and training for workers, but a deepening awareness of what can be. Tribal enterprises deserve all of the support, encouragement, and assistance we can provide for they are critically important agents of economic growth and expansion.

Let me close by thanking you for this opportunity to discuss this important matter with you here today. Again, we urge you to favorably consider our request for enactment of Public Law 105-135 HUBZones Implementation to clarify the eligibility of tribal enterprises and Alaska Native Corporations for participation in the HUBZones program.

National Indian Business Association
725 Second Street, N.E., Washington, D.C. 20002 Tel. (202) 547-0580 Fax (202) 547-0589

May 26, 1999

The Honorable Ben Nighthorse Campbell
United States Senate Indian Affairs Committee
Senate Hart Office Bldg. Rm. 838
Washington, D.C. 20510

Attention: Paul Moorehead

Dear Senator Campbell:

First, I would like to thank you and members of the Senate Indian Affairs Committee for providing us the opportunity to testify at the May 12, 1999 oversight hearing on Public Law 105-135, HUBZones Implementation. NIBA has been and remains a strong supporter of the HUBZones program and we deeply appreciate the Committee's interest in ensuring that the program will benefit tribal communities.

We are pleased to respond to the questions contained in your letter of May 13, 1999. Our responses to each question are as follows:

Question 1 - If this Committee were to propose changes to the two definitions we heard about this morning, would that help make the HUBZones a success in Native Communities?

Yes, the proposed changes are essential to the success of the HUBZones program in Indian Country. Private sector development on Indian reservations, as this Committee is aware, is extremely limited for a variety of reasons, including labor force, market, and capital formation issues, among others. Tribal governments are, in many cases, the only institutions on reservations with the capacity, experience, organizational skills, and access to investment capital to establish and manage business enterprises, particularly skilled, high wage, labor intensive enterprises such as manufacturing companies. Accordingly, most enterprises on reservations presently capable of entering into federal contracts or sub-contracts are tribally owned. The exclusion of tribal enterprises, therefore, virtually nullifies the possibility that the HUBZones program will have a significant impact on reservation economic activity and job creation.

It is also important to note that both this Committee and the Small Business Administration

have invested a great deal of effort in the establishment and growth of tribal enterprises through SBA's 8(a) and other federal business development programs. Many of the most successful tribal enterprises are graduates of the 8(a) program possessing a demonstrated capacity to manage and deliver on federal contracts. It makes no sense to exclude those businesses with the greatest potential to succeed not only in terms of job creation, but in terms of providing quality goods and products under these contracts. Building on past success is the surest path to future success.

Question 2 - What role do you see the HUBZone program serving in Native Economic Development.

While no single federal program will solve all problems, properly implemented, the HUBZones program will serve as an important tool in an economic arsenal aimed at enhancing business and economic activity in tribal communities across the nation. Equally important are the jobs that will be supported and/or created by those business concerns receiving HUBZones awards. Expanding opportunities for tribal members to secure meaningful work experience is one of the most important steps in changing the depressed economic environment that prevails in most of Indian Country today.

One of the most important advantages of the HUBZones program is that the process is simple, straightforward and streamlined, making it easier for small reservation based business owners to complete the application process and participate in the program. Another advantage is that there is no mandatory "graduation" date, which enables small business concerns to participate until such time as they outgrow the "small business" classification altogether. The 10% preference rate for HUBZone businesses will go a long way to ensure that reservation based businesses are competitive. Taken together, these advantages will help reservation based business to breach the gap and successfully compete for contracts from the ten largest federal agencies.

Question 3 - What do you see as the largest impediment to self-sufficient Indian economies?

Many factors impede economic self-sufficiency in Indian Country. Access to capital, geographic isolation, lack of well-developed physical infrastructure, perceptions as to the institutional stability in tribal communities, relative skill and educational attainment levels of the labor force, and a variety of market factors are among the many difficult economic challenges faced by the Indian business community. While NIBA acknowledges that all of these factors play a role, we believe that one of the major impediments is simply that American Indians and Alaska Natives lack employment opportunities which provide the experience needed for the development of entrepreneurial skills.

On reservations, job opportunities are extremely restricted in most cases. In tribal communities, most jobs are in the public, not the private sector. Across Indian Country, the BIA, IHS and tribal government are typically the largest employers of reservation residents. While many such jobs pay relatively well, few positions provide the kind of work experiences needed to equip workers to succeed in the private sector. The absence of a reservation private sector precludes the reservation based labor force from developing the skills needed for business activity as well

as the confidence essential to entrepreneurial success.

Establishing and managing a business, even a very small business can be a daunting task, particularly for persons who have not had the benefit of experience in the private sector. In this respect, reservations are analogous to third world countries whose progress comes slowly through a process of trial and error rather than built upon a foundation of prior experience and success. Adding to the problem is the fact that outreach, education, and training activities related to business development are extremely limited and seldom provided in the community. Efforts to assist reservation based residents overcome these obstacles are needed.

We hope these answers are useful. We also look to this Committee's leadership to ensure that the eligibility of Tribal Enterprises and Alaska Native Corporations as HUBZone small business concerns is clarified and to effect full implementation of the HUBZones program throughout Indian Country.

Sincerely,

Pete Homer
President/CEO

STATEMENT FOR THE SENATE COMMITTEE ON INDIAN AFFAIRS ON HUBZONES IMPLEMENTATION SUBMITTED BY PETRO STAR INC.

Petro Star Inc., a wholly-owned subsidiary of the Arctic Slope Regional Corporation, hereby submits the following statement in conjunction with the Senate Committee on Indian Affairs' May 12, 1999 oversight hearing on HUBZones implementation.

ALASKA NATIVE CORPORATIONS AND THE HUBZONE ACT

Alaska Native Corporations ("ANCs") are unique in that they are organized as private corporations but fulfill many of the functions that are served by Indian Tribes. As such, the primary objective of ANC-owned businesses is to provide economic and employment benefits (through shareholder hire programs) to their Alaska Native shareholders. To facilitate this objective, Congress has chosen to qualify ANCs and their subsidiaries for, *inter alia,* programs designed to assist small businesses, in section 1626(e) of Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. 1601 et seq.

In this regard, the HUBZone program is well suited to assisting ANC-owned businesses. Unfortunately, ANC-owned businesses are unlikely to meet the requirements of the HUBZone Act of 1997 because of the practicalities of locating businesses in Alaska. To address this problem, we propose to amend the HUBZone Act of 1997 to deem any ANC-owned small business that meets the ownership and control criteria of § 29 of ANCSA to be a qualified HUBZone small business concern.[1/] A copy of this proposal is attached. An amendment of this nature will

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[1/] Section 29 of ANCSA, 43 U.S.C. § 1626(e), provides: "(1) For all purposes of Federal law, a Native Corporation shall be considered to be a corporation owned and controlled by Natives and a minority and economically disadvantaged business (continued...)

allow ANC-owned businesses to participate in the HUBZone program and, by so doing, reconcile the purposes of the HUBZone Act with those of ANCSA.

- DEEMING ALASKA NATIVE CORPORATION-OWNED SMALL BUSINESSES TO BE QUALIFIED HUBZONE SMALL BUSINESS CONCERNS IS THE BEST MEANS OF RECONCILING THE POLICIES EMBODIED IN THE NATIVE CLAIMS SETTLEMENT ACT WITH THE FUNDAMENTAL GOALS OF THE HUBZONE PROGRAM.

The ANCs that were organized pursuant to ANCSA bear many resemblances to Indian Tribes, but they also are different in certain crucial respects. Unlike Tribes, ANCs are organized under Alaska state law as private corporations. Land grants under ANCSA were "compensation for the extinguishment of claims to land," 43 U.S.C. § 1626(a), and the ANCs now hold title to their lands as private corporations, governed by the same laws and rules as any other private corporations.

Unlike private corporations, however, ANCs perform dual roles similar to those of Tribes. They have the difficult charge both of making profits to distribute

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[1/] (...continued)
enterprise if the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock and by Natives and descendants of Natives, represents a majority of both the total equity of the corporation and the total voting power of the corporation for the purposes of electing directors. (2) For all purposes of Federal law, direct and indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation qualifying pursuant to paragraph (1) shall be considered to be entities owned and controlled by Natives and a minority and economically disadvantaged business enterprise if the shares of stock or other units of ownership interest in any such entity held by such Native Corporation and by the holders of its Settlement Common Stock represent a majority of both - (A) the total equity of the subsidiary corporation, joint venture, or partnership; and (B) the total voting power of the subsidiary corporation, joint venture, or partnership for the purpose of electing directors, the general partner, or principal officers."

to their shareholders and of safeguarding age-old traditions--despite the extinguishment of their shareholders' aboriginal land rights. Consistent with these facts, ANCs are eligible for all Federal Indian programs. 43 U.S.C. § 1626(d). Indeed, ANCSA recognizes the unique difficulties faced by the ANCs with its mandate that ANCs and their majority-owned subsidiaries (regardless of tier) shall be considered to be "economically disadvantaged enterprises . . . [f]or all purposes of Federal law." 43 U.S.C. § 1626(e).

Within this context, the Regional Corporations selected ANCSA lands largely either for their resource development potential or for their importance to the preservation of their shareholders' traditional (*i.e.*, subsistence) lifestyles.[2/] In contrast, they typically set up separate operating businesses with the different goals of making profits and providing employment for shareholders. Thus, there is little correlation between the Regional Corporations' land ownership and the location of its operating businesses. This is the situation that makes reconciling ANCSA's goals with the HUBZone Program's geographical focus difficult.

Two particular issues arise in crafting an amendment to make the HUBZone program consistent with the purposes of ANCSA. First, any solution to the ANC's dilemma should not operate significantly to diminish the benefits that the HUBZone Program otherwise would have for historically underutilized business zones. And second, any solution formulated to address ANC-specific concerns should be limited so as to affect only ANCs. As discussed below, a solution in which ANC majority-owned small businesses qualify as HUBZone Business Concerns appears to reconcile the different interests.

[2/] Land selections by Village Corporations were geographically constrained. The discussion in this memorandum focuses on the Regional Corporations.

- DEEMING ANC-OWNED SMALL BUSINESSES TO BE HUBZONE SMALL BUSINESS CONCERNS WOULD NOT SIGNIFICANTLY DILUTE THE IMPACT OF THE HUBZONE PROGRAM.

The impacts on *other* small businesses of treating ANC-owned small businesses ("ANC Businesses") as qualifying HUBZone Small Business Concerns ("HUBZone SBCs") would be minimal. To be eligible, ANC Businesses would still have to qualify as "small business concerns." As such, any ANC Business located in a HUBZone already would qualify as a HUBZone SBC unless it had non-HUBZone, non-8(a), or non-Women-owned business affiliates.[3/] Thus, the benefit of the amendment to the ANC Business would be that it could compete on an equal footing with other small businesses in the HUBZone regardless of its affiliations.

The benefits of the HUBZone Program are such that allowing an ANC Business located *outside* of a HUBZone to qualify for the Program would not unfairly prejudice other small businesses. For instance, although an ANC Business located outside of a HUBZone *could* qualify for a sole source award under § 602(b)(1)(B) of the HUBZone Act, 15 U.S.C. § 657a(b)(2)(A), the decision to make sole source awards would be subject to the discretion of the contracting officer, who would safeguard against any undue impacts on other small businesses. Also, while ANC Businesses would qualify for the bid evaluation preference in full and open competition pursuant to § 602(b)(1)(B) of the HUBZone Act, 15 U.S.C. § 657a(b)(3), the HUBZone Act itself provides that this preference would not apply with regard to the bids of other small businesses.

[3/] Under the current regulations, an ANC-owned small business with its principal place of business located in a HUBZone could be found not to qualify for the program if it had an affiliate not located in a HUBZone. Removal of this possibility would not unduly prejudice HUBZone competitors of the ANC-owned business, since affiliates of the ANC-owned concern are "counted" in SBA's determination of whether or not the business qualifies as a small business.

Finally, the proposed approach would allow ANC Businesses to locate, or to maintain their locations, where they could best serve the twin goals of economic performance and shareholder hire. This result, however, would not seriously compromise the goals of the HUBZone Program, since only ANC businesses would be affected.[4/] Moreover, and importantly, the profits from ANC Businesses flow through to the ANC's and their shareholders. Many of these people live in the most and remote and challenging areas of the United States, and the ANCs themselves are recognized by ANCSA as economically disadvantaged. Assisting the economic development of the ANCs is squarely within the spirit of the HUBZone Program.

- MODIFYING THE HUBZONE ELIGIBILITY REQUIREMENTS FOR ALASKA NATIVE CORPORATIONS COULD BE ACCOMPLISHED WITHOUT AFFECTING THE PROGRAM'S APPLICATION IN THE LOWER 48 STATES.

As the discussion above makes clear, the situation of the ANCs is unique. Their legal status among Native American entities is unique, and they have a different legal relationship to their land than Indian Tribes have to their reservations. In addition, Small Business Administration program eligibility requirements have long reflected the special circumstances of ANC Businesses. A continuation of this recognition that ANCs are different from Tribes can form the basis of limiting the impact of ANC-specific eligibility requirements in the same manner that ANC-specific eligibility provisions of the Small Disadvantaged Business program are limited.

[4/] This ability is particularly important where an ANC Business's economic focus is resource related and its location therefore is fixed. For example, Petro Star Inc. is a wholly-owned subsidiary of Arctic Slope Regional Corporation that operates two oil refineries that are dependent on access to both the Trans Alaska Pipeline System and their markets.

PROPOSED AMENDMENTS

TO

THE HUBZONE ACT of 1997

SEC. 1. ALASKA NATIVE CORPORATIONS.

(a) Section 3(p)(3) of the Small Business Act (15 U.S.C. § 632), as amended, is amended to read as follows:

"(3) HUBZone small business concern. -- The term 'HUBZone small business concern' means --

"(A) a small business concern --

(i) that is owned and controlled by 1 or more persons, each of whom is a United States citizen; and

"(ii) the principal office of which is located in a HUBZone; or

"(B) a small business concern that meets the ownership and control criteria set forth in section 29 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1626(e)."

(b) Section 3(p)(5) of the Small Business Act (15 U.S.C. § 632), as amended, is amended by adding at the end the following:

"(E) Alaska Native Corporations. -- A HUBZone small business concern that is an Alaska Native Corporation or is owned by an Alaska Native Corporation is "qualified" if the small business concern certifies to the Administrator that it meets the ownership and control criteria set forth in section 29 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1626(e)."

W. Ron Allen, President
National Congress of American Indians
Prepared Statement on the Implementation of the HUBZone Act of 1997
P.L. 105-135
To the United States Senate Committee on Indian Affairs

May 26, 1999

I. INTRODUCTION

Good morning Chairman Campbell, Vice Chairman Inouye, and distinguished members of the Senate Committee on Indian Affairs. I am W. Ron Allen, President of the National Congress of American Indians (NCAI), the oldest and largest Indian advocacy organization in the United States, and Chairman of the Jamestown S'Klallam Tribe. On behalf of the NCAI, I would like to thank you for this opportunity to submit testimony for the May 12, 1999 hearing record, on the implementation of the "HUBZone Program". NCAI remains dedicated to advocating on behalf of the interests of our 250 member tribes on a myriad of issues including the advancement of economic development on Indian reservations. We also remain dedicated to the exercise of tribal sovereignty and the continued viability of tribal governments.

As this Committee is well aware, American Indians and Alaska Natives suffer higher rates of unemployment, poverty, poor health, substandard housing, and associated social ills than any other group within the United States. Federal under funding of Indian programs and very limited means for viable economic development have created some of the most impoverished areas within the United States.

Sustainable economic development on Indian reservations has proven to be the most viable remedy to alleviate these ills. Within the United States fiduciary duty to tribes lies the responsibility to assist tribes with the development of sustainable economies. NCAI believes that P.L. 105-135, as intended, took some much needed steps toward assisting tribes in acheiving economic self-sufficiency. However, definitional problems have caused this law to be less effective than it could be. In order to rectify this problem, NCAI supports the inclusion of native lands in Alaska and Oklahoma within the benefits from the HUBZones program. In addition, NCAI also supports allowing Tribally-owned firms to be eligible for HUBZones contracts.

II. SHOULD THE BENEFITS OF THE HUBZONES PROGRAM BE MADE TO APPLY TO NATIVE LANDS IN ALASKA AND OKLAHOMA?

Yes, the benefits of the HUBZones program should be made to apply to native lands in Alaska and Oklahoma. Under the definition of Historically Underutilized Business Zones (HUBZones) "lands within the external boundaries of an Indian reservation" are included.

Mr. Chairman, as you are well aware, there are a number of forms of land ownership patterns within Indian country that do not fall within the strict definition of "reservation" status, but nevertheless are tribal territory. Examples of this include the Pueblos of New Mexico, Indian communities on former reservation lands in Oklahoma, and lands held by Alaska tribal governments under the Alaska Native Claims Settlement Act.

For the purposes of the benefits of the HUBZones program, the definitions should be expanded to include native lands in Oklahoma and Alaska. Tribal communities in both of these states suffer from lack of economic opportunity and are clearly within the class of beneficiaries originally intended by Congress to benefit from the HUBZone Act. Because much of Oklahoma is former reservation lands, special care should be taken so that unintended beneficiaries do not dilute the impact of HUBZone programs, as happened with accelerated depreciation under Section 168(j)(6) of the Internal Revenue Code. NCAI also supports the extension of the HUBZone programs to native lands in Alaska, and would encourage the Committee to consult directly with Alaska tribal governments and incorporated Native groups in fashioning appropriate definitions under the Alaska Native Claims Settlement Act.

III. SHOULD TRIBALLY-OWNED FIRMS BE ELIGIBLE FOR HUBZONES CONTRACTS?

Yes, Tribally-owned firms should be eligible for HUBZones contracts. The requirements to participate in the HUBZones program are as follows: a) the concern must be a HUBZones Small Business Concern (SBC) as defined in §126.103 and b) at least 35% of the concern's employees must reside in a HUBZone. For the purposes of this testimony I will only address the first requirement. Under §126.103 an SBC is defined as "exclusively owned and controlled by persons who are United State citizens and has its principal office located in a HUBZone. A person is defined as a natural person that includes "Alaska Native Corporations and any direct of indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation." Unfortunately tribes are not included in this definition, thereby disqualifying the participation of tribally-owned enterprises from the HUBZone program.

Ironically tribes are included in the definition of a Small Disadvantaged Business (SDB), "owned and controlled by socially and economically disadvantaged individuals, tribes, Alaska Native Corporations, or Community Development Corporations." It seems apparent that Congress intended tribally-owned enterprises to be eligible for contracts under the HUBZones program. However, under the Small Business Administration's (SBA) interpretation, tribal enterprises are excluded.

Mr. Chairman as you are fully aware, tribes are located in historically underutilized business zones. The exclusion of tribally-owned enterprises from the HUBZones program is directly contrary to the legislative purpose "to provide federal contracting assistance for qualified SBC's located in historically-underutilized business zones in an effort to increase employment opportunities, investment, and economic development in such areas." It seems impracticable for Congress to create legislation with the intent of benefitting tribes and yet

due to definitional problems have the SBA not allow their participation in the program. NCAI strongly supports the inclusion of tribally-owned businesses in the definition of entities eligible for contracts under the HUBZones program.

IV. Conclusion

Sustainable economic development in Indian Country is a top priority for NCAI. Therefore, we support the inclusion of native lands in Alaska and Oklahoma within the benefits from the HUBZones program. Additionally, NCAI also supports allowing Tribally-owned firms to be eligible for HUBZones contracts.

Mr. Chairman, NCAI stands ready to work with you and Vice Chairman Inouye on the common goal of economic self-sufficiency. Thank you once again, for the opportunity to provide this statement.

Statement of the Navajo Nation Oil & Gas Company, Inc. For the Senate Committee on Indian Affairs On HUBZone Implementation

106th Congress, 1st Session

The Navajo Nation is a federally recognized Indian nation with 225,000 citizens and a territory of over 25,000 square miles in Arizona, New Mexico and Utah. The Navajo Nation entered into two treaties with the United States wherein the United States pledged to protect Navajo self-government and to promote the well being of the Navajo people. Pursuant to its powers of self-government, the Navajo Nation responded to explicit Congressional encouragement in the Energy Policy Act of 1992, 25 U.S.C. §3503, for Indian nations to form vertically integrated tribal energy ventures, and by focusing on the potential of a vertically integrated oil company.

Consequently, the Navajo Nation established the Navajo Nation Oil & Gas Company, Inc. ("NNOGC"), invested $500,000 as start up capital, and authorized NNOGC to market Navajo crude oil as well as participate in the transportation, distribution and sale of refined product in Navajo Indian country. The Secretary of the Interior granted a federal charter for NNOGC under section 17 of the Indian Reorganization Act, as amended, and the Navajo Nation Council approved the merger of all operation of NNOGC into that federal corporation. Under Navajo law and NNOGC's federal charter, all dividends and distributions of profits are required to be devoted to business development and essential governmental functions. Moreover, NNOGC's operations provide critical employment opportunities to alleviate the high unemployment and crushing poverty of the Navajo people.

NNOGC submits this testimony regarding the implementation of the Small Business Administration's ("SBA") HUBZone Empowerment Contracting Program ("HUBZone Program"). On December 2, 1997, President Clinton signed into law, the Small Business Reauthorization Act, P.L. 105-135, Title VI, 111 Stat. 2627, codified at 15 U.S.C. §657a, authorizing the HUBZone Program. The HUBZone Program's purpose is to promote private-sector investment and employment opportunities in distressed communities by expanding Federal contracting within these communities, including Indian communities. For example, the statute specifically includes Indian reservations within the definition of HUBZones. See 15 U.S.C. §632(a)(1). However, in promulgating the proposed regulations and final rule for the HUBZone program, the SBA determined that tribally owned businesses are not eligible to participate in the HUBZone program. The SBA's determination will exclude NNOGC from participating in federal procurement contract preference within the entire Navajo Nation, which in its entirety constitutes a HUBZone. Certainly, this result could not have been the intent of Congress.

The issue here is the statutory eligibility criteria for participation in the HUBZone program. The statute requires that a HUBZone small business (1) must be a small business, (2) the principle office must be located within a HUBZone, (3) ***must be owned and controlled by one or more persons, each of whom are United States citizens,*** and (4) at least 35% of its employees must reside in a HUBZone. See generally, 15 U.S.C. §632 (p)(5); 13 C.F.R. Part 126. The SBA has interpreted the third requirement to exclude from eligibility small businesses that are owned and controlled by an Indian tribe because these entities are not United States citizens. However, the Act's inclusion of Indian reservation in the definition of HUBZones clearly shows

congressional intent promoting tribal economic development and job growth within reservations. Thus, it is simply illogical that Congress would have excluded tribally owned businesses from participation in the HUBZone program.

The Navajo Nation suffers from a multi-billion dollar infrastructure deficit and severe unemployment. The establishment of wholly owned Navajo Nation enterprises and corporations is to help address the staggering poverty on the reservation. Participation of tribally owned businesses in the HUBZone program is critical to promoting economic stability and prosperity on the Navajo Nation. Therefore, we respectfully request that Congress immediately clarify that the HUBZone program was intended to include tribally owned and controlled businesses

Comments on the HUBZone Certification Process
Eric Nelson, North Dakota Small Business Development Center Procurement Assistance Center
1-800-698-5726

05/21/99

1. The HUBZone registration system is not functioning well enough to allow rural small businesses access to the registration process. The first major problem is that there is no option for businesses located on reservations or within designated HUBZone counties to get a response from the Web site certification system recognizing the fact that they are located in a HUBZone. This is essential since this is the point at which they are eliminated from or prohibited from accessing the registration process. The Web Site acknowledges that the county or reservation is a HUBZone. However the company is prohibited from completing the registration process if it does not have a street address that is recognized by the registration system. The required street address feature of certification process excludes many businesses on reservations and rural businesses in HUBZone counties because in rural America there are many places with no street addresses. Some rural and reservation businesses have addresses like "Highway 5 West, Belcourt" or "3.5 miles east and 2.0 miles north of Dunseith". Other examples of common rural addresses are "RR2, BOX 24" and "Fire Number 35" are common addresses in rural America When the business enters the HUBZone registration process the first thing they are greeted with is "you must have a street address to proceed with the registration". The company can go no further. The example I used above belongs to Turtle Mountain Manufacturing. They are located on the Turtle Mountain Reservation in Rollett County. Both the reservation and the county are HUBZones. Yet they cannot get past the first entry point on the HUBZone certification registration process. Another example is DTI, 1 Main Street, Fort Totten, ND, located on the Spirit Lake Reservation, and in Benson County. Both are HUBZones. In both these examples the HUBZone Certification Registration responds with "Unable to find that Address-try again". This is truly amazing since DTI has been registered in PRONet under that address for over a year. Army Tank and Automotive Command has a contract valued at over $12 million they want to award to Turtle Mountain Manufacturing under the HUBZone program, if the company can get the certification. There are Tribal ownership issues with this company. However, **every company in a HUBZone should have access to the registration system to be evaluated for certification based on the elements**

required for certification. The requirements are: (1) the firms must be a small business, (2) it's principal office must be located within a HUBZone, (3) it must be owned and controlled by one or more persons, each of whom are United States Citizens, (4) at least 35% of its employees must reside in a HUBZone. **Not one of these requirements require a street address that is acceptable to the SBA.** This same problem exists for non Indian owned and non reservation businesses located in HUBZone counties. To an observer outside the SBA it appears that an additional requirement not in the program requirements is added to the certification process and only selected addresses are allowed to enter the certification process. The **problems with rural addresses were identified to the SBA at the web site in December 1998, on the phone in January 1999, and have been a continuing issue ever since. It was not fixed when the site opened for registrations on March 23, 1999.it is still not fixed as of May 20, and no alternative is available.** In desperation we sent one registration by certified mail on a registration form printed off the WEB Site. **The HUBZone Certification Process is not serving those it claims to serve on an equal basis.**

A proposed solution is to allow registration based on location in a HUBZone county or on a reservation without a street address. Accept street addresses entered by businesses, the certification process should be able to determine if the business is in a HUBZone in Non-Metropolitan Statistical areas without a street address.. It would be interesting to find out how the SBA arrives at the conclusion that an address is not legitimate, or "not found" as it is phrased in the process.

2. Businesses certified as HUBZone businesses are not listed at the HUBZone web site. This is a real disadvantage to the businesses the SBA is trying to serve. Checking the Web site under "HUBZone approval list" results in the response "Coming Soon". Agencies looking for Certified HUBZone businesses must go to a different site -PRONet to find the list. This places HUBZone businesses at a disadvantage in several ways. The HUBZone Approval List site does not refer anyone to PRONet or mention where the list may be obtained. The HUBZone Web Site is the first place agencies look for certified businesses. **Federal Acquisition Regulations (FAR) Part 19.1303(b) refers contracting officers to the HUBZone Web Site (http://www.sba.gov/hubzone) for a listing of Certified HUBZone businesses. This FAR paragraph also states "The concern must appear on the list to be a HUBZone small business concern.."** The HUBZone site is also the place where businesses look to find the status of their certification. All they see is "coming soon". Those that know about the listing on the PRONet

site can go there but it is not readily apparent where the list is there either. Only those that know how to search the PRONet site can figure out how to find the list. The FAR doesn't mention this as an alternative site for contracting officials to get a list of certified HUBZone businesses. **Contracting Officers do not have access to the approved list of Certified HUBZone businesses to consider for HUBZone contracts.**

3. The SBA claims that there is a goal of over $2 billion in procurement dollars to HUBZone businesses in FY99. (Richard Hayes statement before the Committee on Indian Affairs, May 12, 1999) Currently there are 42 certified HUBZone businesses and only four months left in FY99. There were only seven months left in FY99 when the registration process opened. It must be obvious that the major reason the goals will not be met in FY99 is that there are not sufficient quantity and diversity of businesses certified. And the rate of certifications is not improving. The metrics associated with the HUBZone Certification should be a glaring example. On the business side: more than a million hits on the web site, 105 applications and 42 certifications. The HUBZone registration for certification is advertised as easy to use. And it is essentially a self certification program, because the business provides all the information. So why does this process have to be so difficult when all a business has to do is provide basic information about ownership, location, citizenship, and employee residences? On the Contracting Officer side: there is a goal of 1% of the procurement dollars to Certified HUBZone businesses before the end of September, no list of businesses to use, and a very small number of businesses that are certified but not yet put on a list they can use (the FAR requirement). It is apparent that the major obstacle to the immediate success of the HUBZone program is the SBA itself **Probably the major factor contributing to all these problems is that press releases and other information about the program was sent out giving the impression to companies and agencies that the program was ready to function, and it is not.**

4. Questions and problems submitted to the site either as Email or by phone are not answered or are returned weeks later with no answer. Problems and questions about this process are not being answered by the SBA program sources that invite comments or questions.

Testimony
Of the
National Center for American Indian Enterprise Development
On
HUBZones Implementation in Indian Country
(P.L. 105-135)
On
Wednesday, May 12, 1999

Mr. Chairman and Members of the Committee, I am Kenneth Robbins, President of the National Center for American Indian Enterprise Development. I appreciate the opportunity to present views on the HUBZones. I offer this testimony on behalf of the National Center and the nearly 800 Indian-owned companies (about 100 of which are tribally owned) which we currently serve and the over 20,000 Indian-owned businesses our Center has assisted during our 30 years of operation.

The National Center for American Indian Enterprise Development is the first national organization solely dedicated to developing American Indian economic self-sufficiency through business ownership. We operate three regional offices located in: Mesa, Arizona; Los Angeles, California; and Seattle, Washington. The National Center is a non-profit organization, founded and directed by American Indians. It benefits from sustained relationships with the public and private sectors that, in addition to financial support, offer leadership and expert counsel through representation on Regional Resources Councils. One of the most well known and impressive events the National Center hosts every year is its Reservation Economic Summit. "RES" is the premiere American Indian economic summit, attended by American Indian entrepreneurs, tribal government officials and representatives from corporations and Government agencies. Sessions deliver up-to-minute information on Indian business issues, followed by cutting edge opportunities at the American Indian Business Trade Show.

The National Center's mission as a business management organization is to develop and expand an American Indian private sector which employs Indian labor, increases the number of viable tribal and individual Indian businesses, and positively impacts and involves reservation communities by establishing business relationships between Indian enterprises and private industry. Since 1969, the National Center has helped form or expand more than 25,000 Indian-owned businesses, has trained over 9,000 members, and has worked with myriad Native American and Alaskan communities in all phases of business planning and development. Our staff has negotiated over $620 million in sales, contracts and financing to build these businesses. We currently generate over $40 million per year in contract and financial awards for

Indian businesses.

The National Center's services are designed to assist Indian tribes, organizations and individuals in achieving their economic objectives through enhanced business management. These services include, but are not limited to: strategic planning; feasibility studies; long-term business plans; organizational design; marketing planning and implementation; brokering; financial packaging; cost control and price analysis; bid preparation; accounting and management information systems; production scheduling; site analysis; job skills training; management and board development; evaluation services; event management; and training.

Since the Congress developed and enacted the HUBZone Empowerment Contracting Program, the National Center has heralded the accomplishment and actively disseminated information about the innovative HUBZone program. In fact, for the last two years, the National Center included in its annual conference, The Reservation Economic Summit, a special workshop on the HUBZone program. In addition, the National Center co-hosted a special Federal Contracting Conference in January of this year, which highlighted the HUBZone Program and the tremendous potential it offers Indian Country.

The National Center supports the HUBZone Empowerment Contracting Program because of its goal to help distressed communities, and specifically Indian reservations. The National Center applauds the efforts of the Congress and the Small Business Administration (SBA) to promote the HUBZone Program and assist small businesses located in these distressed communities through use of small business contracting preferences. We also share; however, the concerns of tribal-owned and Indian-owned enterprise clients that the SBA felt constrained by the HUBZone statute to exclude tribal-owned businesses as HUBZone contractors.

The HUBZone program offers tremendous potential for tribal-owned and Indian-owned companies, given the fact that 3% of federal procurement is targeted for HUBZone contracting over a five-year period. Furthermore, these contracting opportunities through restricted competitive, sole-source, and full and open competition would greatly enhance contracting opportunities for tribal-owned businesses on Indian reservations if they were allowed to participate in restricted competition limited to HUBZone firms and in negotiated and sole-source contracting.

The National Center is delighted to hear that the SBA and the Congress will pursue clarifying statutory language to make it permissible for tribally owned businesses to participate in the HUBZone program. SBA efforts in Indian Country have achieved substantial progress however, we have found that complex issues such as the HUBZone program require one-on-one assistance. This is due to the culture barriers and remoteness faced by tribal and individually owned Indian businesses. We recommend the SBA dedicate a portion of the SBA HUBZone funding for American

Indian Procurement Technical Assistance Centers such as the National Center. The National Center will do whatever it can to promote Congressional enactment of the necessary legislative clarifications in whatever legislative vehicle develops. This correction needs to be effectuated without delay. Just as justice delayed is justice denied exclusion of tribal enterprises from participation in the HUBZone program would completely undermine Congressional intent to include Indian Reservations *per se* as HUBZones. In so many cases, tribal enterprises are the only significant reservation economic activity and employment producer on a reservation. To exclude tribal businesses from a program designed to stimulate economic activity and employment is ludicrous.

The National Center or American Indian Enterprise Development envisions the birth of 100,000 new Indian businesses, employing over 1million people and impacting millions more. We anticipate the Indian Nations will become financially secure with revenue generated from their own economic development. The HUBZone program can act as a significant catalyst in this development -- if it is provisions are clarified and the program is properly implemented immediately.

Thank you for this opportunity to present the views of the National Center for American Indian Enterprise Development on HUBZone Program Implementation.

TURTLE MOUNTAIN MANUFACTURING COMPANY
P.O. BOX 770 HIGHWAY #5 WEST. BELCOURT NORTH DAKOTA 58316
PHONE: 701-477-6404 FAX: 701-477-3948 E-MAIL: TMMC@UTMA.COM

7 May 1999

The Honorable Ben Nighthorse Campbell
United States Senate
Indian Affairs Committee
Senate Hart Office Bldg., SH-838
Washington, DC 20510

Dear Honorable Ben Nighthorse Campbell:

We are most concerned that the HUB Zone Empowerment Program does not allow for the participation of tribally owned enterprises or Alaska Native Corporations.

It is our understanding that the rules and regulations as written by the Small Business Administration are such that Tribal enterprises and Alaska Natives Corporations, which are the largest employers of American Indians and Alaska Natives, and a vital lifeline of our economy will not meet the criteria established by SBA. The reference of one or more person owned, does not make these businesses eligible for the HUB Zone Program.

An oversight hearing has been scheduled for Wednesday, May 12, 1999 on P.L. 105-135, HUB Zone Implementation. Please support the testimony of the National Indian Business Association, which is to include all Tribal enterprises and Alaska Native Corporations as being eligible for the HUB Zone program.

Turtle Mountain Manufacturing Company currently has an application pending legal review by the legal counsel for the SBA, HUB Zone Program. Any consideration you may provide in expediting this process will be greatly appreciated.

Thank you for your support.

Sincerely,

Todd M. Bercier
Chief Executive Officer

THE EASTERN BAND OF CHEROKEE INDIANS

CHEROKEE NATIVE AMERICAN BUSINESS DEVELOPMENT CENTER

P.O. BOX 1200, CHEROKEE, N.C. 28719 • PHONE (704) 497-9335 • FAX (704) 497-9009

April 7, 1999

The Honorable Ben Nighthorse Campbell
United States Senate
Indian Affairs Committee
Senate Hart Office Bldg.,
SH-838
Washington, DC 20510

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Thank you for your support.

Ronald J. Blythe

Director, CNABDC

A department of the Eastern Band of Cherokee Indians,
funded by the Minority Business Development Agency, U.S. Department of Commerce

COLORADO RIVER INDIAN TRIBES
Colorado River Indian Reservation
ROUTE 1 BOX 23-B
PARKER, ARIZONA 85344
TELEPHONE (520) 669-9211

May 7, 1999

The Honorable Ben Nighthorse Campbell
United States Senate
Indian Affairs Committee
Senate Hart Office Building
Sh-838
Washington, DC 20510

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Thank you for your support.

Sincerely,

Colorado River Indian Tribes

Daniel Eddy, Jr.
Tribal Council, Chairman

St. Regis Mohawk Tribe

Rt. 37 Box 8A
Hogansburg, New York 13655
Tel. 518-358-2272
Fax 518-358-3203

Chief Executive Officer
Edward D. Smoke
Vice-Chief Executive Officer
John Bigtree Jr.

Tribal Clerk
Carol T. Herne

Tribal Council Legislators
Hilda B. Smoke
Bryan J. Garrow
Barbara A. Lazore

Alma Ransom
Paul O. Thompson

May 26, 1999.

Senator Ben Nighthorse Campbell, Chairman
Senate Committee on Indian Affairs
Washington, D.C.

Re: Title VI, HUBZone Program

Dear Mr. Chairman:

The purpose of my letter is to express a concern we have with respect to the interpretation given by the Small Business Administration to the statutory definition of the "Indian reservation" in its implementing regulations. The regulatory definition includes all lands within reservation boundaries including non-Indians on fee lands within opened and diminished reservations.

Presumably, the inclusion of Indian reservations was to recognize and give assistance to Indian tribes in developing and regulating their reservations. There should be no reason to assist companies, which are inside reservations yet outside of tribal jurisdiction. The regulatory interpretation of the statutory definition, however, gives effect to the assertion that there are certain entities (non-Indian) in areas within Indian reservations which are not within the jurisdiction of tribes (see Montana v. United States, 455 U.S. 544 (1981) yet are eligible to receive federal assistance in economic development without regard to the interests of the tribe, within whose reservation they do business.

This is a serious aberration (along, of course, with the exclusion of tribal businesses) in an otherwise commendable program which should be remedied. That can be done by amending Title VI, Section 602 (a) (1) (C) to read as follows:

> (C) lands with the external boundaries of an Indian reservation and within the jurisdiction of an Indian tribe.

If the statute were so amended those non-Indian entities within reservation boundaries wishing to take advantage of the HUBZone program can establish that they are within a tribe's jurisdiction by entering into a consensual agreement with that tribe. Thus, the integrity of tribal sovereignty on reservations which is vital to continued well being of tribal governments would be recognized and preserved.

Please include this letter in the comments and testimony you received in connection with the May 12, 1999 hearing on the HUBZone Program.

Sincerely,

Bryan Garrow
St. Regis Mohawk Tribe Legislative Council

Caddo Indian Tribe of Oklahoma
Post Office Box 487
Binger, Oklahoma 73009
405/656-2344 405/656-2345
FAX # 405/656-2892

May 7, 1999

The Honorable Ben Nighthorse Campbell
United States Senate
Indian Affairs Committee
Senate Hart Office Bldg.
SH-838
Washington, DC 20510

Dear Mr. Campbell:

We are most concerned that the HUB Zone Empowerment Program does ant allow for your participation of Tribal owned enterprises or Alaska Native Corporations.

It is our understanding that the rules and regulations as written by the Small Business Administration are such that Tribal enterprises and Alaska Native Corporations, which are the largest employers of American Indians and Alaska Natives, and a vital lifeline of our economy will not the criteria established by SBA. The reference of one or more person owned , does not make these businesses eligible for the HUB Zone program.

An oversight hearing has been scheduled for Wednesday, May 12, 1999 on P.L 105-135, HUB Zone Implementation. Please support the testimony of the National Indian Business Association which is to include all Tribal enterprises and Alaska Native Corporations as being eligible for the HUB Zone program.

Thank you for your support.

Vernon Hunter
Chairman

GLOBAL COMMERCIALIZATION FOUNDATION

A candle loses nothing from lighting another

May 7, 1999

The Honorable Ben Nighthorse Campbell
United States Senate
Indian Affairs Committee
Senate Hart Office Building
SH-838
Washington, DC 20510

Dear Honorable Ben Nighthorse Campbell:

Global Commercialization Foundation is a non-profit organization formed to implement a strategy of developing the financial and commercial infrastructure for Native Americans using technology transfer, education and commercialization for sustainable growth in the global marketplace. Therefore, we are most concerned that the HUB Zone Empowerment Program does not allow for the participation of tribally owned enterprises or Alaska Native Corporations.

It is our understanding that the rules and regulations as written by the Small Business Administration are such that Tribal enterprises and Alaska Natives Corporations which are the largest employers of American Indians and Alaska Natives, and a vital lifeline of our economy will not meet the criteria established by SBA. The reference of one or more person owned does not make these businesses eligible for the HUB Zone program.

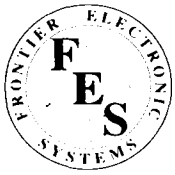
An oversight hearing has been scheduled for Wednesday, May 12, 1999 on P.L. 105-135, HUB Zone Implementation. Please support the testimony of the National Indian Business Association, which is to include all Tribal enterprises and Alaska Native Corporations as being eligible for the HUB Zone program.

Thank you for your support.

Sincerely,

Janice Leek

Janice Leek
Executive Director



Frontier Electronic Systems
P.O. BOX 1023
4500 W. 6th Avenue
Stillwater, OK 74076-1023
(405) 624-1769
http://www.fesi.com

9 May, 1999

The Honorable Ben Nighthorse Campbell
United States Senate
Indian Affairs Committee
Senate Hart Office Building
SH-838
Washington, D.C. 20510

Dear Sir:

We are most concerned that the HUB Zone Empowerment Program does not allow for the participation of tribally owned enterprises of Alaskan Native Corporations.

It is our understanding that the rules and regulations as written by the Small Business Administration are such that Tribal enterprises and Alaskan Native Corporations, which are the largest employers of American Indians and Alaska Natives, will not meet the criteria established by SBA. These groups are a vital lifeline of our economy. The reference of one or more person owned does not make these businesses eligible for the HUB Zone program.

An oversight hearing has been scheduled for Wednesday, May 12, 1999 on P.L. 105-135, HUB Zone Implementation. Please support the testimony of the National Indian Business Association, which is to include all Tribal enterprises and Alaska Native Corporations as being eligible for the HUB Zone program.

Thank you for your support.

Sincerely,

Peggy J. Shreve

Peggy J. Shreve
President/COO

MOHAWK BRIDGE & IRON, INC.
309 SOUTH ELLWOOD AVENUE
Baltimore, Maryland 21224
(410) 522-4255
Fax: (410) 522-6550

MAY 10,1999

THE HONORABLE BEN NIGHTHORSE CAMPBELL
UNITED STATES SENATE
INDIAN AFFAIRS COMMITTEE
SENATE HART OFFICE BLDG.
SH-838

DEAR SIR,

WE ARE MOST CONCERNED THAT THE HUB ZONE EMPOWERMENT PROGRAM DOES NOT ALLOW FOR THE PARTICIPATION OF TRIBALLY OWNED ENTERPRISES OR ALASKA NATIVE CORPORATIONS.

IT IS OUR UNDERSTANDING THAT THE RULES AND REGULATIONS AS WRITTEN BY THE SMALL BUSINESS ADMINISTRATION ARE SUCH THAT TRIBAL ENTERPRISES AND ALASKA NATIVES CORPORATION, WHICH ARE THE LARGEST EMPLOYERS OF AMERICAN INDIANS AND ALASKA NATIVES, AND A VITAL LIFETIME OF OUR ECONOMY WILL NOT MEET THE CRITERIA ESTABLISHED BY THE SBA. THE REFERENCE OF ONE OR MORE PERSON OWNED, DOES NOT MAKE THESE BUSINESSES ELIGIBLE FOR THE HUB PROGRAM.

AN OVERSIGHT HEARING HAS BEEN SCHEDULED FOR WEDNESDAY, MAY 12,1999 ON P.L. 105-135, HUB ZONE IMPLEMENTATION. PLEASE SUPPORT THE TESTIMONY OF THE NATIONAL INDIAN BUSINESS ASSOCIATION WHICH IS TO INCLUDE ALL TRIBAL ENTERPRISES AND ALASKA NATIVE CORPORATIONS AS BEING ELIGIBLE FOR THE HUB ZONE PROGRAM.

THANK YOU FOR YOUR SUPPORT

Bonnie L. Snow

BONNIE L. SNOW
PRESIDENT

Allan T. Snow II

ALLAN T. SNOW II
VICE PRESIDENT

SIR
Systems Integration & Research, Inc.®

May 11, 1999

The Honorable Ben Nighthorse Campbell
United States Senate
Indian Affairs Committee
Senate Hart Office Building
SH-838
Washington, DC 20510

Dear Honorable Ben Nighthorse Campbell:

As a struggling Native American businessman, I understand the adversity facing minority owned business. P.L. 105-135, HUB Zone Implementation, to some measure, levels the playing field for these businesses. However, we are most concerned that the HUB Zone Empowerment Program does not allow for the participation of Tribally owned enterprises or Alaska Native Corporations.

It is our understanding that the rules and regulations as written by the Small Business Administration are such that Tribal enterprises and Alaska Natives Corporations, which are the largest employers of American Indians and Alaska Natives, and a vital lifeline of our economy will not meet the criteria established by SBA. The reference of one or more person owned, does not make these businesses eligible for the HUB Zone program.

An oversight hearing has been scheduled for Wednesday, May 12, 1999 on P.L. 105-135, HUB Zone Implementation. Please support the testimony of the National Indian Business Association which is to include all Tribal enterprises and Alaska Native Corporations as being eligible for the HUB Zone program.

Thank you for your support.

Sincerely,

Lou Torres
Chairman

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