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THE SMALL BUSINESS ADMINISTRATION'S 8(a)
MINORITY BUSINESS DEVELOPMENT PROGRAM

Y 4. SM 1/2: S. HRG. 104-135

The Small Business Administration's...

HEARING
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS
FIRST SESSION

APRIL 4, 1995



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CONTENTS

OPENING STATEMENTS

	Page
Bond, The Honorable Christopher S., Chairman, Committee on Small Business, and a United States Senator from Missouri	1
Bumpers, The Honorable Dale, Ranking Minority Member, and a United States Senator from Arkansas	13
Burns, The Honorable Conrad, a United States Senator from Montana	49
Lautenberg, The Honorable Frank R., a United States Senator from New Jersey	38
Wellstone, The Honorable Paul D., a United States Senator from Minnesota ..	8

WITNESS TESTIMONY

Lader, The Honorable Philip, administrator, U.S. Small Business Administration, accompanied by Cassandra Pulley, Deputy Administrator	14
England-Joseph, Judy A., director, Housing and Community Development Issues, Resources, Community, and Economic Development Division, U.S. General Accounting Office	50
Longuemare, R. Noel, principal deputy under secretary, Defense for Acquisitions and Technology, Department of Defense, accompanied by Dan Gill, Director, Small and Disadvantaged Business Office	68
Sims, Steven, vice president, National Minority Suppliers Development Council, Washington, DC	95
Graham, James B., founder, FaxLand Corporation, Falls Church, Virginia	104
Garza, Santos F., chairman of the board and chief executive officer, Counter Technology, Inc., Bethesda, Maryland	110
O'Donnell, Arnold J., member, Associated General Contractors of America, and vice president, O'Donnell Construction Company, Washington, DC	119
Smith, Joshua I., former chairman, U.S. Commission on Minority Business Development, and chairman and chief executive officer, Maxima Corporation, Lanham, Maryland	151
Archuleta, Nancy E., counsel, Council of Minority and Women Owned Businesses, chairman, Latin American Management Association, and chairman and chief executive officer, Mevatec Corporation, Huntsville, Alabama	163
Galaviz, Fernando, vice chairman, National Federation of 8(a) Companies, Arlington, Virginia	175
Homer, Peter, Jr., co-founder and member, National Indian Business Association, and director, Strategic Business Development Systems Integration & Research, Inc., Arlington, Virginia	196

ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

Archuleta, Nancy E.:	
Testimony	163
Prepared statement	165
Bond, The Honorable Christopher S.: Opening statement	1
Bumpers, The Honorable Dale: Prepared statement	13
Burns, The Honorable Conrad: Prepared statement	49
England-Joseph, Judy:	
Testimony	50
Prepared statement and attachments	53
Responses to post-hearing questions from Senator Pressler	224
Galaviz, Fernando:	
Testimony	175
Prepared statement	177

IV

	Page
Garza, Santos F.:	
Testimony	110
Prepared statement	112
Graham, James B.:	
Testimony	104
Prepared statement	107
Homer, Peter, Jr.:	
Testimony	196
Prepared statement	198
Responses to post-hearing questions from Senator Pressler	228
Lader, The Honorable Philip:	
Testimony	14
Prepared statement and attachments	17
Responses to post-hearing questions from Senator Pressler	217
Lautenberg, The Honorable Frank R.:	
Opening statement	38
Prepared statement	39
Longuemare, R. Noel:	
Testimony	68
Prepared statement and attachments	71
Responses to post-hearing questions from Senator Pressler	225
O'Donnell, Arnold J.:	
Testimony	119
Prepared statement and attachments	122
Responses to post-hearing questions from Senator Pressler	226
Pressler, The Honorable Larry:	
Prepared statement	216
Post-hearing questions posed to the Honorable Philip Lader and subsequent responses	217
Post-hearing questions posed to Judy A. England-Joseph and subsequent responses	224
Post-hearing questions posed to R. Noel Longuemare and subsequent responses	225
Post-hearing questions posed to Arnold J. O'Donnell and subsequent responses	226
Post-hearing questions posed to Peter Homer and subsequent responses ..	228
Sims, Steven:	
Testimony	95
Prepared statement	98
Smith, Joshua I.:	
Testimony	151
Prepared statement and attachment	154
Wellstone, The Honorable Paul D.:	
Constituent letters for the record	3
Opening statement	8
Prepared statement	10

COMMENTS FOR THE RECORD

Basile, Juliana, contracting officer, Fleet and Industrial Supply Center, letter	235
Carradine, Samuel A., Jr., executive director, National Association of Minority Contractors, statement	240
Laverdure, president, National Indian Business Association, statement	248
Robinson, John F., president and chief executive officer, National Minority Business Council, Inc.; and Raymond Daugherty, Jr., chairman, board of directors, EB Enterprise Group, Inc., joint letter	251

THE SMALL BUSINESS ADMINISTRATION'S 8(a) MINORITY BUSINESS DEVELOPMENT PROGRAM

TUESDAY, APRIL 4, 1995

**UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.**

The committee met, pursuant to notice, at 10:05 a.m., in room SH-216, Hart Senate Office Building, Hon. Christopher S. Bond (chairman of the committee) presiding.

Present: Senators Bond, Warner, Burns, Hutchison, Frist, Bumpers, Nunn, Lautenberg, Lieberman, and Wellstone.

OPENING STATEMENT OF THE HONORABLE CHRISTOPHER S. BOND, CHAIRMAN, SENATE COMMITTEE ON SMALL BUSINESS, AND A UNITED STATES SENATOR FROM THE STATE OF MISSOURI

Chairman BOND. The U.S. Senate Committee on Small Business is called to order. Good morning and thank you for attending today's hearing. Since we anticipated a somewhat larger audience than normal for today's hearing, we are meeting here rather than in our smaller hearing room in the Russell Office Building. We are delighted to see so many people with interest in these issues.

Let me say for the record as we begin that we have tried to develop a broad list of witnesses representing a wide diversity of views. For those of you who have not been asked to testify, we would say that you are most welcome to submit written comments supporting, opposing, commenting on the views of all or any of the witnesses, and your written comments will be most welcome. We do not intend to have any vocal expressions made at or during the testimony of the witnesses today.

We are holding a hearing on the SBA's 8(a) Minority Business Development Program and we are going to begin with testimony from the Small Business Administration. Then we will hear from the Department of Defense, the General Accounting Office, and witnesses from the private sector regarding Federal policies governing small disadvantaged businesses and the successes and problems associated with the 8(a) program.

Section 8(a) of the Small Business Act has a long history dating to the origins of the act in 1953. Until 1967, section 8(a) authorized the Small Business Administration to let Federal procurement contracts to small business. It was during the 1967-69 timeframe that section 8(a) was administratively rewritten to direct Federal pro-

curement contracts to minority-owned small businesses. In 1978, with the adoption of Public Law 95-507, the 8(a) Minority Business Program was transformed from an administrative program to a statutory program.

Today SBA's 8(a) program has grown significantly. In fiscal year 1994 there were over 5,100 companies in the program, and nearly \$4.4 billion in Federal procurement contracts were awarded to 8(a) firms. In order to be awarded an 8(a) contract, a small firm must be certified by SBA to be socially and economically disadvantaged. Firms are presumed to be socially disadvantaged if they are owned by African-Americans, Hispanic-Americans, Native Americans, and Asian-Americans. Economic disadvantage is determined in part by the personal net worth of the owners. For example, in order to be eligible an individual's net worth cannot exceed \$250,000 excluding ownership interest in the firm and equity in their primary residence.

Since I became chairman of this committee, I have maintained that each and every SBA program must be scrutinized closely to weed out what has not worked and to identify what is working and worth keeping and improving. The 8(a) program is no exception. At today's hearing we are going to look at the 8(a) program to address, among others, the following questions: No. 1, what were the original purposes of the 8(a) program? Is that program fulfilling its purposes?

Two, should the Federal Government presume that all members of certain racial and ethnic groups are socially disadvantaged?

Three, are there other ways to expand opportunities for all Americans without providing preferences for individuals because they belong to certain groups?

We have 11 witnesses today to hear from. The Administrator will present an overview and we will allot him 10 minutes. But I would ask all other witnesses to keep their oral presentations to five minutes. Your full written statements will be accepted for the record and shared with all committee members.

With each panel I am going to ask the members of this committee to constrain themselves to 5 minutes for questions and answers. As we move along it may be that we have more time, but I want to make sure that everyone who has come to testify today has an opportunity to present their testimony sometime during the daylight hours.

Since our ranking minority member is going to be joining us later, I am now going to turn for an opening statement to the distinguished senator from Minnesota, Senator Wellstone.

Senator WELLSTONE. Thank you, Mr. Chairman. Let me first of all ask for unanimous consent, Mr. Chairman, to include some letters from Minnesota in the record along with my opening statement.

Chairman BOND. Without objection, they will be accepted for inclusion in the record.

[The letters follow:]

Columbia Precision Machine Corp.

1608 East Cliff Road, Burnsville, Minnesota 55337

Phone (612) 890-1003

March 30, 1995

Sen. Paul D. Wellstone
United States Senate
Washington DC 205102303

RE: US Small Business Administration 8(a) program

Dear Senator Wellstone:

I am writing in response to proposed changes and/or dismantling of the US SBA 8(a) program. The 8(a) program which sets-aside federal procurement requirements has a mixed review of value and worth in this contractor's mind.

On paper and in theory the 8(a) program is a win/win proposition: Minority contractors able to negotiate directly with a government procurement agency, much like Prime Contractors, in arriving at a fair and equitable price for an item or services deemed necessary for that agency. It has the upfront economic advantage of keeping costs down by limiting the burden of multiple bids, the receipt of those bids, and the shuffling of paper to find an award winner. In my experience and the input from my minority business colleagues, the government generally receives a more than fair and equitable price for its requirements through this program.

The reality of the program is less than the simple and efficient picture painted above. The problem exists in the under-utilization of some very dynamic and innovative minority business enterprises. This lack of use is directly related to a pervasive attitude in the US government contracting offices that the program is cumbersome and not in their daily realm of letting contracts. Responses I have received from contracting officers range from "We don't do 8(a)" (although mandated) to "It's too much trouble." Those responses highlight the problem. A program that is not designed correctly will continue to be less than it can be.

The 8(a) program, which should be an economic program to enhance the viability and longevity of minority business, has really become a political plum for a handful of the 4,800 8(a) contractors in the United States. Political handholding has allowed some minority businesses to obtain astronomical awards while the vast majority of 8(a) contractors have received little or no support.

This lack of utilization not only impacts the minority business organization but also the community in which the business is located. Many minority business owners, like myself, strive to give back to community. In this age of government program cuts, sometimes the only recourse to those cuts is voluntary donations of either time or money to continue these programs. The success and viability of local minority businesses can fill these voids. Many of us are more than willing to be involved but involvement does require money and resources. The 8(a) program can be an integral vehicle in the continuation of those programs.

As for my view of changes in the program that would give it more value I believe that a cap on the amount of contract awards is the first step in rehabilitating the 8(a) program. It's hard to imagine one minority company needs 20-100 million dollar contract awards. If there is another minority firm in that line of business, contracting officers should either look at a joint venture or a strong subcontract plan to another minority business organization or even a majority company. We all need to work together to strengthen our country and whatever methods to make a stronger procurement.

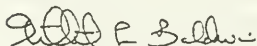
I also believe that bidding among "like" 8(a) contractors can offer "best price" contracting.

Another important point is to simplify the government buying process. The FAR is a dizzying maze of bureaucratic language. Learn from private contractors. Keep it simple and to the point.

The paperwork burden to be certified and to remain certified is a confusing project. There is a more simple and to the point method of certifying minority contractors for the 8(a) program.

We need help, understanding and, most importantly, people in position at the various government buying entities who care about this program performing equitably as it was designed and meant to function. We also need a fully staffed SBA 8(a) office to help our organizations weave the maze of bureaucratic intricacies that now constitute the reality of entry into government contracting through the 8(a) program.

Sincerely,



Gilbert L. Baldwin
President
Columbia Precision Machine Corp.

GLB/ay



I. C. E. S. Ltd.

5354 PARKDALE DRIVE, SUITE 103, ST. LOUIS PARK, MN 55418 • 612/542-0028 FAX 542-0030

30 March 1995

Paul David Wellstone
United States Senate
Washington, DC 20510-2303

Dear Senator Wellstone:

I am the President/CEO of a nine year old growing minority owned System Integration firm based in St. Louis Park, MN and I strongly contest the attempt to eliminate the 8(a) program.

As an African American entrepreneur in a high tech business, I face daily the challenges of having to be better than my European American counterparts. Why? Because of the lack of credibility and distrust created by the media, banks, buyers and by the good old boy competitors themselves.

Over the years I have become accustomed to not starting on an even playing field and this has never been a major concern. However, being routinely denied access to the plum by people steadfast to the idea that minority owned businesses provided poor quality, are unreliable and are always under financed, made this challenge almost overwhelming.

For two years our company grappled to penetrate the lucrative markets. We made minimum strides only because a few of our customers were doing business with the government and had in place some form of (Quota) or Affirmative Action Program. I've watched several large firms win major contracts and call me to ask for the people to do the job. My customers would pay twice the amount to these firms because of their names.

During my second year in the survival mode I applied for the 8(a) status. It took my staff close to 400 man hours to complete this application and it was rejected because all of my SIC codes were saturated by the Beltway Folks. Note I was the only one from MN applying.

On the second try we were approved. We installed one of the first computers in Minnesota to run a MRI machine for the Minneapolis VA Hospital. Our second 8(a) project required the acquisition and sale of computers to the US Forestry Service using year end funds. We provided these systems at hundreds of dollars below GSA prices.

You must understand that before any of these projects were allowed to pass our way we had to complete a full business plan, evaluate our financial capabilities and accept council from the SBA 8(a) business development specialist and contract negotiator. This training provided some basics that gave me the foundation to continue pursuing my business goals.

LEADERS IN
SOFTWARE ENGINEERING AND DATA PROCESSING CONSULTING SERVICES

Recently my company received an award from the Minority Business Network and AT&T as one of the Top Ten Minority firms in the country.

We have captured close to twenty eight million in Commercial, DOD and non-DOD contracts in the last nine months. We are working in seven states including Washington DC and will be providing employment for over fifty people by year end.

Yes, the 8(a) program is making the difference because it gives my company the opportunity to grow when no one else would. It gives us the edge that, when properly honed, allows us to develop a legacy for the future.

What concerns me is that the 8(a) program captures less than one per cent of the revenue paid to Majority owned firms. History tells me that the most of these same firms got their start through contracting with the U.S. Government (or have we forgotten!)

We have all heard the stories of parents with no money, immigrating from somewhere and starting with an apple cart. Who gave them the apples and the cart? My mom ironed shirts for 30 years for eighty five cents a dozen, and sent three of us to college. I was paralyzed from the waist down and started this company with an unemployment check that I had to pay back. My daughter graduates from Harvard Law School in June 1995. You tell me Senator, is the 8(a) program worth spending all this time to eliminate, or is it just a sacrificial lamb to satisfy the lobbyist of some major government contractors? Or is it a ploy to satisfy the tactfully misinformed paranoid public. "Are the Minorities really taking over the world"

When you look at your children and say "there lies our country's future". You should think about the Small Business 8(a) program and say my children might be working for these guys, so I better consider all of the options! This country began with small business and its future will depend on small business. If you eliminate the embryo and the means for the embryo to be nourished, there will be no future. It's as simple as that.

Now how would I change the 8(a) program?

First I would open it up to everyone small enough to meet the start up requirements. This would eliminate the racial issue (backlash) that some folks use as an excuse to claim reverse discrimination.

Minorities, women, disabled and other disadvantaged people have been competing against each other for the crumbs, for a long time. The 8(a) program keeps them focused just on the small picture, thereby giving the big guys less competition at the top. This concept may open the door to have culturally diverse people work together to get a larger piece of the pie. Wouldn't that make the big guys nervous.

Second, I would strongly consider eliminating the title 8(a) and simple name it **The Small Business Development Program**. 8(a) has taken on somewhat of a negative connotation now that the big boys know what it means. It becomes a discriminatory label.

Third, I would make it mandatory that every new 8(a) firm be assigned two senior mentors one in the 8(a) program and the other a Prime government contractor in their areas of expertise.

Forth, I would **Raise the Quota for Small Business Participation**, on government contracts. **Low goals produce low results.**

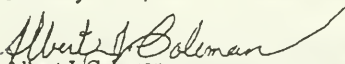
Fifth, I would drop the revenue ceiling down for small businesses based on revenue.

Sixth, I would work out some way to provide project financing for government contracts as well as expediting payments.

Seventh, I would stream line (Gore Line) the SBA by first evaluating their current process, eliminate the bottle necks and automate the system I would make this plan happen within five years, How? By asking Small and Large business to work together for this common goal and make the Small Business the prime. How do I know it will work. I'm doing it now!
References upon request.

Paul, thank you for asking.

Sincerely Yours,


Albert J. Coleman
President/CEO

OPENING STATEMENT OF THE HONORABLE PAUL D. WELLSTONE, A UNITED STATES SENATOR FROM MINNESOTA

Senator WELLSTONE. Mr. Chairman, I will be very brief because we have many panelists. Mr. Lader, Ms. Pulley, I thank you for being here today.

Mr. Chairman, I think that there is an idea that binds and ties all of us together that are here. That idea is the importance of successful minority businesses in our communities. I think all of us are committed to self-reliant, self-sufficient communities, keeping capital within our communities, and I think that is a goal that we all share. There are tens of thousands of success stories. I wish we had time to hear about all those success stories. I think it is extremely important that we emphasize that.

By the same token, I think it is also true, Mr. Chairman, that anybody who wants to take a hard and honest look at our country will come to the understanding that we do not yet have a level playing field. We do not yet have a level playing field. I think that the value of this program—and all programs deserve reexamination and it is important that we have a full discussion—is that it is about promoting opportunity. I think we have to understand that whether it be an African-American or Southeast Asian or Native American or Hispanic small business, it is not just the importance of those businesses and communities of color, but that is a plus for the whole Nation when we promote that kind of entrepreneurship within our communities.

Mr. Chairman, we do not have enough 8(a) contracts in Minnesota for any of our 8(a) companies to be dependent on them. If I had any criticism of this program, and I have raised this before, it is in the allocation of funds. But I do want to conclude my opening statement by reading from a letter from Mr. Albert Coleman, president and CEO of ICES Ltd. in St. Louis Park. He is an African-American who started his system integration firm with an unemployment check 9 years ago. Today he employs about 50 people.

Under the 8(a) program Mr. Coleman's company, according to this letter, began by installing a computer to run an MRI machine in the Minneapolis VA hospital, and has provided computer systems to the Forestry Service at significantly below GSA prices. The company began as a commercial firm before becoming certified in the 8(a) program in 1989, but has used the 8(a) program since then to rebuild its sales and to build its capacity. It has succeeded. ICES recently received an award from the Minority Business Network and was named by AT&T as 1 of the top 10 minority firms in the country.

Mr. Coleman writes—and I conclude my opening statement this way—yes, the 8(a) program is making the difference because it gives my company the opportunity to grow when no one else would. It gives us the edge that when properly honed allows us to develop a legacy for the future.

I would point out, Mr. Chairman, that Mr. Coleman proudly describes in his letter how his mother, who ironed shirts for 30 years, put three children through college, and how his own daughter now is expected to graduate this year from Harvard Law School. I think this is exactly the kind of legacy that we hope for from the Federal

small business program and I think that is the goal we want to achieve.

With that, I conclude my opening statement.

[The prepared statement of Senator Wellstone follows:]

OPENING STATEMENT OF SENATOR PAUL D. WELLSTONE
COMMITTEE ON SMALL BUSINESS
APRIL 4, 1995

Mr. Chairman, Thank you for this opportunity to discuss a program whose goals I believe we all support. I welcome Administrator Lader, and thank him for his appearance today. I also welcome Ms. Pulley and the rest of our witnesses.

I think we all know that members of our minority communities who strive to develop the skills and the values of enterprise and ingenuity within their communities face a struggle. In many ways minority entrepreneurs face even more than the usual, familiar obstacles facing other small business men and women in America. The playing field is still not really level for many minority-owned and minority-run businesses.

There are thousands of success stories. In fact, with the Committee's permission, I would like to submit for the record some materials from Minnesota concerning minority businesses which received their crucial start, or important assistance, from SBA's 8(a) program. Several of these firms have achieved success as commercial firms in the private marketplace, in addition to receiving government contracts through 8(a).

Still, I believe it remains in the economic interest not just of our minority communities, but of the whole country, that we continue to promote and assist the development of successful minority businesses. It is in the interest not only of certain communities, but of the whole country, that those who face extra disadvantages in starting and operating a successful business, receive the chance to do so.

The 8(a) program has had its problems. This Committee discussed reforming it in hearings held last year. Senator Kerry and the SBA each have presented important ideas for reform. But we also know that past reforms have been incompletely implemented. We need to determine the most effective ways of achieving the goals of this program. It is our responsibility to determine whether and how well our programs work, and what to do about it if they do not work well enough. Therefore, I look forward to today's testimony.

In Minnesota, the 8(a) program seems to have done a good deal of what Congress intended the program to do. And I note that support for minority-business development historically has been a bipartisan effort. In Minnesota, the 8(a) program has enhanced the sales of minority-owned and minority-run firms so that they have been able to build their capacity and their capabilities. A number of the firms appear to have become more successful and viable commercial firms in the private market as a result of their participation in the 8(a) program. That is how the program is supposed to work.

Frankly, Minnesota firms generally do not receive enough federal contracts to become overly "dependent" on the 8(a) program. And while we might be pleased by that absence of dependence, the relative lack of contracts points out what I believe to be one of the serious weaknesses of the program -- its geographical bias. I am sure that other members share my concern about the heavy concentration of the benefits from this program among a small number of firms. I understand that this phenomenon is a reflection of broader procurement trends, not only in 8(a). But I am convinced that there are qualified firms making outstanding efforts, who are nonetheless excluded.

Mr. Chairman, I will close by quoting briefly from a letter I received from Albert Coleman, President and CEO of I.C.E.S. company in St. Louis Park, Minnesota. The company began as a commercial firm before receiving its 8(a) certification in 1989, but has used the 8(a) program since then to build its sales and to build its capacity. It has succeeded. I.C.E.S. now employs about 50 people and recently received an award from the Minority Business Network: it was named by AT&T as one of the Top Ten Minority Firms in the country.

Mr. Coleman writes: "Yes, the 8(a) program is making the difference because it gives my company the opportunity to grow when no one else would. It gives us the edge that, when properly honed, allows us to develop a legacy for the future.

I note, Mr. Chairman, that Mr. Coleman's letter proudly describes how his mother, who he says ironed shirts for 30 years, put three children through college. Now Mr. Coleman's own daughter is expected to graduate from Law School this year. I think that is the kind of legacy we hope for from federal small-business programs.

Chairman BOND. Thank you very much, Senator Wellstone. Now it is my pleasure to call on our ranking minority member, former chairman of the committee and my neighbor to the south. My consolation to you on coming in second, but second beats the heck out of all but one other.

Senator WELLSTONE. Would my colleagues just yield for one second?

Chairman BOND. I do not know. If you want to try to talk about the Big 10, I would not—

Senator WELLSTONE. No, I will not do that. I will not talk about the game last night. Mr. Chairman, I just wanted to apologize to Mr. Lader and Ms. Pulley. I actually have reserved time on the floor and I have to leave in about 5 minutes. I will try to come back after floor debate and I just want to let you know, and others know, that it is not lack of interest when I leave. Thank you.

Chairman BOND. Senator Bumpers.

Senator BUMPERS. Mr. Chairman, since I was late getting here I will save the committee the time and just ask unanimous consent that my statement be inserted in the record.

Chairman BOND. Without objection, it will be accepted. Thank you.

[The prepared statement of Senator Bumpers follows:]

OPENING STATEMENT OF SENATOR DALE BUMPERS
Committee on Small Business
April 4, 1995

I would first like to commend and thank the Chairman and today's witnesses for convening this hearing to examine the SBA Minority Small Business and Capital Ownership Development program, known by all as the 8(a) program. I hope that today's hearing represents a continuation of the Committee's work on this program in the last Congress which was led chiefly by Senator Kerry. As members know, Senator John Kerry chaired two hearings and introduced a bill to make several important reforms in the 8(a) program, and this bill passed the Senate just before adjournment. Unhappily, the House did not act on the Kerry bill.

Obviously, there are those who see political gain in attacking programs which benefit minorities, and there are certainly some people who believe they have lost opportunities because of the gains which have been made by African Americans, Hispanic Americans, Native Americans and others. Without addressing any specific case, we should start from the premise that we are a better country and a better people overall when disadvantaged people have been helped to overcome their disadvantages. This country and my state have a history of racial discrimination which has not been forgotten.

Programs like 8(a) make up a large and complex legal framework which was intended to rectify a century or more of legal wrongdoing by giving people opportunities to better themselves and give a better life to their offspring. There is nothing wrong with the purposes of these programs, and we should not be hesitant to defend those purposes from the political attacks which have become today's political currency.

Having said that, the 8(a) program has had more than its share of problems. I was chairman of this Committee in 1988 when we labored for many months to craft a comprehensive reform of the program in light of the horrendous Wedtech scandal. Our efforts were only partially successful. There remain, in my view, too many sole-source contracts and too few competitive awards within the program. The waiting list for program certification is still far too long. Perhaps worst of all, the top 8(a) companies continue to receive a huge percentage of contract awards, while half of all firms received no contracts last year. There are, I am sure, still front companies operating despite stringent efforts to root them out. GAO and others have catalogued the problems and abuses within the program regularly for as long as I have served on this Committee.

I am not, however, prepared at this point to throw the 8(a) program overboard. Perhaps the case can be made that the program is irreparable or has outlived its usefulness. But that case has not yet been made, in my view, and the burden is on the opponents to convince me if either of these is true. Moreover, I believe the motives of some political critics in today's environment are inherently suspect. I know that today's witnesses are not politically motivated, and they will give us the benefit of their experiences and learning, and I thank them for taking time to be with us today.

Chairman BOND. All right, with that we would like to welcome our good friend, Phil Lader, Administrator of the Small Business Administration and his deputy, Ms. Pulley. Mr. Lader.

STATEMENT OF THE HONORABLE PHILIP LADER, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION, ACCOMPANIED BY CASSANDRA PULLEY, DEPUTY ADMINISTRATOR

Mr. LADER. Mr. Chairman, Senator Bumpers, Senator Wellstone, members of your staff, thank you for the opportunity to appear before you and your colleagues today to address this subject. Let me ask that my written testimony be entered in the record.

Chairman BOND. Without objection, it will be accepted in full.

Mr. LADER. Thank you very much, sir.

Let me begin by putting the discussion of 8(a) in a broader perspective with these three points. First, the United States is the world's largest single buyer of goods and services—some \$160 billion. Secondly, as you refer to this chart, I think you will note that the yellow bar represents the total amount of Federal Government procurement. The orange represents the small business portion of that, which, as you can see, with no restrictions, no certification, the small business set-asides come to about 24 percent. So as Federal procurement has decreased in recent years, a rather steady percentage of small business participation means that there is a larger small business share in Federal procurement.

If we look, however, to the blue bars, that represents small disadvantaged business awards in our procurement system; you see how relatively small that is. And if you look at the red, which my vision hardly permits me to see, that is the percentage of women-owned businesses participating in Federal procurement. The specific numbers, as you are well aware, indicate that the total amount of minority-owned business' participation in Federal procurement was 5.8 percent in that last year. In the 8(a) program, the number is only 2.7 percent of total Government procurement.

The third point in the way of perspective is the overall SBA context. The 8(a) program consumes only 3 percent of our operating budget in the operation of the agency. Consequently, when the President announced last week—and I look forward to discussions in further hearings with you on our reinvention Government efforts at SBA—we took four steps to allow us to reduce our overall SBA budget by 32 percent; some \$1.2 billion of taxpayer savings will be accomplished over the next 5 years through reducing the Federal subsidy of our guaranteed loan program, consolidating our field operations, centralizing loan processing, and moving various back office operations from our headquarters to the field.

But today's focus is the 8(a) program. I put all that as the background in which we focus on the history. Mr. Chairman, you identified the major landmarks in the history of this program. Before SBA was even created, Congress recognized the need for Government contracting opportunities for small businesses. In fact, during World War II, Congress ensured that small businesses would actively contribute to the war production effort. In 1953, as you pointed out, President Eisenhower, in calling for the creation of the SBA, authorized it to contract with Federal agencies and sub-

contract with small businesses. But that authority was not used for some 15 years.

In 1967, President Johnson, as a result of the Kerner Commission report, sought to use this mechanism to alleviate chronic unemployment of disadvantaged individuals in distressed urban areas. Then in 1969, under President Nixon, there was this transition to assisting and to fostering the establishment and growth of successful firms owned by disadvantaged persons.

You pointed to the 1978 legislation which shifted the emphasis to business development. Now I want to identify the three codified purposes of that action of the Congress. It was first to foster business ownership of socially and economically disadvantaged individuals. Second, to promote the competitive viability of such firms by providing contract, financial, management, and technical assistance to them. And third, to expand the Federal procurement program relating to these businesses.

Then in 1988, President Reagan signed various reforms of this program into law. By that legislation Congress set annual procurement goals Government-wide at 20 percent for small business, and 5 percent for disadvantaged. And in 1994, a similar goal, 5 percent was established for women-owned businesses.

In June of last year under this administration, a minority enterprise development set of reforms was proposed, the so-called MED Program. The status of the program at this moment is that the number of certified firms has grown from 2,000 in 1980 to more than 5,400 certified firms today, and the survival rate after graduation has increased.

But you asked in your questions, what has been our experience? What have been the achievements under this administration? In sum, by making this program, as well as virtually all of the SBA programs, more user friendly, we have sought to have an increase, and there has been a doubling of the number of certification requests under the 8(a) program. There has been a chronic backlog, as you know, of the certification process. That has been cleaned up over the past year.

Firms have been terminated under the 8(a) program. There has been criticism of too much concentration of these firms geographically and in terms of the small number of the firms. We have proposed and initiated various reforms in that regard which we will be discussing today. And we have proposed a more comprehensive plan through our resource partners, the many SCORE volunteers, the retired executives, and the small business development centers, to provide training, access to capital, as well as what this 8(a) program provides. All of these recommendations suggest the continued commitment that we have to 8(a) to positive change.

You asked, have the purposes of the program been fulfilled? The program, obviously, has been in response to a historic pattern of exclusion, or underrepresentation in business generally, and certainly as you can see from this chart, in Federal procurement. But today, 8(a) is a simplified method for procurement as well as a limited term business development tool. The small disadvantaged business program allows other firms to compete and gives Government agencies other vehicles for procurement.

It must be recognized that 8(a) firms perform well. The average net worth, I point out, of entrants to this program, exclusive as you point out, of equity in their personal residence and the 8(a) business is \$54,000. Black Enterprise magazine, in identifying the 100 top African-American-owned businesses, found that 32 of them were or are participants in the 8(a) program. Hispanic Magazine, in identifying the top 100 Hispanic-owned firms found similarly that 17 were or are participants in this program.

The percentage of graduates who are still operating shows the progress. In 1992, only 50 percent of the graduates continued operations. Last year, more than 61 percent continued operations. So, I say to you and to your colleagues, let us go back in the analysis of 8(a) to what was the legislative purpose: the fostering of minority ownership of businesses and growing the middle class; 8(a) today is not a Government handout, not a giveaway, but it is a means by which qualified businesses have produced goods and services that have met or exceeded the market standards and agency needs.

Mr. Chairman, there is a broader question, and that is currently under review by the President and the Supreme Court. I know this committee will understand that it would be inappropriate for me to anticipate their conclusions, but it is national policy today to use Federal acquisition, in part, to support economically and socially disadvantaged individuals in the ownership of their own businesses. President Clinton is committed to expanding the opportunity for all Americans to participate in our free enterprise system.

I would like to point out quickly that 8(a) is only part of SBA's solution of this broader question. The progress that has been made in our 7(a) Guaranteed Loan Program demonstrated that in 1991 only about 15 percent of those loans and 16 percent of the dollars went to minorities; last year, the rate increased to 19 percent. In the LowDoc Program, which was established for loans under \$100,000, about 17 percent of those loans have been made to minorities. Our one-stop capital shops will be helping to address this problem. Our surety bonds program has gone from 18 percent to minorities in 1991, to 24 percent in 1994. Of our total Microloans made this past year, about a third have gone to minorities.

Thus, you can see that the efforts being made by the SBA and this administration are broader than just 8(a). But I hope that our discussion of 8(a) may be in the context of this overall effort. I hope this has provided some perspective, and Ms. Pulley, who has been a principal partner to my predecessor and to me and who has the most direct experience in working in this program, looks forward to responding to your questions.

[The prepared statement and attachments of Mr. Lader follow:]

STATEMENT OF
PHILIP LADER
ADMINISTRATOR
OF THE U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON SMALL BUSINESS

April 4, 1995

Mr. Chairman and Members of the Committee, thank you for this opportunity to appear before you today to discuss the U.S. Small Business Administration's (SBA) Minority Enterprise Development Program (MED). I am accompanied by Cassandra M. Pulley, Deputy Administrator of the SBA.

As you are aware, President Clinton has directed a review of the Federal government's programs relating to affirmative action. That review is proceeding but is not yet completed. The Administration's objective is to determine what works and what does not work today. SBA is participating in this review.

Let me begin by emphasizing a fundamental point. This Administration is committed to the goal of expanding the opportunity for all Americans to participate in our free enterprise system and in Federal procurement opportunities. When the Administration's review is complete, we will present the recommendations concerning SBA's programs to this committee.

SUCCESSSES

Mr. Chairman, before I get into the heart of my testimony, let me take a moment to address some of the successes of the Minority Small Business & Capital Ownership Development (MSB&COD) program, also referred to as the Minority Enterprise Development (MED) or "8(a)" program. Despite its problems, the 8(a) Program has produced many thriving companies that have created jobs and contributed to America's economic growth and development.

Beltran's Security & Investigation Agency, Inc. (Beltran's) started in 1974 as a patrol operation, but as this market changed, phased into professional security guard services. In 1985, SBA approved a \$48,000 7(a) guaranteed loan for the firm, providing needed financial resources, and certified Beltran's for 8(a) Program participation, thereby improving its marketing opportunities. Since that time, the firm has received eleven 8(a) contracts totaling \$13,944,969. Firm employment has risen from 35 to 210 employees, and annual sales have grown from \$302,000 to \$3.5 million.

Paramount Contracting Company (Paramount) is a general contractor based in Morrow, Georgia, with broad experience in heavy commercial and government construction. The company's construction activities include site development, water and waste water systems, road and building construction, flood control, low level wind shear alert systems and radio communication link towers.

The company was organized in 1978 with five employees, in 1983 received a \$175,000 SBA guaranteed loan, and in 1987, was certified for 8(a) Program participation. Approximately 50 workers are now employed, and sales have grown from \$700,000 to more than \$4 million. Bonding capacity is up to \$10 million per project. Forty percent of Paramount's work force is minority, and minority subcontractors are utilized on most projects. Paramount received an outstanding performance rating from the U.S. Corps of Engineers in Savannah and has been commended by other government and non-government agencies for its performance, quality of work, and organizational capabilities.

Of the top 100 African-American-owned businesses (Black Enterprise Magazine, June 1994), 32 are or were in the 8(a) Program. Of the top 100 Hispanic-owned businesses (Hispanic Business Magazine, June 1994), 17 are or were in the 8(a) Program. Over the past three years, the 8(a) Program has supported well over 100,000 jobs.

The percentage of firms still operating after leaving the program has also improved since implementation of "competitive business mix requirements" in 1989. The Small Business Act, as amended by Public Law 100-656, requires SBA to include in its annual report to Congress a compilation and evaluation of those business concerns that have exited the 8(a) Program during the immediately preceding three fiscal years. The percentage of firms that have exited the program and are operational has risen from 50.3% in 1992 to 61.4% in 1994.

HISTORICAL PERSPECTIVE ON THE 8(A) PROGRAM

The origin of the 8(a) Program can be found in Public Law 77-603, enacted June 11, 1942, which created the Smaller War Plants Corporation. This corporation had broad authority to contract with the United States to furnish goods and services to the government and to arrange for the performance of these contracts by subcontracting to small businesses or others.

The Defense Production Act amendments of 1951, Public Law 82-96, created the independent Small Defense Plants Administration with authority to enter into contracts with the United States and to arrange for performance by subcontracting to small businesses or others.

The 8(a) authority under Public Laws 77-603 and 82-96 was not used, but the concept was inherent in the establishment of SBA. The Small Business Act of 1953 authorized SBA to enter into contracts with Federal agencies and to subcontract the work to small businesses. However, for 15 years SBA did not use the section 8(a) authority.

The 8(a) Program, as we know it today, has evolved over the years from an employment/economic development program, to a contracting program, to an open-ended business development program, and today, to a limited-term business development "opportunity" program. As problems have been identified, Congress passed laws intended to improve the functioning of the program.

The 8(a) Program was started as a result of an Executive Order issued by President Johnson in response to the 1967 Report of the Commission on Civil Disorders, commonly called the Kerner Commission. In 1967, President Johnson ordered that the section 8(a) authority be used to direct contracts to businesses locating plants in distressed urban areas to create jobs. After rioting in the inner cities that year, section 8(a) authority was used for the first time in support of the Test Cities Program in 12 urban locations. Sole-source Federal contracts were provided to induce businesses to locate in areas of high unemployment. This effort was short-lived. The effort to promote more employment in inner cities was turned over to the National Alliance for Business JOBS Program in 1968.

In 1969 in the Nixon Administration, SBA redesigned the program to provide Federal contract support for small firms owned by socially or economically disadvantaged individuals. This use of the Section 8(a) authority was accomplished through SBA administrative regulations. The 8(a) Program grew to include, from 1970 to 1980, approximately 2000 firms. Throughout this period the program was subject to abuse and fraud, particularly because of "front" companies.

In an attempt to correct the abuses and provide the program with statutory authority, Congress enacted Public Law 95-507 in 1978. The law provided a number of measures to shift the program's focus to business development and required program participants to be at least 51% owned and controlled by socially and economically disadvantaged individuals. Congress also determined that the power to award Federal contracts could be an effective tool for development of business ownership among groups that own and control little productive capital. The legislation was therefore designed to foster business ownership and development by individuals in groups that own and control little productive capital and to promote the viability of businesses run by such persons by providing contract, financial, technical and management assistance. The law clarified the intent that the primary beneficiaries of the program would be minorities but also allowed non-minorities to establish eligibility.

The position of Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD) was created by Congress to administer the 8(a) contract and 7(j) management and technical assistance programs. As a result of the inconsistent determinations of eligibility by the field offices, P.L. 95-507 provided specific eligibility criteria and required that all determinations be made by the AA/MSB&COD.

P.L. 95-507 also served to expand the 8(a) Program. There was a great increase in the 8(a) portfolio and number and dollar amount of 8(a) contracts as SBA and Federal agencies responded to the mandate of the new legislation. Unfortunately, even with P.L. 95-507 the program failed to develop viable, competitive firms that graduated from such government assistance. Congress consequently passed P.L. 96-481 in October 1980, requiring SBA to negotiate participation terms and definite graduation dates with each program participant.

Through regulations to implement P.L. 96-481, SBA established the fixed program participation term (FPPT) which limited a firm's participation in the program to an original term of up to 5 years with a possible extension of 2 years. Full implementation of these regulations took place on April 21, 1982.

On November 15, 1988, President Reagan signed into law the "Business Opportunity Development Reform Act of 1988," P.L. 100-656. This law provided for, among other things, competition in the 8(a) Program above certain contract dollar thresholds; a nine-year participation term; attainment of non-8(a) revenue at certain levels during program years 5 through 9; an 8(a) loan program to replace payment of business development expense; establishment of a division of program certification and eligibility to process applications within 90 days; Miller Act surety bond exemptions; Walsh-Healey Act exemptions; approval of business plans after certification but prior to award of any 8(a) contracts; a transition management plan during the first year of the transitional stage; submission of an annual report on the program to Congress; and a career-reserved AA/MSB&COD.

With P.L. 100-656, Congress and President Reagan reaffirmed that the 8(a) Program was a primary tool for improving opportunities in the Federal procurement process for small business concerns owned and controlled by socially and economically disadvantaged individuals and bringing such concerns into the nation's economic mainstream. Yet Congress also found that, while some business success could be demonstrated as a result of the program, the enduring principal objectives of the program had not been fully achieved.

Since its first 8(a) contract award in 1969, the 8(a) Program has awarded approximately 95,000 contracts valued at approximately \$48 billion. At present, there are approximately 5,400 certified 8(a) firms. During FY 1994, 8(a) Program participants received approximately 5,990 contracts. The total of all contract actions,

including contracts and modifications, was valued at approximately \$4.34 billion which represents only 2.7% of total procurement dollars awarded. The 8(a) Program is not a government "handout" or "giveaway," but is a means by which qualified businesses have produced goods and services which have met or exceeded market standards and agencies' needs.

SOCIAL AND ECONOMIC DISADVANTAGE

To participate in the 8(a) Program today, a business must be at least 51% unconditionally owned, controlled and operated by an individual or individuals who are determined by the SBA to be socially and economically disadvantaged. As defined in Public Law 95-507, the Small Business Act [Section 8(a)(5)], socially disadvantaged persons are those who have been subject to racial or ethnic prejudice or cultural bias because they have been identified as members of certain groups without regard to their individual qualities. The Small Business Act [Section 2(f)(1)(c)] states that such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Indian Tribes, Asian Pacific Americans, Native Hawaiian Organizations, and other minorities. This, however, does not preclude other Americans, who may have also suffered from social disadvantage because of racial or ethnic prejudice or cultural bias, from applying to the program.

Individuals who are not members of the designated groups may also apply for 8(a) certification. The Small Business Act [Section 8(a)(6)] defines economically disadvantaged individuals as "socially disadvantaged" individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the SBA shall consider, but not limited to, the assets and net worth of such socially disadvantaged individuals.

Whenever SBA computes the personal net worth for 8(a) Program eligibility, the Small Business Act [Section 8(a)(6)(e)] directs SBA to exclude the value of investments that disadvantaged owners have in their concerns and the equity in their primary personal residences except that any portion of such equity that is attributable to unduly excessive withdrawals from the concern shall be taken into account. Unduly excessive withdrawals are not defined in statute, but the Act [Section 8(a)(6)(c)] does require SBA to initiate termination proceedings or require the owner to reinvest the "unduly excessive withdrawals" in the firm when SBA determines that unduly excessive withdrawals have been made that are detrimental to achieving the firm's business development objectives.

Through the regulatory process SBA has established individual personal net worth thresholds for program entry, and participation during the developmental (first 4 years) and the transitional (last 5 years) stages. At program entry an individual

whose personal net worth (excluding the equity in the personal residence and the business) exceeds \$250,000 will not be considered economically disadvantaged. In the developmental and transitional stages this threshold is set at \$500,000 and \$750,000 respectively.

MINORITY ENTERPRISE DEVELOPMENT

Much of the criticism of the 8(a) Program in the past has focused mostly on internal processes and procedures at SBA such as the lengthy application process, lack of program data and delays in contract awards. In this Administration, SBA has acknowledged these problems and addressed each one in a MED reform proposal, placing a greater emphasis on providing assistance to the participants and making it easier for procuring agencies to utilize the 8(a) process. This has been the underlying approach and philosophy for all of the changes and proposals, especially eliminating unnecessary requirements or processes and improving assistance that is provided to program participants.

Historically, Mr. Chairman, the efforts of the SBA to assist the minority business community, unlike its efforts to assist other small businesses, have focused almost exclusively on providing access to and assistance with government contracting.

The first step in improving the 8(a) Program was included in the Agency's overall reorganization. The Offices of Government Contracting and Minority Enterprise Development were placed under a separate Associate Deputy Administrator. This was done to take advantage of the capabilities and resources of the Office of Government Contracting in marketing and identifying contract opportunities for the 8(a) Program. The Agency has also downsized the central and regional office staffs and redirected those resources to the district offices to better serve our customers.

MED today represents a comprehensive approach to improve both the process operation of the 8(a) and, more importantly, to work toward providing more contact opportunities while also expanding Agency business assistance and training to a much broader base of eligible firms. MED is an effort to expand the program's mission to include the provision of comprehensive technical, business and procurement training. In our analysis of the portfolios of SBA programs, the Agency discovered that minority owned businesses as well as women-owned businesses were under-represented in almost all of the other programs and services of the Agency. SBA has broadened the outreach in its loan programs to provide greater access to credit for minority small businesses. One of our Office of Government Contracting's major priorities is to identify procurement opportunities for program participants. In cooperation with our Office of Small Business Development Centers the Agency is evaluating proposals to provide a structured counseling and training program for start-up and developing small disadvantaged businesses.

The administration of the program has been further streamlined with the elimination of MED Program responsibility at the Regional Office level in October 1994. This change moved many program responsibilities to the local district office, which empowered local officials and reduced the need for coordination, clearance and approval of specific actions at the regional level.

The Agency also believes that the contracting process could be substantially streamlined if the Congress granted SBA the authority to allow Federal procuring agencies to make direct awards of 8(a) contracts after SBA has determined that the firm is eligible for the award. This would free up our contracting personnel to provide assistance in marketing, bid and proposal preparation and negotiations rather than reviewing contract documents that have already been reviewed and executed by the procuring agency.

MED has developed a pilot program to test a simplified application and certification process. Under the proposal, application information will be verified prior to the newly certified firm receiving its first contract opportunity or at the annual review, whichever comes first. The application form for sole proprietorships is three pages, and can be reviewed in much less time than is now required for review. This will allow SBA to streamline its application process, reduce paperwork, and significantly decrease processing time. The Agency also believes that the application process could be further streamlined if the Congress would amend the Small Business Act to allow the Associate Administrator to delegate determinations of program eligibility to District Directors. The 8(a) Program has served as a valuable tool in providing the disadvantaged owners of small businesses access to the Federal procurement market; however, it has not fully met its business development objectives.

EXPANDING 8(A) CONTRACT OPPORTUNITIES

The General Accounting Office (GAO) and SBA Office of the Inspector General (IG) criticized the 8(a) Program because a few companies receive the majority of 8(a) contracts. The Agency agrees with their findings; however, factors beyond the control of SBA play a significant role in the distribution of 8(a) contracts.

It is important to realize that, in overall Federal contracting, a small percentage of firms also receive the majority of the Federal procurement dollars. For example, in FY 1993, 200 firms (representing the largest suppliers of Federal goods and services) received approximately 65 percent of all contract dollars for contracts awarded over \$25,000 (\$117 billion out of \$180 billion). The concentration of contracts within the 8(a) Program is not unique, but is actually a reflection of the overall Federal marketplace.

8(a) firms are not different from other small businesses -- some will be more successful than others. Clearly, some 8(a) participants are more aggressive in marketing their firms than others, some have identified and developed a unique market niche, some provide outstanding customer service and contract performance, and some have the entrepreneurial spirit and tenacity that is necessary for effective market development and growth. Further, under the law, procuring agencies can nominate specific 8(a) firms for specific requirements. The Agency believes these factors make a difference and often determine what firm will get a contract award.

The determination of which firms receive 8(a) contracts, to a large degree, is determined by such factors as the firm's proximity to Federal agencies, capabilities of the firm, access to credit and capital, effective marketing, and the level of support received from each Federal agency. The current goaling process, which focuses only on total contract dollar awards, provides very little incentive for procuring agencies to utilize a larger number of firms or to consider identifying contract opportunities in different industries. Dollar goals can be met by awarding a few large 8(a) contracts to a few firms.

The Agency has taken several steps to broaden the distribution of 8(a) sole-source contracts. In February I issued a memorandum to all district directors directing each district to develop, in cooperation with our Office of Government Contracting staff, a strategic plan to increase the number of contract opportunities for a greater percentage of its portfolio. These plans will include initiatives to market the program to Federal procuring agencies and training of program participants.

SBA is working in other ways to increase the number of participants who actually receive contracts. SBA's Office of Government Contracting continues to take an active role in marketing and promoting the 8(a) Program. One of the major priorities of the Agency's Procurement Center Representatives is to work with SBA district offices and the 8(a) portfolio to identify additional contracting opportunities. The SBA has executed a Memorandum of Understanding (MOU) with the Department of Defense (DOD) to increase DOD awards to small disadvantaged businesses by five percent, with emphasis on the utilization of firms in the 8(a) portfolio. A key feature of this initiative is a commitment by DOD to give special attention to firms that have never received an 8(a) contract. SBA is negotiating with other Federal agencies and expect to execute similar MOUs or other agreements with those agencies.

Additional measures have been proposed by SBA to address this issue. These changes which were published for comment in the aforementioned proposed regulations would eliminate the definitions for local buy (except construction) and national buy 8(a) offerings. A local buy item is a service or product purchased to meet the specific needs of one user in one location. The Small Business Act [Section 8(a)(11)] requires that, to the maximum extent practicable, construction subcontracts awarded under section 8(a) shall be awarded within the county or state where the

work is to be performed. Currently, contracts classified as "local buys" can only be performed by firms located within the district office where the work is to be performed. The new rule will allow firms to market to the Federal government without geographical restrictions. Additionally, the Indefinite Delivery/Indefinite Quantity (IDIQ) contract "loophole" will be closed in the 8(a) Program to increase the number of contracts available for competition. The current regulation allows IDIQ contracts with a minimum value (not estimated value) below the competitive threshold to be offered on a sole-source basis. Many of these contracts are allowed to grow (through the issuance of task orders) to amounts greatly in excess of the competitive threshold. The new 8(a) regulation will establish the estimated value of the contract as the standard for competitive threshold evaluation, creating more opportunities for competition.

While these steps will likely assist in providing better distribution of 8(a) contracts, SBA does not believe this will guarantee equitable distribution of all 8(a) contracts. The 8(a) Program is self-marketed. This means that each participant must market and seek out contract opportunities. While the 8(a) Program provides opportunity and assistance necessary for participating firms to become competitive, it does not guarantee contracts or success. It does, however, in collaboration with other Federal agencies, offer management, technical assistance, and access to capital that will assist a company in its efforts to grow.

SBA also agrees with the comments provided to the U.S. House of Representatives by Mr. Ralph Thomas, NASA's Associate Administrator for Small and Disadvantaged Business Utilization, in his testimony before the House Small Business Committee on March 6, 1995, as summarized below.

Presently, there is too much emphasis on the SBA's 8(a) Program as either the only vehicle or the primary vehicle to obtain the full integration of small disadvantaged businesses into the Federal procurement system. The 8(a) Program was designed to be a part of the solution -- not the entire solution. Within the same law that created the 8(a) Program, a number of other initiatives were authorized for the effective utilization of small disadvantaged businesses. Many of these initiatives have not been fully utilized by Federal agencies.

For example, Section 211 of Public Law 95-507 added Section 8(d) to the Small Business Act to require that prime contractors with Federal contracts that exceed \$1 million for the construction of any public facility or \$500 thousand in the case of all other contracts establish percentage goals for the utilization of SDBs as subcontractors whenever subcontracting opportunities are present.

In FY 1993 small businesses overall received about \$63 billion (out of about \$180 billion) in Federal contract dollars. About one-third of that amount was from subcontracting. SDBs, on the other hand, received a little over \$13 billion in Federal contract dollars but only one-sixth of that was through subcontracting.

In 1988 the General Accounting Office (GAO) conducted a mail survey of Federal contracting officers responsible for 8(a) contracts. The GAO survey report was positive with respect to the performance of 8(a) firms. Contracting officers reported that all or most of the delivery dates were met on over 75 percent of the 8(a) contracts and that for around 90 percent of the contracts the products or services delivered met or exceeded quality specifications.

GAO also found that the performance of 8(a) firms compared favorably with the performance of non-8(a) firms. The good performance of 8(a) firms continues today. For example, during fiscal years 1990 through 1994, 25,147 8(a) contracts were awarded. During this same period there were only 77 8(a) contracts terminated for default. This is a default rate of less than one-third of one percent. In summary, 8(a) firms have proven that, given the opportunity, they perform as well as, if not better than, non-8(a) firms.

ADMINISTRATIVE IMPROVEMENTS

Historically, SBA has not met the 90-day statutory timeframe for processing 8(a) applications. However, in the last 11 months, SBA has made significant headway. SBA anticipates that by the end of the fiscal year our team will be processing consistently below the 90-day statutory requirement. While reducing processing time, SBA has also processed twice as many applications.

To assist in monitoring the 8(a) application process, SBA placed its Certification Tracking System (CTS) in full operation in November of 1993. It has become a valuable management tool which has helped to improve accountability.

Over the past eleven months SBA has moved aggressively to terminate those firms not in compliance with program regulations. All cases that have been referred to us by the Office of the Inspector General have been handled aggressively.

Historically, the SBA has been criticized for its failure to properly plan, develop, and implement an automated information system that allows the agency to collect, assess, and evaluate information regarding MED's programmatic performance. The Agency is building an information system that will monitor assistance provided, contract support, and firm development, and to measure program performance and accomplishment. Last summer, Deputy Administrator Pulley testified before the

Senate Small Business Committee that the Agency would complete our information system by the end of FY 1995. That commitment will be met.

GOVERNMENT-WIDE SDB PROGRAM COMPARED TO SBA'S 8(a) PROGRAM

Many interested in the MED program question whether the Government-Wide Small Disadvantaged Business (SDB) Set-Aside Program obviates the need for the 8(a) Program. This question is best addressed in terms of the stated purpose of both programs. 8(a) is a developmental program that addresses the historical lack of access to markets by firms owned by disadvantaged individuals. This program provides a logical, systematic approach to market access and enterprise growth over a nine-year term. Development is tracked through a business plan which is submitted by the firm upon entry into the Program and annually reviewed by SBA to determine progress and the need for developmental support. The award of Federal sole-source contracts through the 8(a) Program (although a very important component) is only one element in the overall formula used to encourage the development of 8(a) firms. SBA employs several other resources to support 8(a) firms including specialized training opportunities, professional consultant assistance through the 7(j) Program, and the opportunity to participate in high level executive development training.

The MED proposal recognizes that competition in the 8(a) Program would be duplicative of the government-wide SDB Set-Aside Program and has recommended that the 8(a) Program be used exclusively as a sole-source (non-competitive) program. This recognition responds to the fact that a number of disadvantaged owned firms have no prior Federal procurement experience and 8(a) would allow those firms the opportunity to gain this experience.

The SDB Set-Aside Program is intended to increase the amount of Federal contract dollars awarded to SDBs. This Program is a restrictive competitive procurement program. It does not include sole-source contracting or any developmental features. Companies that are involved in this program are considered to have the experience and capability to bid and perform on Federal contracts. This program represents a logical next step for 8(a) firms in terms of business opportunity, but should not be viewed as a substitute for the 8(a) Program.

The 8(a) Program provides a long-term commitment (through several modes of assistance) to the development of specific emerging firms, while the set-aside program has a singular focus -- opportunity for the participation of experienced SDBs within a restricted market.

NEED FOR THE 8(A) PROGRAM

As I mentioned earlier, only 2.7% of total procurement dollars were awarded to 8(a) firms in FY 1993. Adding the contracts awarded to small disadvantaged firms

through the SDB Set-Aside Program the total grows to only 5.8%. Based on the most recent data available from the Department of Commerce's Census Bureau, minority-owned businesses comprise only 8.8% of the total business population, while they comprise 26.3% of the general population.

The 8(a) Program serves to increase the participation of socially and economically disadvantaged individuals, particularly minority individuals, in our Federal procurement system. However, targeting Federal procurement is not unique to minority-owned businesses.

For example, to ensure that domestic products had an advantage over foreign markets in winning Federal contracts, Congress enacted the Buy American Act in 1933 which requires that domestic products receive six to twelve percentage preference points in certain procurements. This was done, in large part, to preserve the domestic mobilization base.

To ensure that a fair proportion of Federal contracts would go to small businesses, Congress created small business set-asides which require that certain contracts be set-aside for competition among small businesses only.

The original intent of Sections 8(a) and 8(d) of the Small Business Act, simply put, is to assist in developing small businesses owned, managed, and controlled by persons who have been determined to be socially and economically disadvantaged. The primary assistance vehicle is the award of sole-source and competitive Federal contracts to certified firms under the Section 8(a) authority. Section 8(d) focuses on ensuring that small disadvantaged businesses receive a fair share of subcontracts from large Federal prime contractors. 8(d) requires percentage goals and subcontracting plans for utilization of small disadvantaged businesses, from offerers or bidders on Federal contracts in excess of \$1,000,000 for construction contracts or in excess of \$500,000 for all other contracts.

In passing P.L. 95-507 in 1978, Congress codified the 10-year efforts of SBA to use the Section 8(a) authority to assist in developing small disadvantaged businesses. Congress made specific findings to support the need for the 8(a) Program based on the economic plight, and the discriminatory treatment, of members of designated minority groups.

At this juncture in the history of the 8(a) and other minority small business assistance programs, the question asked can be whether the purposes of the programs have been fulfilled. The mere existence of the 8(a) Program has increased the business ownership aspirations of members of designated minority groups. Knowing that the 8(a) Program is available to soften the impact of social and economic disadvantage has caused some minority individuals to go into business when they might not have otherwise. This is particularly true for certain types of businesses that

minorities have traditionally not pursued. The 8(a) Program also provides private sector jobs in high wage industries. Professional services, construction, and manufacturing industries pay higher than average wages to those workers producing goods and services purchased by the Federal government.

Congress found in 1988, when enacting P.L. 100-656, that the need for the 8(a) Program was just as valid then as it was at its inception. SBA believes there is evidence that the 8(a) Program has indeed fostered business ownership by socially and economically disadvantaged persons, as intended by Congress. But the participation of minority-owned firms in federal procurement still is comparatively small. The President's review, consequently, is studying alternatives for the program's future direction.

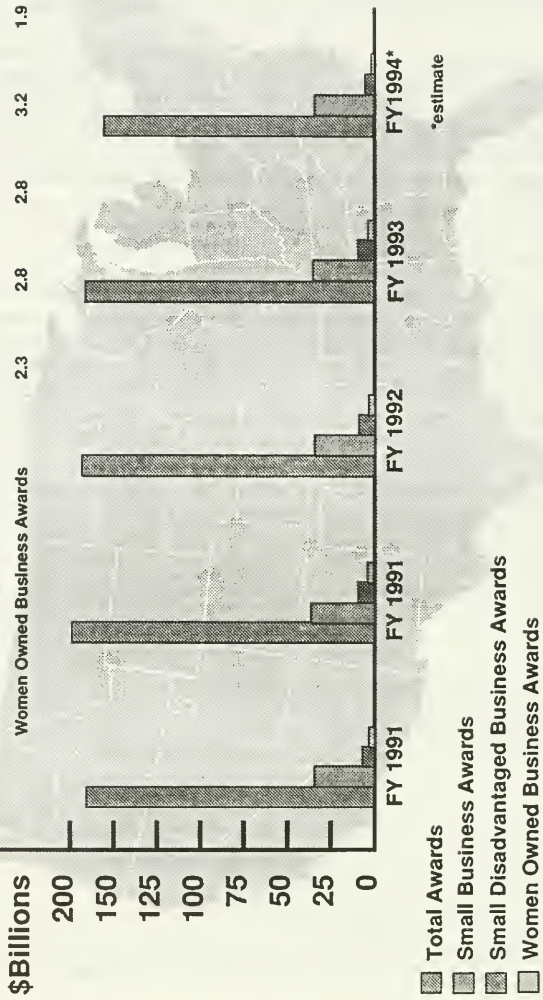
CONCLUSION

Over the past twenty-five years, SBA's use of its 8(a) contracting authority, notwithstanding its problems, has done much to assist socially and economically disadvantaged entrepreneurs. The 8(a) Program has spurred creation of minority-owned businesses in all industrial sectors and unleashed innovative entrepreneurial potential. It has fostered formation of capital and increased access to credit in the minority business community. The program also has provided diverse employment opportunities for economically and socially disadvantaged employees.

This concludes my testimony. I will be happy to answer any questions you may have.

SBA Government Contracting Prime Contracts

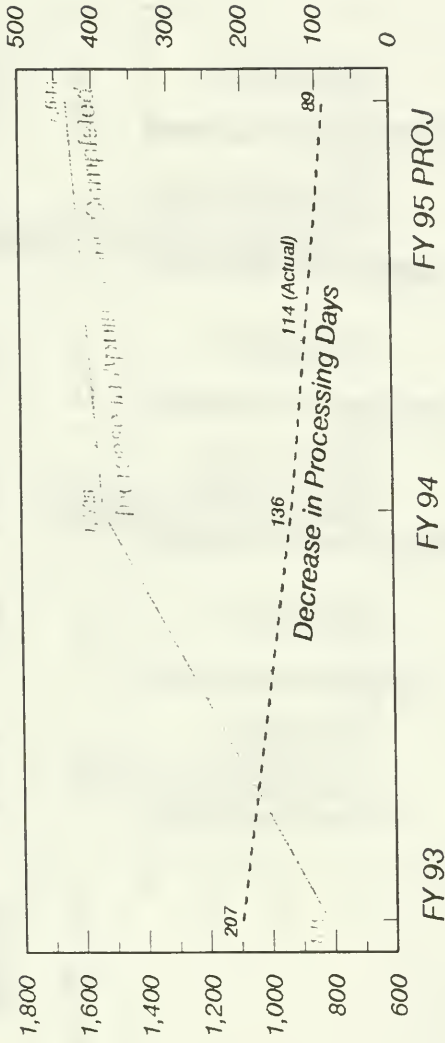
	FY90	FY91	FY92	FY93	FY94*
Total Awards	177.8	190	180.3	179.4	160.1
Small Business Awards	36	43.2	41.3	42.2	36.7
Small Disadvantaged Business Awards	5.5	7.8	8.7	10.5	6.1
Women Owned Business Awards	2.3	2.8	2.8	3.2	1.9



Status of 8(a) Processing

FY 93-95 APPLICATIONS COMPLETED

With Average Processing Time (APT) in Days - At Year End

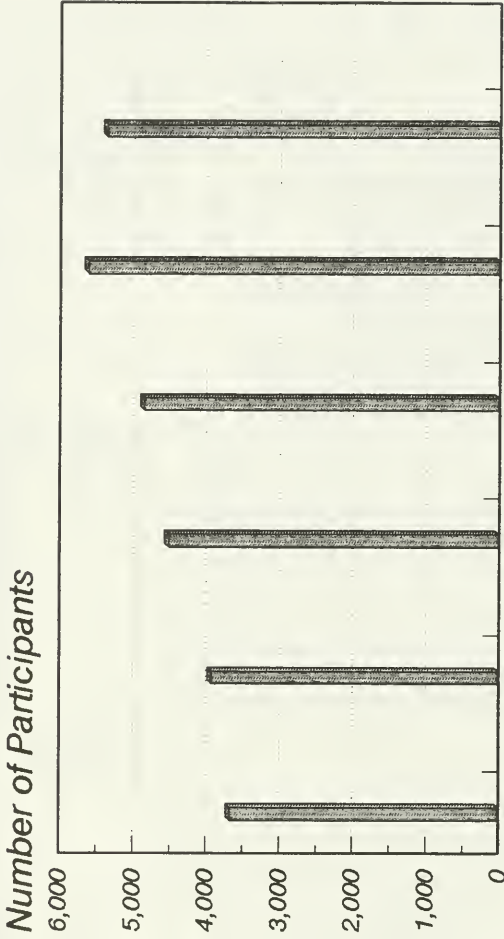


	FY 93	FY 94	FY 95 PROJ
Applications	819	1,536	1,644
Days	207	136	89

Increase in number of applications processed FY 93 to FY 94 - 88%

Decrease in number of processing days FY 93 to FY 95 - Year to Date 93 days

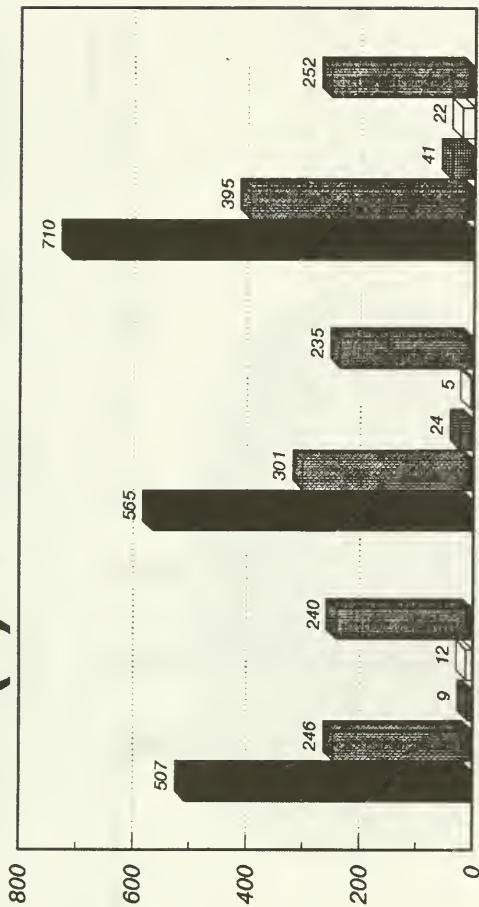
NUMBER OF 8(A) PROGRAM PARTICIPANTS



Fiscal Years	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
	3,673	3,925	4,509	4,848	5,613	5,356*

* Note: Decline from FY 1994 to FY 1995 program participation reflects termination of 302 firms from the 8(a) program.

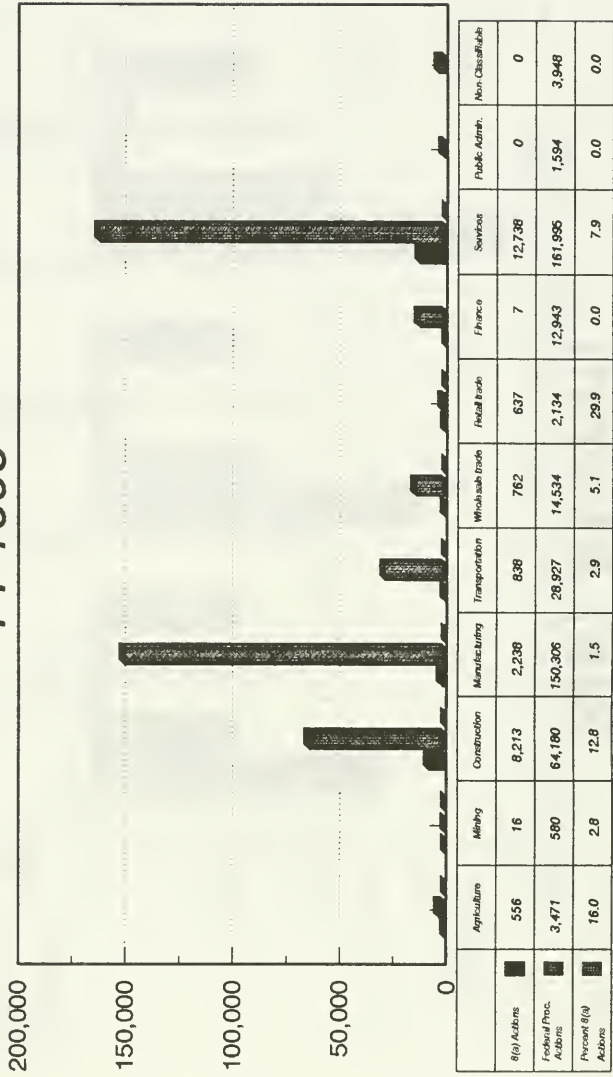
8(a) Alumni



Reporting Year	FY 91	FY 92	FY 93
Number	507	565	710
Full Operational	246	301	395
Curtailed	9	24	41
Acquired	12	5	22
Ceased	240	235	252

Each reporting year includes data on firms exiting the program over the prior three fiscal years (e.g., FY 1991 includes firms exiting the program during fiscal years 1989 thru 1991).

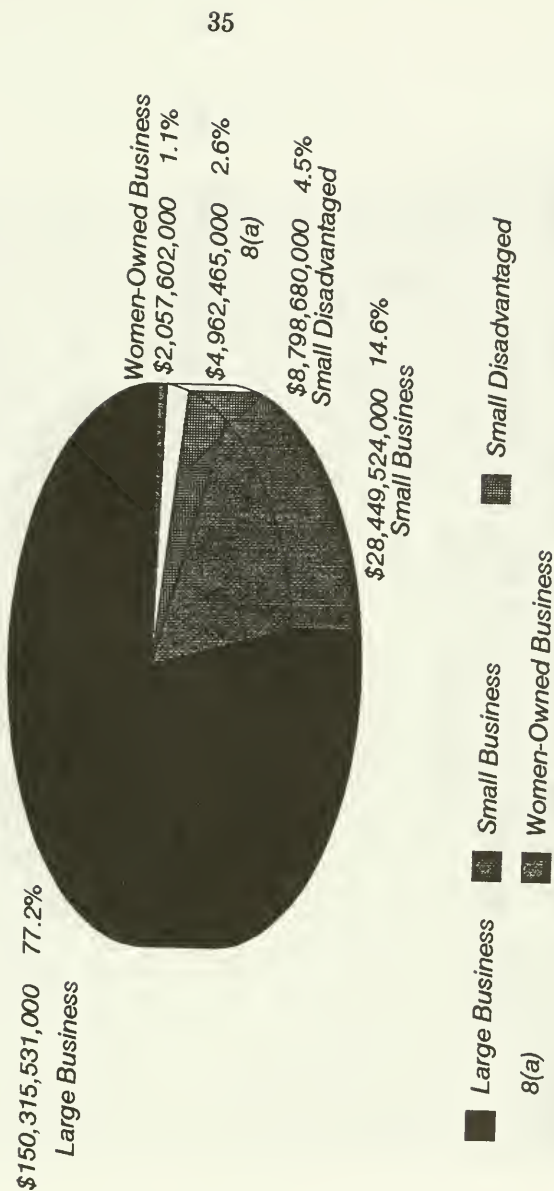
8(a) Contract Actions VS Total Federal Contract Actions by SIC Code FY 1993



	Agriculture	Mining	Construction	Manufacturing	Transportation	Wholesale Trade	Retail Trade	Finance	Services	Public Admin.	Non-Classifiable
8(a) Actions	556	16	8,213	2,238	838	762	637	7	12,738	0	0
Federal Proc. Actions	3,471	580	64,180	150,306	28,927	14,534	2,134	12,943	161,995	1,594	3,948
Percent 8(a) Actions	16.0	2.8	12.8	1.5	2.9	5.1	29.9	0.0	7.9	0.0	0.0

FEDERAL CONTRACT AWARDS OVER \$25,000

Fiscal Year 1993

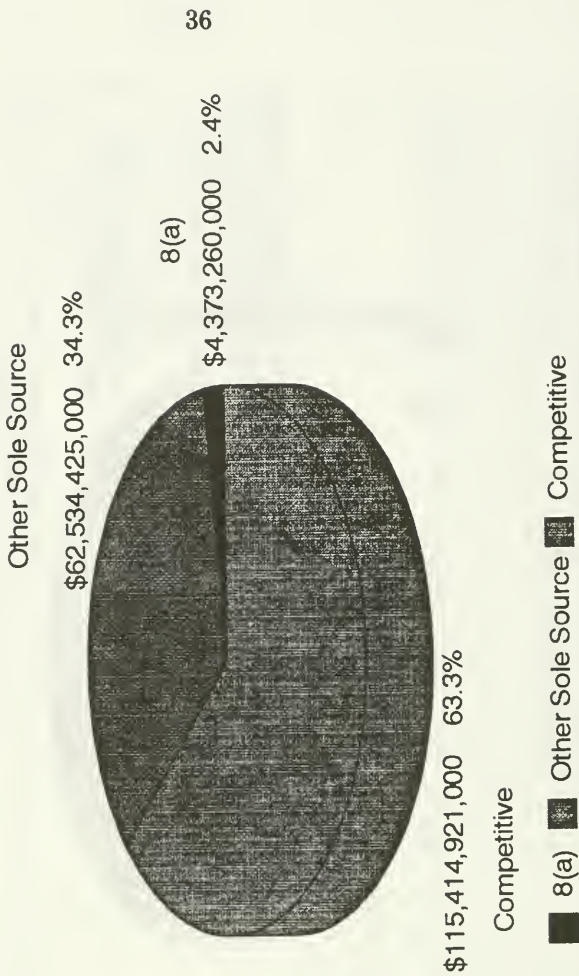


Total Awards \$178,765,055,000

FEDERAL CONTRACTS OVER \$25,000

by Competitive and Sole Source Awards

Fiscal Year 1993



Total Awards: \$182,322,606,000

**MSB & COD
(OLD)**

- 8(a) Contract Awards
 - Sole Source
 - Limited Competition
- 7(f) Assistance
 - Executive Development
 - Task Order Services
 - Other Group Training

MED PROGRAM

- Phase I - Start-up assistance to prospective and new entrepreneurs
- Phase II - Developmental assistance
 - Marketing, management financial skills training
- Phase III - Business development assistance to enable firms to attain competitive viability
 - 8(a) Awards
 - Pre-loan qualifications
 - Mentor protege program
 - Certified Development Company participation
 - 7(f) assistance

Chairman BOND. Thank you very much, Mr. Lader. Before beginning the questions let me welcome two more of our members who have joined us to see if they have any opening statements. Mr. Frist.

Senator FRIST. I do not at this time, Mr. Chairman. Thank you.
Chairman BOND. Mr. Lautenberg.

Senator LAUTENBERG. Thanks very much, Mr. Chairman. I do commend you for holding this hearing. I ask consent that the full statement that I have prepared be included in the record and I would just make a couple of short remarks.

Chairman BOND. Without objection, it will be accepted. Thank you.

OPENING STATEMENT OF THE HONORABLE FRANK R. LAUTENBERG, A UNITED STATES SENATOR FROM NEW JERSEY

Senator LAUTENBERG. This is a program that has, I think, a great deal of merit. Its mission is one that we would like to see accomplished—which is—to increase the number of entrepreneurs in the minority community, so that they might be able to have a chance to live the American dream and to participate fully in our economic affairs.

So, Mr. Chairman, I think it is fair to say that this hearing is about whether or not this program should be continued with some vigor and some support or whether or not we are going to let it languish on the vine. I hope that the former is the truth, and I look forward to the continuing information developed from this hearing. Thank you very much.

[The prepared statement of Senator Lautenberg follows:]

OPENING STATEMENT OF SENATOR FRANK R. LAUTENBERG
COMMITTEE ON SMALL BUSINESS
APRIL 4, 1995

I thank the Chairman for holding this hearing. Today we examine the SBA's 8(a) program. It has recently come under increased scrutiny due to the Majority Leader's speech calling for its termination. I think it's fair to say this hearing is not about whether the federal government should affirmatively assist small businesses. Rather, this is a hearing about whether the federal government should provide special assistance to minority-owned small businesses.

There are problems with the 8(a) program. We have known that for years and Congress has repeatedly tried to remedy the problems.

Last year the Senate unanimously passed legislation that sought to prevent further abuses and to increase the opportunities of firms in the program. That bill, sponsored by Senator Kerry, was cosponsored by many members of this committee -- members of both parties. We should not throw out a program which received such large bipartisan support just a few months earlier. We should, however, enact the reforms.

I believe there is a continuing need to create programs like 8(a) to help minority-owned ventures.

The facts are beyond dispute: for a variety of reasons, minority-owned small businesses have a harder time competing for contracts and securing capital than do other similarly situated enterprises. That reality, in my view, justifies a federal response.

The 8(a) program is designed to help small disadvantaged firms, for a relatively limited period of time, get the experience, contracts, and reputation which will allow them to compete on an equal basis with other firms.

This program awards a small percentage of procurement contracts to qualified and competent firms participating in the 8(a) program.

For many companies, the contracts received through their participation in 8(a) provide them with the necessary capital to build up an inventory, hire additional employees, and invest in better equipment -- all of which permits them to become more competitive.

Support for the concept behind the 8(a) program, however, is not the same as support for the way the program operates. There are problems in the 8(a) program. Let me list just a few:

- * Too few firms get too much of the money;
- * Most of these firms seem to be located within the Beltway;
- * Many of the firms in the program become too reliant upon federal contracts, especially sole-source contracts, and do not take advantage of the program to become more competitive;
- * Some agencies seem to be thwarting Congressional intent by ignoring the thresholds over which contracts must be awarded competitively;
- * Successful firms that can compete in the open market are allowed to remain in the program until their term expires; and
- * Anti-fraud provisions in the program are not strong enough.

Those concerns motivated Senator Kerry and many of us on this committee to support legislation designed to prevent abuses and increase the opportunities for more firms to participate in the program.

But now, instead of fixing the program, some want to abolish it. I disagree. While the 8(a) program has problems, if we agree with the principles upon which it is based, then we have a duty to fix it. We can do that if we use last year's reform proposal, S. 2478, as a starting point.

In fact, if our witnesses today are familiar with that bill, I would ask them to indicate in their statements whether they believe it would adequately respond to the most commonly identified problems in the 8(a) program.

Let me make one final point. The issue of affirmative action is controversial.

Claims of "reverse discrimination" raise profound questions about government policy and public morality. The concept that we may owe something to those who have suffered from historic, if not current, discrimination is complicated. But we should not approach them from the perspective of partisan politics. There is too much at risk here for that.

And I am sure, Mr. Chairman, that this committee and this Congress will accept the responsibility of looking at these questions calmly and rationally rather than simply trying to fuel the fires of passion and hatred which this issue can ignite.

Chairman BOND. Thank you very much, Senator Lautenberg.

Mr. Lader, we have the 8(a) program. Let's begin with a hypothetical. What if the program no longer had authority to set aside contracts for certified 8(a) programs. Just as a hypothetical, could you describe the minority business development activities that the agency would continue to perform? What can you do in addition to this program to assist the minority or disadvantaged businesses?

Mr. LADER. Senator, let me respond in two ways and then ask Cassandra Pulley to add further thoughts on this. First, in terms of the overall programs we have underway, the cornerstone of our Government-guaranteed effort is the 7(a) program, as you are aware. As I mentioned in my opening statement, we have made significant progress in education and in our district offices in the field to make sure that minorities, socially and economically disadvantaged persons who own businesses, have opportunities to have access to the 7(a) programs.

In the Microloan program, about a third of the current portfolio of those loans has been extended and is available to, and been taken advantage by in the best sense of that, such firms. You can see that in the counseling that is done by our retired executives in locations all over the country in the SCORE Program and the 900 small business development centers providing technical training assistance. All of those programs are available in addition to the 8(a) program.

But my second point is this, before turning to Ms. Pulley. I do not have a crystal ball as to what would happen if there were not an 8(a) program, but I can read history. When I look back to 1965 when there was some tampering with the small business set-aside program and by 1969 there was an 18 or 20 percent decrease in small business participation. That was just tampering with the small business set-aside program. There was this decrease in the small business participation in overall Government contracting.

That is why, notwithstanding all of the other efforts that we have within the agency, we are concerned as to what happens with 8(a) and its impact on minority participation in Government contracting.

Let me ask Ms. Pulley to respond as well.

Chairman BOND. Ms. Pulley.

Ms. PULLEY. Mr. Chairman, as the administrator said, we have undertaken a major effort to include minority-owned businesses in all of the agency's programs, which unfortunately, has not been the case in the past. Primarily minority firms were participating in the 8(a) program which is just contracting and not in the additional loan and business and educational programs that the agency offers. Without 8(a), certainly that commitment would continue, but it would be a significant drop and a significant loss to the minority business community without the access to Government contracting and the procurement opportunities.

Chairman BOND. Mr. Lader, I often hear comments about the net worth ceiling. As I understand the current rules, if your net worth is not greater than \$250,000, excluding the value of your business and residence, you are economically disadvantaged. Did you say that the average net worth of new entrants in the 8(a) program was \$53,000?

Mr. LADER. \$54,000.

Chairman BOND. Do you have an idea what percentage of our population in the United States has a net worth that exceeds this ceiling? In other words, if you took out their residence and their primary business investment, what percentage of the population in the United States would exceed that ceiling?

Mr. LADER. I do not have the specific percentage of that. Let us get that for you.

[In response, Mr. Lader submitted the following:]

Information abstracted from the Federal Reserve Board Consumer Finance Survey (1992) indicates that 19.4% of the families that own businesses in the United States exceed the entry level ceiling (\$250,000, excluding primary residence and business equity) for participation in the 8(a) Program as defined by SBA regulations. In terms of continuing 8(a) Program eligibility criteria (\$750,000 with the aforementioned exclusions) 8.4% of families owning businesses in the United States would exceed the net worth ceiling as defined by SBA. It should be noted that the Federal Reserve data is based upon family net worth, while the SBA definition refers to individual net worth.

Chairman BOND. It might be interesting to find that out. Could you describe briefly how the 7(j) program works and how many grants are normally awarded annually?

Mr. LADER. Let me address that and ask Ms. Pulley to. But as a prefatory note, let me refer back to your prior question, if I may, Mr. Chairman, because the concern about this net worth requirement and why there is equity in the residence and the business is excluded. I just want to add quickly, as most Americans homes are typically mortgaged. So the value of the home is not a fair way to be added to the net worth in that sense. In addition to that, homeownership is a great American tradition and we do not want to discourage participants in this program from home ownership.

Similarly, because many of these companies, virtually all of them are privately held, and as those of you who have held and brought businesses public well understand, it is very difficult to ascertain the market value of a business in the private market, particularly when it is very small. Consequently, what would be the value of the entrepreneur's ownership in his own business would be very difficult at best.

[An explanation as mentioned in the conference report, Public Law 100-656, follows:]

AN EXCERPT FROM THE LEGISLATIVE HISTORY OF THE BUSINESS DEVELOPMENT REFORM ACT (P.L. 100-656)

The conferees are aware that the Administration has already taken steps to establish a threshold of net personal worth for the purpose of program admission. However, the conferees are concerned that the threshold established by the Administration includes the value of an applicant's business assets and primary personal residence in such individual's personal net worth.

Because of rapidly escalating real estate values and the wide disparity of real estate prices around the country, the conferees believe that the inclusion of the value of a primary personal residence in calculations of net worth may lead to inequitable treatment of homeowners in some areas. With regard to business assets, the conferees believe that the value of such assets are more properly considered in the context of the firm's ability to compete, and not as an element of personal net worth.

For this reason, the conference amendment requires that the Administration exclude the value of business assets and individual equity in a primary personal residence from calculations of personal net worth. At the same time, the conferees direct the Administration to take appropriate steps to ensure that these exclusions are not subject to abuse. Although the value of business assets and primary personal residence are not to be considered as an element of personal net worth, the conferees

anticipate that the Administration will consider whether such business assets and residence give an individual access to capital or loans such that he or she should not be considered to be impaired in his or her ability to compete.

Mr. LADER. Coming to your 7(j) question. About 65 percent of the 7(j) funds are directed toward 8(a) firms. In other words, more than half of the funds available for minority economic business training and development, of which there has been some very interesting new programs developed in the past year, are devoted to 8(a).

But let me ask Ms. Pulley to respond as well.

Ms. PULLEY. In terms of how the program has been administered in the past, Mr. Chairman, basically we have polled each of our district directors and asked them to review the business and technical assistance needs of the 8(a) companies in their districts. Then, we allocated from the central headquarters pool of funds to each district director based on the percentage. We then subcontracted with individual providers of business and technical assistance, whether it was in helping prepare a business plan, or accounting, marketing assistance—in that way.

As part of our Reinvention II efforts, we are changing the way we manage the 7(j) program. What we will do is combine those funds with the SBDC funds and the funds available in the Office of Women's Business Ownership under the Demonstration Program and allocate those to each district director. We believe that what that will do is enable us to manage the funds more efficiently, reduce the administrative overhead in Washington and eliminate the duplication in administering those programs as well as allow for efficiencies in terms of service delivery. Perhaps the SBDCs can provide some of the individual counseling that the 7(j) program does right now. So those are the changes we have proposed in reinvention.

Chairman BOND. Thank you very much, Ms. Pulley.

Now I turn to our ranking member, Senator Bumpers.

Senator BUMPERS. Thank you, Mr. Chairman.

Mr. Lader, you are familiar with the Kerry bill that passed the Senate last year?

Mr. LADER. Yes, Senator.

Senator BUMPERS. What is your present view of that bill?

Mr. LADER. To the extent that any of those reforms can be done administratively we have been taking action to move in that direction. We are supportive of that bill, and we believe that having a more comprehensive approach, including training and dealing with the local versus national buy questions and some of the other technical provisions of that legislation, would be effective.

Senator BUMPERS. As I understand the bill it also provided that SBA, which is now the sort of prime contractor and the 8(a) contractors are essentially subcontractors, SBA is simply an intermediary between the Federal agency and the 8(a) contractor. As I understood the Kerry bill, it would remove the SBA from that function and 8(a) contractors would go directly to the agencies. Do you find any fault with that?

Mr. LADER. Ms. Pulley and I have been deeply engaged in this discussion. I personally support that view. Let her address our common belief on that.

Senator BUMPERS. Ms. Pulley?

Ms. PULLEY. Senator Bumpers, we are very much supportive of that notion. We did, as you are aware, a number of brainstorming sessions around the country last year reviewing the 8(a) program as part of our comprehensive plan to restructure the program. One of the things we heard consistently all over the country from both procuring agencies and from 8(a) companies, was that there was no real value added from SBA being a part of the process.

In addition, from my perspective as the chief operating officer of the agency, it is an inefficient use of our resources. Certainly to the extent that newer 8(a) firms might need assistance in the negotiation process, we could make available our contracting offices to assist. In terms of the contract being assigned to SBA and then being subcontracted out, we see no real value.

The other problem with it is that it has been part of the misconception among many in the 8(a) community and outside of the community that SBA has contracts to award. So instead of people coming into the program fully understanding that it is a self-marketing program and that, essentially, the contracts a company gets are the contracts it self-markets, there is a perception that once you are certified for 8(a) participation, the agency has contracts to give. So, in general, I think it would be a much, much more efficient system if contracting agencies directly contracted with the suppliers.

Senator BUMPERS. It is sort of the old 1207 program that the Defense Department used, is it not? Doesn't the Defense Department contract directly with 8(a) firms?

Ms. PULLEY. Yes.

Senator BUMPERS. And so far as I know, that program has worked reasonably well for the Defense Department. Has it not?

Ms. PULLEY. Yes.

Senator BUMPERS. As a matter of fact now, and one of the questions, Mr. Lader, that I was going to ask is that since the section 1207 program from DOD is going sort of Government-wide, where does that leave the 8(a) programs, insofar as SBA is concerned? I mean, if we are going to go Government-wide with what is basically the old 1207 program, that essentially means minority business contracting is going to be direct, does it not?

Ms. PULLEY. Actually, Senator Bumpers, the 1207 program, as I understand it, is the Defense Department's small disadvantaged business program which is in addition to the 8(a) program.

Senator BUMPERS. But do they not overlap?

Ms. PULLEY. Actually, they are different programs.

Senator BUMPERS. I understand that.

Mr. LADER. Let me interrupt, if I might, in terms of the distinction, and Cassandra certainly will embellish this. The 8(a) program is a means by which this comprehensive approach can be taken for businesses of certain ownership to ensure that they can, not only have access to, but essentially grow as businesses, have the training, the technical assistance, and the like.

The small disadvantaged business program includes typically more mature businesses of a similar profile, but not necessarily those which are getting the more comprehensive Government assistance. Excuse my interrupting, Cassandra.

Ms. PULLEY. I think, Senator Bumpers, that the Government-wide 1207 program will benefit the procuring agencies as much as the 8(a) firms, because it will provide an additional tool for them to reach the 5-percent goal for contracting with small and disadvantaged businesses.

The 8(a) program is a program of great value to procuring agencies, in terms of a simplified, shortened contracting process. So I do believe that the programs go hand-in-hand.

Senator BUMPERS. They self-certify under the 1207 program, do they not?

Ms. PULLEY. Yes, sir.

Senator BUMPERS. Thank you, Mr. Chairman.

Chairman BOND. Thank you very much, Senator Bumpers. Senator Frist.

Senator FRIST. Thank you, Mr. Chairman.

Mr. Lader, in your testimony you stated that SBA's program provides a logical, systematic approach to market access and enterprise growth over a 9-year term. Can you give me some sort of feel for the average firm? How long is the average firm in there, in the program, over these 9 years?

Ms. PULLEY. That is a bit difficult to answer because the term of the program has changed. The fixed participation term has changed over time. Because it is a 9-year term, and both the 9-year period and the revision came in 1988, it is very difficult because prior to that time it was a 5-year participation with an option for a 2-year extension.

I will take a winger and say that probably about 7 or 8 years is probably average, but it is very difficult to judge because you are looking at a 25-year period and there have been several different revisions on the term of the program.

Senator FRIST. Is there an average or some very short term and some would be in there for a very, very long term? Is there any shape to the curve, or is it hard to know?

Ms. PULLEY. I would imagine that the top of the bell would be at about 7 or 8 years. With some companies, again, when you look at the total number of firms certified in the program, you also have to factor in those companies that are in the program that never get any contracts; those companies that go out of business while they are in the program—those companies that grow beyond the small business size standards and are no longer eligible for participation. There are any number of factors that weigh into that, and it is very difficult.

Mr. LADER. And Senator, let us emphasize, as you and your colleagues understand from your own personal and families' business experiences, this curve is not that greatly different from traditional business experience in terms of the maturation of a business, the fall out of some and the period of time it takes for them to really earn their stripes.

Senator FRIST. Second, in your testimony you have said, I think it was on page 12, the agency also believes that the contracting process could be streamlined substantially if Congress granted the authority to allow Federal procuring agencies to make direct awards of 8(a) contracts. And you go to say this would free up contracting personnel.

How much would that help? How much of a problem is that? Would that be significant streamlining?

Mr. LADER. I will give you this example in terms of our agency: 3 percent of our budget is consumed by the administration of this program. It is a relatively small amount, but every amount is a further taxpayer savings. About 10 percent of the SBA personnel is devoted to the administration of this program. And so, while we have just proposed a significant reinvention, saving about 32 percent of our budget, this 10-percent commitment of our personnel is the minimum necessary, as we see it, for the administration of this program.

Ms. PULLEY. Senator, I think the efficiencies are not only within the agency, but also within the Government. And I think that is the significant improvement. I think it is very cumbersome for many procuring agencies to contract with the SBA. Every time you add another person into the loop, it almost always lengthens the time required, so I think it would be.

But it would also free up people we now use to process paper to work more with the companies in terms of business development and marketing themselves to the procuring agencies.

Senator FRIST. Good. Thank you, Mr. Chairman.

Chairman BOND. Thank you very much, Senator Frist. Senator Lautenberg.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Mr. Lader, I noticed in your prepared testimony that a fairly significant number of the top 100 African-American and Hispanic owned firms are or were in the 8(a) program. That is a statistic you should be proud of. But it seems to me that if any of those firms still participate in the program, we ought to look fairly closely at that. Do you know whether those in that top group there are currently participants in the 8(a) program?

Mr. LADER. Yes, there are. I do not know that specific number.

Ms. PULLEY. I do not know the specific number, but there are a few. But again, I think it is important to look at the size of the top 100 African-American or Hispanic-American owned firms. That number is in terms of gross revenues. The 100th company is not necessarily that large, and they almost all fall still within the definition of a small business.

Mr. LADER. Senator, two further points, if I might offer. If one looks at the 10 American companies which earn the largest share of Government procurement, you will see that there is great concentration of procurement dollars in a relatively small percentage of overall firms. Any of these 100, as Cassandra has indicated, on the African-American businesses are dwarfed in comparison with those businesses.

The second point is, although there are firms currently participating in the 8(a) program listed in that, that is a sign of the success. We do not want to penalize businesses which are successful in creating jobs, in earning revenues, for participating in this program.

Senator LAUTENBERG. By the same token, however, we would like to see as many minority owned firms participating as can be. Is there not some crowding out, if we take the most successful firms—and I do not know what the relative relationship is between

let us say the top 100 of non-minority versus minority. I am sure it is significantly different.

But we ought to, as much as possible, be including as many of the minority owned businesses as possible. And how do the others survive? Are there no successful businesses beyond that 100? How do they survive if they are not participating in these programs?

Mr. LADER. Two specific responses. We certainly agree with that premise, in terms of the participation of more than those 100 firms. And for that reason, the Department of Defense is undertaking an initiative which we support and applaud, and have worked with them, to try to ensure that as they look to other procurement, they look to 8(a) firms that have not participated thus far, have not received contracts. That is my second point.

Of the 5,400 currently certified firms, only about half of them actually have been getting contracts. And so, this is a self-marketed program. Our job is not to guarantee work, Government contracts to these firms, but it is to allow them to have this extra threshold. Consequently, the effort by the Department of Defense, and we hope increasingly Government-wide, to look to other 8(a) firms who can participate in contracts will be very useful to broaden that participation.

Senator LAUTENBERG. I would encourage that. We read and we see reports about front companies. Everyone knows about this problem. I wonder if you or Ms. Pulley can tell us, how prevalent is this problem? It seems to be endemic to the whole program, but I am not sure that that is the case. What do you think about that?

Mr. LADER. Let us both respond. If I can, as a prefatory note, mention that part of the reason for the paperwork that we have—and we have been trying in this administration to streamline the paperwork as much as possible at SBA—quite frankly is to get into the backgrounds of these firms, find out who are the controlling parties, and locate the capital that has been presented.

And consequently, it is that delicate equation of, on the one hand, requiring too much information and burdening the person seeking certification versus making sure that the legitimate statutory purposes are being addressed. Let me ask Cassandra to give you some more anecdotal response.

Ms. PULLEY. Senator, one of the proposals that we made when we reviewed the MED program last year was to delegate certification to our district offices. And one of the reasons we did that was because we wanted to put certification closer to where the companies are located. Right now certification is based almost exclusively on reviewing paper. We do not know the companies that we review, and I think that is one of the reasons that such a large percentage of the certified companies are not getting business—they are not necessarily ready to go after Government contracts.

What we would like to do is to, one, develop a more comprehensive training program so that the agency has an opportunity to work with these companies from the time they first indicate an interest in getting into Government contracting. By the time they are ready for certification, we will know who owns that company and who runs that company, and we will know it because the people in our district offices will be working very closely with them.

The second point I wanted to make in terms of that, is one of the reasons again, we want to delegate the contract award back to the procuring agency is that again our people—those people right now who are involved in signing the papers on the contract—will have a better opportunity to work with a Government agency.

And what we were proposing to do, in delegating contracting authority to the procuring agencies, was not just giving them goals in terms of the numbers of contract dollars which is what they have right now, but also goals in terms of both the number of contracts and the number of contractors, which will further assist us in spreading the 8(a) program around to more companies, which, I think, is a very valid concern.

Senator LAUTENBERG. If I might, Mr. Chairman, just one thing to follow up here, and that is do you believe that this is a significant problem or is it, in your judgment—you know, you have people out in the field, you hear from them and so forth—is this a problem that is a relatively small one? As you see it.

Ms. PULLEY. I think it is a relatively small one, and I think that is what the 1988 legislation did. It was designed primarily to address the issue of fronts, and that is why the process of certification right now is so very extensive.

Senator LAUTENBERG. Without evidence to the contrary, I can tell you what I hear is that it is a serious problem and one that I think has to be further investigated and I hope you have the resources and the capacity to do that, because I would like to hear further about it.

Chairman BOND. Thank you very much, Senator Lautenberg. We will have further questions for the record and perhaps the witnesses can answer that for the record. We will turn to Senator Burns now.

[The prepared statement of Senator Burns follows:]

OPENING STATEMENT OF SENATOR CONRAD BURNS
Committee on Small Business
April 4, 1995

Thank you, Mr. Chairman, for holding this hearing. I only have a few brief comments.

I will be interested to hear the testimony of those present today, for there are numerous 8(a) firms operating in Montana.

I know the 8(a) program has had some difficulties in the past. Thus, I am interested in looking closely at the current program and in hearing more about what the Small Business Administration hopes to accomplish with this program in the future.

I applaud recent efforts to reinvent and downsize the federal government. I also strongly believe that it is time to look at every government program. No program should escape scrutiny for any reason, and that includes the 8(a) program.

For that reason, I look forward to the witnesses giving their views and concerns about the 8(a) Minority Business Development Program. Today this program should be subjected to scrutiny in the same manner as every other government program.

Senator BURNS. I have just one question, I think, and maybe a follow up. How many SBA dollars do we have committed right now to 8(a) Programs that we are liable for, either through guarantee or direct loans?

Ms. PULLEY. None. Do you mean how much of our operating budget is it? \$23 million. That is administrative, salary and expense money.

Senator BURNS. How many dollars, how many loans do we have out there? I am sorry, 7(a).

Mr. LADER. The current 7(a) portfolio is about \$23 billion of Government guaranteed loans, and the average Government guarantee is 78 percent in that portfolio. But that is a separate program, as you are aware, from the 8(a) program.

8(a) participants are eligible to get 7(a) loans, but there is no direct correlation between those numbers.

Ms. PULLEY. Actually, Senator Burns, there are very few 8(a) companies in the 7(a) program, because 8(a) firms need accounts receivable financing. Our 7(a) program is essentially a term loan program. So, it is not necessarily an appropriate match of financing.

Senator BURNS. Thank you.

Chairman BOND. Thank you very much, Senator Burns. Actually, if my colleagues have no objection, we will reserve further questions for the distinguished witnesses from the SBA for written submission. We have the good fortune of being able to work with Mr. Lader on a day to day basis, and we will move on to the other panels, some of whom are not quite as accessible.

I want to express my sincere thanks, Phil, to you and Cassandra, for your help today on this program. Thanks for the information. We will keep the record open for you to respond to any additional questions.

Our second panel is a Government panel, Ms. Judy England-Joseph, Director of the Housing and Community Development Issues, Resources, Community, and Economic Development Division of the General Accounting Office; and Mr. R. Noel Longuemare, Principal Deputy Under Secretary of Defense for Acquisitions and Technology in the Department of Defense.

There is nothing like having long enough titles so that the witnesses can be seated while we are reading the titles. We thank you very much for joining us today. Ms. England-Joseph, would you begin?

STATEMENT OF JUDY A. ENGLAND-JOSEPH, DIRECTOR, HOUSING AND COMMUNITY DEVELOPMENT ISSUES, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Ms. ENGLAND-JOSEPH. Thank you, sir.

We are pleased to be here today to discuss the Small Business Administration's 8(a) Business Development Program. As you recall, Mr. Chairman, our testimonies over the years have discussed the difficulties that SBA has had in implementing many of the changes mandated by the Business Opportunity Development Reform Act of 1988 and subsequent amendments.

Our testimony today is based on the work we did in 1992 and 1993, updated to reflect recent activities. We will focus on SBA's progress in implementing key changes that are designed to make the 8(a) program an effective business development program.

In summary, Mr. Chairman, the 8(a) program undoubtedly has helped some firms to successfully compete in the commercial marketplace. Our testimony today focuses on several of the program's weaknesses that are preventing some firms from obtaining experience essential to their development.

Although the total dollar value of new contracts awarded competitively grew during fiscal year 1994, Federal procuring agencies limit firms' opportunities for competition under the 8(a) program. The concentration of contract dollars in a few firms continued in 1994, limiting the developmental opportunities available to many firms. And, while SBA has approved business plans for most firms, it has not given that same attention to annually reviewing these plans to ensure that they accurately reflect the firms' development goals and contract needs.

Moreover, many firms nearing the end of their program terms are still dependent on 8(a) contracts. These firms will thus leave the program without an adequate base of non-8(a) work, raising doubts about the firms viability in the commercial marketplace.

The 8(a) program is one of the Government's primary vehicles for developing small businesses that are owned by minorities and other socially and economically disadvantaged individuals. As of January 1995, 5,293 firms were in the 8(a) program. In fiscal year 1994, about \$4.37 billion in contracts were awarded to 8(a) firms. Firms participate in the program for a maximum of 9 years.

In updating our previous work, we found that competitively awarded 8(a) contracts have increased. New contracts that were awarded competitively during fiscal year 1994 totaled about \$383 million. This amount represented about 18.5 percent of the \$2 billion in new 8(a) contract dollars awarded during fiscal year 1994, and an 11-percent increase over the contract dollars that were awarded competitively in the prior fiscal year.

We also found that contract dollars are still concentrated in a small percentage of firms. In fiscal year 1994, 50 firms, or about 1 percent of the firms in the program, received 25 percent of the dollars. Further, as 8(a) contract dollars continue to be concentrated in a few firms, many firms do not receive any 8(a) contracts. According to SBA, about 56 percent did not receive any program contracts during the fiscal year.

A key reason, according to SBA officials, for the continuing concentration of contract dollars among relatively few firms is the conflicting objectives confronting procuring officials. The primary objective of agency officials, in SBA's view, is accomplishing their agency's mission at a reasonable cost, and the business development objectives of the 8(a) program are secondary.

Moreover, agency procurement goals for the 8(a) program are stated in terms of dollar values of contracts awarded. According to SBA, the easiest way for agencies to meet their goals is to award a few large contracts to a few firms, preferably firms with which the agency has had experience and knows their capabilities.

In preparing for this hearing, we also found that business plans are not annually reviewed. Business plans help to develop firms by setting forth, among other things, development goals and objectives and future contract activity, both in the 8(a) and non-8(a) area.

Data provided by SBA field offices shows that about 85 percent of the firms have new business plans that have been approved, but only about 57 percent of those firms' plans had been reviewed annually.

And finally, we found that success in meeting 8(a) and non-8(a) business mix levels is very limited. To increase this program's emphasis on firms' development and viability, there is a requirement that there be both an 8(a) and a non-8(a) contract activity level. What we found, based on data SBA provided to us in February 1995, was that 63 percent of the firms in the fifth through the ninth year of the program met or exceeded the minimum non-8(a) business levels while 37 percent did not meet the minimum levels.

Furthermore, for those firms in their final year that did not meet their non-8(a) business levels, their non-8(a) business comprised, on the average, only about 34 percent of their contract dollars. If you look at the top 50 firms, for example, very few of them are meeting their required non-8(a) business mix. Only nine of those firms met their minimum non-8(a) business levels.

In closing, Mr. Chairman, while SBA continues to make progress in improving the 8(a) program, continuing weaknesses with certain aspects of the program deny opportunities for certain small businesses to obtain business development experience. Over the past years, SBA has paid considerable attention to ensuring that firms have new or revised business plans, but they are not conducting annual reviews of these plans on a regular basis. Also, we continue to have concern about the extent to which firms are achieving the requirement mix of 8(a) and non-8(a) contracts. For firms leaving the 8(a) program still are heavily dependent on the program for their livelihood, as in the case with many of the firms nearing the end of their program term, survival outside the program will be even more challenging.

That ends my prepared remarks, Mr. Chairman. I would be happy to answer any questions you might have.

[The prepared statement and attachments of Ms. England-Joseph follow:]

Statement of Judy England-Joseph, Director
Housing and Community Development Issues,
Resources, Community, and Economic Development Division
U.S. General Accounting Office

We are pleased to be here today to discuss the Small Business Administration's (SBA) 8(a) business development program. This program provides federal contracts to small businesses that are owned and controlled by socially and economically disadvantaged individuals to help these firms develop their business skills and become viable businesses. Firms in the program are eligible to receive financial, technical, and management assistance from SBA to aid their development.

As you may recall, Mr. Chairman, our testimonies over the years have discussed the difficulties that SBA has had in implementing many of the changes mandated by the Business Opportunity Development Reform Act of 1988 and subsequent amendments. Our testimony today is based on the work we did in 1992 and 1993, updated to reflect recent activities.¹ We will focus on SBA's progress in implementing key changes that are designed to make the 8(a) program an effective business development program. These are (1) requiring the competitive award of large-dollar-value contracts, (2) distributing contracts so that a larger number of firms receive them, (3) improving business planning by firms, and (4) requiring firms to achieve a certain mix of 8(a) and non-8(a) contract dollars as they progress toward the end of their program terms. As requested, we will also discuss the Department of Defense's (DOD) small disadvantaged business program.² This program served as a model for a similar program established for

¹See Small Business: Problems in Restructuring SBA's Minority Business Development Program (GAO/RCED-92-68, Jan. 31, 1992); Small Business: Problems Continue With SBA's Minority Business Development Program (GAO/RCED-93-145, Sept. 17, 1993); and Small Business: SBA Cannot Assess the Success of Its Minority Business Development Program (GAO/T-RCED-94-278, July 27, 1994).

²See Minority Contracting: DOD's Reporting Does Not Address Legislative Goals (GAO/NSIAD-93-167, July 27, 1993) and DOD Minority Contracting (GAO/NSIAD-94-117R, February 18, 1994).

other federal agencies in last year's procurement reform legislation.

In summary, Mr. Chairman, the 8(a) program undoubtedly has helped some firms to successfully compete in the commercial marketplace. Our testimony today focuses on several of the program's weaknesses that are preventing some firms from obtaining experiences essential to their development. Although the total dollar value of new contracts awarded competitively grew during fiscal year 1994, federal procuring agencies limit firms' opportunities for competition under the 8(a) program. The concentration of contract dollars in a few firms continued in 1994, limiting the developmental opportunities available to many firms. And, while SBA has approved business plans for most firms, it has not given the same attention to annually reviewing these plans to ensure that they accurately reflect the firms' development goals and contract needs. Moreover, many firms nearing the end of their program terms are still dependent on 8(a) contracts. These firms will thus leave the program without an adequate base of non-8(a) work, raising doubts about the firms' probability of success in the commercial marketplace.

BACKGROUND

The 8(a) program, administered by SBA's Office of Minority Enterprise Development, is one of the federal government's primary vehicles for developing small businesses that are owned by minorities and other socially and economically disadvantaged individuals. As of January 1995, 5,293 firms were in the 8(a) program. In fiscal year 1994, 6,012 new contracts and 19,790 contract modifications, together totaling about \$4.37 billion, were awarded to 8(a) firms. Firms can participate in the 8(a) program for a maximum of 9 years.

The 1988 legislation marked the third major effort by the Congress to improve SBA's administration of the 8(a) program and to emphasize its business development aspects. Over the years, reports by GAO, SBA's Inspector General, and others have shown continuing problems with SBA's administration of the program and/or with the program's ability to develop firms that could compete in the commercial marketplace after leaving the program. A problem often cited in these reports was that a large percentage of the total number of contracts was being awarded to very few 8(a) firms. These reports made numerous recommendations for improving the 8(a) program.

COMPETITIVELY AWARDED 8(a) CONTRACTS HAVE INCREASED

To help develop firms and better prepare them to compete in the commercial marketplace after they leave the program, the act requires that 8(a) program contracts be awarded competitively when the total contract price, including the estimated value of contract options, exceeds \$5 million for manufacturing contracts or \$3 million for all other contracts.

New contracts that were awarded competitively during fiscal year 1994 totaled about \$383 million. This amount represented about 18.5 percent of the \$2.06 billion in new 8(a) contracts that were awarded during fiscal year 1994 and an 11 percent increase over the contract dollars that were awarded competitively in the prior fiscal year. While the total dollar value of new 8(a) contracts awarded in fiscal years 1991 through 1994 increased by about 29 percent, the total contract dollars that were awarded competitively increased about 81 percent. Most of this increase occurred in fiscal year 1992, with only a modest increase in competitive awards since then. Appendix I contains a table that shows the number and the total 8(a) contract dollars that have been awarded competitively since fiscal year 1991.

Despite the increase in total contract dollars that are awarded competitively under the 8(a) program, federal procuring agencies have limited firms' opportunities for competition under the 8(a) program. Our February 1994 report³ on contracting practices at the Department of Energy (DOE) revealed several examples where a procuring agency kept price estimates for 8(a) program contracts artificially low and structured contracts so that their estimated prices were below the competition thresholds specified in the act.

- In one case, a program office limited the length of an 8(a) support services contract and required the contractor to provide less-skilled personnel than originally planned, to ensure that the contract did not exceed the \$3 million threshold for competition. At the conclusion of that contract, the office made another noncompetitive 8(a) award to the same contractor for approximately \$2.9 million, to continue the support for another 12 months.

- In another case, a program office prepared price estimates for both 3- and 5-year 8(a) support services contracts. The estimate for the 3-year contract was \$2.95 million and for the 5-year contract was \$5.42 million. The office, citing the immediate need for a contractor's services, made a noncompetitive 8(a) award for 3 years. At the conclusion of that contract, the office awarded another noncompetitive 3-year 8(a) contract to the same contractor for the same services, priced at less than \$3 million.

³Energy Management: DOE Can Improve Distribution of Dollars Awarded Under SBA's 8(a) Program (GAO/RCED-94-28, Feb. 23, 1994).

Our work also showed that before the 8(a) competition thresholds took effect in October 1989, almost 40 percent of the support services procurements that the DOE offered to the 8(a) program carried price estimates above the \$3 million competition threshold. However, after the thresholds took effect, none of the support service procurements that the Department offered to the 8(a) program were estimated to exceed the \$3 million competition threshold. In addition, over 60 percent of the procurements that the Department offered after the competition thresholds took effect had estimates between \$2.5 million and \$3 million, with half of those having estimated prices between \$2.9 million and \$3 million.

By avoiding the competition thresholds, agencies can direct sole-source contracts to firms with which they are familiar. SBA officials told us that agencies' procuring officials find the 8(a) program attractive because it allows them to develop a relationship with a firm and continue to make sole-source awards to that firm. It should be noted that the law generally requires SBA to award a sole-source contract to the 8(a) firm recommended by the procuring agency.

CONTRACTS DOLLARS ARE STILL CONCENTRATED
IN A SMALL PERCENTAGE OF FIRMS

A long-standing concern has been the concentration of 8(a) contracts dollars among relatively few firms. In fiscal year 1994, 50 firms, or about 1 percent of the 5,155 firms in the program, received about 25 percent of the \$4.37 billion in total 8(a) contract dollars awarded during the fiscal year. In addition, 22 firms that were among the top 50 firms in fiscal year 1993 were also among the top 50 firms in fiscal year 1994.

As 8(a) contract dollars continue to be concentrated in a few firms, many firms do not receive any 8(a) program contracts. According to SBA, of the 5,155 firms in the program at the end of

fiscal year 1994, 2,885 firms, or about 56 percent, did not receive any program contracts during the fiscal year. In the prior 3 fiscal years, 53 percent of the firms did not receive any program contracts.

A key reason, according to SBA officials, for the continuing concentration of contract dollars among relatively few firms is the conflicting objectives confronting procuring officials. The primary objective of agency procuring officials, in SBA's view, is accomplishing their agency's mission at a reasonable cost, and the business development objectives of the 8(a) program are secondary. Moreover, agency procurement goals for the 8(a) program are stated in terms of the dollar value of contracts awarded. According to SBA, the easiest way for agencies to meet this goal is to award a few large contracts to a few firms, preferably firms with which the agencies have had experience and know their capabilities.

Nonetheless, some efforts have been made to increase the award of 8(a) contracts to firms that have never received contracts. SBA is requiring that during 1995 each of its district offices develop specific initiatives for marketing the program to federal procurement offices in their jurisdictions in order to increase contracting opportunities for more firms. In addition, DOD has agreed to give special emphasis to firms in the 8(a) portfolio that have never received contracts. Similarly, the Department of Veterans Affairs has agreed to a goal that each of its 172 medical facilities will award a contract to an 8(a) firm that has never received a contract.

BUSINESS PLANS ARE NOT ANNUALLY REVIEWED

Business plans help to develop firms by setting forth, among other things, the firm's business development goals and objectives, estimates of its future 8(a) and non-8(a) contract activity, and

specific steps for ensuring profitable business operations after the firm completes its term in the program. The 1988 act requires SBA to annually review each business plan with the firm and modify the plan, as needed, to ensure that the firm's business development goals are realistic and to help the firm achieve them. During its annual business plan review, each firm is required to provide SBA with a forecast of the amount of 8(a) and non-8(a) contract dollars it will seek over its next 2 program years.

In July 1994, we testified that about 80 percent of the firms in the program had new or revised business plans approved by SBA. However, SBA could not tell us whether these plans were being annually reviewed or were being modified because it did not routinely collect these data from the field offices. However, SBA officials told us at that time that there is a need for this information and that SBA planned to direct its field offices to provide it.

Data provided by SBA field offices as of September 30, 1994, show that 4,393 firms, or about 85 percent of the firms in the program at the end of fiscal year 1994, had new or revised business plans approved by SBA. However, at the same time, the data also show that SBA field offices are not conducting annual reviews of these business plans. Of the 4,393 firms with approved business plans, 2,516 firms, or about 57 percent, had annual reviews conducted of their business plans during fiscal year 1994. To emphasize the importance of and need for annual reviews of business plans, SBA has made the annual review of each firm's business plan one of the three performance goals for its field offices in fiscal year 1995.

SUCCESS IN MEETING 8(a) AND NON-8(a)
BUSINESS MIX LEVELS IS LIMITED

To increase the program's emphasis on business development and the viability of firms leaving the program, the act directed SBA to establish levels of contract dollars that firms in the last 5 years of their program terms must achieve from non-8(a) sources. The non-8(a) business mix levels that SBA has established increase during each of the 5 years, ranging from a minimum of 15 percent of a firm's total contract dollars during its fifth year to a minimum of 55 percent of the total contract dollars in the firm's ninth or final year. SBA field offices, as part of their annual reviews of firms, are responsible for determining whether firms achieve their non-8(a) business levels. In July 1994, we reported that SBA could not provide us with information on the extent to which 8(a) firms were meeting the non-8(a) business levels because SBA headquarters did not routinely collect this information from its field offices.

In February 1995, SBA provided us with data that show that of 1,038 firms in the fifth through the ninth year of their program term, 63 percent of the firms met or exceeded the minimum non-8(a) business levels while 37 percent did not meet the minimum non-8(a) contract levels. However, these data also show that firms who have been in the 8(a) program longer are doing a poorer job of meeting minimum levels of non-8(a) business activities than newer firms. While 72 percent of the firms in their fifth year met or exceeded the minimum non-8(a) business level established for that year, only 37 percent of the firms in their eighth program year, and 37 percent of those in their ninth or final program year met or exceeded the minimum levels established for each of those two years. Furthermore, for those firms in their final year that did not meet their non-8(a) business levels, their non-8(a) business, on average, comprised only 34 percent of their total contract dollars.

In addition, firms that receive most of the 8(a) contract dollars often do not meet their non-8(a) business levels. SBA data show that 40 firms in the 8(a) program at the end of fiscal year 1994 each received 8(a) contracts totaling more than \$10 million during the year. Only nine of those firms met their minimum non-8(a) business levels. The other 31 firms only achieved an average of about 40 percent of their minimum non-8(a) business. Three firms, including one with only 1 year remaining in the 8(a) program, reported no non-8(a) business during fiscal year 1994. As a whole, the 40 firms achieved less than two-thirds of the minimum non-8(a) business levels. The 31 firms that failed to achieve the minimum levels of non-8(a) business were required, on average, to have non-8(a) business equal to only about one-third of their total contract dollars. Some firms had total non-8(a) contracts as low as 15 percent of their total revenues. SBA recognizes the importance of remedial actions when firms are not achieving their non-8(a) business levels and has made this one of its district offices' performance goals for fiscal year 1995.

Appendix II contains a table showing the extent to which firms met their non-8(a) business levels for each program year.

DOD'S PROGRAM FOR SMALL DISADVANTAGED BUSINESSES

In addition to SBA's 8(a) program, DOD has a preference program for small disadvantaged businesses commonly referred to as the 1207 program.⁴ This program (1) allows DOD to set aside contracts for competition among small disadvantaged businesses and (2) allows contracting officers, in evaluating other competitively offered prices, to provide price preferences to small disadvantaged businesses by increasing other offers by 10 percent.

⁴The program was created by section 1207 of Public Law 99-961, the Fiscal Year 1987 National Defense Authorization Act.

DOD's 1207 program is of particular interest because last year's procurement legislation authorized a program for civilian agencies modeled after DOD's program. As in DOD's program, civilian agencies will be allowed to limit competition on some contracts to small disadvantaged businesses and to use price preferences in others.

Eligibility requirements for DOD's 1207 program are similar but not identical to those of the 8(a) program. As in the 8(a) program, participation is limited to concerns owned and controlled by socially and economically disadvantaged individuals. However, the 1207 program uses a less restrictive definition of economic disadvantage.⁵ Moreover, while the 8(a) program requires SBA to certify firms' eligibility for the program, the DOD program relies on self-certification.

In fiscal year 1994, DOD awarded \$6.1 billion in prime contracts to small disadvantaged businesses. About 18 percent of these contract dollars were awarded through the 1207 set-aside, and about 6 percent were awarded using price preferences (or as modifications to such contracts). Close to half of the contracts awarded to small disadvantaged businesses were awarded through the 8(a) program, while 31 percent were awarded outside the 1207 and 8(a) programs. According to DOD officials, the heavy reliance on the 8(a) program is the result of the priority given to 8(a) under DOD procurement regulations. These regulations provide that contracts should initially be considered for the 8(a) program, then for the 1207 set-aside program, next for the small business set-aside, and finally to all businesses through full and open

⁵Under the regulations applying to DOD's program, economically disadvantaged individuals are those individuals with a net worth of not more than \$750,000 (excluding equity in the business and in a primary residence). Currently, the 8(a) program sets the net worth limits at \$250,000 for individuals owning and controlling firms entering the program, which increases to \$750,000 as the firm progresses through the program.

competition. DOD officials also indicated that contracting officials prefer the 8(a) program because it allows them to select a contractor they are familiar with. Appendix III shows the contract dollars awarded to small disadvantaged businesses under each program.

While concentration under the set-aside portion of the 1207 program is similar to that of the 8(a) program, contract dollars awarded through price preference are significantly more concentrated. Under the set-aside program, 1 percent of the firms, or 10 firms, received 15 percent of contract dollars in fiscal year 1993. For DOD awards under the 8(a) program, 1 percent of the firms, or 16 firms, accounted for 17 percent of the contract dollars. However, under the price preference, 1 percent of firms, or 13 firms, received 91 percent of the contract dollars. The high concentration is primarily the result of the award of large petroleum contracts. For all awards to small disadvantaged businesses, 1 percent of the firms, or 41 firms, received 24 percent of the total contract dollars.

CONCLUSION

While SBA continues to make progress in improving the 8(a) program, continuing weaknesses with certain aspects of the program deny opportunities for some small businesses to obtain the experiences needed to develop into successful competitive enterprises. Over the past 5 years, there has been virtually no improvement in the dispersion of program contracts among 8(a) firms, with the result that contract dollars remain concentrated in a small number of firms. While the 8(a) program is intended to facilitate the entry of firms into government procurement and aid their development, the concentration of contract dollars among a few firms denies or limits development opportunities for many other firms.

Over the past several years, SBA has paid considerable attention to ensuring that firms have new or revised business plans, but it has not given the same attention to annually reviewing these plans to ensure that they accurately reflect the firms' business development goals and 8(a) and non-8(a) contract needs. In addition, when such annual reviews have occurred, SBA has not focused sufficient attention on the actions needed to improve firms' development of their non-8(a) program.

Mr. Chairman, SBA's limited success in ensuring that 8(a) firms have an adequate base of non-8(a) contracts that they can rely on as they near the end of their program term is perhaps the most significant issue facing SBA. The transition from the 8(a) program to the commercial market can be difficult even in those cases where the firm has developed a solid base of contracts outside the 8(a) program. However, for firms leaving the 8(a) program still heavily dependent on the program for their livelihood, as is the case with many firms nearing completion of their program term, survival outside the program will be even more challenging.

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This concludes our prepared statement. We would be glad to respond to any questions that you or Members of the Committee may have.

INCREASE IN COMPETITIVE 8(a) CONTRACTS AND DOLLARS SINCE 1991

Dollars in billions

8(a) contracts	Fiscal Year 1991	Fiscal Year 1992	Fiscal Year 1993	Fiscal year 1994
Number of new contracts	4,576	4,693	5,481	5,990
Number of new contracts awarded competitively	86	139	202	174
Percent of new contracts awarded competitively	1.88	2.96	3.69	2.89
New contract dollars awarded	\$1.60	\$1.70	\$2.21	\$2.06
New contract dollars awarded competitively	\$0.21	\$0.34	\$0.34	\$0.38
Percent of new contract dollars awarded competitively	13.13	20.00	15.38	18.45

Source: SBA

ANALYSIS OF 8(A) FIRMS' COMPLIANCE WITH THEIR
NON-8 (A) BUSINESS LEVELS

Program Year	Non-8(a) business mix level (percent of total revenues)	Total number of firms	Number of firms that met or exceeded levels	Percent of firms that met or exceeded levels	Number of firms that did not meet levels	Percent of firms that did not meet levels
5	15-25	345	249	72	96	28
6	25-35	375	260	69	115	31
7	35-45	161	92	57	69	43
8	45-55	138	51	37	87	63
9	55-75	19	7	37	12	63
Total		1,038	659	63	379	37

Source: SBA.

DOD CONTRACTS AWARDED TO SMALL DISADVANTAGED BUSINESSES (SDB)

Dollars in millions

Program	FY 1992		FY 1993		FY 1994	
	(in millions)	(percent)	(in millions)	(percent)	(in millions)	(percent)
SDB set-aside	\$ 796	15	\$1,002	16	\$1,089	18
SDB price preference	264	5	515	8	356	6
8 (a) ^a	2,566	49	2,773	45	2,754	45
Other awards to SDBs ^b	1,569	30	1,893	31	1,915	31
TOTAL	\$5,195	100	\$6,183	100	\$6,114	100

^aMay include awards to 8(a) firms made outside the 8(a) program.

^bIncludes awards to SDBs made outside of the 8(a)/SDB program.

Source: DOD

Chairman BOND. Thank you, Ms. England-Joseph.
Mr. Longuemare.

STATEMENT OF R. NOEL LONGUEMARE, PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITIONS AND TECHNOLOGY, U.S. DEPARTMENT OF DEFENSE, ACCOMPANIED BY DAN GILL, DIRECTOR, SMALL AND DISADVANTAGED BUSINESS OFFICE

Mr. LONGUEMARE. Thank you, Mr. Chairman. I have been joined this morning by Mr. Dan Gill, who is the director of our Small and Disadvantaged Business Office for the Department of Defense.

I certainly want to thank you for the opportunity to testify this morning. I intend to address in summary form the answers to the questions that you submitted to us in advance, but I would also request that the full statement that I have provided be made part of the record.

Chairman BOND. Without objection, it will be accepted for the record in full.

Mr. LONGUEMARE. Before addressing the questions, I would like to very briefly comment on the successes we have had in the Department of Defense with this program. We have a very dedicated and aggressive program in this area, and it actually does play a vital role in supporting the needs of our department.

Since the inception of the Federal Government's policy to support minority business enterprises in 1969, the DOD's Small and Disadvantaged Business Office (SDB) has levied awards that started at \$9 million back in 1969 and we have now grown to in excess of \$8.4 billion, which is quite a significant increase.

We would like to show you three quick charts here, because I think there is a message that is best told with them. If you examine the first chart, this plots the total contracts that we have awarded as a function of time since 1985. You can see that there has been a decreasing trend there of about 25 percent over that period of time.

The next chart shows the prime contracts that we have issued and this shows small businesses at the top. You can see that it stayed approximately level at about \$25 billion or so. In light of the decreasing total contracts, this means we have had additional contracts in the small business area.

However, most significantly, if you look at the bottom, you will also note that the small and disadvantaged business contracts have had a monotonically increasing trend. We are up to 5 percent now, so that we have had a significant increase in this area, despite the fact that our total contracts have been down significantly.

The final chart shows you the same story for subcontracting, in which we also have achieved a 5-percent goal for the subcontracts for the first time this year. We have also had a major 2-to-1 increase in the number of contracts for the women-owned small businesses. So taken in toto, we feel very good about that track record.

As Mr. Lader indicated, we have also signed a Memorandum of Understanding with the Small Business Administration to address the increase in the number of awards that the DOD will make to the small and disadvantaged businesses. We are going to make a specific point of trying to increase the scope of the program to in-

clude more of the businesses in this area, and we think this is an important part of this mission.

I would like to hasten to point out that although these statistics are very impressive, the SDB's have played a very significant role in contributing to the defense mission of our country. Back in Desert Storm, we were critically dependent in several cases on firms that provided, for example, components for the Patriot missile, water trailers, camouflage netting, and things of that nature of cite a few. In my formal testimony, I have provided a number of other examples.

Mr. Chairman, I would now like to briefly answer some of the questions that you provided us. The first was: "What were the original purposes of the 8(a) program?" We believe that the purposes of the 8(a) program, as stated in Public Law 95-507 are to, one, foster business ownership by individuals who are both socially and economically disadvantaged, both of those together; two, to promote the competitive viability of such firms by providing such available contract, financial, technical and management assistance as may be necessary; and finally, three, to clarify and expand the program for the procurement by the United States of goods and services from small business concerns owned by socially and economically disadvantaged individuals. So that is our view of the program.

Question 2 was: "Have these purposes been fulfilled?" Our role in the 8(a) program is limited to providing contracts to assist the Small Business Administration in the development of 8(a) firms. However, we also do provide assistance to the SBA in the areas of helping to determine the qualifications to perform the contract and we also administer these contracts as a help to them. The fact that we provide this \$2.8 billion in contracts to 8(a) firms in 1994 would suggest that there is a reasonable measure of success that we have achieved under this program.

Question 3: "Should the Federal Government presume that members of certain racial and ethnic groups are socially disadvantaged?" Mr. Chairman, as you are aware, this particular question relates to the areas that are currently under review by the President and the Supreme Court and I can only comment that it is national policy to use the DOD acquisition process to support economic and business development programs that are aimed at the socially disadvantaged.

We believe, however, that the only practical way to administer such a program is to accept by presumption the validity of the socially disadvantaged classification as presented on a contract by contract basis.

Question 4: "Are there other ways to expand opportunity for all Americans without providing preferences for individuals because they belong to certain groups?" Again, Mr. Chairman, this question goes to the very heart of the broad issues on affirmative action that are currently under review by the President. It would be presumptuous of me to try to determine what the President might decide once this review is completed.

But I would say that what we are about as a society is to use a variety of Government programs to advance all Americans. These programs range from the small disadvantaged business legislation

to student loans to FHA loans. Generally race is not the main or even a major criterion in crafting these programs, and enters only in specific circumstances.

Our goal in the Department of Defense is to engender a vibrant small business environment that contributes to our national defense, as well as to our national economic well-being. Our experience suggests that if the socially disadvantaged standard is either deleted or significantly broadened, that the program will be so substantially changed as to eliminate the very reason for Section 8(a) of the Small Business Act of 1983.

I have two brief additional comments on some informal questions that we received.

Do we feel that section 2323 could be modified to replace the 8(a) program? Section 2323 and section 8(a) serve very different purposes. Section 8(a) provides for sole source awards to permit SDB's to develop competitive skills. Section 2323 on the other hand, allows for a price advantage where SDB's submit offers in full and open competition. If we are to meet our small and disadvantaged business goals set for us, we believe that it is essential that we have both programs.

And finally, what do we think the impact on the country would be if the 8(a) program was discontinued? Again, from a DOD perspective, the goods and the services that we procure from 8(a) firms are needed to fulfill defense requirements so that the \$6.1 billion we now spend in this area would still go into the economy. However, the social implications throughout the Nation and in many of the inner-cities would be quite significant and I certainly am not in a position to access the economic impact of that.

It is clear, however, that we would be unable to meet our 5-percent SDB goals without the 8(a) program.

Mr. Chairman, this ends my formal testimony and I would be pleased to answer any questions you might have.

[The prepared statement and attachments of Mr. Longuemare follow:]

STATEMENT OF R. NOEL LONGUEMARE, PRINCIPAL DEPUTY UNDER
SECRETARY OF DEFENSE (ACQUISITION AND TECHNOLOGY)
U.S. DEPARTMENT OF DEFENSE

Good morning Mr. Chairman and members of the Committee. I want to thank you for this opportunity to testify about the Department's views on the Small Disadvantaged Business 8(a) Program. As requested, my testimony this morning will address in summary form the substantive areas raised in the four questions contained in your letter of invitation. However, I do ask that my complete statement be made a part of the hearing record.

Before addressing the questions, I want to share with you some of the successes of the Department of Defense (DoD) in support of the programs for small businesses(SB), small disadvantaged businesses (SDB), and women-owned small businesses(WOSB).

DoD has a very aggressive and dedicated small business, SDB, and WOSB program. We recognize that these companies play a vital role in our nation's security and contribute significantly to our Defense industrial base. Our support of this program is evidenced by the fact that of the \$112 billion in prime contracts awarded by DoD in FY 1994, \$24.8 billion or 22.1% went to small business, exceeding our assigned goal of 19.7%. This outstanding performance represents the highest small business achievement rate in the last 40 years. SDBs were awarded \$6.1 billion or 24.6% of the overall \$24.8 billion in small business awards. WOSB were awarded \$1.9 billion, the highest amount awarded to that sector of the small business community since the beginning of the emphasis on

this program. I believe it is obvious that we are taking these responsibilities seriously.

Since the inception of the Federal Government's policy to assist minority business enterprises in 1969, the Defense Department's Small and Disadvantaged Business Utilization program has grown from the award of just \$9 MILLION in prime contracts and subcontracts in FY 1969, to some \$8.4 BILLION in FY 1994. When one considers the total amount spent by the Defense Department for major systems such as airplanes, ships, tanks, and missiles where it is unlikely that any Small Business could be the prime contractor, we believe we have an excellent record in awards to such firms. As you can see from the charts we have included with this statement, DoD performance has continued to improve in this program area. Our most recent success in this program is even more impressive because it comes at a time when our prime contract and subcontract dollars are declining (CHARTS 1,2,& 3).

I am pleased to announce that FY 1994 marks the third time that DoD has surpassed the five percent goal for awards to SDBs established by Title 10, U.S.C.B 2323. Chart 1 shows the total contract dollars awarded by DoD from 1985 through 1994, while chart 2 details our SDB procurement data from FY 1969 through FY 1994. As a result of a General Accounting Office (GAO) review and the GAO interpretation of Title 10, U.S.C.B 2323, the DoD performance against the five percent

goal is measured by combining the total amount awarded for contracts and subcontracts with SDBs as the numerator, and total DoD awards as the denominator. This requires DoD to add the \$6.1 billion in SDB prime contract awards to the \$2.3 billion our major prime contractors subcontracted to SDBs, for a total DoD accomplishment of \$8.4 billion. The \$8.4 billion divided by the total DoD awards of \$112 billion results in an accomplishment rate of 7.5 percent (CHART 4). A breakdown of these awards by ethnic group is also attached. (CHART 5).

Because of our historical emphasis to provide expanded opportunities for SDBs, historically Black colleges and universities (HBCUs) and minority institutions (MIs), DoD allocates three separate goals to the Military Departments and Defense Agencies. They are a five percent SDB prime contracting goal, a five percent SDB subcontracting goal and a five percent goal for awards to HBCU and MI. All goals are assigned to the Military Departments and Defense Agencies by the Deputy Secretary of Defense or the Under Secretary of Defense (Acquisition and Technology). We are extremely pleased to report that for the first time in the history of the SDB program, DoD achieved a rate of five percent against both the prime contracting and subcontracting goals during FY 1994.

It is important to point out that SDBs have played a significant role in contributing to the defense mission. Current participants in the 8(a) program and graduated 8(a) firms were critical in our success during Desert Storm providing, for example, components for the Patriot missile, water trailers, and camouflage netting, to cite but a few.

Some other examples of 8(a) firms that have contributed significantly to the Defense mission are:

- 1) AMA Technologies, Inc., a woman-owned 8(a) firm located in Alexandria, VA, performed a contract for the development and implementation of an automated management information system to support the post production plan for the F-15 aircraft. AMA has delivered all software ahead of contract schedule, and the quality and functionality of this software has exceeded expectations. The system developed by AMA has given DoD the capability to track some \$1 billion in F-15 production tooling, or roughly 200,000 tools and subassemblies. This capability permits us to make sound decisions on what can be used or what can be disposed of. Prior to this system, there was no real handle on tracking this tooling because it was not stock listed. With the inventory modules now in place, we can better manage our spares and repair parts during the life cycle of the F-15. The program manager and AMA demonstrated this system to the Navy and the Grumman Corporation. Both were so impressed, they are looking to pursue this system for the F-14 aircraft

and other systems the Navy manages.

2) Galactic Technologies, Inc. (GTI), an 8(a) contractor, was recently recognized in the San Antonio Business Journal as the highest growth engineering firm in the local area during 1994. This firm has had several successful contracts with local military bases. An example involves a software contract it was awarded by Kelly AFB. The project was completed in half the time allotted and at one half the cost. In addition, GTI returned the savings to the Air Force.

3) LAU Technologies, a woman-owned 8(a) firm located in Acton, Massachusetts, is manufacturing electronic triggers for the Abrams Tank and distribution circuitry for the Abrams and the Bradley Fighting Vehicle. In 1991, LAU Technology received a Contractor's Excellence Award from the Army's Armaments, Munitions and Chemical Command for its participation in support of Desert Storm, reducing lead-time for the circuit boards for the Bradley Fighting Vehicles from 275 to 45 days.

4) As another example, I would like to read to you an excerpt from a letter that was received by the Director for Small and Disadvantaged Business Utilization, Department of the Army, from an SDB that he assisted. It reads: "...your support and dedication to this effort have clearly contributed

to a win, win situation.... The U.S. Army wins in a savings to the Government of \$4,796,155 or nearly 50% of the estimated contract value to the OEM...contributes nearly \$5 million to its small disadvantaged business goals ...20 (of the company's) families living in a labor surplus area maintain their primary source of income...(the company) maintains its manufacturing viability for the next two years."

DoD's achievement of the five percent prime contracting goal for SDBs is attributable directly to our strong support of the Small Business Administration's (SBA) Section 8(a) Business Development Program, the primary source of DoD awards to the SDB community.

Statistics reflect 8(a) growth as provided in Charts 6, 7 & 8. Please note that while 8(a) awards have continued to increase, direct awards to all SDBs also increased. This is attributable primarily to the success of present and graduated 8(a) firms in the competitive marketplace. We believe that the 8(a) awards to these firms have provided a foundation for this success.

I am also pleased to advise this Committee that the DoD recently executed a Memorandum of Understanding with the SBA to increase DoD awards to SDB firms, with particular

emphasis on the utilization of firms in SBA's 8(a) portfolio. A key feature of this initiative is our commitment to give special attention to firms that have never received an 8(a) contract. In this way, we are working to increase the total number of 8(a) firms receiving DoD contracts.

Now I would like to address the four specific questions that were included in your letter of invitation.

Questions-1 - What were the original purposes of the 8(a) program?

Answer 1 - It is our understanding that the authority in Section 8(a) of the Small Business Act (8(a) Program) has existed since 1953. Initially, Section 8(a) was a vehicle for targeting contracts toward all small firms. Prior to 1967 the authority was rarely used. However, in 1967 the authority was activated to encourage business ownership and to alleviate chronic unemployment of disadvantaged individuals in the ghetto. In addition to the 8(a) program, a DoD program of preference awards to labor surplus area (LSA) concerns was also used to alleviate unemployment.

In 1969, there was a transition in the 8(a) program to apply special emphasis on establishing, growing and developing successful firms owned by disadvantaged persons,

in lieu of primarily assisting the hard-core unemployed. The program was broadened to include non-competitive direct contracts for disadvantaged businesses, though these contracts were not restricted to minority owned firms.

In 1978, as a result of Public Law 95-507 (the most comprehensive statute yet enacted dealing with minority businesses), the 8(a) program emphasis remained on business development, but the target was focused more narrowly on businesses owned by individuals who are both socially and economical disadvantaged.

We believe the purposes of the 8(a) program, as stated in Public Law 95-507, are to:

- 1) Foster business ownership by individuals who are both socially and economically disadvantaged;
- 2) Promote the competitive viability of such firms by providing such available contract, financial, technical and management assistance as may be necessary; and
- 3) Clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

Question 2 - Have these purposes been fulfilled?

Answer 2 - DoD's role in the 8(a) Program is limited to providing contracts to assist the SBA in the development of 8(a) firms. However, we also assist SBA by evaluating the firms' qualifications to perform the contract, and we administer the contracts. SBA is responsible for developing criteria for success and for reviewing each firm in the 8(a) portfolio to determine whether it has been successful. The fact that DoD provided \$2.8 billion in contracts to 8(a) firms in FY 1994 and has contributed significantly to the growth in program dollars over the years suggests a reasonable measure of success relative to the business development objectives of the 8(a) program.

Question 3 - Should the Federal government presume that members of certain racial and ethnic groups, are socially disadvantaged?

Answer 3 - Mr. Chairman, as you are aware, this question relates directly to the areas currently under review by the President and the Supreme Court. I can only comment that currently it is national policy to use the DoD acquisition process to support economic and business development programs aimed at the socially disadvantaged. The only practical way to administer such a program is to accept, by presumption, the validity of the social disadvantaged classification as presented on a contract-by-contract basis. This view is presented based on two premises: (1) that each individual company has either been certified by an

appropriate administrative agency or has certified their own status subject to penalty of law, and (2) that it is neither practical nor economical to verify the certification of an individual firm in each instance where an offer is submitted on a government solicitation. Establishing an additional certification process for the very large number of contracts awarded by DoD would be extremely difficult to manage, particularly where the same firms are submitting bids to several DoD buying offices. For the DoD to individually certify would be duplicative and very costly.

Question 4 - Are there other ways to expand opportunity for all Americans, without providing preferences for individuals because they belong to certain groups?

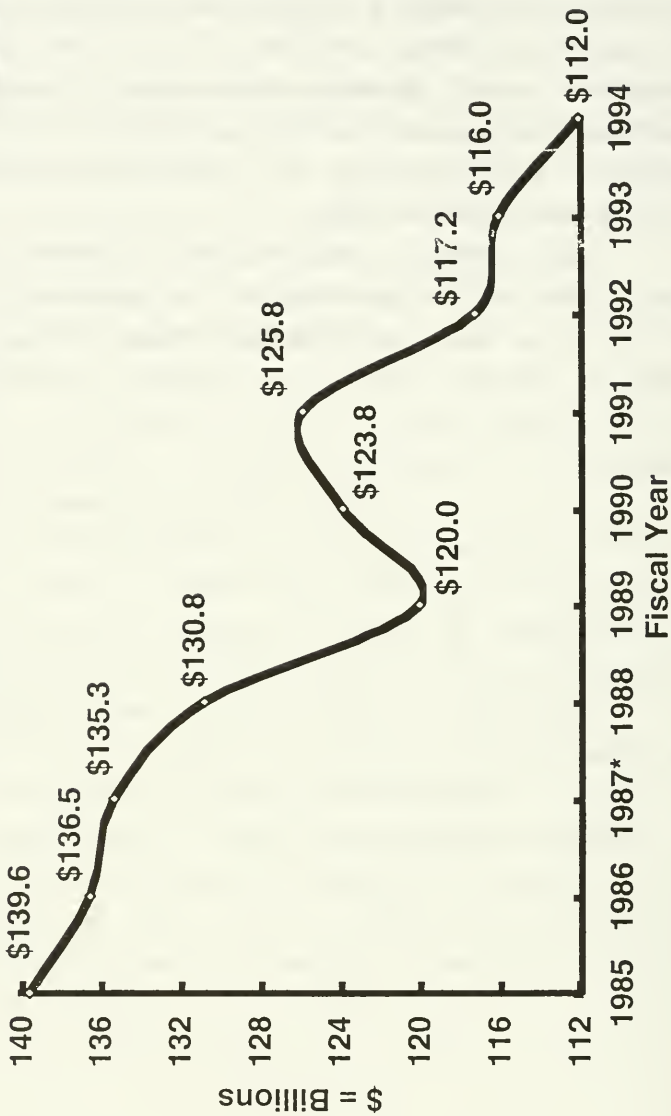
Answer 4 - Mr. Chairman, this question also goes to the heart of the broad issues on affirmative action that are currently under review by the President. It would be presumptuous of me to guess the results of that review, or assume what the President might decide once the review is completed. However, what we are about as a society is using a variety of government programs to advance all Americans. These programs range from the Small Disadvantaged Business legislation to Student Loans and FHA loans. Generally, race is not the main, nor even a major criterion in crafting these programs, and enters only in specific circumstances. Our goal

in the DoD is to engender a vibrant small business environment contributing to our national defense as well as our national economic well-being. Our experience suggests that if the socially disadvantaged standard is either deleted or significantly broadened, the program will be so substantially changed as to eliminate the very reason for section 8(a) of the Small Business Act of 1953.

Mr. Chairman, this ends my prepared testimony. Again, thank you for providing me an opportunity to speak to this Committee about the DoD Small Business Program. I would be pleased to answer any questions you may have.

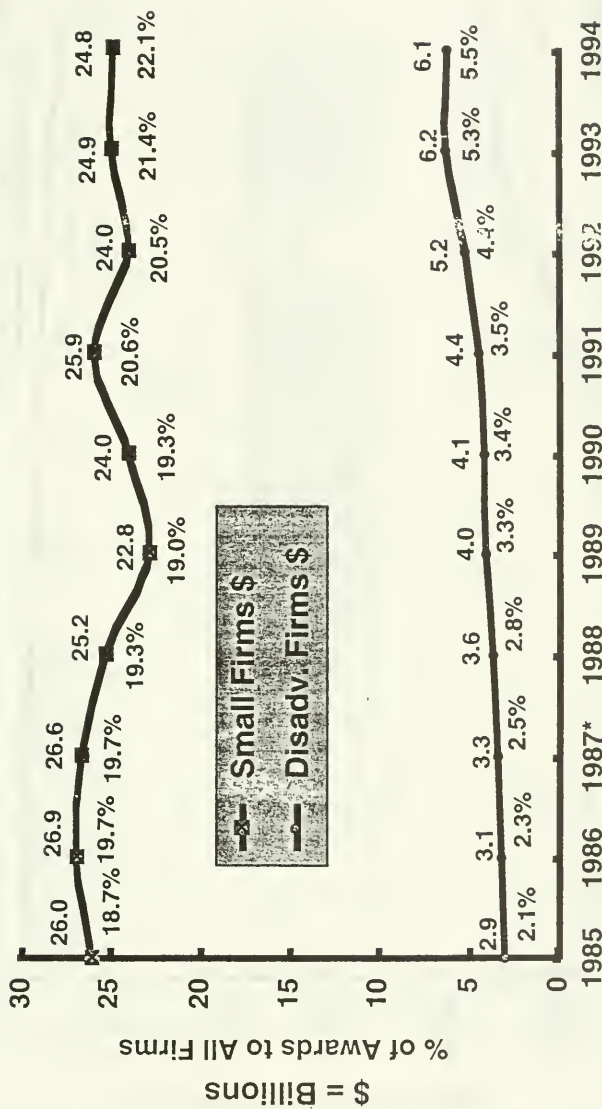


Department of Defense Total Contract Awards (Section 1207 Program Begins)*





DoD Small/Small Disadvantaged Business Prime Contract Awards



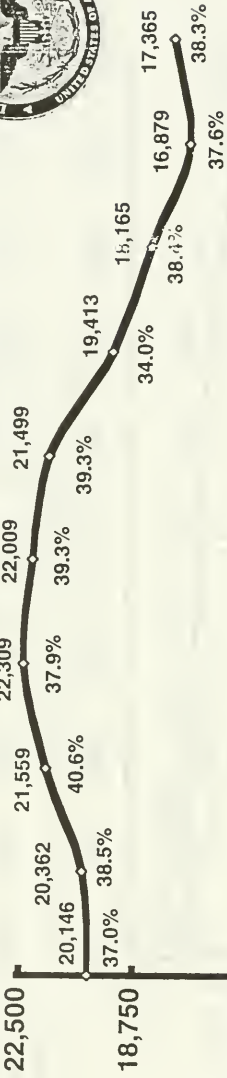
* - Section 1207 Program Begins

Awards to All Firms (\$=Billions)

Fiscal Year	Awards to All Firms (\$=Billions)
1985	139.6
1986	136.5
1987*	135.3
1988	130.8
1989	120.0
1990	123.8
1991	125.9
1992	117.2
1993	116.0
1994	112.0



Department of Defense Subcontracting Awards



\$ = Millions

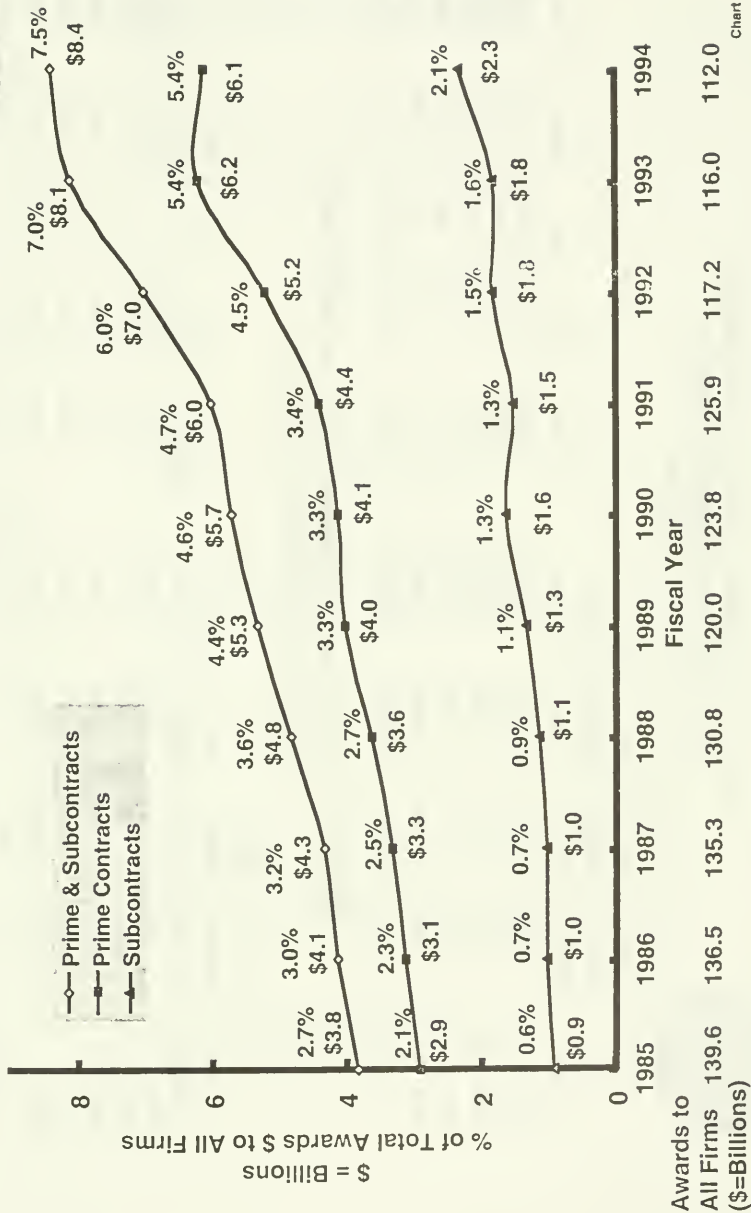
Small Business
 Small Disadvantaged Business
 Women-Owned Small Business

% of Total Subcontract \$ Awarded

Subcontract Awards (\$=Millions)

Fiscal Year	Small Business	Small Disadvantaged Business	Women-Owned Small Business
1985	54,494	52,898	53,116
1986	58,799	58,799	58,799
1987	56,037	56,037	56,037
1988	57,053	57,053	57,053
1989	47,318	47,318	47,318
1990	44,947	44,947	44,947
1991	807	1.4%	808
1992	938	2.1%	938
1993	1,021	2.3%	1,021
1994	2,253	5.0%	2,253

DoD Section 2323 Goal Accomplishment Prime & Subcontract Performance





**DoD CONTRACT AWARDS TO SDBs BY ETHNIC GROUP
FISCAL YEAR 1994 (AWARDS OVER \$25,000)**
(Dollars in Millions)

Dept./ Agency	Asian		Black American	Hispanic American	Native American	Other Certif.	No Repr.	Not Coded	TOTAL
	Indian American	Pacific American							
ARMY	\$187	\$250	\$573	\$509	\$150	\$70	\$120	\$0	\$1,859
NAVY	\$99	\$305	\$572	\$301	\$120	\$90	\$136	\$0	\$1,623
AIR FORCE	\$131	\$197	\$396	\$428	\$171	\$49	\$79	\$4	\$1,455
DLA*	\$18	\$44	\$179	\$110	\$131	\$2	\$20	\$0	\$505
ODA**	\$37	\$33	\$121	\$53	\$9	\$10	\$4	\$0	\$267
DoD	\$471	\$829	\$1,842	\$1,402	\$581	\$220	\$360	\$4	\$5,709

**PERCENTAGE OF DoD CONTRACT AWARDS TO SDBs BY ETHNIC GROUP
FISCAL YEAR 1994 (AWARDS OVER \$25,000)**

Dept./ Agency	Asian		Black American	Hispanic American	Native American	Other Certif.	No Repr.	Not Coded	TOTAL
	Indian American	Pacific American							
ARMY	3.3%	4.4%	10.0%	8.9%	2.6%	1.2%	2.1%	0.0%	32.6%
NAVY	1.7%	5.3%	10.0%	5.3%	2.1%	1.6%	2.4%	0.0%	28.4%
AIR FORCE	2.3%	3.4%	6.9%	7.5%	3.0%	0.9%	1.4%	0.0%	25.5%
DLA*	0.3%	0.8%	3.1%	1.9%	2.3%	0.0%	0.4%	0.0%	8.8%
ODA**	0.7%	0.6%	2.1%	0.9%	0.2%	0.2%	0.0%	0.0%	4.7%
DoD	8.3%	14.5%	32.3%	24.5%	10.2%	3.9%	6.3%	0.0%	100.0%

* = Defense Logistics Agency
** = Other Defense Agencies



Department of Defense

Small Disadvantaged Business Program History

(Dollars in Millions)

Fiscal Year	DoD Total	8(a)	Direct	SDB Pref.	SDB Set-Aside	Total SDB	% of Total
1985	\$139,587	\$1,780	\$1,119			\$2,899	2.1%
1986	\$136,497	\$1,941	\$1,181			\$3,122	2.3%
1987	\$135,340	\$2,169	\$1,148			\$3,317	2.5%
1988	\$130,815	\$2,163	\$1,189	\$134	\$145	\$3,631	2.8%
1989	\$120,003	\$1,987	\$1,137	\$576	\$298	\$3,998	3.3%
1990	\$123,821	\$2,081	\$1,357	\$304	\$408	\$4,150	3.4%
1991	\$125,878	\$2,135	\$1,455	\$181	\$652	\$4,423	3.5%
1992	\$117,151	\$2,566	\$1,569	\$264	\$796	\$5,195	4.4%
1993	\$116,007	\$2,773	\$1,893	\$515	\$1,002	\$6,183	5.3%
1994	\$112,013	\$2,754	\$1,915	\$356	\$1,089	\$6,114	5.5%

SDB = Small disadvantaged business

Direct = Competitive awards to SDBs

Pref. = Evaluation Preference Program Awards



Department of Defense

Analysis of 8(a) Contract Actions Over \$25,000

(Dollars in Millions)

Fiscal Year	Total 8(a) Awards	Non-Competitive		Competitive	
		Dollar Awards	% of Total	Dollar Awards	% of Total
1989	\$1,953	\$1,953	100.0%	\$0	0.0%
1990	\$2,029	\$1,944	95.8%	\$85	4.2%
1991	\$2,079	\$1,832	88.1%	\$247	11.9%
1992	\$2,501	\$2,183	87.3%	\$318	12.7%
1993	\$2,692	\$2,186	81.2%	\$506	18.8%
1994	\$2,666	\$2,087	78.3%	\$580	21.7%

Department of Defense

Analysis of 8(a) Contract Actions Over \$25,000



Fiscal Year	Total 8(a)		Non-Competitive		Competitive	
	Contract Actions	% of Total	Contract Actions	% of Total	Contract Actions	% of Total
1989	6,516	100.0%	6,516	100.0%	0	0.0%
1990	7,959	97.3%	7,742	97.3%	217	2.7%
1991	9,055	91.3%	8,264	91.3%	791	8.7%
1992	9,587	89.8%	8,609	89.8%	978	10.2%
1993	10,755	85.4%	9,182	85.4%	1,573	14.6%
1994	12,073	81.7%	9,861	81.7%	2,212	18.3%

Chairman BOND. Thank you very much, Mr. Longuemare.

Do you agree with Ms. England-Joseph, that there is a high concentration of 8(a) contracts being made with a small number of 8(a) firms?

Mr. LONGUEMARE. Yes, sir. That is, in fact, the whole reason why we instituted this memorandum of understanding with the agency. In order to try to attack that problem directly, by using the 8(a) authority that we have, we can go in and provide sole source awards to additional firms that meet the required qualifications. So we are working out some processes right now, as to how to implement this, but it is our intent to broaden this base in order to achieve the objective of having more firms participate.

Chairman BOND. One of the comments focused on geographic concentration, as well. Are you going to look at the geographic as well as the individual firm concentration?

Mr. LONGUEMARE. Yes, it is our intent to look at this whole program in cooperation with the SBA. We have not worked out all the details of that, but we will work very closely with them in trying to achieve that objective.

Chairman BOND. When will we see the results of your action?

Mr. LONGUEMARE. I believe you will start seeing some results this calendar year, by the end of this fiscal year.

Chairman BOND. We would like to see the results.

Mr. LONGUEMARE. There probably will be more following that.

Chairman BOND. Thank you.

Ms. England-Joseph, you previously stated in testimony that no firms had graduated from the 8(a) program. I thought that there had been numerous graduates from the 8(a) program. Could you explain what you mean when you say that no firms have graduated from the 8(a) program?

Ms. ENGLAND-JOSEPH. Yes, sir. That is probably a term that is widely used to describe any firm that has left the 8(a) program, but in fact, according to SBA officials, no firms have ever officially graduated from the program. I think we have to go back to the 1988 law and actions taken by SBA to implement that law to describe what graduation really meant by SBA; that is, for a firm to successfully meet its business plan, its development objectives and goals prior to the completion of its program term, and to be able to then successfully compete in the marketplace once it leaves the SBA program.

There have been a number of firms that have left the program for any number of reasons. They met or exceeded their eligibility in terms of their equity in their home and their net worth. They may not have participated as actively as SBA would like to see and were encouraged to leave the program. They may have left because of abuses in the program or they no longer were qualified or eligible. Some firms left because they simply felt that they could compete in the private marketplace without any more SBA assistance. So there are a lot of reasons. But the term graduated, as I have used it, is the way in which SBA actually defines it. In reality, no firm has successfully graduated from it, having met the requirements of the program and the requirements of their plan.

Chairman BOND. What information do you have available on the success of firms once they leave the 8(a) program, even though they may not "graduate" in your terminology?

Ms. ENGLAND-JOSEPH. There is very little data—comprehensive data—that is available on that. Much of it is anecdotal. Only two pieces of data exist out there. One is the annual review that is done by SBA as a part of their annual report to Congress. They send out a questionnaire to firms that have left the program trying to ascertain what success they have had since leaving the program.

From a methodological standpoint, it would not be consistent with the way in which perhaps we would want a survey to be done, because you really do not get the kind of information that would allow you to determine whether in fact this firm is financially viable and will be successful. And, you also do not know how many firms are not responding and why they are not responding. So, the data that you have seen which says 55 percent of the firms are healthy and 33 percent no longer exist is probably the only data available, but it is not necessarily the best information on which to base policy.

The other data was a 1988 study done by the Senate committee staff.

Chairman BOND. At the end of this hearing we may want to discuss with you what further studies may be done.

Turning to the net worth for 8(a) eligibility, there is a proposal in your written statement about increasing the eligibility to \$750,000 or three-quarters of a million dollars while a firm is in the program. Have your studies indicated that SBA actually verifies whether firms continue to meet the eligibility criteria? Do you have a feel for how this eligibility requirement stacks up with the population at large?

Ms. ENGLAND-JOSEPH. I do not know how it stacks up with the population at large; \$250,000 to get into the program and \$750,000 by the time you finish the program is a fairly large amount of money in terms of net worth.

SBA is required to annually review a firm's eligibility. As you heard, with Cassandra Pulley on the earlier panel, they do have a very concerted effort to review during the certification process. At the very beginning, when they certify a firm as 8(a) eligible, they have spent time trying to understand whether that firm, in fact, is or is not a front, and whether in fact it meets its eligibility requirements. They have done a better job in the last couple of years than they had done in previous years.

But once a firm is in the program, that annual review is critical as to whether that eligibility continues or whether they have exceeded that eligibility requirement. As I stated in my testimony, only about 57 percent of those firms are annually reviewed. So there is a big question mark as to whether these firms continue to be eligible.

Chairman BOND. If contract set-asides were no longer part of the 8(a) program, what is your evaluation of other programs available to encourage minority small business development?

Ms. ENGLAND-JOSEPH. There are other programs out there that provide assistance. The 7(j) program within SBA is clearly targeted and linked to the 8(a) program, to provide managerial and tech-

nical assistance. The Minority Business Development Administration in Commerce has 100 centers around the country that can also provide assistance to minority firms.

Then there are other programs, like SCORE, that was referred to earlier, that are available to a broader range of firms than just the socially and economically disadvantaged, but it also can target to that population. Finally, the Small Business Development Centers around the country can also provide technical assistance.

Chairman BOND. Thank you very much, Ms. England-Joseph. Senator Frist.

Senator FRIST. Thank you, Mr. Chairman.

Ms. England-Joseph, in your testimony you stated that DOD regulations provide that "contracts should initially be considered for the 8(a) program, then for the 1207 Set-Aside Program, next for the small business set-aside, and finally to all businesses through full and open competition."

In reading this, it looks like we have got several different programs with regulations designed to accomplish similar goals, at least in part. Are these programs duplicating one another in any way?

Ms. ENGLAND-JOSEPH. First of all, that is sort of a hierarchy of decisionmaking, so you go from a smaller population to a larger, to a larger, to a larger. So it is not quite the same. To some extent, it is duplicative if you look at the 8(a) program as being more a procurement program than a development program. I think there are conflicting goals within the 8(a) program because they are intending to try to do both.

From the procurement side, very clearly the 8(a) is somewhat duplicative of other programs like the Small and Disadvantaged Business Program at DOD, but it is the development side, the management business development side, that is missing from that component.

Senator FRIST. Any comment on that, Mr. Longuemare?

Mr. LONGUEMARE. We do believe that the 8(a) program, and the 2323 are complimentary. They have different purposes. The 8(a) program, of course, has thresholds of \$3 million or services and \$5 million for manufacturing, below which we are allowed to award sole source contracts to firms that met the criteria. We find that to be a very important capability to exercise in trying to carry through this mandate.

The 2323, on the other hand, provides for a 10-percent premium—we are allowed to award a contract with a 10-percent differential to those firms that have qualified to allow them an advantage in this marketplace in order to try to get them up to speed. So we see these two as very complimentary and not duplicative.

Senator FRIST. Thank you, Mr. Chairman.

Chairman BOND. Thank you, Senator Frist. We are delighted to be joined by the distinguished Senator from Connecticut, Senator Lieberman.

Senator LIEBERMAN. Thank you, Mr. Chairman. I appreciate your holding this hearing and it has given me the opportunity to start to begin to remember, if not to learn in the first place, about the 8(a) program.

My question builds somewhat on what Senator Frist has said, in some ways just to set down some simple foundations here. Obviously, there is some focus, some interest in this hearing beyond a review of the 8(a) program, in terms of the overall review that Congress is embarked on, the administration has embarked on, of so-called affirmative action programs. It is important to remember as we do that that affirmative action covers a very wide range of programs.

I always find it hard when people say I am for affirmative action or I am against affirmative action; it expresses itself in many different ways.

Let me just ask if there is any way to get some clarity about whether in pursuit of the goals of aiding disadvantaged individuals and the companies that we had, that we are actually spending more money than we would otherwise spend to procure the goods or services that the Government needs?

Mr. LONGUEMARE. Senator Lieberman, I think that question, of course, does indicate that there is a certain startup cost associated with providing this help. We have an office in the department, of which Mr. Gill is the head, whose purpose is to administer this program and try to do what is necessary there. So clearly there are some additional costs.

On the other hand, I would hasten to point out that the total economic benefit is certainly not something I could assess, but in terms of the contribution that these companies have been able to make to our defense effort, first of all, we only start with companies that are qualified. We do not bring people in that are not able to do the job.

Senator LIEBERMAN. Let me stop you there, because I think that is very important. Just indicate, if you would, how you determine qualifications here, how you determine if the company is qualified?

Mr. LONGUEMARE. We basically rely on the SBA to provide the necessary qualification process, and it is our presumption that either the companies self-certify themselves as being qualified under penalty of law, or that they have been certified by an appropriate process. So our approach to that is by presumption.

Senator LIEBERMAN. I understand and at some point—I regret that I missed the SBA witness, Mr. Lader, earlier—but the 8(a) program is not simply based on the status of being socially disadvantaged. It is based on some determination of qualification as well?

Mr. LONGUEMARE. Senator, I would like to invite Mr. Gill to give you a more indepth answer to this.

Senator LIEBERMAN. Please.

Mr. GILL. Senator Lieberman, good morning.

In implementing section 2323, we had to recognize the authorities that the Congress gave to us in awarding the contracts. Generally, all contracts awarded by the department are awarded at fair market prices. So when we set up the priorities of awarding the contracts, with the 8(a) being the first priority, recognizing our responsibility to assist the SBA, we made a determination that all contracts—as our regulation says—are awarded at fair market prices. So generally we pay no premiums on 8(a) contracts.

On section 1207 or 2323, we were given a special authority to pay a premium of up to 10 percent. So what we did, we used that authority also to use less than full and open competition to have SDB set-asides. SDB set-asides are authorized up to 10 percent above fair market price.

The next tool that we use is the premium, the 10-percent preference in full and open competition. We felt that in full and open competition, since the SDB's had to compete with the major corporations and the world at large, to attain the goal we had to use that leverage. So we did authorize contracting officers to pay up to 10 percent.

Now we do not always pay 10 percent. We pay whatever it takes to award the contract to the SDB if the price is within 10 percent of the low bid. Also, we have reports to show that we have paid a minimum in premiums and those premiums have been limited to one primary industry, and that is the fuel oil industry. That addresses the cost issue.

On the other end is the qualification to do the work. We did not reduce our standards for awarding contracts. There are 13 elements of qualifications that are done by our contract administration offices, and these qualifications or elements are done on all companies, major corporations, small 8(a)s and SDB firms. So the qualification standards are the same in terms of financial stability, technical capability to do the work, skills of the employees, the management program, and ability to meet our delivery requirements. They are all the same for all these programs, sir.

Senator LIEBERMAN. Thank you for your answer. My time is up, and I thank you, Mr. Chairman.

Chairman BOND. Thank you very much, Senator Lieberman. As I indicated, we will keep the record open for additional questions and comments, and we appreciate very much the helpful information provided by this panel. Since you are nearby we will look forward to following up with you with any additional questions.

Our third panel will include the following: Mr. Steven Sims, vice president of the National Minority Suppliers Council of Washington, DC; Mr. James B. Graham, founder of FaxLand Corp. of Falls Church, VA; Ms. Santos F. Garza, chairman of the board and chief executive officer of Counter Technology, Inc., in Bethesda, MD; and Mr. Arnold J. O'Donnell, member of the Association of General Contractors and vice president of O'Donnell Construction Co. in Washington, DC.

Thank you very much for joining us today, and we will begin the testimony with Mr. Sims.

As I indicated to all of you, again because of the number of people on the panel, we would appreciate keeping your opening statements to 5 minutes, but be assured that your full written statements and any matters that you feel were not adequately addressed will be most gratefully received in written form for the record.

STATEMENT OF STEVEN SIMS, VICE PRESIDENT, NATIONAL MINORITY SUPPLIERS DEVELOPMENT COUNCIL, WASHINGTON, D.C.

Mr. SIMS. Good morning, Mr. Chairman, and members of the committee. My name is Steven Sims. I am the vice president of the National Minority Supplier Development Council. Our organization is 23 years old and we are considered corporate America's Minority Business Development Program.

We represent some 3,500 corporate members, including most of the Fortune 1000. We include some 15,000 certified minority businesses, those being black, Hispanic, Asian, and Native American, and some 44 affiliated councils across the country and in many States represented by committee members. We provide a wide array of services including certification of minority businesses.

I want to go back to a question that Senator Lautenberg raised. We do believe that front companies are a significant threat and are a significant issue. I have challenged SBA's past program and DOD utilization of that program at 35 percent of the past system are front companies. Since they do not monitor, they cannot dispute my allegations.

We have found a significant increase in front companies trying to penetrate our certification process. We also provide a Capital Contracts Loan Program of up to \$500,000, 1 point above prime, to certified minority vendors working with our national corporate members. We have a national data base of between 15,000 and 16,000 certified minority businesses.

We have just recently opened the first of its kind minority business information center out of New York. We provide seminars and workshops for corporations and MBE's that are committed to minority business development, and opportunities both formally and informally for corporations and MBE's to contact and contract one with the other.

We also have a strong belief that public policy does drive private sector practices. With that understanding, NMSDC created a Government relations office about 5 years ago, because we believed that there was a need to work with some of the Federal agencies, most notably SBA, MBDA, the OSDBU offices, to work with them and support their efforts in minority business development.

I am going to bounce around to cover several items very quickly. In terms of SBA's past and present, we thought there was a real problem in terms of leadership formerly at SBA. The fact that in my 6 years in Washington, up until the time Erskine Bowles came in, there was no one with a strong business background operating SBA. I think from my testimony, within 24 hours of being nominated for the position, Erskine Bowles was in our office in New York asking us how is SBA doing? What changes were necessary?

We also felt that in the past there had been an unwillingness to listen to the customer, small business, minority businesses. It made no sense to have hearings and talk about what do you think? How are we doing? And then do not respond to the information being shared with the agency.

We also believe that there has been a lack of contract diversification. I think GAO reported on the fact that 50 to 60 percent of graduates went out of business within three years of graduation or

moving on from the program. We believe very strongly that there needs to be a balanced portfolio if the 8(a) firms participating are to survive.

Also, then the identification and replication of best practices. If your competitors are doing a good job, sometimes you might ask what are they doing different and attempt to incorporate some of those best practices in order to maintain your own market share. We think that SBA and other agencies that are involved with minority business development need to do those same things. And in the past they have not.

SBA now, the 8(a) Program, starting with the new leadership team that Erskine Bowles brought on board, Cassandra Pulley and Bob Neal, have worked closely with us. They have reached out to the minority business community and the corporate community to ask what are the problems, what are the issues?

Several recommendations that we made that I would like to respond to. First, the issue of certification. SBA, through their 8(a) program, is talking about following the NMSDC model of taking certification locally where the business is known, doing a site visit and making that mandatory as part of certification so you know who you are dealing with. Again, diversifying the portfolio so that there are private sector contracts as well as public sector contracts that are supporting the development of that business.

The loan programs, the notion of reducing some of the paperwork to make it easier for minority businesses to secure loans. I think Low Doc was one example where it went from 28 pages to one page.

Improvement in the local operations of the SBDCs and their support, that we are still talking to SBA in terms of how we can improve our working relationship to and with some of those SBDCs in order to compliment and not necessarily supplement the operations of the SBDCs versus our local councils around the country.

We also suggested recommendations in terms of improving the 8(a) program, I think which resulted in the development of the MED program. We think that still needs some fine tuning, but is well on its way.

I think one of the things—in fact, I talked to Bob Neil earlier this morning, in terms of this issue of best practices. There is an opportunity for the public sector to learn from the private sector and vice versa. I do not think that is done enough across Government. I especially do not think in the 8(a) program. But we are seeing some progress. There have been some discussions with the Big Three automakers and SBA around the second tier program, which has been initiated by the Big Three automakers. And we are having ongoing discussions around issues of certification.

Again, I want to close with, because my remarks are in for the record, that public sector policy drivers private sector practices. I would not like to see the 8(a) program eliminated. I would like to see it strengthened. I would like to see some of the issues mentioned in the testimony that I have read and heard, in terms of strengthening of programs, holding it more accountable. But I certainly do not think it would be in the interest of minority business to have the program eliminated.

Thank you.

[The prepared statement of Mr. Sims follows:]

**Testimony of Steven Sims, Vice President
National Minority Supplier Development Council
before the Senate Committee on Small Business
United States Senate**

April 4, 1995

Mr. Chairman and Members of the Committee:

My name is Steven Sims. I am the Vice President of the National Minority Supplier Development Council (NMSDC).

Our organization is 23 years old and includes:

- forty-four affiliated councils across the country (in many of the states represented by you committee members)
- 3,500 corporate members, including most of the Fortune 1000;
- and more than 15,000 certified minority businesses -- Black, Hispanic, Asian and Native American

Our organization was founded by corporations -- with financial assistance from the Department of Commerce -- to provide increased procurement and business opportunities for minority businesses of all sizes.

The following are programs and services provided by the NMSDC network:

- certification of minority business enterprises after screening, interviews, site visits, and capability studies;
- access to MBYSIS, a national computerized database of nearly 15,000 certified minority suppliers;
- referrals to corporate buyers of minority suppliers capable of providing quality goods and services at competitive prices, and in a timely fashion;
- support in developing, expanding or promoting corporate purchasing programs;
- provision of contract financing loans of up to \$500,000 to certified minority businesses which have contracts with NMSDC national and regional corporate members, through the business consortium fund;
- operation of a government relations office to provide government decision makers with information on minority business issues and to respond to legislative and regulatory proposals and changes which affect minority business development;
- dissemination, through mailings and newsletters, of vital statistics and information pertinent to the changing picture of purchasing;
- educational seminars, training and technical assistance for buyers and suppliers to assist in personal and professional growth;
- business opportunity/trade fairs which allow minority entrepreneurs to present themselves to many prospective buyers in a short time;

- networking opportunities, organized by purchasing categories, at which vendors speak directly to appropriate purchasing agents;
- corporate and vendor directories, and other publications;
- NMSDC Conference -- the nation's benchmark forum on minority business development
- awards and special recognition for outstanding corporate programs in support of minority business development, as well as for excellent minority businesses, and other citations.

I want to thank Senator Bond for the invitation to provide the perspectives and findings of NMSDC during your deliberations on the Small Business Administration and its 8(a) program, an issue of critical importance to minority businesses and the American economy as a whole.

My time is short. I ask that my written testimony be accepted for the record. I will summarize and highlight our major concerns.

As you look at the re-structuring and/or elimination of the 8(a) program at SBA, I want to share some observations and recommendations, and ask that you consider the impact of your decisions on the minority business community.

According to the Bureau of the Census, there are 1.5 million minority businesses in America, and this is one of the fastest growing and most dynamic business segments.

More than 25% of America's citizens are members of minority groups -- that is, Black, Hispanic, Asian and Native American. Minority citizens pay taxes.

Minority businesses account for only nine percent of all U.S. businesses, and four percent of gross receipts. Purchases from minority businesses represent only one to two percent of total corporate purchases. America's major corporations are working with us to bring those numbers up.

In 1972, when NMSDC was founded, our corporate members reported approximately 86 million dollars in purchases of goods and services from minority businesses. In 1993, our corporate members reported 24.7 billion dollars. These procurement successes were accomplished not by lowering purchasing standards, but by sourcing qualified firms and giving them business on a competitive basis -- business which would have been placed somewhere anyway.

Minority suppliers are also minority employers. They hire an extremely high proportion of minorities. Indeed, the benefits to the country's minority community that pass directly through MBEs appear to come from hiring minorities as well as purchasing from other minority-owned businesses, when they can.

Small Business Administration data shows that more than 70 percent of job creation by small businesses occurs after four years of operation. According to the Bureau of Labor Statistics, from 1990 to 2005, the labor force is expected to grow by 26 million people (of these, 27.8

percent will be Hispanic, 15.8 percent will be Black and 10.1 percent will be Asian). Many of NMSDC's certified businesses are well-positioned to contribute both to job growth and to the overall economic health of minority communities and the country as a whole.

With that background on NMSDC, let's talk about the 8(a) program.

SBA - 8(A) THEN

I understand that this committee is interested in a review and consideration of the Small Business Administration's 8(a) program. It is, in my opinion, a program that has merit but until recently did not propose or conduct its operation/activities in the best interest of minority businesses. Some of the reasons for this lack of success include:

* Leadership

With not disrespect intended, the leadership of SBA traditionally appears to have been known as a safe haven for defeated politicians and supportive allies of whichever administration was in office. The concept of strong and proactive leadership, establishment of measured program goals and objectives and sanctions based on outcomes appears to have been avoided. Those folks deeply entrenched in this particular bureaucracy did not really believe they had to respond to the SBA leadership unless they chose to with no anticipation of paying for their insubordination. In one case in particular, the rumor that a battle waged between the SBA administrator and the head of the 8(a) program, resulted in business being halted while staff watched, chose up sides, and service to firms in the program became a tangential concern. In the end only the firms lost, you can not operate a strong effective program without strong effective leadership.

* Unwillingness to Listen to the Customer

As a business focused entity, the Small Business Administration in general and the 8(a) program leadership never really listened to its customer about the problems minority businesses had with the program. How can you avoid good business practices -- asking your customers what they think and how am I doing in serving those needs, -- and expect success. Issues of capital and financing are serious problems; concerns about certification of legitimate 8(a) firms is a problem; and real opportunities to compete for contracts are a never ending reality. You can not and should not compound these problems by ignoring the needs, observations and experiences of your customer and expect success. You can't ask how am I doing? and then ignore the answer. It sends the wrong message to your customer, to your employees and to the people paying for the program -- the taxpayer.

* Lack of Contract Diversification

The 8(a) program did not develop a program to encourage the diversification of contracting opportunities between the public sector and the private sector until 1993.

With a failure rate of approximately 60% of 8(a) graduated firms within a three year period of completion of the program, it was obvious a problem existed. For years, there were no real efforts to identify and solve this problem.

* Identification and Replication of Best Practices

The ability to review, assess, evaluate, and implement best practices of competitors and allies has been lacking within the 8(a) program. Identification of what are the benchmarks in the area of minority business development, who is establishing the benchmarks, how is the bar raised, how is it reflected and can it be replicated in the 8(a) program, seems to be rarely asked questions with never considered responses.

I think you have a clearer picture of what I perceived to be the problems with the SBA 8(a) program. If you notice, for the most part, I have stayed away from the direct program issues and focus on managerial and organizational concerns. That is because in my experience and opinion, you must deal with those concerns before you can realistically expect to improve the product or service offered by your company or business. These issues determine your potential for success and chances for failure.

SBA - 8(A) NOW

As the government relations representative for NMSDC, I believe and have stated publicly that just when SBA and 8(a) are on the right track their existence is threatened. The changes being recommended, by the SBA are both realistic and relevant. They may be too late to save the program . . . and I hope that is not the case.

Let's review the changes in SBA over the last two years. It is impossible to talk about SBA and its Minority Enterprise Development (MED) program becoming a relevant and viable tool of minority business without mentioning Eskire Bowles and the leadership team he put in place. Within 24 hours of his nomination for the administrator's position, he was in our headquarters office in New York asking about our assessment of SBA and the 8(a) program; he asked about our operational procedures and business strategies; and he asked for our assistance. He reached out to numerous other minority business organizations and asked for a blunt critique of the 8(a) program specifically and SBA generally. His experience in running a business, making payroll, sales and marketing and challenging competitors gave him a realistic view of what minority business might need. It also allowed him to integrate the evaluations/reviews he received on the 8(a) program with his own experience as a business person. I don't intend to make this a testimonial to Mr. Bowles, or to Cassandra Pulley or Robert Neal, but I will say, with my, our, experience of assisting in revitalizing and recreating the NMSDC, that this leadership team brought about the real opportunity for change with the 8(a) program. Let's review specifics and the recommendations of NMSDC:

- * NMSDC recommended improved certification process by reducing time necessary and process

SBA response: Proposed to strengthen field offices and have certification done

locally with final approval being done in Washington. Site visits also being made required activity by local SBDC office.

- * NMSDC recommended diversify portfolios of 8(a) firms with stronger emphasis on private sector marketing.
SBA response: Proposed to increase private sector marketing efforts. There still needs to be more of a push in this area but they are moving in the right direction. This should be a mandated activity unless national security or specific market products limit the product or service to the government.
- * NMSDC recommended increase and improve loan programs.
SBA response: Reduced paperwork for Low Doc loan program from 28 pages to one page. Approved NMSDC acquisition of a MBESBIC after many delays and much hoop jumping. This program compliments our \$19 million capital contract loan program.
- * NMSDC recommended improvement in the operation of the local Small Business Development Center offices and their support of minority businesses
SBA response: Some conversations about how they may better serve minority businesses requesting assistance. No firm action taken to date.
- * NMSDC recommended more specialized assistance and assessment of what 8(a) firms needed and programs based on real rather than perceived needs.
SBA response: Creation of the well thought out Minority Enterprise Development (MED) program which is a three-prong approach to supporting and assisting minority businesses. It is a great start toward assisting minority businesses without creating a dependent relationship.

These observations are not to say everything is fine with SBA and the 8(a) program. There are still internal battles, personnel concerns, and developmental activities which can affect the programs success, which greatly concern us. There is a need for stronger outreach to MBE and business groups and assessment of private sector practices (second-tier purchasing and certification) which might better strengthen their efforts.

I can say that I am impressed with the leadership of SBA; the new willingness to listen and consider new ideas and desire to replicate activities and ideas when possible. The administration has come a long way but still has a journey in front of it. NMSDC would like to see them continue to add to the progress made and stands ready to work with this committee and the SBA in that effort. Thank you and I would be glad to answer any questions you might have for me.

P. S. While I have the attention of the Committee, I would like to add the following, non-related recommendations for your review and consideration.

There are still many barriers to the full participation of minority businesses in the American economy. While the National Minority Supplier Development Council acknowledges many

government initiatives at the local, state and Federal level, much more remains to be done to assure access to information, fairness and openness in the government procurement process.

NMSDC recommends:

1) Standardization of terms and definitions of eligibility

Currently, each agency and department has its own definition of minority, small disadvantaged, historically underutilized, etc.

2) Federal government-wide program on small and disadvantaged business

The initiatives at DOD, NASA, and so forth could also be replicated in other non-defense departments and agencies.

3) Abolish "Self Certification"

"Front" companies compete unfairly with legitimate minority businesses, when credentials are not checked to determine that businesses are 51% owned and operated by minorities.

4) Enforcement of regulations impacting the Offices of Small Disadvantaged Business Utilization (OSDBUs) as described in Public Law 95-507.

In many cases, the OSDBU director reports to the Procurement of Contracts office which they are required to monitor. According to the regulations, the OSDBU director would report directly to the secretary.

5) Codification of the OSDBU's operations, which would allow for objective monitoring and evaluation of efforts.

The OSDBU's directors group is itself developing performance measures in order to provide structure and accountability equal to their responsibilities.

6) Developing a credible, effective mechanism for providing access to working capital for minority businesses

Half of the minority business owners who have been turned down for credit by commercial banks believe that racism was one reason for the bank's decision. The Community Reinvestment Act (CRA) is not working in regard to minority business loans.

I would be happy to respond to any questions on these issues at your convenience.

Chairman BOND. Thank you very much, Mr. Sims.
Mr. Graham.

**STATEMENT OF JAMES B. GRAHAM, FOUNDER, FAXLAND
CORP., FALLS CHURCH, VIRGINIA**

Mr. GRAHAM. Mr. Chairman, distinguished members, thank you very much for inviting me to testify before the committee. My name is James B. Graham, and I am president of FaxLand Corp., which I founded 7 years ago. I recently sold the company, and therefore it is important for me to note that the views I will present today are mine alone and in no way should be attributed to the company or its new owners.

My background includes an undergraduate degree in finance, a graduate degree in marketing and 10 years of employment with a Fortune 1000 company. I have been directly or tangentially involved in marketing to the Federal Government since 1980. I am here this morning to share with you my firsthand experience with the 8(a) program and particularly its negative impact on our employees and my business.

I believe the obstacles that the program presents to me are illustrative of the obstacles faced by the vast majority of small businesses on a daily basis. Hopefully, my real world input will help the committee in its efforts to make the agency more effective.

My proudest business achievement is the creation of more than 55 jobs over the last five years. When we were recognized by Inc. magazine as the 111th fastest growing private company in the United States, I was asked by several journalists what the greatest challenge had been in growing my company into a multi-million dollar concern. The answer was obvious: finding qualified, dedicated, hard-working people. It is my conclusion that these characteristics have absolutely nothing to do with ancestry.

My best estimate is that 32 of the 55 employees, roughly 60 percent, would have qualified for the 8(a) program had they started the business. But instead, they were discriminated against because our business did not have that status while direct competitors did.

In preparing for today, I reflected on the unwritten practices that guided the managers and me in finding new hires. The only bias I could uncover was a tacit preference for the unbridled enthusiasm that some of the newest immigrants hold for the free market system. It is clear with many of our new countrymen that their parents have taught them how fortunate they are to have a shot at the American Dream.

Although our business was not reliant on Federal contracts, we found participation in the Government market complementary to our core sales effort. We had dedicated Government sales representatives and, of course, my support staff spent a proportionate amount of time servicing contracts that we had won.

My most important message to the committee today is that the 8(a) program penalizes disproportionately the very same ethnic groups it is designed to help. Employees who themselves would have qualified for special contract set-asides had they owned the businesses lost commissions, pay, and benefits because they happened to work for my company. This occurred not because we had inferior products or services, but simply because of my heritage.

For example, last fall a marketing representative spent weeks working on an agency's communications department requirements, showing them how certain features of a particular fax machine would streamline field communications and save the Government operating funds. After testing, the communications department submitted the purchase request to procurement. Needing to fulfill a buying quota, the agency paid more for the same machine from a California-based 8(a) and my employees lost out.

This is one of numerous cases where the practice of set-asides had measurable negative consequences on our employees. I think less obvious are the unspoken games that major Government contractors play to take advantage of the program through what is euphemistically termed "teaming."

During Desert Storm the secure fax communications requirements at DOD escalated suddenly. Although my company had installed secured units, the scale was different and I pursued a direct relationship with the largest manufacturer of such products. I remember very clearly their sales manager saying "Jim, get with the game. Why should I run uphill selling with your company when I can run downhill with our 8(a) partner."

He went on to explain that they had a special relationship with the 8(a) firm designed specifically for agencies that need to spend set-aside dollars. The conversation was replete with the term pass-through and left the clear understanding that there was no place in this side of the industry for my Federal sales team.

The premise that small businesses need Federal help to compete in the free market is false. It stems apparently from the belief that big business has some insurmountable advantage based on economic resources, when in fact the opposite is true. Our small business thrived on competing with the giants because the burden of bureaucracy inflated their cost of doing business. Tinkering with the self-correcting genius of the free market is counterproductive.

In reviewing the SBA's annual report for this morning, I cannot find a clear and complete explanation of the 8(a) program or its goals and objectives. In fact, for such a high profile element of the agency, it is conspicuously absent from the performance agreement set forth inside the cover. Perhaps establishing such a mission statement should be the first step, for without an understanding of the Government's aim, it is impossible to explain to all the—by definition—socially and economically disadvantaged employees who do not work for 8(a)'s why they are being penalized.

There is no question that the program has rewarded financially a handful of owners. Washington Technology Newspaper publishes an annual list of the fastest growing technology companies in the area. While we have had the good fortune to appear on this list 4 of the last 5 years, 8(a) firms account for over 60 percent of the award recipients.

Has the success of these disadvantaged individuals somehow trickled down to other ethnically or socially disadvantaged people? Is the goal to reward individuals, groups or communities? Is there any evidence that this program has worked better than the free market? These are the issues that I recommend your committee examine when considering the future of the program.

In closing, I hope that the committee is guided by the premise that the free market system works extremely efficiently. I have been challenged and rewarded by it. When you are in doubt about the benefit of a given program or proposed legislation, please remember that most of the problems in America today stem from the interference with the free market and the lack of trust in the underlying strength of the individual citizen.

This concludes my prepared remarks. Thank you again for the opportunity. I will be happy to answer any questions you might have.

[The prepared statement of Mr. Graham follows:]

Statement by James B. Graham

Mr. Chairman and distinguished Members; thank you very much for inviting me to testify today before the committee. My name is James B. Graham and I am President of FaxLand Corporation, which I founded seven years ago. I recently sold the company; and therefore, it is important for me to note that the views I will present today are mine alone and in no way should be attributed to the company or its new owners.

My background includes an undergraduate degree in finance, a graduate degree in marketing and ten years of employment with a Fortune 1000 company. I have been directly or tangentially involved in marketing to the federal government since 1980. I am here this afternoon to share with you my firsthand experience with the 8(a) Program and particularly its negative impact on our employees and my business. I believe the obstacles that the program presents to me are illustrative of the obstacles faced by the vast majority of small businesses on a daily basis. Hopefully, my real-world input will help the committee in its effort to make the agency more effective.

My proudest business achievement is the creation of more than 55 jobs over the last five years. When we were recognized by *Inc. Magazine* as the 111th fastest growing private company in the United States, I was asked by several journalists what the greatest challenge had been in growing the company into a multi-million dollar concern. The answer was obvious: "finding qualified, dedicated people willing to work hard". It is my conclusion that these characteristics have nothing to do with ancestry.

My best estimate is that 32 of the 55 employees (60%) would have qualified for the 8(a) program had they started the business. But instead, they were discriminated against because our business did not have that status while direct competitors did. In preparing for today, I reflected on the unwritten practices that guided the managers and me in finding new hires. The only bias I could uncover was a tacit preference for the unbridled enthusiasm that some of the newest immigrants hold for the free market system. It is clear with many of our new countrymen that their parents have taught them how fortunate they are to have a shot at the American Dream.

Although our business was not reliant on federal contracts, we found participation in the government market complementary to our core sales effort. We had dedicated government sales representative and, of course, the support staff spent a proportionate amount of time servicing contracts that we won. My most important message for the committee today is that the 8(a) Program penalizes disproportionately the very same ethnic groups it is designed to help. Employees who themselves would have qualified for special contract set-asides had they owned the business lost commissions, pay and benefits because they happened to work for my

company. This occurred not because we had inferior products or services - but simply because of my heritage.

For example, last fall a marketing representative spent weeks working with an agency's communications department showing them how certain features of a particular facsimile machine would streamline field communications and save the government operating funds. After testing, the communications department submitted the purchase request to procurement. Needing to fulfill a buying quota, the agency paid more for the same machine from a California-based 8(a) and my employees lost out. This is one of numerous cases where the practice of set-asides had measurable negative consequences on our employees. Less obvious are the unspoken games that major government contractors play to take advantage of the program through what is euphemistically termed "teaming".

During Desert Storm the secure fax communications requirements at DOD escalated suddenly. Although my company had installed secured units, the scale was different and I pursued a direct relationship with the largest manufacturer of such products. I remember very clearly their sales manager saying, "Jim, get with the game. Why should I run up hill selling with your company, when I can run downhill with our 8(a) partner." He went on to explain that he had a "special" relationship with an 8(a) firm designed specifically for agencies that need to spend set-aside dollars. The conversation was replete with the term "pass through" and left the clear understanding that there was no place in this side of our industry for my federal sales team.

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In reviewing the SBA's Annual Report, I can not find a clear and complete explanation of the 8(a) Program or its goals and objectives. In fact for such a high profile element of the agency, it is conspicuously absent from the Performance Agreement set forth inside the cover. Perhaps, establishing such a mission statement should be the first step. For without an understanding of the government's aim, it is impossible to explain to all the (by definition) socially and economically disadvantaged employees who do not work for 8(a)'s why they are being penalized. There is no question that the program has rewarded financially a handful of owners. *Washington Technology Newspaper* publishes an annual list of the fastest growing technology companies in the area. While we have had the good fortune to appear on this list four of the last five years, 8(a) firms account for over 60 percent of the

award recipients. Has the success of these "disadvantaged" individuals somehow trickled down to other ethnically or socially disadvantaged people? Is the goal to reward individuals, groups or communities? Is there evidence that this program works better than the free market? These are the issues that I recommend your committee examine when considering the future of the program.

In closing, I hope that the committee is guided by the premise that the free market system works extremely efficiently. I have been challenged and rewarded by it. When you are in doubt about the benefit of a given program or proposed legislation, please remember that most of our problems in America today stem from interference with the free market and a lack of trust in the underlying strength of the individual citizen.

This concludes my prepared remarks. Thank you again for the opportunity to appear before you; I will be happy to answer any question you might have.

Chairman BOND. Thank you, Mr. Graham.
Ms. Garza.

**STATEMENT OF SANTOS F. GARZA, CHAIRMAN OF THE BOARD
AND CHIEF EXECUTIVE OFFICER, COUNTER TECHNOLOGY,
INC., BETHESDA, MARYLAND**

Ms. GARZA. Good morning, Mr. Chairman, and committee members. My name is Santos Garza. I am the chairman of the board and chief executive officer of Counter Technology.

Chairman BOND. Ms. Garza, could you pull that microphone a little closer? I am having a little trouble hearing you.

Ms. GARZA. My children never complain that I cannot be heard.

Chairman BOND. Actually, my son has trouble hearing me, but it is because he does not listen, so there is a difference.

Ms. GARZA. I am cochairman of the Economic Development Committee for the U.S. Senate Republican Task Force on Hispanic Affairs. I have been involved in identifying those issues that impact the economic development of Hispanic business, and I have met with Senator Dole and shared and offered my recommendations regarding these issues.

CTI has been in the 8(a) program since 1990. Today we have over 375 employees; 69 percent of those employees are minorities and 57 percent of my management staff are minorities and women. We are a high technology firm providing security systems and programs design and engineering to Federal agencies, corporations and major aviation industry clients.

I present a dichotomy in that although I am a product of programs such as affirmative action and minority economic development, I feel very strongly that one succeeds through hard work and commitment. In 1976, I began my public safety and security career as the only minority female sworn officer in the history of the Aurora, IL, Police Department, hired through the city's Affirmative Action Program. I finished No. 2 on the entrance exams out of over 500 applicants, and I graduated first in my class. I served for 11 years before leaving to start my own business. That opportunity prepared me for the position I hold today.

The skills I developed as an officer, along with the support of my staff, have enabled us to successfully utilize the 8(a) program. Not everyone who enters the business world as an entrepreneur will succeed. Similarly, not every company that enters the 8(a) program will succeed. However, along with a plan on how to get CTI into the program, we developed a plan on how to get CTI out of the program successfully.

The SBA had already provided vital assistance to our firm in almost every aspect on how to do business. The 8(a) program has provided us the opportunity to gain further experience in other fundamental areas, such as the development of strategic marketing plans and project and budget management. In addition to quarterly financial reviews, our annual review submissions are monitored very closely by the SBA.

CTI's core service is in the aviation industry. We recently won a coveted contract for the design of a security system for the new airport being built in Austin, TX, the only new airport going up in

the Nation. The competition was full and open, and our competitors included major, multi-billion dollars firms.

CTI's selection over several major national firms is confirmation that the 8(a) Program does work. Three years ago, bidding on this contract would not have been an option for us. However, its impact in terms of CTI's credibility and standing in the industry has literally put us on the map.

CTI's continued success in the program does not mean that we do not mean that we do not recognize the program's weaknesses. For example, there is a potential and tendency to grow too quickly. With the guidance of SBA staff we have learned to manage our growth and today we will go after only those requirements that allow us to enhance the capability that is transferable into commercial or non-8(a) contracts.

One obstacle we had to initially overcome was convincing user agencies that we were qualified to perform on requirements that involved technical and professional disciplines. There is often a proclivity for the agencies to designate labor-intensive contracts to the 8(a) program, reserving the more technical contracts for more qualified firms.

Administrator Goldin recently testified that NASA has increased its use of qualified small minority contractors in highly technical areas in a concerted effort to broaden competition. The effect has been increased competition outside of the 8(a) program, higher quality goods and services, and reduced cost for the agency.

What is frequently misunderstood is that the 8(a) program does not give companies contracts. What the program does offer is the opportunity to develop those skills necessary to compete in a full and open environment and to gain experience necessary but not always available to small minority firms.

During our program participation, the SBA has fostered competence, placed requirements for competitive bidding, and set limits. The SBA continues to provide us with technical assistance, support, and management advice. Our experience in competitive bidding in a more sheltered environment has prepared us to more fully withstand the rigors of a fully open bidding environment.

As our revenues have grown we have become no longer eligible to bid on certain requirements. There has been much discussion, Mr. Chairman, about having reached a level playing field. If this is true and programs designed to ensure this are no longer needed, than 50 percent of police departments would be female and minorities would be representative of the minority populations in those communities.

My experience has been that similar conditions exist in our small business community. If the purpose of the 8(a) program is to foster a level playing field for small minority businesses, we are not quite there yet, despite our advances. The program was conceived for the promotion of diversity and opportunities and ultimately, in the national self-good. Honest conversation and examination without references to these issues is crucial to your decisions, and I thank the committee for the opportunity to participate in this effort.

[The prepared statement of Ms. Garza follows:]



Counter Technology Inc.

SENATE COMMITTEE ON SMALL BUSINESS

TESTIMONY OF SANTOS F. GARZA

Delivered on April 4, 1995

Mr. Chairman and Distinguished Committee Members. Good morning. Thank you, Senator Bond, for the opportunity to give testimony today on the Small Business Administration's 8(a) program.

My name is Santos (San) F. Garza. I am the Chairman of the Board and Chief Executive Officer of Counter Technology, Inc. (CTI), located in Bethesda, Maryland. CTI has been an 8(a) program participant since April, 1990. As Co-chairman of the Economic Development Committee for the U.S. Senate Republican Conference Task Force on Hispanic Affairs, I have been involved in identifying those issues that impact the economic development of Hispanic businesses. On a more personal basis, I have met with Senator Dole and offered my recommendations concerning these issues.

CTI was incorporated in October, 1986, and has grown from four (4) employees to over three hundred seventy-five (375) employees today. In addition to the corporate headquarters in Bethesda, Maryland, CTI now has satellite offices in Chicago, Austin, Dallas, and Covina, CA, from which CTI manages its employees deployed in twenty-five (25) States and the Commonwealth of Puerto Rico.

CTI provides security systems design and engineering, systems integration, security programs development and management, investigations and telecommunications for Federal agencies, such as the Departments of Transportation, Treasury, Energy, Commerce,

Agriculture, NASA and the U.S. Holocaust Memorial Museum. Additionally, CTI provides technical security management services to major aviation clients such as USAir, Northwest Airlines, Chicago's O'Hare and Midway Airports, the New Austin (TX) Airport Project, Philadelphia International Airport and Baltimore-Washington International Airport.

My family roots lie in the Rio Grande Valley of Texas. Although I was born in Illinois, the transient environment in which I spent my early years as the child of migrant workers in the South and Midwest, gave me a unique insight into the plight of Hispanic Americans.

The fact that I am present here today testifying before this committee is a contradiction of sorts. I present a dichotomy in that although I am a product of programs such as affirmative action and economic development, I feel very strongly that one succeeds by pulling oneself up by the bootstraps and that success comes from hard work and commitment.

In 1976 I began my public safety and security career as the first and only minority female sworn officer in the history of the Aurora, Illinois Police Department, hired through the city's affirmative action program. I finished number two on the entrance exams out of over five hundred applicants, and graduated number one from my Illinois State Police Academy basic training class. I went on to serve for eleven years before leaving to start my own business. The fact that I was still the only minority female sworn officer on that department when I left convinced me that had it not been for the affirmative action program, I would have been denied that opportunity. That opportunity prepared me for the position I have now as Chief Executive Officer and majority stockholder of CTI. As a street officer I developed and honed my communication skills; I learned how to lead and motivate people to do what I

needed them to do; I learned how to take command of a situation and maintain control. Most importantly, I learned how to make decisions, good decisions. These skills, along with the support of my dedicated and committed staff, have enabled us to successfully utilize the SBA's economic development program - the 8(a) program.

I would like to give you a brief overview of CTI's experience with the 8(a) program, the lessons learned and my observations.

Not everyone who enters the business world as an entrepreneur will succeed. Similarly, not every company that enters the 8(a) program will succeed. However, along with a plan on how to get CTI into the 8(a) program, we developed a plan on how to get CTI out successfully. The Small Business Administration had already provided vital assistance to our firm in almost every aspect on how to do business. The 8(a) program has provided us the opportunity to gain further experience in other fundamental areas such as the development of strategic marketing plans and project and budget management.

CTI's core service is in the aviation industry, specifically those areas related to security technology. Our competition includes major multi-billion dollar, multi-national corporations. The 8(a) program has enabled us to compete successfully against these firms. We recently bid on a contract for the design of the security system and development of the security program for the new airport being built in Austin, Texas. The fact that it is the only new airport under construction in the nation made this a coveted contract. The FAA, who must approve all design and implementation, was also watching the outcome carefully. The competition was full and open and in addition to technical capability, the bidders were evaluated on experience and performance in managing large projects, several years in duration. CTI's selection over several major firms is confirmation that the 8(a) program works. As recently as three

years ago, bidding on this contract would not have been an option for us. The significance of this contract is not monetary, indeed, it is one of the smallest contracts in CTI's contract base. However, its impact in terms of CTI's credibility and standing in the industry has literally put us on the map.

CTI's continued success in the program does not mean that we do not recognize the program's weaknesses. For example, there is a potential and tendency to grow too quickly, however, even major corporations have suffered from rapid growth as evidenced by today's climate of corporate down-sizing. With the guidance of SBA staff, we have learned to manage our growth. We have developed our own yardstick by which we measure whether we will chase a contract. Today we will only go after those requirements that offer us an opportunity to enhance or further develop a capability that is "translatable" into commercial or non-8(a) contracts and this strategy has worked well for us. In our proposal to the City of Austin we included vital experience gained on two 8(a) contracts.

One of the most difficult obstacles we had to overcome upon entering the program was convincing the user agencies that we were qualified to perform on requirements that involved technical and professional disciplines. Because of our involvement in security, we were offered numerous contracts to provide guard services. There is often a proclivity for the agencies to designate labor intensive contracts to the 8(a) program, reserving the more technical contracts for more "qualified" firms. Administrator Goldin recently testified that NASA has increased its use of qualified small minority contractors in highly technical areas, in a concerted effort to broaden competition. The effect has been increased competition outside of the 8(a) program, higher quality goods and services and reduced costs for the Agency.

The program has its stigmas. During my years as a police officer

I discovered something interesting. Unlike my fellow male officers, I found I had to prove myself every day. I had to make extra effort to do an exceptional job, take extra steps to ensure quality work. I find myself in a similar situation as a small and minority contractor. We have to work harder, be more diligent, monitor more closely because there is a pre and misconception that because we are in the program we must not be quite as good. Just as the extra effort made me a better cop, the extra steps have made CTI an exceptional and quality firm, but more importantly, our clients have benefited. We have received numerous commendations for the quality of our work, most recently, an Excellence Award from the Department of the Treasury, and the 8(a) Contractor of the Year Award for Technical Services from the Department of Education.

What is frequently misunderstood by many, including minority businesses, is that the 8(a) program does not give companies contracts. If anything, CTI has had to work harder to obtain the types of contracts that are preparing us for "life after 8(a)". What the program does offer is the opportunity to develop those skills necessary to compete in a full and open environment and gain experience so necessary but not always possible for a small firm.

An article which appeared in the March 27, 1995 issue of Business Week stated that "with solid technical assistance, set-aside programs can work." It goes on to address "how to make minority preferences work", citing, 1) fostering competence, 2) requirements for competitive bidding and 3) setting limits. Our 8(a) program experience has included all three. First, during our developmental stage, the SBA provided, and continues to provide, CTI technical assistance, support and management advice.

Secondly, we find that the program fosters competition. One of our first Federal contracts and by far our largest at the time, was competed among eligible 8(a) firms. Even though CTI was the

smallest firm to bid on that contract we were the successful bidder. Our experience in competitive bidding in a more sheltered environment has prepared us to more fully withstand the rigors of a fully open bidding environment. Although CTI was the only minority owned firm that submitted a bid as the prime contractor for the Austin airport contract, our competition included giants Unisys, Stone and Webster Engineering and the Bechtel Corporation. The program is structured so that during the transitional phase CTI is required to obtain a proportionate share of contracts outside of the program. Our 8(a) and non-8(a) generated revenues are monitored quarterly and an annual review is conducted to assess our growth, marketing strategies, and revised business and financial plans.

Thirdly, there are set limitations on the types of contracts that we can obtain through the program. As we have grown and our revenues have exceeded certain size limitations, we are no longer eligible to bid on certain requirements.

There has been much discussion about a level playing field. If I may use the analogy once more of my experience in police work, police and fire departments have long represented the transition zone between blue collar and white collar groups, therefore considered solid middle America. If indeed we now have a level playing field and those programs designed to ensure this are no longer needed, then 50% of these departments would be female, and minorities would be representative of the minority populations in those communities. My experience has been that similar conditions exist in our small business community. If the purpose of the 8(a) program is to foster a level playing field for small minority businesses, then I submit that even though we have made significant advances, we are not there yet.

A comprehensive review and assessment of the 8(a) program to

redetermine the purpose of its existence would surely further identify areas of weakness as well as strengths in the program. It is my understanding that the program was conceived for the promotion of diversity and opportunities, and ultimately the national self good. Honest conversation and examination without references to wedge issues is crucial to your decisions. I thank the Committee for the opportunity to participate.

Chairman BOND. Thank you very much, Ms. Garza.
Mr. O'Donnell.

STATEMENT OF ARNOLD J. O'DONNELL, MEMBER, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, VICE PRESIDENT, O'DONNELL CONSTRUCTION CO., WASHINGTON, D.C.

Mr. O'DONNELL. Mr. Chairman and members of the committee, my name is Arnold O'Donnell. My brother, John, and I are the co-owners of O'Donnell Construction Co., a small firm headquartered in northeast Washington, DC. My firm specializes in the construction and repair of streets, sidewalks, and underground utilities. At its peak, my company employed 25 people. Today it has 10 employees.

I am here today as a spokesman not only for myself, but also the 33,000 firms that make up the Associated General Contractors of America. On behalf of AGC and its members, let me thank you for the opportunity to testify on the 8(a) program.

For a long time, I doubted that this day would ever come. I doubted that Congress would ever pause to reflect on the larger, often moral issues, that the program raises. As I waited for this day, I began to fear that the next generation would grow cynical and disinterested in civil rights. As I waited for Congress to pause and reflect, I began to question whether many of our children would come to believe that civil rights are something in which they have no stake, something akin to property rights, belonging to others but not to them or to their children.

I now urge you to reflect on what it would mean to acquiesce to the demands that set-aside programs become a large and permanent feature of Federal procurement. The last generation forged an immensely powerful consensus that civil rights are personal rights guaranteed to each individual without regard to race, gender or ethnic origin. What would further acquiescence to Government preference programs do to that consensus?

Several years ago I challenged a set-aside program that the District of Columbia had implemented. During the course of that litigation I learned that the Nation's Capital had set aside well over half of its road and highway work for a period of 5 years. Eventually, the U.S. Court of Appeals for the District Circuit agreed that I was a victim of unlawful racial discrimination. As members of the D.C. Circuit, Supreme Court Justice Ruth Ginsburg and White House Council Abner Mikva agreed with Judge Randolph that I was entitled to a court order that would end the city's program.

With their decision in hand, I then applied to the 8(a) program. After all, few if any of the firms in the program have anything approaching the same evidence that racial discrimination has limited their business opportunities. I expected a quick decision that I would be eligible for 8(a) contracts, but I was rebuffed.

I was denied admission to the program on the grounds that I had failed to provide enough evidence of my eligibility. When I appealed that decision I was told that the SBA's administrative law judge had retired and that, as a result, there was no one to hear my appeal. The entire matter is now in bureaucratic limbo.

On behalf of AGC, I can tell you that thousands of other construction contractors have come to know the same frustration. They

have come to know the set-aside programs are littered with euphemism for the bottom line that they are deemed to be expendable.

The first attachment to my written statement is a letter from Air Force Col. Stephen Bull to the Honorable Jim McCreery. The letter confirms that Barksdale Air Force Base set aside 100 percent of its construction contracts in fiscal year 1994. The letter adds that the Air Force had found this proper and not disproportionate in its impact on the construction industry.

The 8(a) program is one of the bigger causes of the construction industry's frustration. Barksdale did not use the 8(a) program to set aside these contracts, but the same or another base in any given year could easily do so and the impact on small non-minority firms in the surrounding areas would be exactly the same.

Notwithstanding the many times in which it refers to social and economic disadvantage, the 8(a) program is based on rigid, racial classifications. The program makes a conclusive and un rebuttable presumption that all minorities are socially disadvantaged. The program then abandons any real notion of economic disadvantage and reserves the bulk of its benefits for the affluent members of the nation's minority groups.

In strictly economic terms, the 8(a) program is a subsidy for the upper middle class, particularly in the Washington area. A number of 8(a) contractors are, in fact, millionaires. After subtracting their equity in their homes and businesses, the 722 individuals who entered the 8(a) program in fiscal year 1993 had an average net worth of \$135,000.

I would like to mention one thing briefly. Mrs. England-Joseph mentioned 50 of the top 8(a) firms got 25 percent—200 8(a) firms got 54 percent of all 8(a) contract dollars in fiscal year 1993. I mean 200 individuals got more than half of all the money.

The 1990 census found that 5.4 million Hispanics were living in poverty. I found that 8.4 million Blacks were living in poverty. It found that 19 million Whites were living in poverty. In these austere times, when Federal, State, and local budgets are all being cut, it is difficult to understand why the Federal Government should continue to subsidize a select group of affluent citizens.

Some of the program supporters will contend that 8(a) contractors make at least a greater effort to employ minorities. The data belies the claim. The second attachment to my testimony is an Associated Press report on the results of its own study of where the 8(a) program dollars are going. The study found that the lion's share of the dollars are going to firms whose headquarters were located in primarily white, well-to-do neighborhoods. The Associated Press found that the average minority contracting company is located in an area where 68 percent of the residents are white, half of the household earn \$37,415 or more, and only 1 person in 7 is poor.

According to the attached article, the SBA's deputy administrator has actually conceded that the 8(a) program is not designed for economic development in black inner-city neighborhoods.

As I stated earlier, the 8(a) program is based on rigid racial classifications. The program does not merely add race to a mix of factors that collectively effect the award of Federal contracts, it makes race the dominant and controlling factor in the award of billions of

dollars of Federal work. Once a contracting officer sets a contract aside, non-minority firms are completely excluded from any and all consideration.

I hear the phrase, "the level playing field." We do not have a level playing field. For the past 5 years, my brother and I are not even allowed to enter the stadium. We are not complaining about field conditions.

The 8(a) program is one of the extreme forms of affirmative action and not one of these close cases in which race has become a plus factor used only to break a tie.

In closing, I urge the committee to review not only the 8(a) program, but also all of the other set-aside programs that have crept into the Federal system. The programs are many, and their collective impact is tremendous.

The Federal Aid Highway Program sets aside approximately \$2 billion each year. The 8(a) program sets aside more than \$4 billion. The 1207 program sets aside another \$1 billion. If the civilian agencies maintain the Defense Department's ratio of 8(a) to other set-asides, the new program that Congress included in the Federal Acquisition and Streamlining Act will set aside another \$2 billion.

Thank you again for the opportunity to testify. I hope that my testimony has been helpful. For myself and ACG, I respectfully request the committee to include the full text of my written statement and the attachments thereto in the record of this hearing.

[The prepared statement and attachments of Mr. O'Donnell follow:]

Arnold J. O'Donnell
On Behalf of
The Associated General Contractors of America

Mr. Chairman and members of the Small Business Committee, my name is Arnold O'Donnell. My brother and I are the co-owners of the O'Donnell Construction Company, a small firm headquartered in Northeast Washington, D.C. My firm specializes in the construction and repair of streets, sidewalks and underground utilities. At its peak, my company employed 25 people. Today, my company has 10 employees.

I am here today as a spokesman for not only myself but also the 33,000 firms that make up the Associated General Contractors of America (AGC). These firms engage in the construction of highways, bridges, tunnels, airports, water conservation projects and waste treatment facilities. They also engage in the construction of office and other buildings, factories, warehouses and shopping centers. Among their projects are defense and other federal facilities.

On behalf of AGC and its members, let me thank you for the opportunity to testify on the 8(a) program. For a long time, I doubted that this day would come. I doubted that Congress would ever pause to reflect on the larger, often moral issues that the program raises. Congress has held many oversight hearings on the program's implementation. In fact, this Committee held a hearing just last summer. The Inspector General of the Small Business Administration (SBA) delivered typical testimony. He addressed the large number of contracts that the program concentrates in the hands of a few firms, the wealth of many of the program participants, the great number of contracts that the program sole sources, and the brokering that the program tolerates.¹

Congress has heard similar testimony on many occasions. Congress has not, however, made much effort to put the program into any larger context. It has not made any serious effort

¹ Statement of James F. Hoobler, Inspector General, U.S. Small Business Administration, before the U.S. Senate Committee on Small Business, July 27, 1994 (hereinafter "Hoobler Statement").

to square the program with the nation's commitment to civil rights. It is an unpleasant truth that the 8(a) program threatens the civil rights consensus that past generations fought so hard to create. It is an unpleasant truth that the bulk of the program's benefits accrue to an affluent few.

As I waited for this day, I began to fear that our children would grow cynical and disinterested in civil rights. As I waited for Congress to pause and reflect, I began to question whether many of our children would come to believe that civil rights are something in which they have no stake, something akin to property rights, belonging to others, but not to them, or to their children.

I was myself a victim of discrimination, and much of my fear grew out of my own experience. The pain of racial discrimination became real for me because the government had imposed special preference programs.

But having been a victim of discrimination, and having experienced the pain, I now urge you to reflect on what it would mean to acquiesce to the demands for more of the same. The last generation forged an immensely powerful consensus that civil rights are personal rights, guaranteed to each individual, without regard to race, gender or ethnic origin. What would further acquiescence to government preferences programs do to that consensus?

It was seven years ago that I began writing to the federal and local officials who were routinely denying me the opportunity to bid for the smaller contracts that my company could perform. I wrote to Congress. I wrote to the Secretary of Transportation. I wrote to the city government. Letters went back and forth. To absolutely no avail.

Out of utter frustration, I took a drastic step. As have many minorities, I asked the federal courts for relief. During the course of that litigation, I learned that the nation's capital had set

aside well over half of its road and highway work for a period of five years.² Eventually, the U.S. Court of the Appeals for the D.C. Circuit agreed that I was a victim of unlawful racial discrimination in the award of public contracts in the District of Columbia. As members of the D.C. Circuit, Supreme Court Justice Ruth Ginsburg and White House Counsel Abner Mikva agreed that I was entitled to a court order that would end the city's program.

With their decision in hand, I then applied to the 8(a) program. After all, few if any of the firms in the program have anything approaching the same evidence that racial discrimination has limited their business opportunities. I expected a quick decision that I would be eligible for 8(a) contracts. But once again, I was rebuffed. I was denied admission to the program on the grounds that I had failed to provide enough evidence of my eligibility. When I appealed that decision, I was told that the SBA's administrative law judge had retired, and that, as a result, there was no one to hear my appeal. The entire matter is now in a bureaucratic limbo.

On behalf of AGC, I can tell you that thousands of other construction contractors have come to know the same frustration. They have come to know that set-aside programs are littered with euphemisms for the bottom line that they are deemed expendable. The first attachment to my written statement is a letter from Air Force Colonel Stephen Bull to the Honorable Jim McCrery. The letter confirms that Barksdale Air Force Base set aside 100% of its construction contracts in FY 1994. The letter adds that the Air Force has found this "proper" and "not disproportionate" in its impact on the construction industry.

The 8(a) program is one of the bigger causes of the construction industry frustration. Barksdale did not use the 8(a) program to set aside these contracts, but the same or another base, in any given year, could easily do so, and the impact on the small non-minority firms in the

² I learned that the city had set aside 98% of the locally funded road and highway construction, over the same period. This had a particularly severe impact on my company, because it could not perform the large contracts that tended to have federal funding.

surrounding area would be exactly the same.³ Notwithstanding the many times in which it refers to "social and economic disadvantage," the 8(a) program is based on rigid racial classifications. The program makes a conclusive and un rebuttable presumption that all minorities are "socially disadvantaged." The program then abandons any real notion of "economic disadvantage," and reserves the bulk of its benefits for the affluent members of the nation's minority groups. In strictly economic terms, the 8(a) program is a subsidy for the upper middle class, particularly in the Washington area.⁴

It is true that section 8(a) of the Small Business Act⁵ is racially neutral. Section 8(a) makes no reference to any racial classification, and its legislative history reveals that Congress made a conscious and deliberate decision to make the program's benefits available to all Americans, on an equal basis, without regard to race or ethnic origin.⁶ Nevertheless, the Small

³ Eleven percent of the \$4.32 billion that the 8(a) program set aside in FY 1993 was for work performed in just two of the twenty-seven SIC codes that make up the construction industry. Minorities in Business Insider, October 5, 1994, at 6-7.

⁴ Twenty-five percent of the firms in the 8(a) program in FY 1993 were in the Mid-Atlantic region. *Id.*, at 7. One-thousand-fifty-five of these firms, or 22%, were in Washington, D.C., Maryland or Virginia. *Id.*

⁵ 15 U.S.C. §637(a).

⁶ From the time of its enactment in 1953 at least until 1968, when the President directed the SBA to develop a new program for socially or economically disadvantaged persons, section 8(a) was universally understood to be racially neutral. In 1970, in response to the President's directive, but well before Congress amended the statute, the SBA limited the program to such persons. 35 Fed. Reg. 17833 (1970). The agency also defined such persons to include Black Americans, American Indians, Spanish Americans, Oriental Americans, Eskimos and Aleuts. 13 C.F.R. §124.8-1(c) (1971).

It was not until 1978 that Congress amended section 8(a). Long after the fact, Public Law 95-507 authorized the Executive Branch to limit the 8(a) program to "socially and economically disadvantaged small business concerns." That legislation did not, however, authorize the 8(a) program to presume that minorities are either socially or economically disadvantaged. To the contrary, the legislative history reveals that Congress made a conscious decision to require the 8(a) program to be racially neutral. The House proposed to insert presumptions into sections 8(a)

Business Administration (SBA) has long and consistently presumed that racial minorities are socially disadvantaged, within the meaning and for the purposes of the 8(a) program.⁷ Moreover, the SBA has made that presumption conclusive and un rebuttable, in both form and substance. One regulation implies that the SBA will apply the presumption only "[i]n the absence of evidence to the contrary."⁸ But elsewhere, the SBA has retained the the unfettered discretion to disregard any such evidence.⁹

In the implementing regulations, one will find elaborate procedures for contracting officers and a limited number of others to challenge an individual's claim that he or she is socially disadvantaged.¹⁰ A close reading of this material will, however, reveal that the SBA has authorized no one to protest an 8(a) set-aside.¹¹ The agency has authorized contracting officers and a limited number of others to protest section 1207 set-asides and bid preferences,¹² and the implementation of the 8(d) program, and "other federal procurement programs," but the relevant regulation expressly excludes the 8(a) program.¹³

and (d). Initially, the Senate rejected both. In conference, the Senate agreed to the House proposal to insert a presumption into section 8(d). In turn, the House agreed to delete the presumption that it had proposed to insert into section 8(a). See Conf. Rept. No. 95-1714, reprinted in 1978 U.S. Code, Cong. & Adm. News 3881-3882.

⁷ See 13 C.F.R. §124.105(b).

⁸ Id.

⁹ See 13 C.F.R. 124.609(f).

¹⁰ See 13 C.F.R. Part 124, Subpart B.

¹¹ See 13 C.F.R. §124.603.

¹² See 10 U.S.C. §2323.

¹³ 13 C.F.R. §124.603(c).

In addition, the SBA has retained the discretion to reject any protest against any firm that it has admitted to the 8(a) program -- in reliance on the very presumption that the protest would question. The agency has retained the discretion "summarily" to determine that any 8(a) firm is "socially disadvantaged" without conducting any investigation or hearing of any kind.¹⁴

At the same time, the SBA has made it extremely difficult for non-minorities to enter the 8(a) program. The definition of social disadvantage is vague and subjective, and in the absence of any presumption, the "clear and convincing" evidence that will satisfy the SBA is equally uncertain.¹⁵ Racial discrimination prevented me from bidding on hundreds of public contracts in the Washington area, but apparently, that does not mean that I have been "subjected to racial or ethnic prejudice or cultural bias."¹⁶ My evidence of discrimination was strong enough to satisfy the U.S. Court of Appeals for the D.C. Circuit, but it is not enough, today, to satisfy the SBA.

The far from surprising result is that more than 99% of the 8(a) contractors are racial minorities.¹⁷ Forty-eight percent of the 8(a) contractors are Black, 26% are Hispanic, 19% are Asian, between 6% and 7% percent are Native American, and less than 1% are non-minority.¹⁸

The SBA has also written any serious notion of "economic disadvantage" out of the 8(a) program. The SBA has defined economic disadvantage so broadly that even millionaires can

¹⁴ 13 C.F.R. 124.609(f). The regulation does require the SBA to determine that it has completed an annual review of the firm within the previous 12 month period, and it does require the 8(a) firm to file an affidavit, but once again, it does not require any kind of independent investigation, or any hearing of any kind.

¹⁵ See 13 C.F.R. §124.105(c).

¹⁶ See 13 C.F.R. §124.105(a).

¹⁷ Minorities in Business Insider, October 5, 1994, at 8. Accord, Associated Press, April 11, 1994.

¹⁸ Id. Accord, Associated Press, April 11, 1994.

qualify for the program.¹⁹ It has placed certain limits on the net worth of those eligible for the program but excluded their equity in their homes, and their equity in their businesses, from its estimate of their net worth.²⁰ Thus, if I had a million dollars in equity in my home, and twice that equity in my business, but no other assets, the SBA would find that my net worth is zero.

If I were a minority, and had \$200,000 in other assets, the SBA would still let me into the program, because its limit on other assets, for anyone seeking to enter the program, is \$250,000.²¹ The SBA would permit me to remain an 8(a) contractor so long my other assets did not exceed \$500,000.²² For my last five years in the program, the agency would allow my other assets -- in addition to my home and business -- to climb to \$750,000.²³

Once again, the results are far from surprising. A number of 8(a) contractors are, in fact, millionaires.²⁴ After subtracting their equity in their homes and businesses, the 722 individuals who entered the 8(a) program in FY 1993 had an average net worth of \$135,000.²⁵

Adding insult to this injury is the frequently reported fact that a majority of the 8(a) contracts wind up in the hands of a few firms. A computer run of 8(a) companies with active

¹⁹ Hoobler Statement, supra, n.1, at 8.

²⁰ See 13 C.F.R. §124.106 (a)(2)(i)(B). The SBA also excludes a spouse's one-half interest in all community property. Hoobler Statement, supra, n. 1, at 6

²¹ See 13 C.F.R. §124.106(a)(2)(i).

²² See 13 C.F.R. §124.111(a)(2)(i).

²³ See 13 C.F.R. §124.111(a)(2)(ii).

²⁴ See note 18, supra

²⁵ Associated Press, April 11, 1994.

contracts as of July 8, 1994, revealed that 200 companies had 54% of the work.²⁶ Their contracts totalled over \$14 billion, meaning that each one had an average of \$70 million in 8(a) work.²⁷

The 1990 census found that 5.4 million Hispanics were living below the poverty. It found that 8.4 million Blacks were living below the poverty line. And it found that 19 million Whites were living below the poverty line. In these austere times, when federal, state and local budgets are all being cut, it is difficult to understand why the federal government should continue to subsidize a select group of affluent citizens.

Some of the program's supporters will contend that 8(a) contractors make at least a greater effort to employ minorities. In my personal experience, including several years in which I worked for a minority contractor, there is no significant difference in the number or percentage of minorities working for minority and non-minority firms. Every construction company tries to employ the best people it can find. Construction is a labor intensive industry, and the quality of a contractor's workforce can make all the difference in the world.

In any event, the data belies the claim. The second attachment to my testimony is an Associated Press report on the results of its own study of where the 8(a) program's dollars are going. The study found that "the lion's share" of the dollars are going "to firms whose headquarters were located in primarily white, well-to-do neighborhoods." The Associated Press found that "the average minority-contracting company is located in an area where 68 percent of the residents are white, half the households earn \$37,415 or more, and only one person in seven is poor." According to the attached article, the SBA's Deputy Administrator has actually

²⁶ Hoobler Statement, *supra*, n. 1, at 4.

²⁷ *Id.* One-hundred-sixteen firms received 50% of the work in FY 1991; 151 firms received 50% of the work in FY 1992; and 175 firms received 50% of the work in FY 1993. *Id.* at 5.

conceded that the 8(a) program "is not . . . designed for economic development in black inner-city neighborhoods."

As I stated earlier, the 8(a) program is based on rigid racial classifications. The program does not merely add race to a mix of factors that collectively affect the award of federal contracts. It makes race the dominant and controlling factor in the award of billions of dollars of federal work. Once a contracting officer sets a contract aside, non-minority firms are completely excluded from any and all consideration. The third attachment to my written statement is an example of how the process works. It is a notice that the National Naval Medical Center had decided to set aside a sewer line replacement contract for an 8(a) contractor. As are the vast majority of 8(a) contracts, this one was sole sourced.²⁸ Thus, the military installation permitted only one contractor to bid for the work. All non-minority firms were completely shut out. The 8(a) program is one of the extreme forms of affirmative action, and not one of those close cases in which race has become a "plus factor" used only to break a tie.

In closing, I urge the committee to review not only the 8(a) program but also all of the other set-aside programs that have crept into the federal system. The programs are many and their collective impact is tremendous. Since 1987, the 1207 program has authorized the Defense Department to set aside contracts entirely on its own initiative, without going through the SBA or its 8(a) program. Last year, when it passed the Federal Acquisition and Streamlining Act, Congress extended the 1207 program to NASA and the Coast Guard. Congress also authorized a parallel program for all of the civilian agencies.

²⁸ The 8(a) program normally requires certified contractors to compete, among themselves, for any manufacturing contract expected to exceed \$5 million, and for any other contract expected to exceed \$3 million. See 13 C.F.R. §124.311. Nevertheless, from January of 1989 to July of 1994, the program actually required competition for only 1.9% of the 8(a) contracts, accounting for only .9% of the 8(a) program dollars. Hoobler Statement, *supra*, n. 1, at 11. During this period, the program sole sourced a total of \$16.6 billion in federal work. *Id.*

The new program for the civilian agencies has yet to take effect but it is bearing down on me and thousands of other small businesses, and as Congress and the President debate the merits of racial preferences, the rest of us can only wonder whether Washington has even summoned the courage to keep the situation from getting worse. This program authorizes the civilian agencies to use not only set-asides but also bid preferences (up to 10%) to reach the "maximum practicable" level of "small disadvantaged business" participation in their procurement. Unless Congress and the President take decisive action, a huge new set-aside program will soon take effect.

And as have the 8(a) and 1207 programs, the new program will take its greatest toll on small non-minority firms. It is a fact of economic life that set-asides run down hill. The federal agencies cannot set aside their larger contracts because "small disadvantaged" businesses cannot perform those contracts. To make the numbers come out right, the agencies must and do set aside an excessive number of the smaller contracts on which small non-minority firms must also depend. It is not surprising that all of the construction contracts that Barksdale Air force Base set aside last year were contracts for less than \$2 million. Nor would have it helped for the installation to put out a \$20 million contract for open competition. The aggregate numbers would have changed, and in truth, Washington's perception of the situation would have also changed. The fact remains that small non-minority firms are incapable of performing such a large contract, and the set-aside program's impact on those firms would have been exactly the same.

Without taking the time necessary to discuss all of the federal programs, I would also urge the Committee to examine the "disadvantaged" business enterprise program for federal-aid highway construction. This program puts a \$2 billion burden on one discrete segment of just one industry. For more than a decade, it has imposed a severe hardship on the small non-minority contractors in the highway construction industry.

Until it identifies and assesses all of these programs, Congress cannot begin to appreciate their collective impact on non-minorities. As I noted, the federal-aid highway work sets aside approximately \$2 billion each year. The 8(a) program sets aside more than \$4 billion. The 1207 program sets aside another \$1 billion. If the civilian agencies maintain the Defense Department's ratio of 8(a) to other set-asides, the new program that Congress enacted just last year could well set aside another \$2 billion. The new bid preference for minority contractors could bias the competition for millions of dollars in additional work.

As it proceeds, Congress will also find it cannot take a piecemeal approach. These set-aside programs overlap and duplicate each other. It would do little if any good to revise or repeal the 8(a) program but permit the 1207 program or the new program for the civilian agencies to go forward. The latter would simply expand, and the total amount of work being set aside would be little changed.

Thank you again for the opportunity to testify. I hope that my testimony has been helpful. For myself and AGC, I respectfully request the committee to include the full text of my written statement, and the attachments thereto, in the record of this hearing.

First Attachment

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330-1000

JAN 09 1995



OFFICE OF THE SECRETARY

January 3, 1995

SAF/LLP
1160 Air Force Pentagon
Washington, DC 20330-1160The Honorable Jim McCrery
United States Representative
6425 Youree Drive
Suite 350
Shreveport, Louisiana 71105

Dear Mr. McCrery

This is in response to your letter of November 25, 1994, to Brigadier General David Young, Commander of the 2nd Bomb Wing at Barksdale Air Force Base (AFB), Louisiana, concerning the percentage of construction contracts set-aside for small disadvantaged businesses (SDBs) at Barksdale AFB during Fiscal Year (FY) 1994.

Although the Small Business Competitiveness Demonstration Program of 1988 deleted a large portion of the small business set-aside requirements (15 U.S.C. 644 note), agencies still must comply with 8(a) and small disadvantaged business (SDB) set-aside requirements. Title 10, United States Code, Section 2323 sets forth a percentage goal for Department of Defense (DoD) contracts with SDBs and other categories of contractors. The statute directs the Secretary of Defense to prescribe regulations providing procedures to meet these goals. Under DoD Federal Acquisition Regulation Supplement (DFARS) 219.502-1-70, the Contracting Officer "shall" set-aside acquisitions for SDB concerns when the requisite conditions are met.

Policy states that an acquisition will be set-aside for SDBs if the Contracting Officer has a reasonable expectation that two or more SDBs will submit bids and otherwise meet all requirements of the solicitation. In each case where a solicitation is to be set-aside, the Director of Business Programs determines whether or not a set-aside is appropriate. The Shreveport/Bossier City area happens to have numerous small disadvantaged contractors who are capable of performing projects for Barksdale AFB. Of the ten contracts awarded in FY 1994, Barksdale AFB received less than two bids only one time. In most cases, they received as many as five or six bids. The data shows that there are enough SDB concerns

bidding on projects at Barksdale AFB to justify the set-asides. Although 100 percent of Barksdale AFB's construction contracts that were awarded during FY 1994 were set-aside for SDBs, only 75 percent of the base's solicitations were set-aside. All of the projects that were open to large and small businesses either had bid opening dates in FY 1995 or were canceled prior to opening of bids.

Headquarters Air Combat Command (HQ ACC) has reviewed the bases's set-aside procedures and concurs that they are proper and that the base's set-aside rate is not disproportionate. Comparing bases is sometimes difficult because of the numerous factors that contribute to these figures such as the number of SDB contractors in the area, their willingness to bid on projects on DoD installations, and the aggressiveness of the Director of Business Programs in informing SDBs of the contracting opportunities. The complexity and magnitude of projects at each base can greatly affect the number of small disadvantaged businesses that bid on projects. Installations that advertise simple, small dollar construction projects will typically set-aside a greater percentage than bases with more complex, large dollar projects. We believe this was the case at Barksdale AFB in FY 1994 since all of their projects were relatively small and of a non-complex nature.

In summary, we believe Barksdale AFB's actions have been in accordance with public law and current policies and that the set-aside rate was consistent with the rest of the command. For your information, we have enclosed a list of all the solicitations for construction at Barksdale AFB and the outcome of each.

We appreciate your interest in this matter and trust the information provided is useful.

Sincerely



STEPHEN D. BULL, III
Colonel, USAF
Chief, Programs and Legislation
Division
Office of Legislative Liaison

Attachment

BARNSDALE AFB FY 94 CONSTRUCTION INFORMATION

SOLICITATIONS ISSUED IN FY 94 - NOT AWARDED:

94-B0020	Repair Switching Station	\$974 K	Unrestricted	FY 95 Award
94-B0007	Construct 1 TH Maint Fac.	\$422 K	SDB S/A Canx, Bids too high Reissued in FY 95 (Unrestricted)	
94-R0001	Replace Wherry Housing	\$16 Mil	Unrestricted	Canx, Offers unacceptable Being Reissued

SOLICITATIONS ISSUED IN FY 93 - CANCELLED IN FY 94:

93-R0021	Repair DRMO Road	\$40.6 K	8(a) S/A	Canx Oct 93
93-B0025	Paint JP4 Fuel Tanks	\$35.2 K	SDB S/A	Canx Oct 93
93-B0026	Repair Twining Drive	\$256 K	SDB S/A	Canx Oct 93
93-B0027	Airfield Paint/Removal	\$105.1 K	SDB S/A	Canx Nov 93
93-B0028	Rpr N Taxiway Shoulders	\$436 K	SDB S/A	Canx Nov 93
	(This solicitation was reissued in FY 94 SDB S/A)			
93-B0029	Repair Supply Roof	\$425 K	SDB S/A	Canx Oct 93
93-B0032	Demolish Pumphouse 9	\$216 K	SDB S/A	Canx Oct 93
93-B0033	Demolish Metal Dorms	\$1.2 Mil	SDB S/A	Canx Oct 93
93-B0038	Lights/Fans, Base Supply	\$40 K	SDB S/A	Canx Oct 93

CONTRACTS AWARDED IN FY 94: (All were SDB Set-Aside)

94-C0009	WSA Entry Control Point	\$97 K		
94-C0010	Alt/Rep Bldg 7213	\$483.8 K		
94-C0011	Alt Capehart MFH, Ph I	\$1.6 Mil		
94-C0014	25 Ton A/C, Hospital	\$48.5 K		
94-C0025	Repair Sanitary Sewers	\$635K		
94-C0027	BURS, Base Supply	\$214.6 K		
94-C0028	North Taxiway Shoulders	\$396.9 K		
94-C0029	Construct New Weld Shop	\$505 K		
94-C0032	Repair Commissary Roof	\$608.5 K		
94-C0034	Repair Airfield Lighting	\$717 K		

BARKSDALE AFB FY 94 CONSTRUCTION INFORMATION

	<u>NUMBER</u>	<u>DOLLARS</u>
CONTRACT AWARDS IN FY 94:	10	\$5,328,880
CONTRACT AWARDS FROM SDB S/A:	<u>10</u>	<u>\$5,328,880</u>
Percentage:	100%	100%

The following applies to ALL solicitations in FY 94:

SOLICITATIONS ISSUED IN FY 94:	8	\$19,968,099
SOLICITATIONS SET-ASIDE FOR SDB:	<u>6</u>	<u>\$2,994,099</u>
Percentage:	75%	14%

The following applies to solicitations estimated under \$2 Mil only:

SOLICITATIONS ISSUED IN FY 94:	7	\$3,968,099
SOLICITATIONS SET-ASIDE FOR SDB:	<u>6</u>	<u>\$2,994,099</u>
Percentage:	85%	75%

NOTE: The above figures were prepared by removing only 94-R0001 (\$16.0 Mil)

Second Attachment

03253277 0006

Minority Contract Program Mostly Benefits Companies in White Areas

BY: TIM BOVEE

DATELINE: WASHINGTON PRIORITY: Rush WORD COUNT: 1273

THE ASSOCIATED PRESS DATE: April 11, 1994 07:07 EDT

The government's flagship program for minority entrepreneurs awarded \$19 billion in contracts over the last six years, with the lion's share going to firms whose headquarters were located in primarily white, well-to-do neighborhoods.

An Associated Press computer analysis of "minority set aside" contracts handled by the Small Business Administration found that just 22 percent of the project dollars went to companies located in minority areas.

And those companies that qualified for the program while remaining in minority areas on average got fewer contracts and dollars than those in white areas, the analysis showed.

The SBA's 8(a) program directs federal contracts to minority-owned companies for work ranging from computer processing to construction or custodial services. SBA has told Congress that one effect of these contracts has been to boost job opportunities in less prosperous city neighborhoods.

Yet to be more competitive, some business owners said they moved out of minority communities to get closer to their federal customers.

"I was (located) so far away from government installations, the SBA was reluctant to give me jobs," said Samuel Hayes, who moved his construction company out of Benton Harbor, a city in southwestern Michigan where nine people in 10 are black.

Now his company, Rah Development, does business from Northville, Mich., in an area of the Detroit suburbs where half the households make more than \$167,374 and nine people in 10 are white.

The program's supporters say its goal is to foster minority businesses, not community development. And like any business, they say, minority companies need to locate near their customers. In the 1990s, that often means the suburbs.

"It's a business decision, not a social decision as to the location," said Cassandra Pulley, SBA deputy administrator. "It is not a program that is designed for economic development in black inner-city neighborhoods."

The analysis of 8(a) contracts showed the average minority-contracting company is located in an area where 68 percent of the residents are white, half the households earn \$37,415 or more, and only one person in seven is poor.

In contrast, most black Americans live in neighborhoods where

minority residents are the majority and where half the households earn less than \$24,550.

"A lot of truly small minority businesses which really would be the backbone of the minority community cannot get a quarter from the SBA," said attorney H.T. Smith, organizer of a recently ended black tourism boycott in Miami.

When it comes to investing in minority communities, Smith believes, "as far as the government and the business community are concerned, that's just throwing money away." There is no requirement that participants stay in minority neighborhoods or that they be poor. In fact, entrepreneurs can qualify with a net worth up to \$250,000, excluding their home and business assets.

When SBA goes to Congress for funding, it presents the program as a business incubator that benefits impoverished minority communities.

"8(a) firms provided employment for over 102,000 men and women during fiscal 1992," the agency said in its most recent report to Congress. "Many of these jobs are in the inner city and in areas of high unemployment."

The AP analysis, however, suggests otherwise.

The study analyzed the contractors' location by the ZIP code of their headquarters, using racial, ethnic and income information from the 1990 census. AP reviewed almost 25,000 contracts covering \$17.5 billion of the \$19 billion awarded under the program from 1988 to 1993.

About \$1.5 billion was not analyzed because there was no matching census information for the companies' ZIP codes.

Contracts spanned the country, ranging in value from 12 cents to \$96.2 million.

It was not possible to determine from the database where the companies did the contract work, and the SBA said it did not track the background of employees who worked on the 8(a) contracts.

Companies owned by blacks or Hispanics make up three-quarters of the program's participants. However, the review found:

Only 9 percent of the 8(a) contract dollars went to businesses in black-majority neighborhoods.

4 percent went to Hispanic-majority neighborhoods.

9 percent went to neighborhoods with majority Asian, American Indian or mixed-minority populations.

7 percent of contract dollars went to neighborhoods with

minority populations from 40 percent to 50 percent.

The largest bloc of 8(a) dollars 37 percent went to companies in neighborhoods with fewer than 20 percent minorities. And three-fourths went to neighborhoods where the typical household income was more than \$30,000.

Some contractors who remained in poor minority communities say they did so out of a sense of responsibility.

During the time she was in the SBA program, Florence Hicks Alexander kept the headquarters of her management consulting company in a mostly black neighborhood in Washington and located most of her 350 offices in minority neighborhoods across the country.

"We are very proud of what we did and how we did it," she said. "I myself am a product of the ghetto. ... I felt it was my responsibility to give back."

Such businesses, however, get fewer and smaller contracts, the AP review found. Businesses in primarily minority areas averaged seven contracts worth \$589,594 each, compared to nine contracts worth \$748,661 each for those in white communities.

Some see the program, a product of the civil rights movement, as mirroring a growing divide in minority communities between rich and poor, skilled and unskilled.

"You have a two-tier system that's becoming more discernible in the black community itself," said Elijah Anderson, sociology professor at the University of Pennsylvania. "The people who have the skills and education are being siphoned off by the corporate world. Those people are not starting inner-city businesses."

Weldon Latham, of the National Association of Minority Business, defends the 8(a) program, saying critics wrongly view it as a "paternalistic" welfare initiative instead of a tool to help minorities break into the economic mainstream.

Participants say the decision on how many minorities they hire often depends on where the work is done.

"If I got a job in upper Appalachia, I'm going up there and hire me some white folks," said James L. Harrell, an Alabama construction company owner and president of the 4,500-member National Association of Minority Contractors.

Some say there are other ways their companies help minority communities.

Singobee Builders Inc. in Loretto, Minn., is located in a 99-percent white neighborhood and has only five minorities among its 25 workers, but it subcontracts much of its work with minority

firms, according to its chief officer, Gae Veit.

"The more successful minority businesses become, they automatically reach out to the minority business community," said Ms. Veit, who is an American Indian.

But the Rev. Michael Pfleger, a Roman Catholic priest on Chicago's largely black South Side, is skeptical. "I look at the community I live in here, no businesses are opening up. You can't get jobs. I've only seen a continual spiral downwards," he said.

SECTION HEADING: Finance;

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Third Attachment



DEPARTMENT OF THE NAVY
 CHESAPEAKE DIVISION
 NAVAL FACILITIES ENGINEERING COMMAND
 BUILDING 212 WASHINGTON NAVY YARD
 WASHINGTON, D. C. 20374-2121

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23 March 1992

TO ALL CONCERNED:

Subj: N62477-89-R-0154 - SEWER LINE REPLACEMENT AT THE NATIONAL NAVAL
 MEDICAL CENTER, BETHESDA, MD

Initially project N62477-89-R-0154 was advertised in the Commerce
 Business Daily (CBD) as an unrestricted project. As a result of a
 recommendation from our Small Business Representative and an endorsement
 from the Small Business Administration (SBA), this project has been set
 aside as an 8(a) Negotiated Procurement.

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CORRECTED ADDRESS

Thanks for your interest in this project, and we hope you will
 participate in future projects that will be forthcoming.

SANDRA K. SODERSTROM
 CONTRACTING OFFICER

Chairman BOND. Without objection, it will be included. Thank you very much.

Mr. Sims, your organization has been very effective in helping small minority companies prosper without Government interference, and we have heard testimony about the difficulties of 8(a) firms once they leave the program. How would you address this failure rate, or the disappointing results of the 8(a) firms that leave the 8(a) program?

Mr. SIMS. Again, I think it starts with the leadership. If the mission of the 8(a) program was to provide opportunities for minority firms or socially and economically disadvantaged firms to enter and compete in the mainstream, then the designers of the program in terms of looking at how to best do that failed.

As I mentioned to you, I have been reaching out and have been meeting with folks at SBA in the 8(a) program to look at maybe developing working relationships with some of us who are involved primarily in the private sector, to mandate that the 8(a) firms diversify their programs and work with us to not only develop a process for that to happen but also to track how they are doing in terms of diversifying.

I think again, Judy from GAO had mentioned that there had not been an annual review of the business plans. As part of our recertification process, we mandate that every firm, every MBE in our data base has to submit updated information so that we can track from year to year how well or how poorly the program is doing, who it is working with, and what progress it is making.

So I do think that there is a process by which not only can we track how the 8(a) firm is doing, but we can also—and I would suggest a notion of looking at the contracts that go to some of these firms mentioned by my two fellow panelists. We are designing a program internally to track how much business MBE's are doing with each other, because in the private sector it does not make sense to go out to corporations and say you discriminate, you should be doing more contracting with minority firms, if we are not willing to also do business with minority firms.

So we have begun a process to look at how that money trickles down. How does it stay in the community? How many times is it turned over? And how many other MBE's benefit from the prosperity of some of the larger MBE firms?

Chairman BOND. Thank you, Mr. Sims.

Mr. Graham, you have heard the test that Ms. Garza suggested about seeing that there was a level playing field. You expressed your strong belief in the efficacy of the free market system. Are there any thoughts that you might have, or you could offer us, on how we can assist minorities in the development of economically viable businesses? What would you recommend?

Mr. GRAHAM. I guess my comments in summary, Senator, were that the discrimination that takes place is at the employee level. While the owners are being rewarded, there does not seem to be any effort in the program to see if that rewarding of the owners who are qualified as disadvantaged are, in fact, passing through those earnings to their employees.

My problem, quite simply, was that I had employees who would qualify as disadvantaged under the program who would come to me

and say I lost this commission payment, I lost this bonus. Why cannot we have the same kind of benefits that this other 8(a) firm can have? And therefore, our business was not on a level playing field.

Chairman BOND. Ms. Garza, let me ask you a question and you can also respond to that. You talked about how you would not have been successful without the help of the 8(a) program. With your experience prior to joining the 8(a) program, was that different from what it would have been for a non-minority firm seeking to provide security services? And what kind of commitment allowed you to make your business succeed without 8(a)—would be necessary for your business to succeed without 8(a) assistance?

Ms. GARZA. Mr. Chairman, let me clarify that. I did not mean to imply that we would not have been successful without the 8(a) program. I feel that CTI, prior to receiving 8(a) certification, was a successful firm. At that point, we had approximately 8 or 10 employees. That was 8 to 10 employees that I was providing employment for, and to me that is successful.

We would not be where we are today, I would not be providing employment to 375 individuals; 69 percent of those individuals, as I stated, are minorities and 50 percent of all my management is filled by minorities and females. I think that is a tremendous success rate, and I feel that the program has enabled us to do that.

In addition, the work that we are doing in our core service industry, which is the aviation industry, we are pitted against some very, very formidable companies. TRW is out there, Ogden-Allied, Bechtel, Stone & Webster, Unisys to name a few. We have been able to bid successfully against these firms.

We would not have been able to do that 3 years ago. There is just no way that I had the monies, the resources for the bidding and the proposal competition involved in those kinds of contracts.

Chairman BOND. Thank you very much, Ms. Garza. I will have to submit the rest of my questions for the record, and we will turn now to Senator Lieberman.

Senator LIEBERMAN. Thank you, Mr. Chairman. I thank the four of you. You have been an outstanding panel and you really put into stark relief some of the issues that we have got to deal with, both in 8(a) and affirmative action programs generally.

The picture that Mr. Graham and Mr. O'Donnell paint, and I take the liberty of trying to bring it together, one of the pictures they paint is of a program, the 8(a) program, that is basically benefiting a relatively small number of people at the top who, though they may be in generally socially or economically disadvantaged groups, themselves are not.

It is not, to paraphrase Mr. Graham's contention, trickling down. At least certainly not in the case of his employees. Some of his employees, quite clearly, being socially or economically disadvantaged and being additionally disadvantaged by his inability to compete for some of these 8(a) programs.

Mr. Sims or Ms. Garza, how would you respond to that, which is essentially that at one level there is no trickle down going on here?

Mr. SIMS. There has never been a—well, my response would be that the assumption is that everybody should compete equitably. I agree that the playing field has not been level, but it has not been

level for years. Our studies, and the MBE's that we work with around the country, when they do well they hire more minorities except in those situations where the industry has been such that they have had to hire some white sales staffs in order to even get in the door.

I mean, if you want to look at some research, Prof. Mark Dollinger of Indiana University, a self-described Reagan Republican, did a study after years of arm twisting that showed that there are barriers to contracting opportunities even between minority and majority suppliers that have nothing to do with product, nothing to do with cost. It is—I identify with you, we have some commonality.

Senator LIEBERMAN. Let me interrupt, and I apologize because I have limited time.

Are there any studies through the 8(a) program to indicate whether there is trickle-down? That is to say are there any national studies that you can provide to the committee that show the percentage of the workers of the MBE companies that are in the socially or economically disadvantaged groups themselves?

Mr. SIMS. No, but we can provide that. Since our data is computerized, we can do a run showing how many employees all of our 16,000 MBE's have and what the racial makeup of those employees are.

Senator LIEBERMAN. Let me ask, and these are sensitive and difficult questions but we have to ask them directly, and you are all very eloquent. I am therefore going to ask you again, Mr. Sims, to answer the question that Mr. O'Donnell's testimony poses, which is a very real question, which is—well, I am going to use his words. Forget the level playing field. Why can't he and his brother and their company even get into the stadium to play? That is the question that we are being asked over and over again, as we deal today with affirmative action.

Mr. SIMS. And it is a question that we have asked for hundreds of years and the Federal Government, in its wisdom, designed these programs to provide us entree'. It does not say that once we get into the stadium the field is level. It does not say that if you are going to run a 100-yard dash that I might not have a ball and chain, somebody else might be disabled, somebody else might be blind. But we have also had the problem of not even having access, and that this is one of those programs that at least provides an opportunity to compete and get in the arena also.

The playing field has never been level. We have never been a meritocracy. There have always been benefits, whether it is education, whether it is employment, et cetera. But this is a small token effort to adjust and provide opportunities for those that have been historically underutilized.

Mr. O'DONNELL. Could I respond to that, since you used my words?

Senator LIEBERMAN. Yes, go right ahead. I wanted to give you time.

Mr. O'DONNELL. There are quite a few things you have to realize. One, my company and the type of work we do is almost always owned by some Government agency, so we are greatly impacted by these programs.

Two, we are not talking about equal opportunity. Most of the work that we do is competitively bid. It is rip and read. The bid is due at 2 o'clock, you open the envelope and whoever has the low number gets it. This is not a subjective judgment. It does not matter what color the person is or their gender or the religion or anything else. When you go into the bid room, you drop the envelope off and somebody else rips it open.

We are not allowed to submit an envelope. It is just as simple as that. And if the program that was passed last year and the regulations were published on January 6 go into effect, my company is out of business.

You know, you have to recognize, Mr. Sims, society has changed. The attitudes of the people in the procurement offices, and in the country as a whole, are not what they were 30 and 40 years ago. They have changed dramatically. What we need to focus our efforts on is not establishing programs to shut out myself, Mr. Graham, and thousands and thousands of other people who want to do business with the Federal Government, State government, local government. What we should concentrate on is people who still discriminate and get rid of it. These programs do nothing to do that.

You are talking about percentages. My company used to be about 80 percent minority. Now it is 70, but that is only because I include my brother and I. If you take my brother and I out, it is 90 percent minority. We do not discriminate and we do not want to do business with people that do discriminate.

But these programs, they are a windfall to the companies that do not need them. I have worked for 8(a) firms for years, and it was like shooting fish in a barrel.

The other thing, you asked about, do these programs cost money? They cost a fortune. You are talking about billions and billions of dollars every single year. If they do not cost money, you do not need the program. If a minority owned firm is going to submit the low bid, why do you even need to have a program? The 8(a) allows Government to pay a lot more money.

Now on some of the contracts I negotiated, we got 50 to 100 percent profit on the jobs. It was easy. The companies were well-funded, well run, and it was just a windfall.

Mr. SIMS. But you have 97 percent of the field and you argue—Ataran said that he lost 70 percent of the contracts he went after. He decided to challenge one because it was given to a minority firm that resulted in it. You control 90 percent of the field. We ask for 5 or 3 percent and we have trouble getting our foot in the door.

Senator LIEBERMAN. I thank you both.

Mr. O'DONNELL. That is a real distortion. When you—

Ms. GARZA. I would like some equal time here.

Chairman BOND. This is the kind of discussion that I hope that we are going to be able to continue through written comments. We want to come back to it. We have another panel today. I will give Ms. Garza 1 minute, because she sat quietly through that interesting discussion. Ms. Garza.

Ms. GARZA. I would like to just comment on one of his comments on that it was like shooting fish in a barrel. There is no question that there may be abuses in the system. Being in the program, I recognize some of those. When the program is used and utilized in

the spirit in which it was intended, believe me, at my firm it is not like that at all. Our growth is very controlled. We are looking at those contracts that will help us succeed in an open environment. We only take those contracts that will give us capability that we can transfer into that environment. We are not in the program to grow for the sake of growing.

Chairman BOND. Thank you, Ms. Garza.

We have been joined by two more of our distinguished committee members and I would like to turn now for questions to the distinguished senior Senator from Virginia, Senator Warner.

Senator WARNER. I thank you, Mr. Chairman. Again, I and other members of the committee wish to commend you in the manner in which you are moving forward on a very broad front on this committee. It is a pleasure working with you.

Now I am in my 17th year here, and you have to go back and draw on all of the thousands of people who come through your offices during that period of time and distill in your mind the impression that is left with you. It is twofold, and this panel has very carefully described it here today. First, 8(a) conceptually was laid down to do a specific set of goals, and those goals need to be achieved. Therefore, where I am at the moment is that I do not want to kill the 8(a) program. I want to help make it work like it was intended to be.

Then, of course, I have heard any number of persons come in and describe the abuses which each of you discussed here today. So I would start off with these questions and if we could have brief answers. Congress put in place the framework of laws, regulations were promulgated, and I can remember when a former U.S. Senator under Ronald Reagan was the head of the SBA; a good friend of mine. So it is not political that the Republicans did this or the Democrats did this. It is just a constant flow of stories coming out.

So the question is, is SBA oriented to allow these abuses to continue? They have got to be aware of them. Or does the framework of laws allow them to perpetuate? In other words, why hasn't a good strong administrator gotten in there and said, we are going to stop this. We are going to go back to square one and figure out what this agency was designed to do and do it. It looks like Ms. Garza is ready to go on that. Just about 30 seconds, so I can get everybody.

Ms. GARZA. One of my observations have been that many of the abuses in the 8(a) program may not necessarily be from the SBA side. There are weaknesses in the Federal procurement process and those are transferred into the 8(a) program. So many of these so-called abuses—

Senator WARNER. Then the SBA Administrator should have been down here and saying, Congress, we want to tighten this up. Mr. Graham, what is your view?

Mr. GRAHAM. Senator, I think part of the problem is that I have had procurement people in the Government say to me, Jim, why don't you go get an 8(a) company to work with. We like working with the 8(a) program because it is easy, and procurement in the Federal Government has become increasingly difficult for the Government workers that have to handle that. So that is at least part of the reason.

Senator WARNER. All right, that is clear. Mr. O'Donnell.

Mr. O'DONNELL. I think it is fundamentally unreasonable to put race as a prime criteria as to who can do business with a Government organization, and I think it just gets worse following that premise. In contracts in general without 8(a) or any of these other programs there are abuses, but they are compounded by tenfold when you start taking away low bid and quality work as a criteria.

Senator WARNER. All right. Mr. Sims.

Mr. SIMS. On that I agree with my panelist here. I am against race-based and that is why 8(a) was created so that it was not all whites that had a chance to benefit. I think once you had a businessperson come in and head up SBA and begin to ask business questions and begin to reach out to some of us that have been working in the business community you got a better designed program. Still flaws, still some work to be done, but it is headed in the right direction.

Senator WARNER. Let me start with you on a second question and we will go the other way. Is 9 years too long, and should we begin to put some caps in here?

Mr. SIMS. It depends on what happens in the 9-year period. If there is more focus on diversifying the portfolio, if there is a stronger, solid certification program, or a Governmentwide certification program, if there are some teeth put in and greater accountability to measure the growth, then 9 years might be too long.

Senator WARNER. All right, Mr. O'Donnell.

Mr. O'DONNELL. I think 9 years is a little too long; probably 5 to 7. But the main thing is the annual volume. People should not be allowed to get \$200 million a year in 8(a) work. It should be like \$5 million.

Senator WARNER. Caps? You would cut down the number of years and put in some caps.

Mr. O'DONNELL. Regardless of the industry. Small business should be several million dollars a year.

Mr. GRAHAM. Senator, I think the program might take notice of some of the State contracts that are being let today. For instance, the State of Virginia which we hold part of the contract has a requirement for local employee participation in various regions of the State. One of the things I hear from the panel is that we are rewarding individuals and the request is, is that trickling down? If that is the goal of the program, is it getting down to the employees? One way of doing that is where several States in this area have required that certain percentages of the employees be locally employed.

Senator WARNER. All right. Ms. Garza?

Ms. GARZA. Senator, in my experience there are limitations set. I have experienced those—

Senator WARNER. Let us talk about the number of years now. Do you think we could back off nine?

Ms. GARZA. Not necessarily. I think it all depends on the progress of the company, and I think that is why the annual reviews that have been discussed here today are so important. I know that my reviews elicit a lot of comments from the business opportunity specialist that handles my firm.

Senator WARNER. How about caps?

Ms. GARZA. I had started to talk about that before. There are certain size limitations, and I have experienced those. When you hit those limitations you are no longer eligible to bid on those contracts. I know that. Your whole program is designed so that in your annual submissions to the SBA you yourself project how far or how fast you are going to grow. That has to be approved by them and then they hold you to those.

Senator WARNER. I thank you, Mr. Chairman. I thank the panel.

Chairman BOND. Thank you very much, Senator Warner. We appreciate your comments and certainly appreciate your service on this committee. You ask very good questions and we are honored to have senior members of the Senate who are taking an active part in this. I know you have many other responsibilities.

We also are very pleased to have another member who has been active for a long time on this committee and has a great deal of experience in the Defense Department side of the work. I know he has many other hearings going on. We are very pleased that Senator Nunn could join us today.

Senator NUNN. Thank you, Mr. Chairman. I appreciate your having these hearings and I appreciate our witnesses being here. This is a tough problem.

My first question to anyone on the panel—I would make an open invitation—when I read the definition the SBA is now using of what economic disadvantage is, it is anyone whose net worth does not exceed \$250,000. As I read this, that excludes the value of investments that disadvantaged owners have in their concerns and the equity in their primary residence. If I am correct on that, that gets the net worth up to a very high level it seems to me.

Is the economic disadvantage portion of this—forgetting the social part of it for a moment—a proper definition or is it too broad? It seems to me if you forgot the social part of it and just said economic was the criteria that that would include probably 90 percent of most Americans.

Mr. O'DONNELL. One quick thing is the definition of economic includes social. We have been determined to be economically disadvantaged by the 8(a) certification except for the fact that we are not socially disadvantaged. That is the Federal Government's definition of economically disadvantaged, you must first be a socially disadvantaged individual.

But I agree with you, I think your net worth should just be what a bank looks at. What you can do now, if your net worth is \$2 million and you have a \$300,000 house, buy a bigger house and you qualify for the program.

Senator NUNN. What would be the appropriate—again, forgetting the social side for a moment, does anybody what to venture, if this is not the appropriate definition of economic—if it is, I would like to hear someone defend it. If it is not, what would be the appropriate definition of economically disadvantaged in America today?

Mr. GRAHAM. Senator, I will certainly comment on that. I know that by that criteria I would have been judged economically disadvantaged when I started my business. I think there is a tendency to lose touch with what small business is all about. I think the vast majority of people that have the entrepreneurial spirit and go out and start their own companies are economically disadvantaged by

those criteria. I think you would discover that the net worth of the average fellow or young lady that wants to go out and start a company is minute compared to those numbers.

Senator NUNN. It seems to me that if you exclude what people have invested in their business—now I may not be reading this right but that is what they have in a house, it is almost unlimited. I do not get it. I do understand how the economic disadvantage can be this broad because you could have \$1 million invested in your own business. You could have \$5 million invested in your business.

Mr. O'DONNELL. Some of these companies have tens of millions of dollars invested in their businesses and they are still in the program.

Senator NUNN. In that case, economic disadvantage is a meaningless term, is it not, the way it is being applied?

Mr. O'DONNELL. The way it is applied by the Small Business Administration. Last year in testimony, I believe before this committee by Inspector General Hoobler, he suggested that one firm that had been in the program that had received \$440 million in 8(a) contracts, it might be appropriate to review that person's economic disadvantage. Another individual in Virginia who had withdrawn \$6 million from his firm over a two-year period, the inspector general suggested that it might be appropriate to review his economic disadvantage also.

Senator NUNN. The whole debate has been focused on race so far, but it seems to me that the question of economics is just as important here if we are going to make some sense out of this program.

Mr. Sims.

Mr. SIMS. I also think, though, that there are some considerations that have to be given, given the kind of business someone is going into. If I am a businessperson and I am competing with a large, well-financed competitor, the fact that I have some money in the bank should not be an embarrassment to me. Now I do not know if we need to look at and tighten up the economic disadvantaged criteria. But certainly, I do not think having a few dollars in the bank or being able to have a nice home precludes you or should preclude you from being considered eligible or provided an opportunity to compete in this arena.

Senator NUNN. I remember when we made social and economic, and I can assure you that the intent back then was not to have this broad a definition, not by at least a number of people who were involved in this. Ms. Garza.

Ms. GARZA. Senator, when I went into the 8(a) program I did not even realize what the definition for economically disadvantaged was. But let me tell you my background. My parents were migrant workers. I had to struggle and fight to get into the Aurora Police Department when I finally was hired through the Affirmative Action Program. I am a single parent to two sons, and I took my pension, sold my house, took whatever little savings I had and I started this business. I was not worth \$55,000 when I started this business and I probably am not even worth that now because everything that I make goes back into my firm. I think that the majority of the 8(a) firms participating in this program are in the same position that I am in.

Senator NUNN. I think that falls within the intent of the economic disadvantage. What I am concerned about though is somebody that may have \$250,000, \$500,000, \$1 million in their own business net equity and also a house worth \$500,000 to \$1 million. They are in the upper bracket of American people by far. They are way above the average level of net worth in this country.

Ms. GARZA. Senator, I feel that the enforcement—

Senator NUNN. I think that is way too far. That is going way too far, forgetting the race part all together for the purpose of this question. I do not think that is the intent of this program. Excuse me.

Ms. GARZA. I agree with it, it is not. I think the enforcement section if indeed—because I know that when this program was started the enforcement was not part of SBA's mandate. But if the enforcement section needs to be reviewed and revised and reassessed, then perhaps that is one of the alternatives that we have.

Mr. O'DONNELL. There is no opportunity to challenge the economic status of a firm that is certified as 8(a). In the Department of Transportation's DBE program which is before the Supreme Court right now, I went to the hearing and I sat there and listened to the Solicitor General tell the Justices about all the checks and balances in that program; how DBEs could be challenged.

Well, I challenged the economic status of eight individuals in 1989. That challenge has yet to be resolved. It is laying at the office of the Secretary of Transportation along with three other issues I have laying up there for several years. These are unreasonable programs administered by unreasonable people.

Chairman BOND. Thank you very much, Mr. O'Donnell. My sincere thanks to the panel for giving us a lovely and lively and exciting discussion. We do invite followup comments and questions from the panel. We will keep the record open for other members of the committee who read the record and have questions to submit the questions.

As I have indicated previously, those who are here as members of the audience who have written comments who wish to provide their views on what has been said here today, your comments and criticisms will be most welcome. My sincere thanks to panel number three.

We will now turn to panel number four: Mr. Joshua Smith, former chairman, U.S. Commission on Minority Business Development, and chairman and chief executive officer of MAXIMA Corp. of Lanham, MD; Mrs. Nancy Archuleta, counsel on the Council on Minority and Women-Owned Businesses, chairman of the Latin American Management Association, and chairman and chief executive officer of Mevatec Corp., Huntsville, AL; Mr. Fernando Galaviz, vice chairman, the National Federation of 8(a) Companies in Arlington, VA; and Mr. Pete Homer, Jr., cofounder and member of the National Indian Business Association and director, strategic business development for Systems Integration & Research of Arlington, VA.

Mr. Smith.

STATEMENT OF JOSHUA I. SMITH, FORMER CHAIRMAN, U.S. COMMISSION ON MINORITY BUSINESS DEVELOPMENT, AND CHAIRMAN AND CHIEF EXECUTIVE OFFICER, MAXIMA CORP., LANHAM, MARYLAND

Mr. SMITH. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you. My name is Joshua Smith, I am chairman and chief executive officer of the MAXIMA Corp. I have had this opportunity to appear on two previous occasions before this committee as chairman of the U.S. Commission on Minority Business so I appreciate what you are doing here.

Let me get right to the heart of the matter because I think the previous discussion is very enlightening and it reflects some of my views from three years of having chaired the Commission, and we were in 42 States, 100 cities, 500 witnesses and actually appeared before a quarter of a million people, so we have some ideas. And by the way, many of the recommendations of SBA were first recommended by the Commission so we feel we have contributed.

I think the heart of this discussion, particularly the last panel is, how do you measure success? What is a success in the 8(a) program? Is it a company that continues to survive in post-8(a)? Is it a company that achieves success as a profitable enterprise? Is it a company that properly follows the myriad of rules and regulations while in the 8(a) program? Is it a company that provides jobs for minorities and disadvantaged persons and unemployed persons? Is it a company that locates its business in the plush suburbs of industrial parks or one based in the hood—the neighborhood, excuse me.

Is it a company that is able to obtain capital via equity or debt to meet its needs? Is it a company that performs well and is able to successfully sell its business? Is it a company that is able to attract members for its board of directors to help guide it? What is a success?

I think the heart of the discussion in the last panel and what we encountered is germane to this whole discussion. What is economic success? What is social success?

The truth is, we do not know what a success is, so how can we evaluate it? Can we offer experience? I think we can offer opinions, we can express views, we can debate it. But until we have some standards, until we have some measures, it is impossible to determine whether the program has or has not been successful.

We were in the 8(a) program, MAXIMA Corp., for 6 out of 17 years. The 6 years in the program were both great, and to some extent, horrible. But the main thing is that we got an experience, but we also felt tied to a rubber band because we never really got outside the rules and regulations.

I think that the single most important problem the 8(a) program faces and that you face as this committee, and minority business programs in general, have to do with socioeconomic programs. But in reality, socioeconomic programs are neither social nor economic. Therefore, the measures of success are totally lacking.

We have encountered some interesting nomenclature. For example, referring to a firm as a disadvantaged business. That sounds innocent enough until you go to your loan officer out in Podunk who does not understand what the Federal rules are and you are

trying for a loan as a disadvantaged business and this loan officer is trying to perform successful loans that increase his or her performance, and therefore, can grow up through the chain. You do not tell your boss in a loan portfolio that we should back a disadvantaged business because banks are in business to make money from the success of its clients.

Disadvantaged is a negative, if not lethal, term. In a socio-economic context that sounds innocent. In a business context, it is not. So we came up with the term historically underutilized business so we could be constructive and positive in terms of how we present ourselves to the outside world.

We look at set-asides and we have a different measure for 8(a) set-asides. But set-asides in truth are as old as the Federal procurement system. As a matter of fact, set-asides is the way the Federal procurement system achieves its goals. What about labor surplus set-asides? What about tobacco subsidies? What about farm subsidies? What about the United States acting in terms of national need, whether it is war, whether it is emergency? What about the tens of billions of dollars that go to universities for research time and time again and they are completely dependent? What about the small business set-asides?

The problem with the 8(a) is it is a hybrid system. It is neither fish nor fowl, so we do not know really what to do with it. We can discuss it. We can get angry. We can get happy. But we have not achieved a measure, and until we do we will not be able to resolve this issue.

I have some recommendations I would like to quickly present. One is, create successful business programs with specific social benefits and mandates. In other words, what about a company providing a return on investment to this country in areas where there is a need, such as employment in certain depressed areas? So a company that creates jobs and hires minorities and others should have some kind of benefit. A job still is the greatest social program that ever existed.

What about a company that locates its business in that neighborhood? That is adding value to this country. What about those that participate as mentors and role models to other companies and to other individuals? That is adding value to the country. What about economic development designated in areas for neighborhood revitalization?

So there are ways that we can target performance, entrance, and even evaluation through the social benefits side. But as long as it is socioeconomic, it is difficult, if not impossible, to have a success.

No. 2, I believe we need to have one agency that would administer the program. We recommended that it be put in Commerce, but to be honest with you, that is a question mark because we are not sure where Commerce is on that issue. But it should be in one agency and Commerce appears to be the likely one.

We need to manage the program with business people employing business principles and business knowledge. We found time and time again, the people who were administering, who were advising, and who were offering assistance to 8(a) companies did not know business. Therefore, when you rely on someone who is not business

savvy for life and death information and you have got to meet a payroll, that is a very critical issue.

We have got to establish value added requirements, particularly from participating firms, and we have got to establish measures that exist in the financial and business community. For example, profitability, the niche and services, and value of services, ability to raise capital, no penalty for selling. That is actually a success. And ownership and control through a board of directors.

So these are just a few of the things that emanate from what we found out to be the problem. The problem is, we do not know what we have. We have not made any progress. We have great intentions but we have zero measures. And if you have zero measures, you have no ability to evaluate.

Thank you.

[The prepared statement and attachment of Mr. Smith follow:]

STATEMENT OF JOSHUA I. SMITH
FOUNDER, CHAIRMAN AND CHIEF EXECUTIVE OFFICER
THE MAXIMA CORPORATION

GOOD MORNING CHAIRMAN BOND AND MEMBERS OF THE COMMITTEE, I WOULD LIKE TO BEGIN MY TESTIMONY THIS MORNING BY SUGGESTING THAT WHILE THERE ARE MANY LEVELS OF REVIEW CURRENTLY UNDERWAY IN AN ATTEMPT TO ASSESS ALL TYPES OF AFFIRMATIVE ACTION PROGRAMS, IT IS MY HOPE THAT THE REVIEWERS NOT LOSE SIGHT OF THE FACT THAT THE TOTAL REMOVAL OF ANY ECONOMIC DEVELOPMENT PROGRAM WHICH BENEFITS MINORITY COMMUNITIES WILL LEAVE A VOID IN THOSE COMMUNITIES. WE MUST UNDERSTAND THAT MINORITY BUSINESSES ARE VITAL TO THE AMERICAN ECONOMY BECAUSE MINORITY BUSINESS PEOPLE LOCATE THEIR BUSINESSES WITHIN THEIR NEIGHBORHOODS, REVITALIZE COMMUNITIES, CREATE JOBS AND TRAIN OTHER MINORITIES, AND SERVE AS ROLE MODELS. THE PROPER UTILIZATION OF THIS SEGMENT OF THE U.S. ECONOMY WILL CREATE A SITUATION WHERE ECONOMIC SOLUTIONS CAN ADDRESS SOCIAL NEEDS. I AM A FIRM BELIEVER THAT CIVIL RIGHTS WITHOUT ECONOMIC STRENGTH IS A BORROWED EVENT. IT CAN BE TAKEN AWAY AT ANY TIME, BECAUSE YOU DON'T OWN IT.

AS AN ENTREPRENEUR AND A REPUBLICAN, I AM CERTAINLY IN FAVOR OF REDUCING GOVERNMENT BUREAUCRACY AND RED TAPE; HOWEVER, YOU DO NOT THROW THE BABY OUT WITH THE BATH WATER WHEN ALL IT MAY NEED IS A CHANGE OF ITS DIAPER.

I HAVE BEEN ASKED TO COMMENT ON THE U.S. SMALL BUSINESS ADMINISTRATION'S 8(A) PROGRAM, IN WHICH MY FIRM, THE MAXIMA CORPORATION, PARTICIPATED FOR ABOUT FIVE YEARS. MAXIMA'S EXPERIENCE IN THE PROGRAM WAS OVERALL BENEFICIAL, ALTHOUGH NOT IDEAL, AND WE ARE HONORED TO BE RECOGNIZED AS A "SUCCESSFUL" GRADUATE OF THE PROGRAM. WE LEARNED MUCH FROM THE 8(A) PROGRAM, AND WE BELIEVE THAT THE PROGRAM LEARNED MUCH FROM US. LADIES AND GENTLEMEN,

BELIEVE ME WHEN I SAY THAT ANY FIRM WHICH SURVIVES THE RIGORS OF PARTICIPATING IN THE 8(A) PROGRAM AND REMAINS IN BUSINESS FOR A SIGNIFICANT PERIOD AFTERWARDS DOES SO IN SPITE OF THE PROGRAM, AND NOT BECAUSE OF IT.

AS I HAVE STATED BEFORE, THE 8(A) PROGRAM NEEDS STRUCTURAL CHANGES TO MAKE IT STRONGER. EVEN THOUGH THE PROGRAM NOW ACCOUNTS FOR OVER 40 PERCENT OF ALL PROCUREMENT DOLLARS RECEIVED BY SMALL MINORITY FIRMS, WHICH REPRESENTS WELL IN EXCESS OF \$4 BILLION, IT ONLY REPRESENTS A LITTLE MORE THAN 5,000 FIRMS OUT OF THE TOTAL 1,200,000 MINORITY-OWNED FIRMS IN THE UNITED STATES.

I HAVE APPEARED BEFORE THIS AUGUST BODY ON TWO PREVIOUS OCCASIONS TO DISCUSS THE 8(A) PROGRAM AS THE CHAIRMAN OF THE U.S. COMMISSION ON MINORITY BUSINESS DEVELOPMENT. THE COMMISSION, ESTABLISHED UNDER PUBLIC LAW 100-656 WAS ESTABLISHED DURING THE PRESIDENCY OF RONALD REAGAN, AND FULFILLED ITS MANDATE UNDER THE AEGIS OF ANOTHER REPUBLICAN PRESIDENT, GEORGE BUSH. IT WAS MANDATED TO OFFER TO THE PRESIDENT AND THE CONGRESS WAYS TO IMPROVE THE 8(A) PROGRAM. THOSE RECOMMENDATIONS WERE BASED UPON TESTIMONY RECEIVED BY THE COMMISSION AT ITS 18 HEARINGS AND TOWN MEETINGS. (A COPY OF THE RECOMMENDATIONS SPECIFIC TO THE SBA IS ATTACHED TO THIS TESTIMONY.) I AM CERTAIN THAT CHAIRMAN BOND AND MANY OF YOU ARE FAMILIAR WITH THE COMMISSION'S FINAL REPORT. FOR THOSE OF YOU WHO ARE NOT, THE REPORT REPRESENTED THE CULMINATION OF OUR ACTIVITIES WHICH COVERED 42 STATES AND 100 CITIES, FROM ANCHORAGE, ALASKA TO MIAMI, FROM BOSTON TO LOS ANGELES, AND FROM TALEQUAH, OKLAHOMA TO KANSAS CITY - WE GATHERED TESTIMONY FROM

OVER 500 WITNESSES AND APPEARED BEFORE AUDIENCES TOTALLING OVER 250,000 PEOPLE.

THE MEMBERS OF THE COMMISSION ARE PROUD OF THE WORK WE COMPLETED, AND OUR FINAL REPORT WAS HERALDED BY SOME AS THE MOST COMPREHENSIVE EFFORT OF ITS TYPE EVER UNDERTAKEN IN SUPPORT OF MINORITY BUSINESS DEVELOPMENT.

I SUBMIT TO YOU THAT I HAVE HAD MANY DISCUSSIONS WITH BOTH THE FORMER SBA ADMINISTRATOR (ERSKINE BOWLES) AND THE PRESENT ASSOCIATE ADMINISTRATOR OF THE SBA (CASSANDRA PULLEY) REGARDING THE RECOMMENDATIONS MADE IN THE FINAL REPORT. I AM PLEASED TO SAY THAT ALTHOUGH THE MAJORITY OF THE COMMISSION'S RECOMMENDATIONS WERE INITIALLY VIEWED WITH SKEPTICISM BY THE SBA, EVENTUALLY THOSE RECOMMENDATIONS WERE ACCEPTED BY THE AGENCY. CURRENTLY, MANY ARE TAKING THE FORM OF PROPOSED LEGISLATION OR HAVE ALREADY BEEN ENACTED AS POLICY OR REGULATORY CHANGES.

AS A GRADUATE OF THE 8(A) PROGRAM, MY FIRM, MAXIMA, IS VIEWED AS A SUCCESSFUL EXAMPLE OF A FEDERAL PROGRAM WHICH HAS BEEN MUCH MALIGNED FROM BOTH WITHIN AND WITHOUT. 8(A) IS VIEWED AS EVERYTHING FROM A "GIVE-AWAY" PROGRAM TO ONE WHICH SERVES NO OTHER PURPOSE THAN TO CREATE A FEW MINORITY MILLIONAIRES AT THE TAX PAYER'S EXPENSE. THE TRUTH OF THE MATTER IS THAT THE 8(A) PROGRAM DOES PROVIDE ACCESS TO BUSINESS OPPORTUNITIES WITH THE FEDERAL GOVERNMENT, BUT IT DOES NOT FULFILL ITS MISSION OF CREATING MINORITY BUSINESSES WHICH ARE ECONOMICALLY VIABLE IN THE OPENLY COMPETITIVE ARENA .

ONE OF THE MAJOR REASONS IT FAILS TO FULFILL ITS MISSION IS BECAUSE IT WAS DESIGNED AS A SOCIOECONOMIC PROGRAM, BUT IT IS NEITHER SOCIAL NOR ECONOMIC. IN TERMS OF AN ECONOMIC PROGRAM, HOW CAN THE PROGRAM BE AN ECONOMIC ONE IF THERE ARE NO MEASURES OF SUCCESS. WITHOUT MEASURES OF SUCCESS IT IS IMPOSSIBLE TO DETERMINE WHETHER A FIRM HAS SUCCEEDED OR NOT.

FOR EXAMPLE, 8(A) PARTICIPANTS ARE NOT MEASURED BY NORMAL BUSINESS STANDARDS. LET US BEGIN BY ADDRESSING THE INITIAL ISSUE OF NOMENCLATURE - A MAJOR PROBLEM WHEN DEALING WITH FIRMS WHICH ARE OWNED BY A MINORITY PERSON, BECAUSE FEDERAL PROGRAMS INSIST THAT YOU REFER TO YOUR BUSINESS AS DISADVANTAGED, WHICH IS A LETHAL TERM IN THE BUSINESS WORLD WHEN IT COMES TO EQUITY OR INVESTMENT. I CONTEND THAT AN INDIVIDUAL MAY BE DISADVANTAGED, BUT A BUSINESS SHOULD NOT CALL ITSELF DISADVANTAGED UNLESS IT TRULY IS. MY EXAMPLES OF DISADVANTAGED BUSINESSES ARE EASTERN AIRLINES, AND DREXEL BURNHAM -- THESE FIRMS ARE OUT OF BUSINESS AND ARE TRULY DISADVANTAGED.

NORMALLY, A FIRM IS JUDGED TO BE SUCCESSFUL BY ITS PROFITABILITY OR LACK OF SAME. HOWEVER, IT IS NOT A REQUIREMENT FOR AN 8(A) FIRM TO BE PROFITABLE. THE PARTICIPANTS ARE MEASURED BY REVENUES, BY SALES VOLUME, BY NUMBER OF EMPLOYEES. BUT, THE SBA DOES NOT MEASURE THE GOVERNMENT'S RETURN ON ITS INVESTMENT, SO HOW CAN PROFITABILITY OR VALUE TO STAKEHOLDERS BE DETERMINED, AND THEREBY THE SUCCESS OF THE FIRM?

FURTHER, THE 8(A) FIRM IS SUBJECTED TO DIFFERENT STANDARDS REGARDING CONTROL THAN FIRMS IN THE GREATER FINANCIAL WORLD. FOR

EXAMPLE, AN 8(A) FIRM'S BOARD OF DIRECTORS MUST CONTAIN THE PROPER NUMBER OF SOCIO-ECONOMICALLY DISADVANTAGED MEMBERS IN ORDER TO CONTINUE TO QUALIFY FOR THE PROGRAM. WHEN ASSESSING AN 8(A) FIRMS OWNERSHIP AND CONTROL, THE SBA INSISTS THAT THE MEMBERS OF THAT FIRM'S BOARD OF DIRECTORS, WHO COLLECTIVELY REPRESENT THE TOTAL NUMBER OF VOTING SHARES FOR EXECUTIVE DECISION MAKING PURPOSES, MUST ALSO BE SOCIO-ECONOMICALLY DISADVANTAGED THEMSELVES OR IT IS POSSIBLE FOR NON-DISADVANTAGED INDIVIDUALS TO CONTROL A FIRM. THIS IS NOTWITHSTANDING THE FACT THAT THE PRINCIPAL OWNER OF AN 8(A) FIRM MUST CONTROL 51% OF THE STOCK FOR THAT FIRM TO CONTINUE TO QUALIFY. IN THE FINANCIAL WORLD, WHOEVER OWNS THE MAJORITY OF THE FIRM'S STOCK CONTROLS THE CORPORATION, IT DOES NOT MATTER THE SOCIAL OR ECONOMIC STATUS OF OTHER MEMBERS OF THE BOARD.

IN THE REGULAR BUSINESS WORLD, IF AN ENTREPRENEUR DECIDES TO SELL HIS OR HER FIRM, IT IS RULED A SUCCESSFUL TRANSACTION. IF AN 8(A) FIRM DECIDES TO SELL, IT CAUSES GREAT PAIN TO SBA.

THERE IS NO MISTAKING THAT WE STILL NEED A FEDERAL PROCUREMENT PROGRAM LIKE THE 8(A) PROGRAM. ALTHOUGH IT IS CERTAINLY IMPERFECT, WITH THE PROPER RESTRUCTURING AND FOCUS, IT COULD RETURN TO ITS INITIAL MISSION OF PROMOTING ENTREPRENEURSHIP BY PROVIDING OR FACILITATING ACCESS TO CAPITAL BY THOSE FIRMS IN TARGETED AREAS OF THE ECONOMY MOST IN NEED OF STIMULATION TO EITHER AVOID ECONOMIC CONCENTRATION OR TO PROMOTE OTHER LEGITIMATE POLICY GOALS NECESSARY TO MAINTAIN AND STRENGTHEN THE OVERALL ECONOMY OF THE NATION.

IN CLOSING, I WOULD LIKE TO SUGGEST THAT THE COMMITTEE CONSIDER THE FOLLOWING IN ITS DELIBERATIONS REGARDING MINORITY BUSINESS DEVELOPMENT PROGRAMS. THESE CRITERIA WERE DETERMINED BY THE TESTIMONY RECEIVED FROM THE BUSINESS COMMUNITY DURING THE DELIBERATIONS OF THE COMMISSION ON MINORITY BUSINESS DEVELOPMENT. THE SUCCESS OF MINORITY BUSINESS PROGRAMS SHOULD BE MEASURED BY THE DEGREE TO WHICH THE SPECIFIC PROGRAM HAS OR WILL:

- 1 *CONTRIBUTE TO THE EXPANSION OF ECONOMIC GROWTH AND INDUSTRIAL CAPABILITY, WHILE PROVIDING THE CONCOMITANT BENEFITS OF INCREASING JOBS AND THE AVAILABLE TAX BASE;*
- 2 *INCREASE THE MARKET SHARE FOR MINORITY OWNED BUSINESS, MEASURED IN TERMS OF A PERCENT OF TOTAL GROSS RECEIPTS IN THAT MARKET, BY SHIFTING CONTROL OVER, OR INCREASING ACCESS TO, THE FACTORS OF PRODUCTION;*
- 3 *MOVE MINORITY OWNED BUSINESSES INTO BUSINESS AREAS WHERE THEY HAVE BEEN HISTORICALLY UNDERUTILIZED OR THAT PRESENT PARTICULARLY DIFFICULT ENTRANCE BARRIERS;*
- 4 *DEMONSTRATE SOME INDICATION THAT THE ASSISTANCE PROVIDED CAN PRODUCE, WITHIN A REASONABLE PERIOD OF TIME, SELF-SUSTAINING MINORITY OWNED BUSINESS FIRMS, CAPABLE OF REMAINING IN BUSINESS WITHOUT THE CONTINUOUS NEED FOR REMEDIAL ASSISTANCE;*
- 5 *NOT HAVE A SUBSTANTIAL NEGATIVE IMPACT ON NON-MINORITY-OWNED SMALL BUSINESS;*
- 6 *ATTRACT SOME RESOURCES FROM THE PRIVATE SECTOR AND/OR STATE OR LOCAL GOVERNMENTS; AND*
- 7 *PRODUCE A REASONABLE COST-TO-BENEFITS RATIO AS COMPARED TO OTHER AVAILABLE ALTERNATIVES."*

ABOVE ALL, WHAT IS CERTAINLY NEEDED IS A CENTRALIZED FOCAL POINT WITHIN THE FEDERAL GOVERNMENT FOR THE DEVELOPMENT AND COORDINATION OF ALL MINORITY BUSINESS DEVELOPMENT PROGRAMS --WITH THE PROVISION THAT THOSE PERSONNEL RESPONSIBLE FOR MANAGING IT ARE FULLY QUALIFIED AND EDUCATED IN THE PRINCIPALS OF BUSINESS . THIS, ABOVE ALL ELSE IS WHAT IS TRULY IMPORTANT TO THE EFFECTIVE FUNCTIONING OF ANY GOVERNMENT PROGRAM, AND WHAT HAS BEEN SORELY LACKING IN THE REPERTOIRE OF MANY INDIVIDUALS ASSIGNED TO ASSIST MINORITIES IN BUSINESS.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE TODAY, AND WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

ATTACHMENT

Final Report - CMBD
Recommendations - Structural Changes to the 8(a) Program

The Commission recommends:

The elimination of the traditional 8(a) contract agreement and that agencies be given the authority to contract directly with 8(a) certified firms, thereby terminating the role of SBA as a conduit, or surrogate prime contractor to the buying agency.

That most authorities stated in the Small Business Act regarding the 8(a) Program be removed from the SBA and vested in another, new administration, created by statute within the Department of Commerce, that will have the development of historically UNDERUTILIZED businesses as its sole mission.

That the new administration within the Department of Commerce be called the Administration for the Development of Historically UNDERUTILIZED Businesses, headed by an Undersecretary, who reports directly to the Secretary and is subject to confirmation by the Senate. This new agency should be the recipient of the transfer of all authority under Sections 8(a) (contract support); 7(j)(management assistance); and 7(a) (20) (direct and guaranteed loans for 8(a) concerns.)

That a management information system be established by the proposed Administration for the Development of UNDERUTILIZED Businesses that makes information on Federal contracts available nationwide. (The system should conform to seven specific requirements explained in the Final Report.)

That measures of economic disadvantage be "industry specific." Therefore, determination of whether a business is disadvantaged will take into account the capital, asset base, and sales figures needed to become competitive in that particular business area.

That the proposed Administration for the Development of Historically UNDERUTILIZED Businesses direct more of its concern on potential abuses and less on artificially derived maximum net worth.

That 8(a) contracts be selected for competition regardless of the dollar amount of the contract and that competitions be limited to firms in the last three (3) years of the program.

That 8(a) program participation terms be approved on the basis of four-digit SIC codes. Terms should vary from as low as seven years to a maximum of 14 years, depending upon

the industry in which the firm is engaged.

The creation of an automated centralized vendor certification process that designates qualifying firms as HUBs. Various SBA offices that certify firms for the 8(a) program should be given this added responsibility along with adequate resources to accomplish this mission. (The Centralized Certification System should comply with six specific criteria, which are spelled out in the Final Report.)

That each SBA district office be allocated a share of loan authority that can be reserved for small business deemed to be a "local priority." (Instead of the central office in Washington, D.C. making all final decisions about loans.)

That Congress and the Administration redirect the SBA Business Loan Programs to achieve their original purposes. (Protect the interests of small business concerns to ensure that a fair proportion of Government's total purchases go to small businesses.)

That the Division of Program Certification and Eligibility remain as the only organizational element within SBA related specifically to the 8(a) Program.

That the job of processing 8(a) applications be taken away from SBA Central Office and decentralized. (Processing should take place at the organizational level closest to the place of business of the applicant.) If any SBA personnel are displaced by this reorganization, they should be assigned to other offices to assist with the processing of applications at that level (district or regional.)

That the selection of eligible firms be limited to small businesses attempting to enter, maintain, or expand a presence in economically concentrated industries.

That business plan review and approval become an integral part of the 8(a) process.

Chairman BOND. Thank you very much, Mr. Smith. Thank you for sharing your experiences with us. As I said, we will try to cover more of these things in questions and would invite further comments from the panelists. But unfortunately we are running up against a time deadline so we need to move right along.

Mrs. Archuleta.

STATEMENT OF NANCY E. ARCHULETA, COUNSEL, COUNCIL OF MINORITY AND WOMEN OWNED BUSINESSES, CHAIRMAN, LATIN AMERICAN MANAGEMENT ASSOCIATION, AND CHAIRMAN AND CHIEF EXECUTIVE OFFICER, MEVATEC CORP., HUNTSVILLE, ALABAMA

Ms. ARCHULETA. Thank you, sir. It is good to see you again. The Council of Minority and Women Owned Businesses—I will refer to it as the Council from here on out—is pleased to submit this written statement regarding the Small Business Administration's 8(a) Minority Small Business Program.

Chairman BOND. That will be accepted and we thank you.

Ms. ARCHULETA. The Council is comprised of 16 trade associations. The Council was formed in early 1993 in order for the trade associations representing minority businesses from across the country to share their collective knowledge and to present a unified position for streamlining the SBA's 8(a) program, and for increasing minority business participation in the Federal sector. We are proud of the progress made by the Council in developing a unified position, of our efforts to present this position to Congress, and to the SBA.

Changes in the section 8(a) program and the Federal procurement process are urgently needed and we are encouraged by today's hearings. I will add, however, that the Council is extremely concerned that these hearings still relate to the 20 percent of the Federal procurement effort. We are pitted small business against 8(a) company, and we are still very concerned that perhaps a bigger answer to this whole thing is that there should be more of a total Federal procurement dollar to all small businesses, therefore eliminating the need for us to fight between 24 percent to a mere 2.7 percent of the dollars that 8(a) companies get. I would like that to be noted.

Chairman BOND. We will note that.

Ms. ARCHULETA. The Small Business Acts and small disadvantaged business goal in section 8(d) presumption were designed by Congress to eliminate the present effects of past discrimination and to foster the development of businesses owned by socially and economically disadvantaged individuals.

However, the term "socially disadvantaged individuals" does not exclude any individual from qualifying. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. To use the old cliché, a white male from Appalachia could qualify depending on the area where those cultural biases may have existed.

The term "economically disadvantaged individuals" is defined as follows, economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free en-

terprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

These purposes have not been fulfilled. Quoting from Senator Robert Dole's remarks to the Congress on March 15, 1995, "Unfortunately, America is not the color-blind society we would all like it to be. Discrimination continues to be an undeniable part of American life." He also stated that, "Discrimination is illegal. Those who discriminate ought to be punished, and those individual victims of illegal discrimination have every right to receive the remedial relief they deserve."

Further, in a study that cost over \$1 million, the State of Texas disparity study, it was found that widespread marketplace discrimination against women and minorities, particularly African-Americans and Hispanics, does exist. The question of presumption, that members of certain racial and ethnic groups are socially disadvantaged, is not whether the Federal Government should make the presumption but that the Federal Government should recognize that the presumption exists. As an example, in the aforementioned study it was found that historically underutilized businesses received a smaller share of State procurement between fiscal year 1989 and fiscal year 1993 than would be expected given their availability to do business in the State.

Based on consistent survey findings across race, sex, and industry groups from survey and anecdotal evidence there is anecdotal evidence of discrimination that makes it harder for businesses owned by minorities and women to prosper. That disparity study was made a part of my testimony by the way.

Certainly there are ways to expand opportunity for all Americans and we believe that FASA has become to address exactly that. However, the Council does not believe that past and current discrimination have been overlooked and that some form or preference is still needed. Therefore, we proposed that legislation be introduced providing a comprehensive method for streamlining the 8(a) program and creating additional opportunities for small and minority-owned business.

Key elements of such legislation should consider the following recommendation: removal of unnecessary regulatory provisions and reduction in paperwork including the removal of the limitations on SIC codes. The elimination of SBA's policy of using business support levels as a basis for denying 8(a) contracts. The removal of the restriction of marketing national and local buy contracts. That would certainly address the concentration issue.

The removal of SBA as a party in the section 8(a) contracting process. The reduction in the reporting requirements for 8(a) firms. Elimination of levels of review for 8(a) applications.

We strongly recommend an implementation of prime contractor 8(a) programs. Increasing the Governmentwide small business goal from 20 percent to 40 percent, and the SDB goal from 5 percent to 10 percent; SDB here used to include women. Streamlining the acquisition process. I have entered some very, very definite remarks in that area there, sir.

Thank you very much.

[The prepared statement of Ms. Archuleta follows:]

WRITTEN STATEMENT OF
THE COUNCIL OF MINORITY AND WOMEN OWNED BUSINESSES

PRESENTED BY
NANCY E. ARCHULETA
CHAIRMAN AND CHIEF EXECUTIVE OFFICER, MEVATEC Corporation
CHAIRMAN, LATIN AMERICAN MANAGEMENT ASSOCIATION

The Council of Minority and Women Owned Businesses (Council) is pleased to submit this written statement regarding the Small Business Administration's 8(a) Minority Small Business Program.

The Council is comprised of sixteen trade associations, including the Asian-American Business Roundtable, Black Presidents Roundtable Association, Greater Los Angeles African American Chamber of Commerce, Institute for the National Business Council, Inc., Laguna Pueblo Indian Reservation, Latin American Management Association, Latin Business Association of Los Angeles, Minority Business Association of Northern Virginia, Minority Business Enterprise Legal Defense and Education Fund, National Association of Minority Businesses, Native American Businesses, National Indian Business Association, New Mexico 8(a) Association, Region X 8(a) Association, San Antonio 8(a) Association, and the United States Hispanic Chamber of Commerce.

The Council was formed in early 1993 in order for the trade associations representing minority businesses to share their collective knowledge and to present a unified position for streamlining the Small Business Administration's Section 8(a) Program and for increasing minority business participation in the Federal sector. We are proud of the progress made by the Council in developing a unified position of our efforts to present this position to the Congress and the SBA. Changes in the Section 8(a) program and the Federal procurement process are urgently needed and we are encouraged by today's hearings.

The Small Business Act's small and disadvantaged business goal and the section 8(d) "presumption" were designed by Congress to eliminate the present effects of past discrimination and to foster the development of businesses owned by socially and economically disadvantaged individuals. However, the term "socially disadvantaged individuals" does not exclude any individuals from qualifying:

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

The term "economically disadvantaged individuals" is defined as follows: Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

These purposes have not been fulfilled. Quoting from Senator Robert Dole's remarks to the Congress on 15 March 1995,

"Unfortunately, America is not the color-blind society we would all like it to be. Discrimination continues to be an undeniable part of American life." He also stated that, "Discrimination is illegal. Those who discriminate ought to be punished. And those individual victims of illegal discrimination have every right to receive the remedial relief they deserve."

Further, in a study that cost over a million dollars, State of Texas Disparity Study, it was found that widespread marketplace discrimination against minorities and women, particularly African Americans and Hispanics does exist.

The question of presumption that members of certain racial and ethnic groups are socially disadvantaged is not whether the federal government should make the presumption, but that the federal government should recognize that the presumption exists. As an example, in the aforementioned study it was found that

"*HUBs received a smaller share of State procurements between FY 89 and FY93 than would be expected given their availability to do business in the State.

*Minorities and women earned far less from their businesses in 1990 than would be expected given their qualifications. Moreover, minorities are less likely to own or operate a business than non-minorities with similar qualifications in 1990.

Generally, each of these statistical analyses showed that businesses owned by African Americans and Hispanics fared the worst, that businesses owned by white women fared the best (although still worse than white men), and, in most cases, that businesses owned by Asians and Native Americans fell between these two extremes.

Based on consistent survey findings across race, sex and industry groups from survey and anecdotal evidence, there is anecdotal evidence of discrimination that makes it harder for businesses owned by minorities and women to prosper."

Certainly there are ways to expand opportunity for all Americans and we believe that FASA has begun to address exactly that. However, the Council does not believe that past and current discrimination can be overlooked and that some form of preference is still needed.

Therefore, we propose that legislation be introduced providing a comprehensive method for streamlining the Section 8(a) program and creating additional opportunities for small and minority-owned businesses. Key elements of such legislation should consider the following recommendations.

A. REMOVAL OF UNNECESSARY REGULATORY PROVISIONS AND REDUCTION IN PAPERWORK

There currently exist artificial restrictions on a Section(a) firm's ability to do business and a need exists to eliminate unnecessary paperwork requirements associated with the program. We strongly support enactment of the following proposals:

1. The removal of the limitations on SIC codes.

Currently, a firm is not permitted to seek Section 8(a) contracting opportunities as designated under a particular SIC code, unless SBA has pre-approved that firm for that business. For example, if an 8(a) firm wishes to add an additional line of business, it must submit a written request to the SBA in the form of an application, demonstrating that the firm has the capacity and capabilities to perform under the requested SIC codes and that the SIC codes are a logical business progression for the firm. The required documentation in support of such a request includes resumes, copies of contracts, and other burdensome and redundant evidence.

Eliminating this process removes the unduly burdensome regulatory requirement of submitting extensive paperwork to the SBA by allowing the 8(a) firm itself to select, within reason, the SIC codes under which it is capable of performing. This should also bring the Section 8(a) program in line with Federal contracting realities by allowing contracting officers to determine whether, in fact, a prospective 8(a) awardee is capable of performing under the SIC code designated for the procurement. At the same time, the SBA should maintain its authority to challenge a contracting officer's decision not to set aside a particular requirement for a firm. If the participant meets the size criteria for that SIC code, then the participant can bid on that procurement. Currently, the participant must request and justify in writing a SIC code addition to its portfolio, and the SBA must review approve/reject the participant under each SIC code. The SBA, however, is largely comprised of "business-type" personnel who are probably not technically qualified to determine if a particular participant has the technical capability and resources under each and every SIC code it applies for. In addition, the government may need to consider an additional "Certification & Representation" for the participant which states the participant meets the relevant SIC code criteria for the particular procurement. Currently, there is no such certification.

2. The elimination of SBA's policy of using business support levels as a basis for denying 8(a) contracts.

The concept of using program "support levels" as a ceiling on 8(a) revenues was created by the SBA and not mandated by Congress in Public Law 100-646. Currently, the SBA annually establishes an 8(a) support level for each firm which, generally, the firm may not exceed. Under current regulations, even contracts which have been self-marked for which an 8(a) firm

has been selected after an 8(a) competition may be disapproved for that firm if award is inconsistent with the firm's approved 8(a) support level. The current regulatory requirement unnecessarily limit a Section 8(a) firm's ability to obtain 8(a) contracts and to grow in the marketplace by placing artificial restrictions on the firm based on what SBA may perceive as a firm's ability to grow. Further, the provision is unnecessary given the requirement that 8(a) firms must achieve certain percentages of their sales outside the 8(a) program. Given this requirement, it is unnecessary to further restrict a firm's ability to increase its 8(a) business base.

3. The removal of the restriction on marketing national and local buy contracts.

The Council supports the elimination of unnecessary regulatory limitations on self-marketing by Section 8(a) firms, including those relating to national and local buy procurements. Section 8(a) firms, like all other Federal government contractors, should be permitted to compete on a national level at all times. This should also help address the issue of concentration of 8(a) contracts within local areas.

4. The removal of SBA as a party in the Section 8(a) contracting process.

This should decrease administrative expense of the Government and increase attractiveness of the procurement process by providing a two-party contracting process. (A carefully structured "Certification & Representation" section with stiff, enforceable penalties for false certification should streamline this contracting process.) If the tripartite 8(a) contracting agreement is removed it eliminates SBA serving as the prime contractor on 8(a) contracts, with the 8(a) firm as the subcontractor. Currently, SBA is required to review and execute all 8(a) contracts, options, modifications, and extensions. This tripartite arrangement was created when the 8(a) program was first established to provide agencies with additional assurances that 8(a) contracts would be performed.

Elimination of this regulation will motivate 8(a) contractors to initiate internal business management procedures which will effectively serve to better position them for exiting the program. However, the Council believes that SBA should still be involved in the contracting process in limited circumstances, i.e., to offer assistance if an 8(a) firm and the procuring agency are unable to reach agreement regarding the terms and conditions of award or for the resolution of disputes arising from the performance of a contract. In addition, if requested by the Section 8(a) firm, SBA should assist in contract negotiations.

Finally, the SBA should retain responsibility for issuing search letters on behalf of 8(a) participants and for requesting that procurements be set-aside for the 8(a) program. Use of SBA's limited resources for these tasks, rather than for the administrative tasks of executing

contracts, options and modifications, is more beneficial to program participants and provides substantial cost savings.

5. The reduction in the reporting requirements for 8(a) firms.

The current reporting requirements for 8(a) firms also place a costly burden on the SBA. Presently, 8(a) firms are required to submit semi-annual reports regarding their use of consultants, agents and other representatives, including the amount of fees paid. The Council recommends that all filings be done on an annual basis. This provision is consistent with the current goal of the Federal government to reduce unnecessary paperwork and to conserve Federal resources in the government contracting arena.

6. Elimination of Levels of Review for 8(a) Applications.

In addition to the aforementioned elimination of unnecessary regulatory and paperwork requirements, the Council supports a single level of review of 8(a) applications. Currently, 8(a) applications are reviewed at the district, regional and central office levels. Recommendations to do the certification either at the Central Office or at the District Office have been submitted. Either approach would streamline the 8(a) application process, thus ensuring timely and more efficient review of 8(a) applications and the elimination of unnecessary duplication. The Council prefers that the certification process remain at the SBA Central Office to ensure uniform determinations on certification. In the early 1980's, SBA Regional Offices approved applications for 8(a) certification. Often, this resulted in similarly situated firms being accepted in one region or denied certification in another region. Therefore the Council recommends that certification decisions be made at the Central level, with input from the District Offices, if necessary.

B. Implementation of Prime Contractor 8(a) Program.

This action would expand 8(a) contracting authority to ANY prime contractor. A prime contractor would be allowed to issue 8(a) sole source and 8(a) competed contracts to assist the prime in meeting its small, SDB, and Women-Owned Business goals. One of the FAR exceptions to "full and open competition" is exceptions as "Authorized or Required by Statue (FAR6.302-5). If the 8(a) program can be expanded to allow 8(a) subcontracts (from prime contractors, then FAR regulations are already in place to handle this exception to full and open competition. It broadens the possibilities for 8(a)s, it helps prime contractors meet their required SMALL BUSINESS, SDB and Women-Owned goals and it makes it easier for primes to meet their "consent" requirements. Further it would be an excellent way for a transitional 8(a) to mentor developing 8(a)s into the process and it could allow for transitioning 8(a) primes to be a follow-on subcontractor, thus insuring better continuity for services for the government. It's a win for the transitioning 8(a), the developing 8(a), and the government because it enhances the successful exiting from the 8(a) program.

C. Increasing the government-wide Small business goal from 20% to 40%, and the SDB goal from 5% to 10%.

Government-wide Small Business goals have been set at 20% and SDB goals at 5% respectively, and traditionally that is all that has ever been met and in most cases has not been met. Agencies should also be encouraged to exceed the recommended goals and, in fact, the Council believes that this committee should state clearly that the ultimate objective is to increase small business and SDB participation well beyond the final stated goal. Without a clarification, agencies barely meet the stated goals and the final result is the pitting of small businesses against SDB's for a very small percentage of the total federal procurement pie.

D. Streamlining the Acquisition Process.

Public Law 100-656 mandated that all procurements reserved for the 8(a) program with award amounts above thresholds of \$3 million for services and \$5 million for manufacturing be competed. By injecting competition into the 8(a) program, Congress intended to increase the ability of 8(a) firms to become competitive, particularly after exiting the 8(a) program. This provision, plus the requirement of Public Law 100-656 that a progressively increasing amount of revenues be obtained by 8(a) firms outside of the program, were intended to limit undue reliance on 8(a) sole-source awards.

Unfortunately, the implementation of this requirement by SBA and procuring agencies has had an unintended negative impact on minority-owned small businesses. Contrary to the intentions of Congress, the competitions required by Public Law 100-656 have not been "expedited or efficient." As a result, these competitions have been extremely time-consuming and expensive for both the Federal government and Section 8(a) firms. This, in turn has severely limited the growth potential of firms in the 8(a) program as well as the number of sizable procurements that procuring agencies are willing to set-aside for the program.

The solution to this problem is multi-fold. First, as set forth above, civilian agencies and prime contractors should be permitted to establish their own 8(a) competitions. This concept will create additional pools for 8(a) companies to develop competitive proposals and increase their ability and viability to win competitive awards.

Secondly, the creation of a streamlined bidding process which objective is to decrease administrative expense of Government and increase attractiveness of 8(a) procurements to federal and civilian agencies and prime contractors because of the two-party contracts (SBA is no longer involved), and incorporates an initial agency screening via the creation of a data base to which qualified firms have submitted resumes and experience summaries to agencies; files would be annually updated. These firms would be required to submit required certifications and representations on an annual basis so that when a contracting opportunity arises, the agency screens the data base and selects a specified number of qualified firms. This definitely

encourages competition among the various firms thereby creating diverse opportunities. For example, if a procuring entity chooses to compete a contract among eligible firms, it may consider a bidding process that includes the following:

1. Invitations for bids would be encouraged, and in some cases required
2. Increase use of cost plus, award fee, fixed-price and time and materials contracts (control contract costs)
3. Encourage use of minimum requirements which are clearly stated in the solicitation
4. Require page limitations for solicitations
5. Eliminate burdensome requirements (similar to Simplified Acquisition Procedures used in contracts under \$100,000)
6. Offerer's certify that Certifications on file in agency data base are accurate and current
7. Page limitations for proposals (experience information is already on file in agency data base)
8. One round of written discussions, with time limits
9. Once determined that a firm is technically qualified, cost can be negotiated including one round of BAFO, with time limits.

This process assures that the government has achieved best value contracting.

It is important to eliminate 8(a) competition in the 8(a) process in order to free scarce resources of the Section 8(a) firms. Currently, Section 8(a) firms competing in 8(a) competitions are required to expend significant time, effort and bid and proposal dollars to the preparation and submission of an 8(a) competitive proposal. These resources can be better utilized for other competitions which will assist the Section 8(a) firms in meeting their competitive business mix requirements and preparing them for successful exit from the program.

Procuring agencies would utilize their individual set-aside programs for more formal competitions among small, small disadvantaged and women- owned businesses. Actually, the Council would recommend that a similar streamlined procurement process be initiated for the aforementioned businesses.

The Council believes that this proposal is consistent with streamlining the overall procurement process, as well as the Section 8(a) program and should be included in any legislation to be enacted.

E. Transitioning 8(a) Program Graduates

Public Law 100-656 fell short of addressing the primary concern of the 1987 Senate Small Business Committee survey of 8(a) graduates-their serious concern over 8(a) firms that failed after graduation. As mentioned previously, the current 8(a) program fails to address the critical issues of development of strong business management infrastructures, competition outside of the 8(a) program (current 8(a) competition is not the answer), and broader more enhanced opportunities outside of the 8(a) program which result in direct competition with firms struggling to obtain a portion of the small 20% of the pie. Under this scenario, the number of firms allowed into the program will never make a difference, because the current structure only creates more competitors for the same (decreasing) portion of the available dollars.

To make matters worse, under the current program, 8(a) firms eventually lose their existing 8(a) business base after graduation because 8(a) contracts tend to be recycled back into the 8(a) program. In today's economy it would be extremely difficult for even a large and prospering business to lose annually up to 35% of its existing business base. For small exiting 8(a) firms, the loss of existing business base can mean the difference between a successful transition and failure.

In addition, because of the way the government does business (they want certain persons, without regard to the firm and its needs) employees generally stay with the company that wins the contract. This creates a void which attacks the core competency and core capability of an 8(a) firm and reduces its ability to compete in other areas.

Due to the many aforementioned inadequacies of the program, firms are placed in jeopardy. The Council wishes to affirm that these comments are not intended to mean that the program does not work, because in fact without it many minority firms would not be allowed access to these opportunities. However, we wholeheartedly agree that changes in the overall system must be implemented in order for it to succeed and thereby assure the success of its participants without jeopardizing the success of other small businesses.

F. Increased Access to Credit and Capital

An issue which is of critical importance to all small and minority small businesses is access to credit and capital. We believe a Section 8(a) firm's ability to access credit and capital is directly related to its ability to survive. Currently, the Section 8(a) program imposes unduly harsh restrictions on a Section 8(a) firm in its attempts to raise capital and access credit. These requirements must be relaxed to facilitate 8(a) firms in raising equity or working capital to operate their businesses. Current restrictions on firms must be reviewed to provide firms the ability to raise capital in ways similar to non 8(a) firms. In order for 8(a)

firms to be successful after exiting the program, they must be allowed to function like mainstream businesses.

G. Bundling of 8(a) Contractor Capabilities

Contract bundling has become an issue not only for 8(a) firms but for small businesses in general. The Council endorses a proposal that would allow 8(a) program participants to team with other program participants, small concerns, or large businesses for purposes of competing for bundled procurements. A provision that would allow this to occur would provide 8(a) firms more contracting opportunities and should relax the affiliation and control requirements of the SBA regulations which ordinarily would prohibit such teaming relationships.

In addition, a provision is needed that would limit large business participation in the subcontracting team to no more than 40% of participation of the anticipated total value of the contract. Although we recognize that this is a high percentage for large business, we also recognize that the government has not accepted that our constituent firms can perform on these kinds of contracts.

H. Competitive Business Mix Requirements

As mentioned in this testimony, this element of the law is vital to the success of an exited 8(a) firm. However, under current provisions, 8(a) competitive awards are not counted in the competitive mix requirements for 8(a) firms. This provision is costly both to the government and to the firm. Section 8(a) competitions are costly and time-consuming and, although competition is limited to program participants, the competition is as severe (possibly more so) as outside of the program.

The Council strongly recommends that the aforementioned recommendations for streamlining the acquisition process be considered as a way to (i) release bid and proposal dollars for non 8(a) procurements (ii) encourage 8(a) firms to compete in other areas (iii) release valuable bid and proposal and profit dollars for competition and technology development outside of the program.

I. Other Key Provisions

The Council also supports these additional key provisions that would prove instrumental in developing the 8(a) firms:

- a. Buy-Indian Act: would waive the Buy Indian Act requirements for 8(a) contracts awarded to Native American owned 8(a) firms;
- b. Require contracting officers to respond within 15 days to an 8(a) firm's requests regarding administration of contracts;

- c. Require agencies to make available alternative means of dispute resolution to handle contracting officers' failure to make prompt payments or to respond to contract administration questions;
- d. Allow current competitive 8(a) award to exited 8(a) firm if eligible on date specified for receipt of offers and if firm had a timely submitted offer, including price;
- e. Allow sole-source award to a an exited firm which was eligible on the date specified by the agency contracting officer for the submission of an offer, including price;
- f. Encourage mentor protégé arrangements between exiting, exited and emerging 8(a) firms.

J. Conclusion

In closing, the Council wholeheartedly agrees that changes to the Section 8(a) program are urgently needed. We urge the Committee to consider that there are many benefits to assisting minority owned business including: developing business persons that have long term commitments to economic growth; encourage diversity, innovation and competitiveness in the industrial base; provide upward mobility and career development for women and minorities (minority firms employ more minorities than the eight largest U.S. firms); developing role models for other women and minorities to follow; provides access to capital with may not otherwise be available; and, assure the creation of access to business development opportunities that are not otherwise available.

Chairman BOND. We will receive those for the record and thank you very much for your constructive comments.

Mr. Fernando Galaviz.

STATEMENT OF FERNANDO GALAVIZ, VICE CHAIRMAN, NATIONAL FEDERATION OF 8(a) COMPANIES, ARLINGTON, VIRGINIA

Mr. GALAVIZ. Mr. Chairman, my name is Fernando Galaviz, vice chairman of the National Federation of 8(a) Companies. We dearly appreciate the opportunity to testify before you and we request that our written statement be part of the record.

Chairman BOND. Your full written statement will be made a part of the record.

Mr. GALAVIZ. Mr. Chairman, first I personally want to thank this Congress and other congresses for providing for me and my family the opportunity to be able to develop a business. Also, I would like to thank some individuals, particularly Josh Smith who helped me start my business with my first contract, who helped me qualify for a sophisticated computer contract and also who provided some financing. Also Gordon Yamata, Dick Otero, and Elizabeth Penn. These are owners of companies that have helped me.

Also, I would like to acknowledge the fact that we have made a dramatic difference in trying to be viable with the help of Senator Nunn's mentor protege program. I want to thank the Senator for the support of that program.

Over the weekend an article appeared in the Los Angeles Times. If I were not familiar with the 8(a) Program and if I had not been an activist over the last 25 years, just by reading this article I would say, cancel the program. This article and other articles and other information, including the information you got today from the GAO, which a lot of it was incorrect, is what is creating for us a problem.

We know that right now we are in a friendly body here. But we know in the overall Senate and the overall Congress there are a lot of discussions being done on affirmative action. And we need your help to teach us how can we really clear the record as to what are the real facts.

This article and other articles do not address the fact that the so-called sole source concept in Government is the way it is doing business. In fiscal year 1993 the Federal Government spent \$182 billion in Federal procurement, \$55 billion went sole source to large corporations and nonprofit organizations; \$7 billion went sole source to small businesses. Only \$3.5 billion went to the 8(a) Program and \$900 million was won 8(a) competitive.

Now also there is this perception in this body and other places that everything is sole source. The fact is, gentlemen, that when an agency puts out a requirement, they announce in the CBD or the small business office calls a group of 8(a) firms. Then that list might be 20 firms; they select seven. Then out of the seven they make us come in and make formal presentations. We have to spend money on those presentations. We have to get the right technical people. We have to do a professional job.

The perception that we get all our business sole source is totally erroneous. Our federation from some homework we have done

claims that only 10 percent of the 8(a) awards really come to us sole source.

The GAO today said to you, there is no such progress of graduation. That is incorrect. There are several ways you graduate out of the program. Either by the completion of the nine-year term or by going over your size standard. So if you are a computer company and you have only been five years in the program and you have gone over that three-year average, you are no longer small, then you can no longer qualify for 8(a) awards even though you are still 5 years into the program.

The net worth is a catch-22. Business expects you to be reasonably viable in order to—the CAA when they come in and check you out and audit you before you get a contract award, they expect you to be financially viable. They do not care that you are an 8(a) firm. There is no special provisions of the DCA regulations, the fact that you are an 8(a) firm. So if you do not meet the financial criteria, they might classify you as nonviable.

The 8(a) Program, there is confusion between the DOD program 1207 and the 8(a) Program. I was part of the people that worked to get the 1207 into law and the bottom line, the hidden agenda there was that we wanted to get SBA out of dealing with the three-party contracting effort. That was the real answer. Plus, the fact that at that time the Reagan administration was supportive. The Reagan administration is the one that started MED week and other initiatives. And so did the Bush administration provide support.

Basically, for the time that is allowed to me, there are other points I hope that will be picked up in the question and answer. But the one thing I would like just to second here. The question is whether or not these programs are needed. Please remember in the 1940's, 1950's, and 1960's when there was a lot of expenditure in Federal dollars and today's largest companies became viable because of those dollars that World War II provided, 1940's, 1950's, and 1960's we minorities were not allowed in.

Today, should the program continue? If I take you to any trade show throughout this country, whether it is a computer trade show, electronics trade show, sporting goods, any trade show, you are going to find that there are very few minorities. You are going to find that the people that are working those trade shows are mostly the executives, the salesmen. In the big, expensive trade shows you are going to find they are mostly white males, maybe a few white females, and once in a while a person of color. This is today in 1995.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Galaviz follows:]



COMPANIES The National Federation of 8(a) Companies

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TESTIMONY FROM THE NATIONAL FEDERATION OF 8(A) COMPANIES TO THE SENATE COMMITTEE ON SMALL BUSINESS FOR THE SENATE HEARING ON APRIL 4, 1995. TESTIMONY PRESENTED BY MR. FERNANDO GALAVIZ, VICE CHAIRMAN OF THE NATIONAL FEDERATION OF 8(A) COMPANIES.

Good afternoon Mr. Chairman Bond and distinguished members of the Senate Committee on Small Business—I am Fernando Galaviz, Vice Chairman of the National Federation of 8(a) Companies. The 8(a) Federation appreciates the opportunity to provide testimony on SBA's 8(a) and 8(d) Program.

The 8(a) Federation is a non-profit organization in good standing with a 12-member National Board and over 200 associate members nationwide.

We respectfully submit our written testimony to be included in the record of this hearing. The purpose of our testimony is to provide the background history of the original goals and objectives of the 8(a) and 8(d) program; discuss if these goals and objectives have been met; address the questions and concerns that have been raised in recent years on the design of the 8(a) and 8(d) program; and discuss the effectiveness of the Small Business Administration (SBA) in the management of these two programs. Included in our testimony are specific recommendations that we hope this committee will consider as deliberations on the 8(a) and 8(d) program are finalized.

Our testimony includes 18 recommendations that will streamline the resources that are presently being used, which we are confident will result in improved support for the development of minority owned enterprises and save the Federal government and tax payers over \$65M.

It is important to acknowledge that the initial key objectives in the creation of the 8(a) and 8(d) program were to increase the number of small minority owned firms that support requirements in the Federal government and to increase the capital access of the minority community so that it may become a full participant in the mainstream of the American business community.

Support for minority business enterprises was initiated by the Nixon administration. The most crucial problem the Nixon administration attempted to address was the under-utilization of the minority business community by the Federal government and by the major corporations that support Federal government requirements. It is my understanding that President Nixon strongly felt that it was critical to bring the white and black communities together through a Black Enterprise program which

is now known as the Minority Business Enterprise (MBE). President Nixon recognized that the most effective way to achieve the building of peace in the civil unrest of the 1960's, which would go beyond the civil rights and affirmative action legislation, would be through much needed economic development initiatives that would give economic empowerment to the minority community—and sections 8(a) and 8(d) of the Small Business Act over a period of time were determined to be the best means to achieve economic empowerment and development in the minority business community.

Over the last twenty five years, the 8(a) program has made significant contributions to the American economy. After its inception, the number of minority owned companies has increased creating healthy competition in the Federal government contracting business. Federal government Managers now have a wider range of competitive choices, which in the last 10 years have clearly resulted in the 8(a) firms providing lower cost services and products to the Federal Government, this is reinforced by empirical observation and economic theory that the larger the supply of firms, the lower the prices get. The creation of the 8(a) program has proven to be a sound policy decision with clear and proven results in comparison with the distorted market choices of the 1970s.

The first 10 years of the 8(a) program were quite challenging for Federal government procurement and program managers. In the 1970's the concept of successful minority owned firms was questionable, and with reason, because there had been a history of "unsuccessful" and unprofitable minority owned businesses. These "unsuccessful" experiences were caused by the grim realities of the time. The minority business community had to be developed almost from scratch because it was the general practice at that time to purposely exclude minorities from business opportunities and sources of capital and lending. Prior to the Federal government's focused involvement in the development of minority owned business, the mainstream market place which included the Federal government, provided very little opportunities for minority owned businesses, and in fact, for many decades, prior to the 1970's minority owned firms were not encouraged or welcome to participate in the Federal government market place.

Has the 25 Years of the 8(a) Program Created an "Even Playing Field" for Minority Entrepreneurs?

If anyone believes that in 1995 the playing field for minority owned businesses is not as uneven as it was four decades ago, or that 25 years of the 8(a) program has catapulted minority owned firms into the mainstream market, then Mr. Chairman and distinguished members of the committee, I recommend to go to any part of this country, to any of the national industry trade shows, and whether it is the AFCEA show, telecommunications, housewares show, hardware show, electronics show, COMDEX computer show, or any other national industry trade show, in fields of agriculture, medicine, science, and many others, and you will find that without exception, the participation of minority firms in the endless rows of industry or corporate exhibits is minimal or nonexistent. And, as importantly, you will find as you walk from exhibit to exhibit, whether it be large or medium-size mainstream companies, the representatives waiting to receive you are for the most part white males,

and now and then white females. This is a reflection of the realities we face in the marketplace. You may ask yourself why the state of affairs is the way it is, and this in 1995 can speak louder to you than all the statistics that the government or critics of "set-asides" for minority owned firms can provide. "A picture is worth a thousand words," and the real picture that should not be ignored is that the state of economic development minority firms need to achieve is the "consistent ability" to acquire and retain the resources necessary to be part of mainstream industry economic marketplace.

In the retail business, the three most critical elements for success are Location, Location, Location. What are the three most important elements for a minority owned company doing business in the Federal government or in the private sector to achieve success? The three most important words for minority entrepreneurs are Access, Access, Access, to capital, market and the "Old Boy's Network."

The greatest challenge to the minority business community is how to develop and manage business growth. In order to appreciate and understand the challenges that minorities have faced, it is necessary to take into consideration that most minority entrepreneurs have no family background of business experience, and for at least six decades into this century, minorities have had very little exposure to business very few successful role models to emulate. In general, non-minority mainstream business owners have ready access to "traditional sources of lending," an educated work force, generation after generation of professionals and experienced business individuals within the family structure, and fairly good access to markets by building upon generations of large and established relationships commonly known as the "Old Boys Network." Minority business owners, on the other hand, face great challenges finding traditional sources of lending.

It has been proven again and again through different independent studies that a minority person has a higher probability of being turned down for a loan than a non-minority person. It is also a fact that minorities have higher high school and college drop out rates than non-minorities—this has led to a scarcity of qualified and educated minorities in the sophisticated and technical labor market.

In real and concrete terms, very few minority business owners have broken the glass ceiling, and would have never, as a community, made the modest progress that has been made to date without the Federal government's support.

The 8(a) Program helps minority business owners to vie for entry into the business minor leagues' locker room, and, now that the minority business community is on the playing field (beyond the great progress Jackie Robinson made), minority businesses are considered as a "threat" to the welfare of this nation by those who carry the perception that these firms have reached "equality." Without the 8(a) program, minority firms would have a much higher failure rate, not because they are not good

entrepreneurs and managers, but because there is very limited access to capital and technology, and we have not been easily accepted as a community into the "Old Boys Network."

In 1995, a higher level of concern and attention has been given to set-asides. Therefore, Mr. Chairman, will Congress and the public show an interest in looking into the large and real benefactors of large sole source Federal set-aside awards to large corporations and large non profit organizations? After all, they receive over 40% of the contract awards on a sole source basis, compared to 2% of set-aside 8(a) awards, of which 35% of the 2% are 8(a) competitive awards?

Regarding the total number and dollar value of Federal government contracts awarded to 8(a) firms throughout the life of the 8(a) program, it is important to note that recent figures produced by the SBA have revealed a consistent pattern that 98% of Federal contract awards are made to non-minority and non-8(a) firms. This means that minority firms in the 8(a) Program have only been able to achieve, at most, a 2% market share penetration of total Federal contracting expenditures. One would have expected that after all these years of federally supported minority programs such as the 8(a) program, we would be celebrating a much greater success than this. And yet, can it be that even this modest 2% achieved over a 25-year period poses such a "threat" to our society that elected officials in the 104th Congress are debating its destruction? Is the notion that the minority business community will gain more than 2% of the market share so frightening that the 104th Congress may abolish or drastically reduce the programs which support the economic empowerment of the minority business community? Does the 104th Congress want to leave a legacy of "stumping" the progress that has been made to date? Will the 104th Congress show as much concern and intensity because 40% of contracts that are awarded on a sole source basis are given to major corporations and large non-profit organizations?

We highlight this one fact as a sample Mr. Chairman, so that as the 104th Congress reviews and evaluates the merits, problems, and challenges of the 8(a) program, that under your leadership as Chairman of the Senate Small Business Committee you will lead us in developing business solutions to improve the 8(a) program. These initiatives need to make good business sense instead of the past initiatives designed to restructure the 8(a) program which were driven more by political considerations rather than what makes good business sense in the development of minority owned firms in the United States.

Before we proceed, it is important for those who may not be familiar with the way Federal agencies operate, to point out that, for many years, it has been the practice of the Federal government to award a significant number of large sole-source contracts to large corporations and large non-profit organizations. The award of these sole-source contracts can be classified as set-asides for large organizations. Prior to the Competition and Contract Act of 1984, almost 60% of all contract awards were set-aside, on a sole source basis, to large corporations and non-profit organizations. After the Competition and Contract Reform Act of 1984 came into effect, the sole source awards to large corporations and non-profit has decreased to just over 40%. Throughout the life of the 8(a)

program, during any given year, the amount of contract awards to 8(a) firms has not exceeded 2% of all contract awards. Since the Business Opportunity Development Reform Act of 1988 came into effect, which required competition between 8(a) companies on contracts over \$3 M for Services and \$5M for Manufacturing, 35% of 8(a) awards have been awarded on a competitive basis. This means that approximately 1.6% of all Federal sole source contract awards have been made to 8(a) firms while over 40% of all sole source contracts have been awarded to large corporations and non-profit organizations.

Mr. Chairman, it is our intent in presenting this information to encourage you to look at the whole picture and not just focus on set-aside programs that have been proven to support the economic development of minority firms.

SECTION 8 (d) SUBCONTRACTING PLAN / ITS PURPOSE / DO WE STILL NEED IT?

In 1995, major corporations, in complying with section 8(d) of the Small Business Act, seek out, identify, and work with minority firms throughout the country. The force behind their interest to include minority owned firms lies on contractual requirements designed by the Federal government through section 8(d) of the Small Business Act. Unfortunately, there are too many cases in which many of these large corporations only meet the minimum contractual requirements to subcontract to minority firms. The relationship between 8(a) firms and major corporations is critical to the 8(a) program because SBA regulations require 8(a) firms to diversify their revenue base to include non-8(a) competitive awards.

The 8(d) provision of the Small Business Act requires large prime contractors who have been awarded Federal contracts valued at \$500,000 or greater for services, or \$1,000,000 or greater for construction, to submit a subcontracting plan for small and small disadvantaged businesses. This plan is submitted by the large prime contractor after it has succeeded in winning the contract, and in some cases, after contract award. The performance by large prime contractors to meet the letter and the spirit of the law in the 1980's was very disappointing. In the late 1980's, agencies such as the Air Force and NASA started initiatives to make large prime contractors fully comply with section 8(d).

Agencies need to require large bidders to detail their subcontracting strategy in their initial proposal. In addition, evaluators should award additional points to those large primes with the best subcontracting strategy.

In the 1980's, Congress recognized the need to incorporate additional penalties through contract liquidation damages if the subcontracting plans were not implemented. Large prime contractors initially showed poor faith in complying with section 8(d), but have improved their compliance only after the Federal government stepped in to require compliance. There is no real concern, however, if a prime contractor does not meet its subcontracting plan.

With this in mind, Mr. Chairman, if the 104th Congress decides to eliminate section 8(d), awards to small disadvantaged businesses from large primes will diminish and perhaps decrease to a negligible level. The participation of minority owned firms supporting major prime contractors will be seriously affected.

History provides us with interesting and valuable hindsight. There is a great national hero, a great Republican, who will go down in history as one of the most accomplished men of our times. This man is Dwight D. Eisenhower, who started the Small Business Administration. It was another Republican, President Nixon, who had a clear vision that beyond civil rights and beyond affirmative action, the most significant element of bringing reasonable civil peace to our country and to address the national interest was to bring blacks and whites together. It is said that President Nixon privately used a phrase, "green power"—not black, brown, white, or yellow, but "green power" to mean that economic empowerment of minorities would bring the white and black communities closer to a productive, civil relationship. President Nixon was very wise in understanding that it was not to our Nation's national interest to continue civil unrest by the burning WATTS and other cities. Using Republican principles, he recognized that capitalistic initiatives supported by the Federal government would merge the interest of the white and black communities by providing economic development opportunities.

In our country today, due to Section 8(d) of the Small Business Act and its subcontracting provisions, the positive impact of President Nixon's vision is clearly evident. White males, mostly representing large corporations, sit down with all races to conduct business and to make a profit. But even in the case of inter-racial business dealings, it is important to be realistic by acknowledging that the only reason that non-minority and minority businesses are sharing the Federal government "business pie" is because the Federal government has mandated it. And if the Federal government had not mandated major corporations and others to share a piece of the market share, albeit a very modest piece, then large corporations would not be doing so yesterday, today, or tomorrow.

Chairman Bond and distinguished members of the committee, if the Federal government does not require large and medium size corporations to subcontract, specifically to small disadvantaged businesses, what makes anyone think that those corporations are going to share the "Federal government Business Pie" with minority firms?

It is very interesting to note that large corporations are quite aggressive in encouraging 8(a) firms to share a piece of the 8(a) contracting pie with them, and that the large companies usually want 49% of the share. This common practice has as its source the high standards that are imposed on 8(a) competitive awards. These standards are similar to those used in mainstream industry to measure well established and financially stable businesses rather than developing and merging minority owned businesses. These standards are a sharp contradiction to SBA's position that the 8(a) program is a development program, not a contracting program. Therefore, in order to compete successfully, the 8(a) has no choice but to share its piece of the pie with large corporations.

The case in point in modern times is with NASA. For several years, large corporations that traditionally support NASA missions have been telling NASA management that there is no possible way that minority firms can perform on sophisticated engineering work which requires a significant degree of proven experience or mission expertise that NASA requires. They argued that it was impossible to find qualified minority owned firms. These large companies told NASA management that NASA management and staff were unrealistic for recommending initiatives that promoted expanded use of small minority firms. Thanks to the commitment, courage, and persistence of the management of NASA, supported by Republican Presidents Reagan and Bush, that these large companies got the message. In the late 1980s, NASA management and the Executive Branch sent the following message to long term major NASA prime contractors: "If you think it's too difficult to work with minority firms than you better not bid NASA jobs."

Through the efforts of Presidents Ronald Reagan and George Bush, the industry knew that there would be full support for the development of minority owned firms at NASA. The result was, Mr. Chairman, that the same large corporations that had been convinced that it was impossible to increase the use of minority firms at NASA, were now "falling all over themselves" to successfully and profitably bring minority business partners into their teams to support their competitive bids. — Now isn't that remarkable? So Mr. Chairman and distinguished members, everything starts from the top: It has to be the vision of you and the members of this Committee and other members of Congress to look each other "eyeball to eyeball" and ask yourselves for the national interest, is 2% of the Federal procurement market share that minority firms have achieved through Federal sponsored programs too much? Do we want to take away from the minority community the very modest progress that it has made? Do we want to stunt the modest growth of the capabilities that minority enterprises have developed to date, which has provided a greater number of competitive and qualified Federal government suppliers?

No one ever said life is fair. This is true for just about everything in life, however, the reality of the unfairness of life becomes much more tangible when you are an 8(a) company or a minority business. We have all heard about large companies being caught conducting illegal activities. . . and indictments come, fines come, officers, management and personnel from major corporations go to jail, and there are even some notices of temporary debarment. Yet the following week these large corporations are given task order contracts with the same agencies that initiated the legal proceedings and the convicted large corporations continue to do business with the rest of the Federal government. Now, lets see what happens to a small minority firm or 8(a) firm whose legal problems do not even go as far as an indictment, but only an investigation, or the firm is indicted for a lesser sin than the large corporation's. . . as a consequence, the minority firm is destroyed forever—no one said that it would be fair.

No one said it would be fair, for example, with minority subcontracting provisions under section 8(d) of the Small Business Act. We know that there are many people in this audience who own minority firms and who would tell the committee such true stories as this: A major corporation calls on a

small minority firm to give it an opportunity to find, as an example, ADA Programmers, or other specific technical professionals who possess a unique skill set, and the minority firm is pleased to fill the requirement knowing that it is going to be a tough assignment because it requires very unique capabilities. The minority business expends resources, time, and money recruiting for the major corporation because it wants to meet the challenge and successfully earn the work. Then, the minority firm discovers that the large corporation that originally gave it the requirement had already advertised and recruited on its own for the source requirement, and has filled most of its own requirement. Why do large corporations ask minority owned businesses to conduct the search and spend their limited resources to do useless digging with no hope of coming up with a bone? Why is it that minority firms are given the most difficult challenges? Do large corporations do it so they can say that they gave the minority owned community an opportunity, but it couldn't deliver?

The most important quality of a salesman is that he or she be a good listener—that he or she listen to what the customer needs, and what the customer wants. In all practical terms, Mr. Chairman, you and your colleagues on the committee, and other members of the Congress are our customers, and we have to listen to what it is that you want if we want to do business with you. We understand the importance of the "Golden Rule," that is, that he who has the gold makes the rules. Over the last four weekends, on all the weekend network talk shows—from Meet the Press, to This Week With David Brinkley, to Face the Nation, and, of course, Nightline—the members of the 104th Congress have been conveying on all these network television shows the message that, basically, as far as education, jobs, and economic development, the minority community is now empowered; that through whatever means it has reached the market share to satisfy "those minorities," that enough is enough and it is now good political time to be a fair and colorless society. If this is the case, why does the minority community have only 2% of the Federal government contract pie after trying for 25 years to get a reasonable market share? Is 2% a reasonable market share? We don't think so, nor would any reasonable and fair minded person.

The National Federation of 8(a) Companies is prepared to address the challenges of the changing political realities that the last congressional elections have put into the fore front of the national debate on set- asides, affirmative action, and the widely publicized court cases challenging minority business development support programs. These series of political driven events have augmented widespread national discussion of the need for a narrow definition of social and economic disadvantaged status.

The following are recommendations that the National Federation of 8(a) Companies is proposing to the 104th Congress. Mr. Chairman and distinguished members of the committee, we believe that these recommendations are balanced to ensure that, in the interest of the Federal government, large corporations, small businesses who are non-minority, and the taxpayers' interests are taken into consideration. These recommendations will streamline the support services and reduce the cost to the Federal government and the taxpayer by approximately over \$65M.

RECOMMENDATIONS TO THE 104TH CONGRESS FROM THE NATIONAL
FEDERATION OF 8(a) COMPANIES

1. Streamline and Lower Cost of Administration of the 8(a) Program

We estimate that these recommendations will reduce by 40% the SBA staff presently required in the administration of the 8(a) program.

The following are activities that should be eliminated from SBA's responsibilities:

- A. Involvement of SBA in the "third party" contracting process.
- B. Assignment of SIC codes to 8(a) program participants.
- C. The SBA Program support planning process.
- D. The local/national buy concept.
- E. Providing technical assistance through the 7(j) program.

SBA should manage the portfolio for each 8(a) participant to ensure participants are in good standing regarding the qualifying criteria in order to remain in the 8(a) program.

2. Streamline Resources That Provide Technical, Marketing, and Management Assistance On A Cost Sharing Basis. This Will Eliminate Duplication Of Services And Savings To The Tax Payer

8(a) firms who need management and technical assistance should use established sources such as the Department of Commerce (DOC), Minority Business Development Agency (MBDA), Business Development Centers, Marketing and Technical Support Services. MBDA provides these services on a cost sharing basis. SBA can be removed from this support effort.

3. Consolidate Duplication Of Field Support Services Which Will Result In Better Services At Half The Cost, Resulting In Savings To The Taxpayer

Streamline Federal government outreach support services through consolidation of field offices. At present SBA, MBDA, DOD, GSA, DOT, and other Federal agencies have outreach support services in most major cities. In many cases, these programs are a duplicated effort.

4. Reduction of Taxpayers' Contributions to Federal Government Activities in Support of Minority/Small Disadvantaged Business Trade Shows and Minority Seminars

Since the early 1970's there has been a considerable effort by federal government agencies and by major prime contractors to participate in the wide range of minority business development events, such as seminars, minority industry trade shows, trade fairs. These activities over a period of time have assisted many minority entrepreneurs and minority firms in becoming acquainted with a wide range of federal agencies and federal programs. Besides the activities by federal agencies, Congress members have sponsored their own federal procurement conferences which normally are sponsored in each State and District by members of Congress.

The funding to provide support to all these minority business development events is provided by the Federal Government, or more specifically, the taxpayer, and includes the travel, lodging, per diem for federal officials and for officials of prime contractors to participate. It also includes the costs of materials, exhibit space, freight of exhibit displays, communications cost, registration fees and other incidentals. The Federation recommends that a pilot program be approved that will require coordination among all federal agencies, the private sector, and Congress in order to be assured of an effective use of limited resources. In many instances, there has been a great duplication of effort of these conferences, for example, take southern California where one month there is a Congressional Procurement Conference in, say, Orange County, three weeks later another Congressman holds a similar conference just 40 miles away in Los Angeles, and the following month a federal agency holds its conference, and a minority trade association using federally-sponsored dollars holds a trade show. All these activities may be occurring within a period of six weeks, in less than a 100 mile radius.

We recommend that Congress require for the development a pilot program basis for their to be only be two major conferences for the year in each major metropolitan area in which all parties will participate in the same federal event. The Federation believes that it is not only a matter of considerable cost savings, but also that the quality of the managers sent by the federal government and major contractors to attend the events would be much higher did they not have to spread out so thin among so many events. In the present state of affairs, it is often not the most qualified federal and corporate representatives who attend, but whoever is expendable.

5. Significantly Cut The Cost of the Development and Management of Subcontracting Plans In Order To Comply With Section 8(d) By Streamlining The Subcontracting Plan Requirements

We strongly recommend that the 1974 requirements established under PL 95-507 be changed in order to eliminate the development of subcontracting plans and reporting requirements

which put a burden on prime contractors and cost the taxpayer a significant amount of dollars. Since 1974 there has been consistent concern in the small disadvantaged community about the low level of compliance by prime contractors in meeting the letter and spirit of PL 95-507.

The 8(a) Federation recommends that on contracts valued over \$3M, all federal agencies should include in the RFP solicitation a requirement for bidders to include in their proposal the proposed contract work distribution by tasks, to specify which tasks will be performed by the prime contractor and which will be performed by the small and small disadvantaged businesses. The agency will be required to develop an RFP evaluation criteria which will award greater evaluation points to the bidders that have the best and most complete subcontracting strategy.

The benefits of this measure would include:

- a) The federal government would benefit by knowing "up front" how the prime contractor will perform on the contract prior to contract award. In the present system, the Federal government does not receive the details of the subcontracting plan, which details the specifics on how and with whom the prime will perform the work and its actual implementation after contract award.
- b) The federal government will benefit by eliminating the cost of monitoring contractors on their subcontracting plans. By including small and small disadvantaged businesses in the formal bid, the formal contractual teaming arrangement between the parties is a very effective self-monitoring mechanism, given that the parties involved have a contractual relationship.
- c) The prime contractors will benefit by not having to develop the subcontracting plan. This measure will also eliminate the need for primes to file status reports on an on-going basis. This would eliminate a lot of paperwork and save the taxpayer a considerable amount of money.
- d) The prime contractors will benefit by having the small and small disadvantaged businesses contribute to the marketing, data collection of market conditions and intelligence, and in proposal development efforts. At present, since the prime submits the subcontracting plan, subcontracting firms are not identified while the proposal is being developed by the prime.
- e) The small and small disadvantaged firms will benefit by working and contributing to the prime contractor's efforts to develop the proposal and by having the appropriate time to prepare for its performance in the contract in the event the team wins.

6. 8(a) Program Training of Potential Participants

The SBA should focus its efforts and resources in the management of the 8(a) Program to effectively train potential entrepreneurs who are considering being federal government contractors and participating in the 8(a) Program.

7. 8(a) Program Certification Process

For the SBA to certify the participants who successfully complete the SBA training course; who have clearly demonstrated the practical elements necessary to succeed as a Federal government contractor to ensure that they meet the qualifying criteria to participate in the program. To ensure that SBA certifies those business owners who clearly understand that it is their responsibility to market their own business.

8. 8(a) Program Participant Business Owner Solely Responsible For Developing New Business

For SBA and Congress to make it clear to 8(a) participants that only they, the minority entrepreneurs, are responsible for developing their businesses. The 8(a) and 8(d) program will provide development assistance to make it a little easier to develop management and technical expertise through the limited participation period of nine years of receiving sole source awards. It is critical that 8(a) Program participants have a clear understanding that neither the SBA nor the Federal government are responsible for their contract awards.

9. Revision Of Qualifying Criteria For Economic Disadvantaged Status for 8(a) Program Participation

Narrow Qualification Criteria for Economic Disadvantaged Status:

Members of the Federation and the minority business community realize that the dynamics of the present state of the political environment require for all of us to be prudent and realistic by addressing the following question:

What is the best, most reasonable, and most common sense method to modify and enhance the legislative and regulatory language of the 8(a) Program to focus limited federal resources to assist the development of the minority entrepreneurs who are the most disadvantaged and who need the most assistance?

Mr. Chairman and distinguished members of the Committee, the time has come to reconsider the redefinition of the term "disadvantaged," because this is not an affirmative action hearing, this is a hearing about business, and as such, we should limit addressing the overall issues of affirmative action, or the issues of social disadvantage, and we should discuss the issue of defining guidelines

for economic disadvantage status.

At present, in order to determine economic disadvantage, the formula that is used has loopholes which can and has contributed to abuse and misinterpretation. We propose a streamlined and very straight-forward approach. It is very important to remind critics that the 8(a) Program is not a welfare program. If this were the case then all the major corporations, such as Grumman, and large non-profit organizations, such as MITRE, would all be considered to be on welfare for the last 55 years because they have all received sole source contracts. The following, Mr. Chairman, are initiatives that you and your colleagues should consider.

- A. To qualify for the 8(a) Program, the net worth of the applicant and his or her immediate family, including spouse and relatives living in the same household, may not exceed \$650,000 for all combined assets and equity in the home, but excluding the business. The business may not exceed the Small Business Administration's small business size standard for its primary SIC code.
 - B. To continue in the 8(a) Program, the net worth of the applicant and his or her immediate family, including spouse and relatives living in the same household, may not exceed \$1.5 million, and the business must remain within the Small Business Administration's small business size standard for each contract it bids on.
 - C. To qualify as a Small Disadvantaged Business (SDB), the same restrictions as in A, above, apply. SBA will become involved in the annual SDB certification process to stop the present widespread abuse of SDB self-certification.
10. Competitive 8(a) Bids Are as Costly and as Risky as Open Competition Bids

The Reform Act of 1988 introduced the element of formal open competition in accordance with the Federal Acquisition Regulations (FAR), with in 8(a) firms. The Reform Act of 1988 has resulted in a double-edged sword—on one hand it has created a healthy competitive environment, on the other hand it has made it considerably more difficult for developing firms to build up their management and technical infrastructure in a reasonable time frame in order to achieve being able to succeed in a competitive environment. Prior to the 1988 Reform Act, an 8(a) firm could position itself to be awarded sole source contract awards larger than \$3M for services or \$5M for manufacturing. Such awards made it possible for 8(a) firms to have greater financial resources in their General Administration (G&A) and Overhead (OH) budgets in order to be able to afford competent marketing and sales, proposal development, graphics and technical support personnel.

The Federation strongly recommends expanding the definition of competitive contracts within the 8(a) Program's competitive business mix to include 8(a) competitive contract awards for

the purpose of meeting the SBA's present definition of non-8(a) Business Mix Requirements. The definition should be changed to sole source awards versus competitive awards which include 8(a) competitive awards.

The Federation board recommends that 8(a) company owners who have developed their businesses beyond 30% of their primary SIC code's size standard seriously consider implementing, on a voluntary basis, a Mentor-Protégé Program within their company to ensure that they set an example for other firms. Mr. Chairman, 18 months ago in my company, The CENTECH Group, Inc., we formalized a program in which any employee, regardless of race, sex, age, creed, color, national origin, or disability, after serving in good standing at the CENTECH Group for a period of five years, can qualify for mentoring by The CENTECH Group in the start-up of his or her own business. The CENTECH Group will assist the employee and protege firm in the business start-up process for 18 months. After the 18-month mentoring period, mentor firm and protégé firm will sever the business relationship. The reason for a total separation between the firms is to make it clear that The CENTECH Group has not established this volunteer mentor program for the purpose of developing and continuing a legacy for itself in the 8(a) Program. At this point, we have two employees who have applied for the program—Emma Vento, whose vision it is to start a recruiting firm, and Steve De Veranez, who intends to start a computer services firm. The CENTECH Group does not take any equity position in the new business.

It is reasonable to respond to the question, "Why do we have this entrepreneurship program at The CENTECH Group?" The reason is because at The CENTECH Group, we understand that even though the company is using its own capital and resources, we acknowledge that we are using a publicly-supported Program that is important to this Nation—and this is our way of paying back for the privilege that we have enjoyed as an 8(a) firm, and the assistance we have received to develop The CENTECH Group.

11. 8(a) Graduate Program Participants To Assist Siblings And Spouses

Sons, daughters and spouses of 8(a) Program participants (including current and graduated participants) whose mother, father and spouses combined net worth is greater than \$2.5 million will not be eligible for 8(a) certification. The Federation believes that if an 8(a) program participant has had very successful results in the 8(a) program, it is necessary that the experience be transferred to their own family given that the family has had a role model and has accumulated considerable financial resources. We believe that today abuses are committed when successful 8(a) business owners establish family members such as their wives or sons/daughters as another 8(a) company.

12. Promote The Support Of 8(a) Firms To Do Business In Economic Depressed Areas

An 8(a) firm that meets the following three criteria for at least four consecutive years during its Program participation will be allowed to extend its 8(a) participation for an additional two years (beyond the nine years), provided the firm stays within its primary SIC code's small business size standard:

- a) Owner lives in an economically depressed area,
- b) Corporate headquarters office is located in an economically depressed community,
- c) 30% of the business's project and corporate management staff are minorities.

13. 8(a) Firms To Contribute To The Education Of Minority Students

8(a) firms that exceed \$10 million in gross annual sales in two consecutive years will be required to provide financial educational assistance, such as NAACP, Urban League, LULAC, IMAGE, etc. etc. to a minority student through a national civil and economic non-profit minority organization by providing scholarships.

14. Not all 8(a) Program Participants Are The Same - Some Need More Time To Successfully Mature

Increase years of 8(a) Program participation to 11 years for 8(a) firms that have not achieved three-year average sales equaling at least 50% of their primary SIC code size standard dollar threshold by the end of their seventh year in the Program.

There is general agreement with the fact that minority and non-minority businesses experience different degrees of success and development. 8(a) firms and disadvantaged businesses are not all the same, and it is unrealistic to have a "cookie cutter mentality." The Federation proposes that the focus should be: "How do we make sure that more firms reach their graduation date in a stronger business position?" Therefore, we support that the legislation permit those 8(a) firms that have not achieved average sales equaling at least 50% of their size standard dollar thresholds in their Primary SIC code by the end of their seventh year of participation in the 8(a) Program be granted an additional two years of Program participation, beyond the standard nine years for a total of 11 years of Program participation.

As an example, the size standard for a computer services firms to be considered a small business, the firm must not exceed \$18M in sales over a three year average. We are proposing that if an 8(a) computer services firms at the end of the seven years has not achieved a three year average of \$9.0M, the firm be eligible to participate in the 8(a) program for a total of eleven years.

15. Develop By Reasonable Industry and Viable Business Guidelines

Develop a clear and precise definition to determine when a small business is "reasonably viable." In order to determine which business needs the most assistance it would be necessary to develop by industry viable business guidelines.

Mr. Chairman and distinguished members of the Committee, it is necessary and critical that each and every member of this committee be able to answer a very important question: "How do I, as a legislator, know when a given business in a given industry is reasonably viable?" And, what does it really take to make a small business successful?

Is the critical information necessary to answer this question available to you, Mr. Chairman, and your distinguished colleagues on the Committee. A clear definition is essential, if members of the Committee and Congress are to address where the federal government should focus its resources in order to assist those 8(a) firms that need the most assistance.

The reality today is the same as it has been since the beginning of federal programs that support the development of minority-owned businesses: The most critical business program decisions have been political in nature, instead of using reasonable and practical business sense. We strongly hope that you accept our invitation to have the opportunity in a working group setting to develop a framework program structure that is a win, win situation for all involved.

16. Participation By Small Minority Firms in Sole Source Awards to Large Corporations and Non-Profit Organizations

Study and recommend an approach for 8(a) firms to share access to the sole source or limited competition contracts which are currently being awarded to large corporations and large non-profit organizations.

17. 8(d) Program Subcontracting Eligibility Monitoring

Deterring companies from falsely self-certifying as SDBs by improving SBA's administration of the Government-wide "status" protest system and encouraging the use of available administrative as well as criminal remedies for those individuals or firms found to be engaged in a pattern of misrepresentation.

Firms which are required to comply with subcontracting provisions will ensure that all notifications provided to SDBs regarding contracting opportunities will clearly establish the qualifications criteria for the work to be performed by the SDB for each specific requirement

in accordance with the Small Business Act provisions which determine size standards for each contract or major task order to be performed. At the time of proposal submission, the prime contractor will require SDB bidders to certify that for the majority of the work category to be performed the SDB firm is within the SBA size standard threshold.

The prime contractor's solicitation will clearly identify the type of work to be performed, and will identify which SBA size standard classification the SDB firm must comply with in order to qualify, and in order for the prime contractor to legally qualify the award toward SDB contract goals.

We strongly support addressing the issue of self-certification of SDBs. However, the Federation agrees that the provisions proposed under the Business Development Act of 1994 by Senator Kerry of Massachusetts lack the force to fully eliminate misrepresentation.

Federation members have experienced inconsistencies in the subcontracting arrangements of major primes with SDBs. Some major primes proudly publish press releases after winning a contract which list their claimed SDB partners who have already exceeded their small business status. It often happens that these SDBs had long ago exceeded SDB size standard thresholds for the work which the primes have selected the firms to perform.

The position that certain primes have taken is that present regulations allow self-certification, and unless formal complaints are brought up, they will not remedy their inconsistencies. The primes' unlawful practice of taking credit for their SDB contract goals with firms that are no longer small is widespread. What is important for the Senate Small Business Committee to realize is that 98% of the time when a prime "invites" SDB firms to compete the prime selects the firms whom it invites for competitive consideration. It is not an open bidding process, nor is it a level playing field—the decision of who may to compete is made by the primes, unlike Government contracting opportunities which are openly advertised, and in which participants meet a certain size and revenue criteria in order to qualify as a small business and be considered, and no firm competing is at a major disadvantage in terms of size standard.

It is difficult and sometimes impossible for firms to bring up this issue during the bid process because of a fear of being marginalized or simply not considered in future bidding opportunities with that prime. The underlying politics with this issue may be described as follows—if a SDB complains either formally or informally about an unfair competition (the inclusion of large minority firms competing with truly small minority firms), that SDB is considered by the prime as "persona non grata." SDBs need protection from the Federal Government with regards to this issue.

18. 8(a) Manufacturing Enterprises Require Greater Level Of Effort To Develop As Viable Enterprises

Most 8(a) firms are in the service business which do not require as much capital assets as a manufacturing business. The 8(a) program has had many success examples in the service or distribution business but not in the manufacturing industry. It takes a greater level of development to position a minority business as a viable business concern.

In order to increase the number of viable minority manufacturing enterprises it is necessary for the Federal Government to assist and encourage the realistic increase in the development of minority-owned manufacturing enterprises by allowing Program Participants, who, by the end of the first quarter of their eighth (8) year in the 8(a) Program can demonstrate that during the previous two (2) years they operated a manufacturing facility, and who have not achieved at least 50% of their size standard SIC Code for manufacturing, to be granted a three (3) year extension in the Program beyond the standard nine (9) years for a total of twelve (12) years of Program participation. The three (3) year extension shall apply only to manufacturing-type SIC Codes.

It is a fact that building a strong business foundation for a viable manufacturing firm requires more time, and more capital and operating investment than it does to develop a winning services firm. A start-up manufacturing firm must have the resources and support to strategically position itself in business.

Most Frequently Asked Questions About The 8(a) Program

1. Does the average citizen know that 8(a) firms risk their own capital?

It is critical for the taxpayer to know that the government does not provide any money to start-up and operate an 8(a) business. It is true that in the late sixties and early seventies, the 8(a) Program did provide a very limited number of grants because there were very few minority firms of any consequence in the engineering, manufacturing, computer support services, or sophisticated sciences fields. The few minority firms that existed in the sixties were in janitorial, guard services, courier services, and the like low-tech fields. The fact is that it is the minority business person that takes all the financial risks in the 8(a) program and the Taxpayer does not subsidize the minority business.

2. *Why do 20% of the 8(a) firms get 80% of the business?

The statistics are similar and consistent with large corporations. It comes down to the fact that the 8(a) firms or large corporations who position themselves to capture a greater share of the market and demonstrate their effectiveness will naturally capture a greater share of the market. The 8(a) firms do self marketing, very seldom does the SBA or Federal agency automatically provide the contract a opportunity to an 8(a) firm. Most participants in the program do not come from an hands on Federal Government contracting business experience. The average profile of a new 8(a) applicant is that he or she has been employed by a Federal, State, or Local government or by a large corporation that does business with the Federal Government and has an minimal two year exposure of establishing and getting a new business off the ground just before they are certified into the 8(a) program. The National Federation of 8(a) Companies has experienced that 40% of owners whose firm has been in the 8(a) program after three years have not received a contract and do not have full understanding or knowledge of what it takes to be a successful Federal Government Contractor. We believe that the training 3 phase program as developed and proposed by former Administrator Bowles should make a drastic difference in assuring that no minority owner gets certified until he or she demonstrates full understanding on what they are getting into. The minority business owner has to take full responsibility to assure that she or he does not enter into a business field which they are not reasonably prepared for. It is very unrealistic and unfair to continually blame the Federal Government and the SBA when individuals who by their own choice select to risk entering into the area of starting and operating successfully a business in the federal government marketplace.

Chairman Bond and members of the Senate Committee on Small Business, on behalf of the Federation I want to thank you for giving us the opportunity to present our views.

Chairman BOND. Thank you very much, Mr. Galaviz. As I indicated, the full statements will be accepted in the record and we look forward to receiving those.

Now we turn to Mr. Peter Homer. Welcome, Mr. Homer.

STATEMENT OF PETER HOMER, JR., COFOUNDER AND MEMBER, NATIONAL INDIAN BUSINESS ASSOCIATION, AND DIRECTOR, STRATEGIC BUSINESS DEVELOPMENT SYSTEMS INTEGRATION & RESEARCH, INC., ARLINGTON, VIRGINIA

Mr. HOMER. Thank you, Chairman Bond, and members of the Senate Small Business Committee for the opportunity to submit testimony today on the SBA's 8(a) Program. My name is Pete Homer and I am testifying today on behalf of the National Indian Business Association, NIBA, a national association established in 1992 to provide Native American business development through education, communication, and advocacy.

NIBA represents over 25,000 American Indian and Alaskan Native-owned companies nationwide. Approximately 220 of the total 308 8(a) Native American, Alaskan Native companies are members of NIBA. The 8(a) companies that I am talking about are considered in Indian country very viable companies and very successful companies.

My recommendations today on behalf of NIBA have the concurrence of the National Congress of American Indians and the Council on Minority and Women-Owned Businesses.

In addition to my role with NIBA, I am currently the director of business development for Systems Integration & Research, Inc., a 100-percent Native American-owned section 8(a) engineering firm. My experience also includes 2½ years of service for the Small Business Administration where I worked as the Director of the Office of Native American Affairs. In total, I have worked the past 26 years to advance opportunities for American Indians at the local, State, and Federal levels.

Today I would like to take the opportunity to offer several positive recommendations for improvement of the 8(a) Program. No. 1, tribally owned firms should be presumed economically disadvantaged for purposes of entry into the 8(a) Program as is currently the case for Alaskan Native village corporations. The use of the presumption would expedite the 8(a) application process for Indian-owned firms and reduce the resources that are being expended by the SBA to review these applications.

No. 2, the Small Business Act should be amended to state that 8(a) contract awards to American Indian firms will satisfy the Buy Indian Act. The Buy Indian Act, which involves lengthy competition among Indian firms has a burdensome waiver requirement. This discourages agencies from pursuing 8(a) awards to American Indian firms.

No. 3, the current 9-year 8(a) term should commence when an 8(a) firm gets its first contract. This will ensure that 8(a) firms have meaningful participation in the program, thereby helping them to succeed after graduation.

No. 4, the three nature contracts or the tripartite nature of 8(a) contracts should be eliminated. The SBA's authority should be, with limited exceptions, delegated to the procuring agencies. This

will streamline the 8(a) contract process by eliminating SBA's review and approval of contracts, options, modifications, and extensions, thereby creating an additional incentive for procuring agencies to use the 8(a) program.

No. 5, SBA's approval of the SIC codes to be contained in the 8(a) firm's business plan should be eliminated. The 8(a) firm rather than SBA should determine which industries should be part of their business plan. This would reduce unnecessary SBA oversight, eliminate burdensome paperwork, and encourage growth by 8(a) firms into new industries.

No. 6, the 8(a) program's support level approval requirements should be eliminated. This requirement limits an 8(a) firm's marketing ability and places an artificial restriction on the amount of 8(a) support a firm may receive during each year. Because 8(a) firms are already required to achieve certain percentages of their sales outside of the 8(a) program, the support level requirement is a duplication and unnecessary.

No. 7, unnecessary regulatory limitations on self-marketing by 8(a) firms including those relating to national and local buy procurements should be eliminated. 8(a) firms, like all Federal contractors, should be permitted to compete on a national level at all times.

No. 8, current semiannual reporting requirements for 8(a) firms are unnecessary and should be reduced.

No. 9, 8(a) applications should be subject to a single review by the SBA central office. This would streamline the 8(a) application process and eliminate unnecessary levels of review.

I have previously submitted for the committee's consideration my written testimony which more fully explains the above issues. I am available to answer the questions that you may have regarding these issues and I thank you again for the opportunity to appear before the committee and present these views.

[The prepared statement of Mr. Homer follows:]

TESTIMONY OF
THE NATIONAL INDIAN BUSINESS ASSOCIATION
BEFORE THE
SENATE COMMITTEE ON SMALL BUSINESS

April 4, 1995

Thank you, Chairman Bond and members of the Senate Small Business Committee for the opportunity to submit testimony today on the Small Business Administration's Section 8(a) Program.

My name is Peter Homer and I am testifying today on behalf of the National Indian Business Association ("NIBA"), a national association established in 1992 to promote Native American business development through education, communication and advocacy. NIBA represents over 25,000 American Indian-owned companies nationwide. My recommendations today on behalf of NIBA have the concurrence of the National Congress of American Indians.

NIBA is also a member of the Coalition of Minority Business Associations, which has been recently reconstituted as the Council on Minority and Women-Owned Businesses ("Council"). The Council, originally comprised of twelve minority associations, is growing to include many women's groups and Regional 8(a) associations throughout the country.

In addition to my role with NIBA, I am also involved in the private sector. Currently, I am the Director of Business Development for Systems Integration and Research, Inc., a 100% Native American-owned Section 8(a) engineering firm.

My experience also includes 2½ years of service for the SBA, where I worked as the Director of the Office of Native American Affairs. In total, I have worked for the past 26 years to advance opportunities for American Indians at the local, state and federal levels.

Today, I would like to take the opportunity to offer a few positive recommendations for improvement of the 8(a) Program. However, before addressing these recommendations, I would first like to state that, based on my experience both with the SBA and as a member of minority business community, I believe that the 8(a) Program is an invaluable tool for minority-owned businesses that are attempting to gain a footing in the mainstream of America's business economy. The 8(a) Program offers unique assistance which allows disadvantaged businesses to gain the experience and infrastructure necessary to survive in today's economy.

The 8(a) Program is especially beneficial because of its emphasis on business development. The Program is structured so that firms do not become unduly reliant on 8(a) contracts. On average 8(a) contracts account for only 25% to 30% of an 8(a) firm's total sales. As a result, many Native American and other minority-owned businesses have benefitted from the Program and are now prospering members of the nation's business community.

In addition, the American public as a whole benefits greatly from the Program. The cost of the 8(a) Program to the American public is approximately \$20 million. In contrast, successful

8(a) firms provide the American public with over twice that amount in federal, state and local tax revenues. Moreover, the 8(a) Program develops needed role models for women and minorities.

Notwithstanding the tremendous value of the 8(a) Program, there are still certain areas that can be improved. Therefore, on behalf of NIBA, I would like to offer the following positive recommendations.

As you may know, NIBA strongly supported S. 2478, a bill that was passed by the Senate last year. S. 2478, which was introduced by Senators Kerry and Pressler, would have revised certain aspects of the 8(a) Program.

Specifically, we strongly support a presumption that tribally-owned firms are "economically disadvantaged". Currently, in order to qualify for admission into the 8(a) Program, a tribally-owned firm must submit extensive documentation to the SBA to prove that the tribe itself is economically disadvantaged. Such evidence includes: the number of tribal members; the per capita income of the tribal members; the present tribal unemployment rate; the percentage of the local Indian population below the poverty level; and other burdensome documentation.

On March 18, 1994, the SBA amended its regulations to eliminate the requirement that firms owned by Alaska Native Corporations prove that their Alaska Native village corporations are economically disadvantaged for purposes of 8(a) eligibility.

Likewise, tribally-owned firms should not have to prove that their tribes are economically disadvantaged. There is ample evidence to support the conclusion that most Native American tribes are economically depressed and require business development opportunities. For this reason, NIBA strongly recommends elimination of the requirement that tribally-owned and Native Hawaiian firms prove that their tribes are economically disadvantaged to gain entry into the 8(a) Program.

The elimination of this requirement would not only streamline the 8(a) review process, but it would also reduce considerably the time and energy that is being expended by the SBA to review the tribe's economic disadvantage status, as well as the tremendous volume of documentation that is required to be submitted.

Second, we recommend that the Small Business Act be amended to recognize 8(a) contract awards to American Indian firms as being in compliance with the Buy Indian Act. This provision is critical for several reasons. The Buy Indian Act is a Congressional mandate pertaining to the Departments of Interior and Health and Human Services. It is recognized by the Bureau of Indian Affairs ("BIA") and the Indian Health Service ("IHS"), and more recently, by other Federal agencies through interagency agreements. In an attempt to assist Indian people to become self-sufficient, the Buy Indian Act was designed to preferentially utilize goods and services provided by Indian-owned firms. All contracts are awarded under the Buy Indian Act

through open competition among Indian-owned firms, with the competitions often lasting more than a full year. This protracted procurement process is burdensome (both in terms of time and money) on the Federal government as well as the Indian-owned firms.

Additionally, a waiver of the Buy-Indian Act's stringent competition requirements involves an excessive amount of unnecessary paperwork. It is not surprising, therefore, that, due to the difficulty in obtaining such waivers, BIA and IHS are reluctant to pursue 8(a) sole-source contracts. Unfortunately, this drawn-out waiver process prevents an abundance of 8(a) contracts from being awarded to Indian-owned firms. In addition, based on my experience, when the waiver process has been used, it has been used to avoid contracting with Indian-owned firms in favor of contracting with non-Indian companies.

To address these problems, BIA and IHS should be allowed to award contracts through the 8(a) Program to Indian-owned firms. This would streamline the acquisition process by eliminating unnecessary and protracted "waiver" requirements. Also, this would eliminate the disincentive that the "waiver" requirement currently creates for BIA and IHS to use the 8(a) Program. Finally, this change would satisfy the spirit and intent of the Buy Indian Act.

Our next recommendation relates to a firm's participation term in the 8(a) Program. As you know, the 8(a) Program is designed to promote a firm's business development by assisting

them in obtaining Federal contracts. In 1988, Congress determined that firms should be able to perform a sufficient number of Federal contracts in nine years so as to gain the necessary infrastructure to compete in the open marketplace. However, Congress did not anticipate that, in reality, it often takes an 8(a) firm three to five years to obtain its first Federal contract, thereby leaving such firms with only several years of meaningful participation in the Program. Even if these firms are successful in obtaining contracts during their remaining four or five years in the Program, this is often an insufficient period of time in the Program for firms to fully develop. Indeed, many Program participants go out of business shortly following Program graduation precisely for this reason.

Therefore, we recommend that the current nine year term in the Program be revised to commence when a firm obtains its first 8(a) contract. This will ensure that 8(a) firms have meaningful participation in the Program, thereby helping them to succeed after graduation.

In addition to the foregoing, we are recommending a number of improvements that will streamline the 8(a) Program by removing unnecessary restrictions and burdensome paperwork requirements. These recommendations, which are designed to increase the efficiencies for 8(a) firms, the SBA and procuring agencies, are reviewed below.

A. Elimination of "Tripartite" 8(a) Contracts

First, we recommend the elimination of the "tripartite" nature of 8(a) contracts, under which the SBA is included as a contracting party. Currently, the SBA serves as the prime contractor on all 8(a) contracts, and the 8(a) firm serves as the SBA's subcontractor. This framework requires the SBA to review, approve and execute all 8(a) contracts, options, modifications, and extensions. This tripartite arrangement was created when the 8(a) Program was first established in order to provide agencies with additional assurances that 8(a) contracts would be performed. However, the Program has progressed to the point that this arrangement is not only unnecessary, but it is burdensome and time-consuming for all involved.

The SBA should not be a party to 8(a) contracts. Rather, its authority should be delegated to the procuring agencies. Elimination of the "tripartite" nature of the 8(a) contract will streamline the 8(a) acquisition process, thereby creating an additional incentive for procuring agencies to use the 8(a) Program. Furthermore, unnecessary paperwork within the SBA will be reduced, thereby freeing up agency resources for business development activities.

Although the "tripartite" 8(a) contract should be discontinued, the SBA should still be involved in the contracting process in certain circumstances: (1) to offer assistance if an 8(a) firm and the procuring agency are unable to reach agreement regarding the terms and conditions of award; (2) to resolve

disputes arising from the performance of 8(a) contracts; and (3) to assist in contract negotiations, if requested by the 8(a) firm. In addition, the SBA should retain responsibility for issuing "search letters" on behalf of 8(a) firms and for requesting that procurements be set-aside for the 8(a) Program. Use of the SBA's limited resources for the above tasks, rather than for the administrative tasks of executing contracts, options and modifications, will reduce the SBA's expense in administering the 8(a) Program, and eliminate unnecessary delay and paperwork in the 8(a) contracting process.

B. Removal of Limitations on SIC Codes

The 8(a) firm, rather than SBA, should determine which industries, as designated by Standard Industrial Classification ("SIC") codes, should be part of its business plan. This would streamline the Federal procurement process by limiting SBA's role in an 8(a) firm's determination of which contracting opportunities it should pursue.

Currently, an 8(a) firm is not permitted to seek 8(a) contracting opportunities designated under a particular SIC code, unless the SBA has pre-approved that firm for that type of business. For example, if an 8(a) firm wishes to add an additional line of business, it must submit a written request to the SBA in the form of an application, demonstrating that the firm has the capacity and capabilities to perform under the applicable SIC code, and that the SIC code is a logical business

progression for the firm. The documentation required to support such a request includes resumes, copies of contracts, and other burdensome and redundant evidence.

Allowing 8(a) firms to determine, within reason, the SIC codes under which they are capable of performing will eliminate the burdensome regulatory requirement of submitting extensive paperwork to the SBA. This would also bring the 8(a) Program in line with Federal contracting realities by allowing contracting officers to determine whether, in fact, a prospective 8(a) awardee is capable of performing under the SIC code designated for the procurement.

C. Elimination of SBA's Policy of Using 8(a) Support Levels as a Basis for Denying 8(a) Contracts

The concept of using 8(a) Program "support levels" as a ceiling on 8(a) revenues was created by the SBA, and not mandated by Congress in Public Law 100-656. We recommend that this restriction be eliminated.

Currently, the SBA annually establishes an 8(a) support level for each 8(a) firm. Generally, the 8(a) firm may not exceed this level of 8(a) contracts. Under current regulations, even contracts that have been self-marketed, or for which an 8(a) firm has been selected after an 8(a) competition, may be disapproved if award is inconsistent with the firm's approved 8(a) support level.

The current regulatory requirement unnecessarily limits an 8(a) firm's ability to obtain 8(a) contracts and to grow in the marketplace by imposing artificial restrictions based on what the SBA may perceive as a firm's ability to grow. Further, the provision is unnecessary given the current requirement that 8(a) firms achieve certain percentages of their sales outside the 8(a) Program. In light of this requirement, a firm's ability to increase its 8(a) business base should not be subject to further restrictions.

D. Removal of Restrictions on National and Local Buys

NIBA also recommends elimination of the unnecessary regulatory limitations on self-marketing by 8(a) firms, including those relating to national and local buy procurements. Section 8(a) firms, like all other Federal government contractors, should be permitted to compete on a national level at all times.

E. Reduction in Reporting Requirements for 8(a) Firms

We also strongly recommend a reduction in current reporting requirements for 8(a) firms. Presently, 8(a) firms are required to submit semi-annual reports regarding their use of consultants, agents and other representatives, including the amount of fees paid to such persons. Such filings should only be required on an annual basis. This is consistent with the current goal of the Federal government to reduce unnecessary paperwork and to conserve Federal resources in the government contracting arena.

F. Elimination of Levels of Review of 8(a) Applications

Finally, in addition to the elimination of unnecessary regulatory and paperwork requirements, we further recommend a single level of review for 8(a) applications. Currently, 8(a) applications are reviewed at the SBA Regional and Central Office levels. We recommend a single review at the SBA's Central Office. This would streamline the 8(a) application process, thus ensuring timely and more efficient review of 8(a) applications and the elimination of unnecessary duplication.

In closing, I would like to reiterate that the 8(a) Program is an extremely necessary and valuable program. We believe that adoption of our recommendations will make the Program more efficient with the Federal Government and more meaningful for minority-owned businesses.

NIBA would be pleased to work with this Committee to enact positive legislation that would improve the 8(a) program, assist in transitioning 8(a) graduates to the open marketplace, and increase Federal contracting opportunities for minority-owned businesses.

Thank you again for the opportunity to present our views to the Committee.

Chairman BOND. Thank you very much, Mr. Homer. My thanks to all the members of the panel. As I indicated, we will be reviewing the entire written statements and we will keep the record open for other questions.

I would like to address just a few questions to this panel. Mr. Smith, you refer to promoting entrepreneurship by providing access to capital to firms in targeted areas. Now one of the real problems I have had as I have talked with leaders in the inner cities in my State of Missouri who complain to me that they have all the job training money needed and what they really need is jobs. That we are continuing to look for a way to get jobs into the 'hood, the neighborhood and into areas of rural poverty. How would you structure such a program? Would that be an 8(a) requirement or how would you—

Mr. SMITH. Senator, I think the first thing that the Federal Government has failed miserably on is to get a value added. As has been clearly indicated from the testimony 8(a) companies do the same thing other Federal contractors do. So there is no question about service to the country. There is no gift. There is no welfare system. None of that exists in the 8(a) program. But I believe there is a perception that is very strong as to what is happening. One of the ways you alter that is for there to be incentive by people of the same ilk in communities serving not only as role model but literally providing jobs in those communities.

Now everybody gets a benefit from that. You can also mesh or marry the job training with the jobs. What we need is a social benefit trailing a business success. But it has all gotten jumbled together and you do not know which one is which, and you see angry white men saying that because of the 8(a) companies I am being denied. But if the country is getting a value added, a return on investment by way of providing opportunities others clearly cannot do, then we have a contribution that the program makes in addition to the service that it provides the country.

We have some ideas on it. Be glad to talk to you about it. But I believe we have got to recognize that we have got to target social benefit programs, but we need the business successes first.

Chairman BOND. That is a very interesting idea. We do look forward to following up with you. In the early 1980s we were successful in adopting enterprise zone legislation in Missouri, which only partially met that need. We still do not have the jobs that we need and I would like to have your further thoughts on how we could build on that.

Mr. SMITH. I would be glad to work with you, sir.

Chairman BOND. Ms. Archuleta, you had some very good recommendations but I do not recall you saying anything about the management and technical assistance role of either the SBA or the SBDC's. How important is the technical assistance provided by the SBA or any of its agencies? Do you see that as an important function for encouraging and assisting minority and women-owned businesses?

Ms. ARCHULETA. That is a very good question, sir, because I believe that, as was testified earlier by a previous panelist, the burden of proof is on the entrepreneurs themselves. We need to be able to know what questions to ask and know where to seek that advice

and be well informed. No, not in every case does SBA have all of the answers. I have not to this date ever participated in any of the programs provided by an MBDC. However, I did have access to an SBDC that was very helpful in helping us get some market research done. I was assisted extensively by the Service Corps of Retired Executives. They helped me build some of my original business plans. This was pre-8(a). I knew that they were there and they came in to help me.

So there are programs that help. I believe part of the problem has been the public relations associated with it. I do not think most businesses know what is available to them. We get so wrapped around the flagpole trying to worry how we are going to meet payroll that we do not always look at those things in the long term. So it is really an education process that has to take place.

Chairman BOND. Mr. Galaviz, in your prepared testimony you referred to, and I think you mentioned briefly, abuses where successful 8(a) business owners set up family members in another 8(a) company. Can you explain how this is done and how SBA certifies these individuals as economically disadvantaged? What are we dealing with here?

Mr. GALAVIZ. The National Federation since 1984 has focused our efforts to help the people in the community who need the most help. We have always taken the posture that there should be a tightening up of many of the potential abuses such as the issue of net worth and other issues. As it relates to the issue you just brought up, we are concerned that there is allowed—for example, I have seven children. If I feel that my business is growing and eventually doing well and I am able to achieve a reasonable net worth, I feel that then I should be responsible to help my children if they want to become Government contractors. That I should then, since I have already gained the experience, I already have a role model, and I already have the financial support, then it should not be the Government through the 8(a) program that should help my children develop into being a Government contractor.

The issue one has to also look at, the difference between becoming a Government contractor and being 8(a) certified. There is that reality that many people certify to the 8(a) program because they want to just be in the 8(a) program and take advantage of what they perceive, some easy benefits to come. Later they find out when they get certified that the SBA is not going to help you to get business; you have to go and get the business. SBA is not going to help you to meet the payroll; you have to meet the payroll.

So basically the concern has been right now that, we can provide this information privately, of specific situations where successful 8(a) entrepreneurs positioned their siblings or their spouses go open up into the 8(a) program and continue the legacy.

Chairman BOND. My staff and I would welcome any suggestions or discussion you have on that issue. We will not disclose that information or seek to embarrass anyone with it. Thank you.

Mr. Homer, you have talked about the difficulties of a number of the regulations and burdens and restrictions put on by the SBA. Do you find that there is a valuable role for the SBA in providing technical advice? Has this been helpful to the Native Americans, and the Indians and Native Alaskans that you represent? Have

they utilized any of the technical assistance or SBDC or minority development assistance?

Mr. HOMER. No, SBA has not. It's been nonexistent, because of the isolation of the Indian reservations and the Alaskan Native villages. They more or less get technical assistance on their own by reading business types of journals and things like that.

Chairman BOND. Is this a need? Is this an area that there—

Mr. HOMER. Yes, very much a need because the simple fact is that Indian tribal governments only have 17 tribal governments that are in the 8(a) Program and all 17 are successful. The need is there for more to be involved in the program to create jobs on Indian reservations. Outreach is probably the most important technical assistance that SBA can provide to tribes. The processes of SBA are numerous processes that are very cumbersome, but important for tribes to know.

SBA provides technical assistance by providing funding to 500 colleges, junior colleges, and universities throughout the country. NBA recommends the funding of 22 American Indian colleges to provide SBA technical assistance to Native American communities.

Chairman BOND. If you heard Mr. Smith's suggestion about not only targeting the minority business firms but those that deliver a social advantage, I would assume that certainly geographically most of your members would fit in with that philosophy. Would you agree that your organization, your businesses would meet the test that Mr. Smith suggests?

Mr. HOMER. Yes.

Chairman BOND. Let me ask Ms. Archuleta and Mr. Galaviz just to comment briefly. What about saying that not only do you have to be a minority business owner, 8(a) qualified, socially disadvantaged, economically—and I think we are going to have some lengthy discussions among members of the committee on the economic levels. But what if there were a further requirement that your activities, your employment also had to be in areas where there would be greater social benefits derived from the program?

Ms. ARCHULETA. I believe that it is a step that needs to be certainly considered. There are some limitations however. Given the fact that the Department of Defense has the largest portion of the Federal procurement dollars and most of our firms do a lot of business with DOD, you are really limited to where DOD is located. If they are not located in some of those targeted areas that does present a problem.

One of the advantages or one of the things that we have done, and my company is an example and I have seen it done in others, is that because of the growth of our company we have been able to expand into some of those targeted areas. I got the highest concentration of my contracts in Huntsville, AL, because that is where NASA and DOD are located. But we have gone in and targeted placing pockets of business in other areas even back in New Mexico where I was originally from. So we have really had a distribution of the profits and we have reinvested those profits in those targeted areas, so I think it will have to be looked at and some conversation has to occur.

But, Senator Bond, I would like to address the issue of economic disadvantaged and that issue that Senator Nunn brought up. One

of the reasons that we have to be very careful how that gets played out is because of the ability to access credit. When I go to the bank, they take out the mortgage on my home and they take out the net value of my business before they will consider whether I have that access to credit, even signing on business loans. I still have to personally guarantee those. So they have to look at all of that.

So it is not just an issue that you are creating millionaires. What you are trying to do is create individuals that have the ability to have access to credit so that when they exit the program they can still be successful. If we are not careful and the cuts become too draconian or you begin to look at that situation from a draconian point of view, you will limit the individual's ability to access credit and therefore be a viable business thereafter. It is a very fine balance that has to be followed.

Second, the whole issue of the creation of millionaires. I heard an earlier panel say something about he had heard of a contractor that got a \$260 million contract. I recently was awarded a \$50 million contract which I won in a small business competitive arena. I would not have been prepared to do that, just as Ms. Garza was not, had it not been for 8(a) and the ability to grow my business there.

However, I certainly did not put \$50 million into my pocket. My net profits on that are going to be minimal. I am very proud to say a lot of that will go back to Uncle Sam in the form of corporate taxes. And most of the balance of that will go back into reinvesting, back into areas that may be targeted pools. Thank you.

Chairman BOND. Mr. Galaviz.

Mr. GALAVIZ. Mr. Chairman, I would like to answer that in two ways, personally and on behalf of the Federation. On a personal basis—and normally I do not like to promote my company whenever I am doing work for the Federation, but if I may at this time because I have to put my money where my mouth is.

Due to the fact that we were able to participate in Senator Nunn's mentor protege program and the assistance we got through Congress through being a participant in the 8(a) program, we have instituted in our company a program where any employee, regardless of color, race, or creed, after being employed with the company more than 5 years and if they want to start their own business, we will formally help them in transition to that business, whether it is to open up a McDonald's franchise or a competing company like ours. We are the only company that we know in the Nation that has such a formal program.

Second, we let our employees develop their own bonus program because we want to share the wealth—if you may call it wealth, the short margins that we get—with our employees by them creating the kind of initiatives that are going to help our customers.

Third, we have started a program to support scholarships for minority students.

On behalf of the Federation, the Federation in their submission they have made to the committee, we recommend that indeed if a minority 8(a) firm lives in an economically depressed area and has their business there and at least 30 percent of their staff is minorities, then that firm should have some extra—we recommend, as

long as they are still small they should have 2 more years participation in the program.

That is my answer, sir.

Chairman BOND. I would like to thank this panel for all of your comments. Unfortunately, I have a time deadline. I was supposed to be someplace at 1 o'clock. I will continue the perception that Senators are always late when I arrive. But I very much appreciate receiving both the written testimony and the oral testimony and our discussions today.

You have heard, I think, some of the questions from the panel, the things that are of concern: the economic size of the firm going in, the targeting, the length of time, and other aspects. As you reflect on these, and I address to the audience as well, any further comments or views that you would like to express will be gratefully received by the committee. We thank all of you for the attendance today and for giving us an awful lot to work on.

Thank you, the meeting stands adjourned.

[Whereupon, at 1:06 p.m., the committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

(215)

PREPARED STATEMENT OF SENATOR LARRY PRESSLER
COMMITTEE ON SMALL BUSINESS
APRIL 4, 1995

I thank the Chairman for calling this important hearing on the Small Business Administration's section 8(a) program.

Few would question the goal of the 8(a) program. Part of the SBA's mission is to work with undercapitalized and inexperienced entrepreneurs. Likewise, it is important for small businesses to have an opportunity to compete for government contracts.

Unfortunately, instances of waste, fraud, and abuse have brought the integrity of the 8(a) program into serious question. Documented accounts of bloated contracts, front companies, and bureaucratic mismanagement have brought the usefulness of preferential contracting into question. The American citizenry--including small business owners from my home state of South Dakota--has spoken on this issue. Many think race-based preferential contracting has failed to achieve its objective. Fittingly, all three branches of the Federal government have responded in one form or another to these concerns.

As my colleagues will recall from the activity of this Committee late last Congress, the 8(a) program is of great interest to all involved in the world of small business. Last year, my good friend and colleague, the Senator from Massachusetts, Senator Kerry, took the lead on this issue by introducing S. 2478, the Business Development Opportunity Act of 1994. Though I felt this bill could have gone farther to encourage competition, S. 2478 was a step in the right direction for the 8(a) program and, therefore, worthy of cosponsorship.

The 8(a) program has had its share of success stories. We will hear from some of them today. Likewise, we will hear from critics of this program. I commend the Chairman for bringing together such a balanced slate of witnesses and look forward to hearing their testimony.

THE HONORABLE PHILIP LADER, ADMINISTRATOR
U.S. SMALL BUSINESS ADMINISTRATION

Responses to post-hearing questions posed by Senator Pressler
Hearing on the Small Business Administration's 8(a) Minority
Business Development Program
April 4, 1995

1. American Indian business owners from my home state of South Dakota have told me they do not think the SBA's 8(a) program has worked well for them in the past. These important entrepreneurs cite lack of cultural understanding and remoteness as the culprits. What is the status of the office of the Assistant Administrator of Native American Affairs? What sort of outreach is this office making as it relates to the 8(a) program?

RESPONSE:

The Office of Native American Affairs (ONAA) has developed partnerships with other Federal agencies and continues to work closely with SBA District Offices to reach out to Native American communities. Activities currently underway include:

- In March 1995, the SBA selected Montana, South Dakota and North Dakota as participants in the minority Pre-qualification Pilot Loan Program. This Program is specifically directed at reservation communities and is designed to alleviate difficulties for Indian people needing a business loan. The intent of this Program is to pre-qualify individuals, or Tribal Organizations, for an SBA guaranteed loan for new or expanding business ventures "prior to" their first meeting with a financial lender. This program will encourage Indian businesses to establish relations and a credit history with financial lenders, assist in the development of reservation based businesses, and foster creation of a private sector Indian business economy. Currently, the SBA Montana, North Dakota and South Dakota District Offices are conducting reservation workshops to explain this and other SBA program opportunities.
- SBA continues to monitor and fund the Oregon Native American Business Entrepreneurial Network (ONABEN). ONABEN is a Pilot Program for the SBA, a permanent entity for the Oregon Tribes. ONABEN is a not-for-profit corporation chartered by the Confederated Tribes of Grand Ronde, Klamath, Siletz and Warm Springs. The ONABEN mission is to create reservation based, Indian Business Development Centers and provide Tribal members with: business development classes; counseling; academic credit from Northwest Indian College (NWIC) and; to support the SBA, BIA, RDA loan programs. ONABEN has had an outstanding impact in these reservation communities, affecting both Indian and non-Indian people, and has succeeded in creating an Indian business private sector and an expanded

economic base for Indian Tribes throughout Oregon. To expand and support business development opportunities for Indian people the SBA will provide (3) three high-technology mini Business Information Centers to ONABEN in June 1995. These Centers will be located on the Grande Ronde, Warm Springs and Klamath reservations. In addition, the SBA has teamed with the Bureau of Indian Affairs to establish reservation based Indian Business Development Centers in South Dakota, North Dakota, Montana, and Wyoming. This effort will allow SBA 8(a) participants the opportunity to access business development resources closer to home.

- The SBA is working with, and closely monitoring the Defense Acquisition Regulatory Council (DARC), in the re-drafting of Federal Acquisition Regulation (FAR) Part 26, which implements the Indian Incentive Program (IIP). The IIP, initially created by a 1987 amendment to the Indian Financing Act, promises Federal prime contractors a flat monetary five percent subcontract "bonus" to utilize Indian businesses. The legislative intent of the Act is to provide Federal prime contractors with an incentive to reach into Indian Country and utilize Indian businesses located in reservation communities. Since 1987, the Department of Defense (DOD) appropriations has provided \$8.0 million, drawn pro-rata, out of Title III procurement accounts to pay these incentives. Unfortunately, the current interim rule published in the FAR in 1988 virtually did away with the IIP. SBA, however, has been working with DOD to develop a new rule. We hope to announce the publication of a new regulation by July 1995. It is the SBA's position, that the IIP if implemented correctly through regulation, will provide substantial business and economic support for reservation based businesses participating in Federal procurements.
- In February 1995, the SBA created a separate Native American Goal category and negotiated Native American lending goals with 28 SBA District Offices servicing the Indian communities across the United States. This new goal category is designed to increase participation by SBA District Offices in assisting Native American businesses in accessing capital markets.
- The Office of Native American Affairs has developed an aggressive marketing strategy directed at both the Federal and private sector business community. Specifically, the SBA continues to encourage large Federal prime contractors to enter into Mentor/Protege agreements with Indian businesses and Tribal organizations, meets with commercial firms to outline the business and monetary opportunities of locating subsidiaries in reservation communities, as well as the benefits of team and contracting with individual Indian businesses and Tribal organizations.

- In Fiscal Year 1995 which began October 1, 1994, the SBA has made 48 micro-loans to the Native American community in the amount of \$5,147,270, and 132 SBA 7(a) guaranteed loans totaling \$22,531,782. On October 22, 1994, P.L. 103-403 amended the Small Business Act to allow Tribal Governments and non-profit Tribal Organizations to be eligible to lend under SBA's micro-loan program.
 - The SBA has proposed a legislative amendment to the Small Business Act to eliminate the requirement for Tribes to prove they are economically disadvantaged prior to acceptance into the SBA Minority Enterprise Development 8(a) program.
 - The SBA sponsored two Native American conferences in May 1995: the Third Annual Cultural Tourism Conference for the Alliance of Tribal Tourism on the Lower Brule reservation in South Dakota May 5-7; and the native American Economic Development Conference at KwaTazNuk Resort in Polson, Montana May 18-19. The Montana conference included special presentations by NASA, DOE, and Battelle Labs on the subject of technology transfer and business opportunities for Native Americans.
 - As of May 1, 1995, the SBA has 363 Native American firms in its Minority Enterprise Development 8(a) program, and to date has processed 1672 contract actions totalling \$837,583,884.22.
2. Last year your agency testified that business development programs and public-private partnerships would be developed to supplement the business assistance portion of the 8(a) program. If this already has been done, could you please explain how well such partnerships are working?

RESPONSE:

The Office of Minority Enterprise Development, in cooperation with Small Business Development Centers, has devised a plan to train and increase the viability of minority small businesses. Each pilot project has unique qualities and the target audiences vary. However, the principal goal is to develop the skills and organizational structures required to enhance the performance of small businesses in the marketplace. Six pilot sites have been selected around the nation for participation in this initiative. The targeted cities for these pilots include Helena, MT; Boston, MA; Miami, FL; Washington, D.C; San Diego, CA; and Houston, TX.

The University of Houston Small Business Development Center (UHSBDC) has targeted approximately 119 8(a) firms within the Houston District Office portfolio. The primary component of the UHSBDC project will be the use of the

renowned Premier FastTrac program to assist participating firms in developing and improving business plans. Selected participant firms will also have the opportunity to attend up to 40 hours of small business training. Topics addressed in the many training series range from marketing to product development. The objective of the third component is the provision of one-on-one counseling. Selected participants will be able to choose from three consultant pools. Consultants will assist the business owner in solving problems specific to the individual business.

The Montana and San Diego projects both contain public awareness campaigns to reach the minority small business community. These projects will target the Native, African and Hispanic American communities. News releases, public service announcements, paid advertisements, and targeted mailings will be used to apprise the minority business community of the many technical assistance resources available to them for the improvement of their business skills and expansion of their companies. These programs will also have a strong emphasis on loan packaging for business expansion.

The San Diego project will develop an Expansion Training Program for minority business owners. Participants will attend 40 hours of specialized training to provide them with the knowledge required to successfully seek, qualify for and obtain financing. The Montana project will utilize the Premier FastTrac program and counseling services. Participants will be referred to one of the following resources: Native American Technical Assistance Officer, Department of Commerce Regional Development Officer, SCORE counselor, Minority Business Development Center Officer, or other private or public resources.

The Howard University (HUSBDC) and University of Massachusetts (UMSBDC) Small Business Development Centers pilot projects also include intensive public awareness campaigns. The UMSBDC project will offer seminars which assist participants in completing a business plan. Seminars will also be conducted for participants with existing business plans. These seminars provide participants with the skills to conduct an in-depth analysis of potential commercial and government market segments, management structure and financing. HUSBDC will print a resource guide listing available management and technical assistance resources in the area and conduct a study to determine the impact of such programs.

3. **Many within the small business community feel race-based preferential contracting should be terminated. Do you think the 8(a) program ought to drop the "socially" from the "socially and economically disadvantaged" qualification?**

RESPONSE:

Historically, the Congress has supported the concept of increasing the level of business ownership by socially disadvantaged individuals so that they would have a better opportunity to materially share in the competitive free enterprise system. In 1978 Congress enacted Public Law 95-507 which specifically required 8(a) program participants to be at least 51% owned and controlled by socially and economically disadvantaged individuals. The Congress designed the legislation to foster business ownership and development by individuals in groups that own and control little productive capital and to promote the viability of businesses run by such persons by providing contract, financial, technical and management assistance. Congress also determined that the power to award Federal contracts can be an effective tool for development of business ownership among groups that own and control little productive capital.

The Administration is currently reviewing affirmative action and contract preference programs in the Federal government, including the 8(a) program. The outcome of this review will determine the future course of the 8(a) program.

4. **Does the Administration have any legislative plans to improve the effectiveness of the 8(a) program pursuant to the recommendations of the General Accounting Office?**

RESPONSE:

We have taken aggressive steps to effectively address each of these problems. In an effort to change the longstanding issue of contract concentration we have negotiated a Memorandum of Understanding (MOU) with the Department of Defense that will give special attention to firms that have never received an 8(a) contract. In this way, we are working to increase the number of participants who actually receive contracts. We are negotiating with other federal agencies to execute similar MOUs or other agreements.

Also, new program regulations that were published in the Federal Register on June 7, 1995, include two features that will assist greater contract distribution among 8(a) firms. The first is the elimination of the concept of local (except construction) and national market segmentation. This change will allow 8(a) firms to market to the Federal government without geographical restrictions. The second

regulatory change addresses the methodology for determining when Indefinite Delivery/Indefinite Quantity contracts must be competed. This revision will establish the estimated value of the contract as the standard for competitive threshold evaluation, creating more opportunities for competition among more 8(a) firms.

The Administrator has also issued a memorandum to all district directors to develop a strategic marketing plan to increase the number of contract opportunities for a greater percentage of their 8(a) portfolios. Also, all district offices are required to conduct annual reviews of all 8(a) firms. This requirement has been made a part of each district director's performance plan for this year. The districts are also required to report the progress of their accomplishment of this requirement. SBA Headquarters will monitor compliance to assure that this goal is achieved.

Firm compliance with 8(a) and non-8(a) contracting targets is a requirement that has also been included in the aforementioned district director performance plans. The previously mentioned proposed regulation will provide clear, consistent guidance to our district offices. Compliance with this requirement will be tracked by SBA Headquarters.

The 8(a) program's new management information system has been completed and will be in place and functioning at all district locations within the next two months.

5. **It has been suggested that private franchising be encouraged as a substitute for Federal assistance. Franchises may offer a better support network and access to capital than the SBA. I tend to agree that the private sector often provides services more efficiently than the government. Why could not the franchising concept be used to spur entrepreneurial growth in lieu of government involvement?"**

RESPONSE:

There is no doubt that franchising offers ample opportunity for individuals with sufficient resources to own and operate profitable enterprises. It is also generally true that franchisors, normally large corporate entities, provide support to their franchisees in many functional areas, e.g., purchasing, advertising/promotion, accounting services, etc. Another advantage of franchising is that normally the product or service is known and accepted in the marketplace. In addition to automobile retail franchises, which capitalize on manufacturer brand identification and loyalty, there are other examples such as McDonald's, Midas Muffler, Jiffy Lube and Pizza Hut.

There are, however, other factors associated with franchising which present drawbacks or limitations that make franchising unattractive to the typical user of SBA's programs. Normally, to obtain a franchise requires a large front end investment. The more successful franchises require the largest cash outlay. Franchisors also maintain extensive control over the operation of the franchisee so that there is virtually no room for the type of innovation, expansion and diversification that typifies entrepreneurial management. Franchises normally are limited to providing goods and services at the retail level. SBA's programs address entrepreneurial interests which go beyond retailing. The 8(a) program for example, which is the Federal government's most successful program in developing the capabilities of minority and women entrepreneurs, provides financial, management and technical assistance to manufacturers, suppliers of goods and services, construction companies and a broad range of high technology firms. In fact there are few, if any, participants in this program that could accurately be classified as retailers.

It is our opinion that while franchising does play a role in growing the economy, this approach, as any other, has limitations and consequently does not provide the whole answer. SBA programs and services play an important complementary role in providing access that is not available through other approaches to socially and economically disadvantaged individuals who are interested in starting and growing their own businesses.

JUDY A. ENGLAND-JOSEPH, DIRECTOR
HOUSING AND COMMUNITY DEVELOPMENT ISSUES, RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT DIVISION
UNITED STATES GENERAL ACCOUNTING OFFICE

Responses to post-hearing questions posed by Senator Pressler
Hearing on the Small Business Administration's 8(a) Minority
Business Development Program
April 4, 1995

- Q: Have either the GAO or the Department of Defense compared the cost of sole-source versus competitively awarded contracts?
- A: GAO has not performed any analysis comparing the cost of awarding contracts on a sole-source versus competitive basis, and we are not aware of any such study performed by others. However, we have examined how various factors, such as contract size and type, affect the length of time agencies require to award contracts. Our March 1995 report Information Technology: A Statistical Study of Acquisition Times (GAO/AIMD-95-65, March 13, 1995) showed that, among other things, sole source contracts were awarded faster, and that the difference in contract-award time between the two methods increased dramatically as the contract value increased. For example, sole source contracts with values of less than \$250,000 took 18 percent less time to award than comparably priced full and open competition contracts. Sole source contracts for \$25 million and above took 58 percent less time to award than competitive contracts of similar value.
- Q: Is there any evidence from SBA initiatives that the concentration of awards will change in the near future?
- A: We have no evidence at this time that SBA's efforts will change the concentration of 8(a) program contracts in the near future. As noted in my testimony, the efforts that SBA has underway to increase contracting opportunities to a greater number of 8(a) firms include requiring its district office to better market the 8(a) program to federal procurement offices, as well as agreements from the Departments of Defense and Veteran Affairs that they will award contracts to 8(a) firms that have never received contracts. However, how successful these and SBA's other efforts will be, and how soon results may be expected, depends a great deal on the commitment of SBA's and the other agencies' staff to these initiatives.

R. NOEL LONGUEMARE, PRINCIPAL DEPUTY UNDER SECRETARY OF
DEFENSE FOR ACQUISITIONS AND TECHNOLOGY
DEPARTMENT OF DEFENSE

Responses to questions posed by Senator Pressler
Hearing on the Small Business Administration's 8(a) Minority Business Development Program
April 4, 1995

- Q. Have either the GAO or the Department of Defense compared the cost of sole-source versus competitively awarded contracts?
- A. I know of no recent studies done by either GAO or DoD that compares the cost of sole-source versus competitively awarded contracts. However, it is obvious that competitively awarded contracts almost always cost less than sole-source, and there is no rational argument to support a different conclusion.

O'Donnell Construction Co.

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United States Senate
Committee on Small Business
Washington, D.C. 20510-6350

April 26, 1995

Attention: Karen Ponzurick

Re: U.S. Small Business Administration
8(a) Minority Business Development Program

Dear Ms. Ponzurick,

Listed below are my responses to Senator Pressler's questions from the April 4, 1995, hearing on the SBA's 8(a) program.

1. Changing the 8(a)'s race-based preferences to economically-based preferences would at least correct the constitutional deficiency of the current program; however, the waste, fraud, corruption and incompetence of this bureaucratic nightmare would continue. In our free market, capitalist country, the U.S. government should be the leading example of open and free competition. The low bid system is not perfect and it requires watchdogs, but there is no better system in the world for awarding publicly funded contracts. Gender, race, religion and economic circumstance should not determine which persons are allowed to do business with the federal government. I say this in spite of the fact that the SBA has conceded that my brother and I are economically disadvantaged except for the SBA's definition that only socially disadvantaged individuals can be determined to be economically disadvantaged.

2. The 8(a) program does one of four things to fledgling firms depending on the circumstance of the certified company:

a. Wastes the company's precious resources at a critical stage because most certified firms never receive a contract.

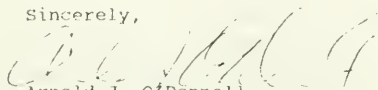
b. Gives false hope to marginal firms that the SBA is actually going to help the company succeed. More than 90% of ALL small businesses fail within five years. There is no reason to expect 8(a) firms to do better.

c. Allows companies that should not be in business to survive or actually prosper. This group includes firms that are not competitive in open competition, but survive because the SBA allows much higher prices than the real world; fronts, brokers and criminals who have learned to manipulate the SBA to a degree that can not be achieved under the scrutiny of open competition.

d. Bestows a windfall of almost unimaginable proportions on a few companies that are owned by individuals who happen to be members of the preferred groups and who operated companies that would succeed with or without the SBA. About 200 such firms received more than \$2.3 billion just from the SBA in FY94.

3. Privatizing a fundamentally flawed government program offers no benefit to American society. Surely, there are more pressing needs for U.S. tax dollars than to perpetuate a program that does little good and a great deal of harm.

Sincerely,



Arnold J. O'Donnell
Vice President

NATIONAL INDIAN BUSINESS ASSOCIATION

Honorable Senator Pressler
United States Senate
Committee on Small Business

May 2, 1995

Dear Senator Pressler:

On behalf of the National Indian Business Association ("NIBA"), I am pleased to respond to your letter of April 24, 1995, requesting additional information about our position on matters raised at the April 4, 1995, hearing on the Small Business Administration's 8(a) Minority Business Development Program. Our responses are as follows:

1. Should the criteria for eligibility for the 8(a) program be changed from a race-based preference to an economically-based preference?

NIBA believes that the current standard of eligibility based on an individual proving that he or she is both socially and economically disadvantaged is appropriate and should be maintained. Under the current eligibility criteria, "socially disadvantaged" does not equate to an automatic preference based on race. Nor is race the determining factor in an applicant's establishing that he or she is "socially disadvantaged."

The Small Business Act's definition of "socially disadvantaged" individual does not grant a "preference" to members of any particular racial or ethnic group. Rather, any person who can make the requisite showing that he/she has been subjected to bias may qualify as "socially disadvantaged." Thus a poor Appalachian white person who has never had the opportunity for quality education or the ability to expand his/her cultural horizons, may similarly be found "socially disadvantaged." Any individual may qualify as "socially disadvantaged" if they provide the requisite showings. As such, there is no "race-based preference" for 8(a) eligibility.

For example, even though Native-Americans are considered socially disadvantaged, this classification is based on social conditions, not race per se. NIBA represents over 24,000 Indian-owned businesses, which, given the size of Indian Country and the population, is relatively small. Moreover, Indian unemployment

and poverty levels continue to be disproportionately high. Today more than 30 % of the American Indian population lives in poverty as contrasted to only 13 % of the total population. Given the present socio-economic conditions, NIBA is committed to the creation of as many economic opportunities for American Indians as possible, both on and off reservations and for both tribal and individual businesses. To ensure maximum opportunities for the growth of both tribally and individually owned Indian businesses, we would recommend that SBA consider how SBDC or loan programs can target and promote tribal business development and how SBA's business development/procurement programs can better serve the entire Indian community.

Accordingly, while there are reasonable arguments on both sides of this issue, NIBA's position is that the present criteria which encompasses both socially and economically disadvantaged status should not be changed.

Moreover, as you know, a case presently before the U.S. Supreme Court, *Adarand Construction, Inc. v Frederico Pena*, will likely affect whether the Small Business Administration may continue to use social disadvantaged status as a criteria for entry into the 8(a) program. Should the Supreme Court determine that it is unconstitutional, than a significant amount of additional analysis and consideration should go into changing eligibility to only "economically disadvantaged." We believe, however, that until the Supreme Court rules on this issue, changing the criteria to exclusively "economically disadvantaged" is premature.

2. Whether the 8(a) program has been of assistance to Native Americans?

Ten years ago, tribal interaction with the SBA was minimal, and there were virtually no Indian-owned businesses participating in the 8(a) program.

Today however, this has changed dramatically, and SBA programs are increasingly recognized as important tools in the development of tribal economies and the expansion of Indian business opportunities. Indeed, a number of Indian-owned businesses are ranked in the top businesses under the 8(a) program. These businesses include Laguna Pueblo Industries, Turtle Mountain, Piquiniq, Amerind, First Computer Concepts and Cherokee Nation Industries.

Moreover, in the State of South Dakota, there are several American Indian 8(a) firms. In 1993 and part of 94 SBA loans to American Indians in South Dakota ranked near the top of the list of among the 13 states with significant American Indian populations. The opportunities created by participation in the 8(a) program are desperately needed in Indian Country. However, as you note, the primary barrier to full Indian participation in the program is the geographical remoteness of most reservations combined with the absence of a good tribal outreach effort at SBA's field office levels. Consequently, tribal business owners do not have access to the business development management counselling, and other services available through the SBA Small Business Development Centers or the technical assistance provided by the SBA 7J program.

Accordingly, we offer a few recommendations that we believe will make the 8(a) program even more beneficial to American Indians. One way that the SBA could improve services to reservation based businesses especially in South Dakota is to coordinate through and work with the tribally controlled community colleges located on reservations throughout Indian Country. SBA should also increase the level of understanding among its staff members about the unique nature of the tribal business climate. Equally important, SBA should take steps to improve communications with the Indian business community.

3. The 8(a) competitive/non-competitive mix requirements do not prepare 8(a) firms for graduation and creates a controlled environment that actually stymies the development of fledgling firms.

As I noted in my testimony, NIBA does not believe that the SBA 8(a) program stymies the development of program participants. Rather, we believe that the program is structured so that firms do not become unduly reliant on 8(a) contracts. Competitive business mix requirements require firms perform a significant percentage of contracts that are non-8(a) contracts before graduation. This ensures that program participants are prepared for the "wilderness" of the competitive business world.

In addition, we believe that the "environment" of the 8(a) Program actually helps participants to develop the infrastructure that enables them to be competitively viable after graduation.

However, certain artificial restrictions imposed by the Program, such as the restrictions of 8(a) firms merging, or becoming acquired with non-8(a) firms, do tend to inhibit, rather than promote.

In addition, NIBA believes that two SBA policies in particular tend to stymie the full development of American Indian 8(a) firms before they graduate. The first problem, relates to a firms participation term in the 8(a) program and the second is the national and local buy policy.

As you know, the 8(a) program is designed to promote a firm's business development by assisting them in obtaining federal contracts. In 1988 congress determined that firms should be able to perform a sufficient number of federal contracts in nine years so as to gain the necessary infrastructure to compete in the open marketplace. However, congress did not anticipate that, in reality, it often takes an American Indian firm three to five years to obtain its first federal contract, thereby leaving such firms with only several years of meaningful participation in the 8(a) program. Even if these firms are successful in obtaining contracts during their remaining four years in the program, this is often an insufficient period of time in the program for firms to fully develop. Indeed, many program participants go out of business shortly following program graduation precisely for this reason.

Therefore, NIBA recommends that the current nine year term in the program be revised to commence when a firm obtains its first 8(a) contract. This will ensure that 8(a) firms have meaningful participation in the program, thereby helping them to succeed after graduation.

Secondly, NIBA also recommends elimination of the unnecessary regulatory limitations on self-marketing by 8(a) firms, including those relating to national and local buy procurements. Section 8(a) firms, like all other federal governments agencies and private sector contractors, should be permitted to compete on a national level at all times.

Finally, NIBA believes that a number of the recommendations in the bill you sponsored with Senator Kerry last year would also tend to make the 8(a) environment more like that confronting businesses upon graduation. For example, reducing the reporting requirements would enhance the likelihood of that a firm will be

able to compete in the open marketplace upon graduation. As presently structured the reporting requirements impose undue administrative burdens on participants and divert limited resources from normal business operations. Abolishing many of the reporting requirements would enable firms to focus more on the development of their infrastructure, thus enabling them greater success rates upon graduation.

4. Encourage private franchising as a substitute for SBA/federal assistance.

Although this is an interesting concept there are significant reasons why private franchising cannot replace SBA/federal assistance, particular on reservations. The fact that Tribes have trust land status, sovereign immunity, and jurisdiction on American Indian reservations will present substantial obstacles, especially with regards to bank loans and private business development on an Indian reservation. The doctrine of sovereign immunity presents a problem because it means that Tribes cannot be sued, and without a "sue or be sued" provision in the financial or business arrangement, private franchising, banks, leasing and business development financiers are reluctant to make investments or loans on reservations.

The other main obstacle involves jurisdiction. Contractual disputes involving tribal enterprises or individual Indian businesses on reservations are most often handled by tribal courts and private businesses and bank lenders often feel they will receive less than fair treatment in these settings.

Finally, should they win a dispute, lenders often feel that enforced collection efforts by tribal governments will be less than aggressive.

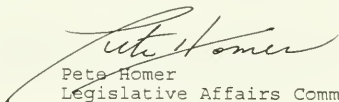
In closing let me say that NIBA's goal is to enhance the self determination and self-sufficiency of American Indian businesses and economies by offering them opportunities to succeed and secure a productive way to live. Our goal is to give American Indians economic independence.

The United States congress and SBA, by helping to create a strong network of American-Indian-owned and managed small businesses, are in a unique position to help reduce joblessness among Indian

populations. NIBA is convinced that SBA's 8(a) program is the most effective way to promote self-determination for American Indian businesses, by development of small businesses, owned and operated by American Indians.

I would like to close by thanking you for the opportunity to testify and to address the additional issues. Please feel free to contact the National Indian Business Association if we can be of any further assistance to you on this or any other matter. If I can be of further assistance, you may contact me at (703) 418-6888.

Sincerely



Pete Homer
Legislative Affairs Committee
National Indian Business
Association

COMMENTS FOR THE RECORD

(234)

April 13, 1995

The Honorable Christopher S. Bond
Chairman, Senate Committee on Small Business
United States Senate
428A Russell Building
Washington, DC 20510

Dear Chairman Bond,

Please let me start by saying the comments and suggestions provided are made strictly on behalf of myself and in no way represent any official position for the United States, Department of Defense, the Department of Navy, the Naval Supply Systems Command or the Fleet and Industrial Supply Center, Pearl Harbor, Hawaii.

I am a Contracting Officer currently employed with the Fleet and Industrial Supply Center, Pearl Harbor, Hawaii. It is my responsibility to enforce the small business goals for the Government in all my contracts.

In this capacity, I have twelve years of experience with the small business programs. I would very much like to take this opportunity while the Senate Committee on Small Business is looking at the implementation of the Small Business Administration's (SBA) 8(a) program, to share my views with the Committee.

First, my opinion on the intent of the program.

It is a wonderful way for a small business person to learn the in's and out's of government contracting which can be very difficult to understand.

For contractor's who are not necessarily good managers, this program can provide a path to build those skills.

It encourages the parties do some considerable thinking about matching the skills necessary to perform with contractors who have a strong chance of performing successfully.

Second, my opinion on the program's actual implementation.

1. We pay a higher price to the 8(a) contractors for supplies and services while the contractor performs as a middle man. Without the element of competition, the contractors do not operate under the concept of proposing a fair and reasonable price when they first submit an offer. We pay a hidden cost by virtue of the fact another Government agency is the Prime Contractor and intercedes on behalf of the 8(a) contractor. We pay more because many of these firms don't demonstrate an over zealous desire to learn if they know someone (SBA) is the fall back support.

The reality in the field is the Government is supporting a program whereby we ask a contractor to procure things (like computer hardware) that the contracting offices can do (but our system takes too long for most customers) even if we are assured to get competitive prices. The Government ends up paying a mark-up for the 8(a) contractor's service. This factor makes justifying the 8(a) contractor's price as "fair and reasonable" very difficult.

SUGGESTION:

I am wishfully hoping the implementation of the Federal Acquisition Streamlining Act of 1994 might make the Government procurement system seem more attractive to end users by becoming more responsive to their needs. In this situation, I would welcome the 8(a) contractor's service as a supporting role

to the system, not a way around it.

2. The contractor has little incentive to keep costs down. Therefore, we find they are not always encouraged to think of ingenious ways to perform tasks and functions in any way that would be more efficient.

In the solicitation phase, the Government generates an estimate of what labor and material we think will be necessary to perform the work. But at the negotiation phase, The Government is put in the position of having to "disprove" the manhours needed that the contractor proposes. This isn't the unusual part, it works like this on unrestricted competitive procurements as well. What concerns me is in the contract performance period, when the contractor is operating under a fixed price contract, the contractor might and probably does find ways to cut costs - but no savings are passed back to the Government. This wouldn't bother me quite so much if the contractor had won the contract in a competitive environment. The theory being, competition will force the offerors to develop a price that is streamlined right from the beginning. But the 8(a) contractor was under no such pressure. He received a strong advantage whereby he did not have to compete. And as such, it isn't really true that in performance of the contract he is assuming all the risk. The risk factor is the key in a firm fixed priced contract. With SBA's support the contractor is pampered. Allowing them to be removed from the competition process puts the Government in a costly and vulnerable position.

SUGGESTION:

Let the 8(a) contractors compete with other contractors, even other 8(a)'s and of course Small Disadvantaged Businesses (SDBs). Perhaps using the same approach used in the SDB program of giving a percentage preference to 8(a)'s would be enough? Depending on which program is considered more disadvantaged the percentage could be more or less than the 10% used in the SDB program.

3. There is an increased amount of post-award administration that is needed for contracts done with 8(a) firms than is experienced with other contracts for similar services that were awarded using full and open competition.

Having SBA in the tri-party process means the contractor doesn't get a true impression of the role he plays as the service provider. Having the mediator is non-productive with respect to modifications and proposed changes. The SBA representative cannot know the business of the contractor the way he/she does. I believe this three party system actually robs the contractor of the valuable learning experience.

SUGGESTION:

Change the SBA's role to be that of an advocate, advisor, or champion only. Let the contractor's owner/negotiator be the responsible official to enter into and sign the contract with the Government. The contractor will realize he/she is actually at stake for his/her word and they will be learning how the process works which will help them to successfully graduate from the program with the confidence and skills they will need to compete in the larger (full and open) competitive arena.

4. The Government activities have come to know the 8(a) program as the alternative to having to write a Justification and Approval (J&A) as outlined in FAR PART 6. At times, the main reason they want to limit competition is to get the procurement done by the fastest means available. The end users are willing to settle for a contractor with less experience, who is 8(a) and hope they will partner with the quality business firm the customer really wants.

Since using a J&A means having to pick whether the action is urgent or sole source. The end user knows that if they can justify using the urgent reason, then they can have their contract in place faster. But they know that just because they have one known responsible offeror, they will still have to wait a long time for the award to be completed. Therefore, they go looking for 8(a) contractors to circumvent the long lead times it takes to make a competitive award. This takes me back to the first problem, we pay more for the privilege of saving procurement lead time.

I have no suggested solution to this problem. I am hoping the change to the acquisition regulations that will result from the Federal Acquisition Streamlining Act of 1994 will address long lead times and shorten the regular acquisition process, thereby leaving the 8(a) alternative as just that - as a valuable alternative, not an overly abused "short-cut".

5. As functions that are done by 8(a) contractor are vacated when the 8(a) graduates from the program, the contracting office is left with the pool of contractor's SBA has to step in and attempt to perform the function. This is a real problem in my community. The 8(a) contractors take a long time to figure out the process of not only contracting but the particulars of the requirement. We see no evidence in the field that SBA actively seeks out other potential contractor to take over fields vacated by graduating 8(a)s. Many times we get offered replacement contractor who are in totally different fields unrelated to the task being left vacant. I do not feel it is an acceptable answer for a contractor to tell me "I've never done that before, but I can". There is no assurance that the Government is getting a quality replacement. I would rather complete the requirement using full and open competition. If a contractor is "playing" at contracting and doesn't currently perform the same or similar duties elsewhere, why would we consider giving this contractor a protected status to gain work with us that he doesn't already perform and perform satisfactorily? Some areas of the country do not lend themselves to having a multitude of contractors who perform in certain areas. The contractors need to be shown potential work areas and motivated to get themselves ready to step into that field PRIOR to the time the incumbent graduates.

SUGGESTION:

Allow a senior 8(a) contractor to work closely with a newly entered 8(a) contractor IN THE SAME FIELD to partner together in some capacity to be able to offer the Government Contracting Officer a reliable future source to continue using the 8(a) program. OR give the Contracting Officer a way out by permitting the requirement to be an unrestricted full and open competition (something which is now prohibited).

6. Along the lines of number 5. The idea of a mentor program amongst the 8(a)'s would be another valuable creation. I understand SBA already has some type of mentor program whereby a Large Business teams with an 8(a). This happens as a by product of the fact the 8(a)'s get preferred status and many large business seek the 8(a) firms to gain contracts. I suggest the 8(a) who is in his/her final year and approaching graduating should be teamed with a newer participant to teach the newer 8(a) about the 8(a) program. As an optimist, I believe the 8(a) contractor ought to want to give something back to the program. Realizing this may not be enough to encourage them to participate, they might need some motivating in this area. I don't know what that could be, but the general idea is for the graduating contractor to impart his/her lessons learned and return the favor for the privilege of benefiting from the program.

7. The time the contractors are in the program, and permitted to stagnate, is extremely long. If there is no demonstrated ability to achieve success at the five year mark, the contractor should be subject to removal from the program.

SUGGESTION:

Shorten the over all length of the program to 6 or 7 years, and institute more stringent requirements to show evidence of achievement.

8. Along the line of number 7. make the 8(a)'s seek to participate in regular large contracting procurements in the open market environment. Many 8(a) contractors will track the Commerce Business Daily for potential procurements they think might be good for them and seek SBA's assistance to get it set aside as an 8(a) procurement. When the reply from the Contracting Officer is negative, the contractor is included on the Bidder's/Solicitation Mailing List. It becomes increasingly aggravating when the 8(a) contractor makes no attempt to offer in the full and open competitive process. This implies a lack of diligence (in my opinion) in trying to stay gainfully employed. It also

implies, if they can't have their cake and eat it too, they just quit. These contractors should either be persuaded to really get with the program or be eliminated from having the protected status.

SUGGESTION:

Institute an incentive to make the contractors participate in non 8(a) set-aside procurements. One way to do this would be to bench mark the process by which an unemployed person has to demonstrate they have actively been seeking employment. The 8(a) contractor could show his SBA champion a copy of a proposal the contractor has submitted in response to some solicitation that he did on his own. Perhaps requiring at least one submittal every six months. Some ideas of what would constitute demonstrated evidence might be a copy of the bid/proposal abstract with his proposal on it; or get the Contracting Officer or Bid Officer to sign a copy of his proposal or a letter. These could be taken back to the SBA representative. Even if his offer or bid didn't "win", this would give the contractor some good experience, some good questions to bring to SBA to get focused help and give the contractor a feel for what it will be like when he leaves the program.

9. Allow SBA and the rest of the Government to work with (i.e., support with time and money and resources and assistance) those contractor's who routinely demonstrate a cooperative attitude, a willingness to learn and mature in the program. We need to "work with the workers" and purge the contractors who just hang in the program to say they are "8(a)".

I don't have a suggestion on how this purge would take place. I would render an opinion that there are specialists within SBA who would have a plan on how this might be done.

10. There are many contractors in the program who render supplies and services that very few or almost no Government agencies need or procure. The cost to administer this program must certainly preclude leaving in contractors who add no value to the program. Many contractors just don't want to hear that the majority of the Government doesn't buy what they are offering.

SUGGESTION:

Make the prospective 8(a) applicants submit (for example) ten Government invoices from contracts or purchases they supplied, to an appropriated funded activity, with their application to demonstrate to themselves and the SBA champion that there is a bonafide need for the supplies or services. To do other wise is a waste of the SBA's resources entertaining contractors who merely beef up the program figures but offer nothing of value.

11. My community is very small and I work closely with the SBA and the Chamber of Commerce to provide training to the small businesses of Hawaii. These conferences and seminars have been conducted for at least seven years. This state wide focus provides many different aspects of contracting with the Federal Government and has proven very successful. But to my knowledge, I have never heard of any class offered or conducted by SBA strictly for prospective 8(a)s in the community to teach them what the program is and is not, what the program offers, and what it can do and is targeted to do.

SUGGESTION:

This could easily be done to include: how to write a proposal/bid and the concept of the fair and reasonable determination, for starters. This would be a valuable tool to teach the contractors and demonstrate to the Government Contracting Officers that SBA is taking an active role in finding, training, offering and graduating quality vendors.

12. My last request. The appeal process is time consuming and cumbersome. In cases where the Government tries to pursue an 8(a) contractor's proposal, if the contractor's price cannot be determined to be fair and reasonable, it would be nice if the Contracting Officer could decide to reverse the 8(a) set aside. My office spends hundreds of hours every year debating over a contractor's capability. This time is not productive and adds nothing of value to the decision. SBA, even with the best 8(a) contractor, cannot guarantee the

contractor's price or workmanship. Sometimes the only alternative is to cancel the procurement and then the customer ends up "the loser".

SUGGESTION:

Please consider giving the Government Contracting Officer the final decision on when to go B(a) or cut it off and eliminate the SBA appeal.

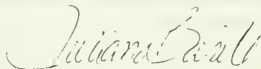
Of course the comments and suggestions presented here are all subject to discussion. I do not make any claim to be an expert on the 8(a) program. I am only a participant and these are my views "from the bottom". I, in no way wish to slight the hard working employees of the SBA, whom from my experience, just want to do the right thing and help a small business owner to be successful.

I urge you to do more than simply recommend to SBA to "manage the program better". It should not be an accepted answer from SBA to simply say "we promise to manage the program better". It is my opinion some real and tangible objectives and suggestions should be made to make the program more effective.

You are taking a positive step to evaluate a government assistance program that needs some serious revamping. Please take the time to make the necessary changes that will allow us, the contracting community, greater flexibility in whether or not to use this program. Please make the contractors put in a little more effort at demonstrating they can learn the process and can do the job. This will be the best way Contracting Officers can be assured we are spending the taxpayer's money as wisely as possible and that the taxpayers are able to reap the long term benefit of our collective investment.

Thank you for this opportunity.

Sincerely,



Juliana Basile
Contracting Officer

STATEMENT BY SAMUEL A. CARRADINE, JR.
EXECUTIVE DIRECTOR
NATIONAL ASSOCIATION OF MINORITY CONTRACTORS

Staff Attorney: J. Cobbie de Graft

1. Introduction

The National Association of Minority Contractors (NAMC) is a non-profit trade association that was established in 1969 to address the needs and concerns of minority contractors. While membership is open to people of all races and ethnic backgrounds, the organization's agenda focuses on construction industry concerns common to African Americans, Asian Americans, Hispanics, and Native Americans. The organization has a membership of 3,500 businesses, and represents the interests of more than 60,000 minority contractors nationwide.

NAMC's agenda for minority contractors includes educational and training programs, legal and legislative advocacy, business networking, and technical assistance for business development. Many of NAMC's members have participated in, or had experiences under, the Small Business Administration (SBA) Minority Enterprise Development Program (more commonly referred to as the 8(a) Program). We offer this statement on behalf of such businesses under the 8(a) Program hearing which was conducted by the Senate Committee on Small Business on April 4, 1995. We hope our comments will contribute meaningfully to the Committee's assessment of the 8(a) Program's utility and efficiency as an Affirmative Action tool in the 1990s.

Recognizing that many of the questions posed under the 8(a) Program have already been addressed in-depth by the panel of witnesses under the Senate hearing, we wish only to add a few key points as highlights on the broader dialogue:

- First, we emphasize that there are still more good points than bad about the 8(a) Program. Changes should focus on increased efforts to carry out key improvements rather than outright elimination. We believe that continuous monitoring by an independent oversight board would assist in tightening the 8(a) Program's performance, as well as in preventing and/or quickly correcting future problems.
- Second, we suggest that 8(a) improvements might include emphasizing non-Program competitive contracting as a matching requirement on continued sole-source awards to Program participants. Such matching requirements would nurture 8(a) companies toward increased competitive capability on the open market. They would also deflect the perception of unfairness associated by critics with the net worth thresholds governing Program eligibility under the Small Business Act's "economically disadvantaged" provisions.

- Third, we suggest that the 1994 changes expanding the Department of Defense (DOD) "Section 1207" Program to civilian agencies under a new Small Disadvantaged Business (SDB) Program should by no means serve as a reason to terminate the 8(a) Program, but rather as an opportunity to better its performance as a minority business development tool. A stronger 8(a) Program would compliment the SDB Program by providing workable, well-defined, business building services targeted to assist emergent minority business owners for whom technical support and sole source opportunities provide solid developmental encouragement.

The remainder of this statement is devoted to expanding on each of the above three suggestions.

2. Using an Oversight Board to Monitor the 8(a) Program

Congress originally mandated the 8(a) Program in 1968 as a means of assisting minority business-owners in gaining access to opportunities in the mainstream American economy. Today, about half of all federal dollars going to minority businesses get channeled through the 8(a) Program. Despite current criticism of the Program, NAMC believes proper credit is due for the very real achievements of a critical number of 8(a) participants and graduates over the years.

It is currently estimated that about one-third of the top-one hundred African-American businesses, and one-fifth of the top one-hundred Hispanic-owned businesses, are current or former participants of the 8(a) Program. We believe the question of how and why these businesses have fared well should be at the heart of the 8(a) review process. We also believe that the 8(a) Program has strong merits that contribute meaningfully to Affirmative Action, and that these merits should be enhanced while at the same time eradicating the negative aspects of the Program.

NAMC directed close attention to the Congressional hearings in September, 1994, which brought to the forefront many of the issues that have caused some to declare the 8(a) Program a failure. Reflected in those hearings were the erstwhile findings of the General Accounting Office (GAO), the Commission on Minority Business Development, and the SBA Inspector General, all of which cited very specific problems needing attention. Among these problems were the slow processing of Program entry applications, the relative inequity in the distribution of contract opportunities among Program participants, and claims that an inordinately high number of graduating 8(a) participants are unable to compete in the open market after years of supposedly being nurtured for such competition under the

Program's business development initiatives.

The SBA responded to these and other criticisms by embarking on a process to improve its internal management of the 8(a) Program. And it seems to have made clear progress over the past several months. On March 2, Mr. Robert Neal, SBA Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, testified before the House Committee on Small Business that key changes effected under the 8(a) Program last year have already resulted in marked improvements in 1995. Mr. Neal particularly stressed internal management changes which have helped reduce the backlog in 8(a) Program applications, and the new effort to increase contract awards to first-time 8(a) Program recipients.

In light of the above and other ongoing changes, NAMC believes that current indications point to strong efforts within the SBA to improve the management of the 8(a) Program. We also believe that these efforts are sincere, and are beginning to yield measurable results. There is unquestionably a continuing need among emerging minority businesses for strong mechanisms providing meaningful opportunities for business growth. An outright elimination of the 8(a) Program therefore makes little sense given the clear investments toward appropriate reform already underway. *Instead of elimination, NAMC supports a continued 8(a) Program with improved oversight mechanisms, preferably through the use of an independent board or panel.*

An independent oversight board comprising federal and private sector representatives would be an excellent means of monitoring the 8(a) Program to ensure proper functioning as well as reduced potential for abuse. Such a board, properly structured, would function as a mechanism to counter-check, but not unduly interfere with, the SBA on issues regarding the 8(a) Program's efficiency and fairness. An oversight board would also be valuable as a means for providing specific and comprehensive feedback on the SBA's efforts to correct current or impending 8(a) Program shortcomings.

NAMC will not attempt to address details regarding the composition or structure of the proposed board in this statement because we believe the options are numerous and should be developed through continued and purposeful dialogue. We merely suggest here that such oversight boards are not unusual, and have been known to work well under other circumstances for programs or entities needing reform. We believe this idea at least deserves serious consideration in Congress, and propose specifically that a Congressional mandate would ensure sufficient authority in an oversight board to bring clearer focus to the process of fulfilling the original purpose of 8(a) Program. We offer our assistance in developing this idea further through the Senate Committee on Small Business.

3. Instituting a “Matching Requirement” for Competitive Contracting under the 8(a) Program

One of the now-predominant arguments against the 8(a) Program is that it fosters inequities in the distribution of contracting opportunities, not only among 8(a) companies, but also between 8(a) companies and non-8(a), white owners of small businesses. The criticisms are borne out by the facts, at least on the issue of internal Program inequities. In 1994, for example, one percent of all 8(a) firms received 25 percent of the \$4.4 billion in contracts awarded. The complaints regarding inequities between 8(a) Program participants and white small business owners, while not necessarily supported statistically, are reflected by the anecdotes of what many now describe as the “angry white male.”

The trends suggesting these inequities are disturbing, considering that the aim of the 8(a) Program is not to enrich a few, but to provide increased business development opportunities for as many “socially and economically disadvantaged” business owners as possible. *NAMC believes that requiring 8(a) participants to balance their sole-source contract portfolios with matching dollars from competitively awarded contracts would help, not only to deflect the perceived inequities, but also to bring Program objectives within the original Congressional intent of assisting disadvantaged businesses in accessing the mainstream American economy.*

Our suggestion of requiring matching competitive contract dollars to balance 8(a) sole-source awards stems from the observation that the current Program structure may indeed carry internal inconsistencies that feed perceived inequities. The Small Business Act provision establishing a rebuttable presumption that most racial and ethnic minorities are socially and economically disadvantaged inevitably runs into problems when juxtaposed against the simultaneous provision allowing for 8(a) Program applicants to have an entry-level net worth threshold of \$250,000 (excluding home equity and business investment). Understanding the dichotomy helps to correct it.

The 8(a) Program’s entry-level net worth threshold makes good sense as a business practice issue because business entities by nature require capital infusion for growth. Deterring businesses-owners from building their net worth would virtually assure their failure. But, to critics whose first impulse is to cast an emotionally-charged comparison to the relatively lower net worth of the average white citizen, such an argument tends to hold little ground. The truth is that such critics are upset not only by the 8(a) entry net worth threshold, but also by 8(a) Program participants being permitted to increase their net worth to \$750,000 (within

defined limitations) virtually without having to compete for contracts.

Critics' further perceptions of inequity are generated when a select few in the 8(a) Program are permitted millions of dollars in sole source portfolio increases while many are unable to land even a single 8(a) contract. To make matters worse, the net worth rules have a loophole (or loopholes) that technically allow contractors who receive a windfall to further enrich themselves by passing on benefits without restriction to immediate family members to the detriment of others in the Program. A few 8(a) contractors therefore take over the Program by establishing mini-dynasties tied directly sole source opportunities.

NAMC believes that the proposed competitive contract matching requirement would work to correct such unfair sole sourcing, and deflect net worth criticisms, by allowing each 8(a) company to progress on its own merits in healthy stages with a portfolio that appropriately balances sole-source awards with competitive awards. For each new "level" of sole-source contracting, an 8(a) company would be required to secure matching competitive awards before moving on to the next level allowing for more sole-source awards. The bottom line is that companies doing well in 8(a), SDB, small business, or even open market subcontracting competitions would be rewarded with the opportunity for further business growth through sole-source awards.

Companies failing to demonstrative competitive capability would not be bumped off the Program, but would be held at lower sole-source dollar levels while being given the opportunity to improve business efficiency for competitive capability. They would be discouraged from excessive reliance on growth through sole source contracting and encouraged to seek opportunities for competition. The results of a strong push for competition would increase the likelihood of an 8(a) company being ready to graduate, either after nine years of being in the Program, or after reaching a reasonable net worth meriting graduation.

We will not endeavor to lay out specific details of the competitive matching approach here because we believe the rules could be structured successfully in a number of different ways, and deserve to be fully explored through dialogue and planning. While one simple approach, for example, might be to tie competitive matching requirements to the stages of a business-owner's net worth growth in steady increments of \$200,000, a better alternative might be to set matching requirements on an industry-by-industry schedule categorized according to SIC codes. The latter approach would be more difficult to attain, but certainly seems better in light of there being varying capital infusion requirements from one industry to the next. As another example, matching requirements could be based on either on a simple ratio (e.g. a 1:1 match between sole-source and competitive

contract awards) or on a more complex ratio tied more closely to industry-by-industry planning or business risk considerations.

NAMC acknowledges the SBA's argument that the less successful 8(a) companies remain that way due to their failure to self-market, and proposes that requiring greater competition as part of the net worth building process would help ensure a wider spread of contracting opportunities. We are also aware of a number of proposals, including those submitted by the National Federation of 8(a) Companies, which would aim to tighten the 8(a) net worth rules and open up options for competition among 8(a) participants, and do not think our proposal in any way deterring such efforts.

In short, we believe competitive matching requirements would not take away, but would complement, many of the other good proposals currently on the table for 8(a) reform. Allowing 8(a) Companies to contract directly with Agencies rather than through the SBA, for example, would provide solid channels of opportunity for fulfilling proposed matching requirements. Again, closing loopholes in the net worth rules that allow 8(a) participants to siphon Program benefits to their relatives would help in structuring tighter rules on competitive contracting matching requirements. We welcome the opportunity to further discuss our ideas on competitive contract matching with members and staff of the Senate Committee on Small Business.

4. Comparing the 8(a) Program with the New, Government-wide Small Disadvantaged Business (SDB) Program

NAMC supports the widening of the DOD Section 1207 Program to the civilian agencies under the Federal Acquisition Streamlining Act of 1994 (FASA). We do not believe, however, that proposed new SDB rules under FASA would appropriately compensate for the clear losses that would be sustained by minority businesses if the 8(a) Program were outrightly repealed. We believe that there are fundamental foundational differences between the 8(a) and the SDB Programs which should not be played down, but should be emphasized as a means of getting the best possible results out of both.

At its base, the 8(a) Program differs from the SDB Program in its focus on business development rather than straightforward contract letting. It acts as a launching pad for very small but highly promising businesses seeking opportunities for growth through federal contracting. The very nature of the 8(a) Program fosters the building of institutional know-how regarding the unique problems of minority contractors in a way that could not be easily replicated under the SDB Program. NAMC submits, therefore, that eliminating the 8(a) Program

would only create pressure for new programmatic facilities, whether within the OFCPP, the OFPP, the MBDA, the SBA, or some other body, for providing minority technical and business development support. It make little sense to do away with the 8(a) Program only to have to reinvent the wheel in some other form.

The strengths of the SDB Program, on the other hand, lie in its utility as a tool for streamlining managed competition among historically under-utilized businesses. The SDB Program in essence creates a tier allowing for federal contracting competition by minority and women-owned businesses traditionally lacking such opportunities under the small business set-aside. There is a flexibility in the SDB contracting process that is absent in the 8(a) Program, and that could probably never be properly achieved otherwise. This is why the SDB Program should exist side-by-side with the 8(a) Program.

As a aside on this issue, NAMC has learned of a proposal to roll-over the 8(a) Program's business and technical services into the SBA 7(j) Program, and we would like to comment that we believe this approach to be impractical. The 7(j) Program would literally have to carve out a sub-program to achieve the same level of success in its minority outreach and business development capabilities as the 8(a) Program. NAMC does not by any means advocate segregated programs for technical assistance to small businesses and businesses owned by socially and economically disadvantaged individuals, but we believe that the same logic meriting the need for an SDB Program on contracting drives the need for separate yet complimentary activities between the 7(j) and 8(a) Programs.

The 8(a) Program's strengths as a one-stop center for technical support and business opportunity among socially and economically disadvantaged individuals currently remains unparalleled in the federal marketplace, and would most likely be undermined if forced under the 7(j) Program. In short, it seems pointless to eliminate the 8(a) Program when many of the lessons it has taught, particularly in the areas of minority business outreach, certification, and contract letting, will only have to be relearned or reapplied under a new regulatory regime.

NAMC therefore supports continued implementation of the 8(a) Program side by side with the SDB Program under circumstances allowing for the sharing of information and business development tools. We particularly believe that enhancing the business development component of the 8(a) Program while leaving the bulk of the competitive contracting functions to the SDB Program, would enhance the value of the 8(a) Program. As a corollary, we support the strong emphasis on competition under the SDB Program, and advocate counting SDB competitive awards under the competitive matching requirements proposed earlier (Section 3, above) for adoption under the 8(a) Program.

5. Conclusion

NAMC believes that the SBA 8(a) Program has served, and should continue to serve, as an important Affirmative Action tool assisting minority-owned businesses in accessing greater opportunities in the American economy. The Program has not only made a tangible difference in minority business development, but serves as an important channel of hope for many seeking the opportunity to make a difference with their businesses. Eliminating the 8(a) Program would not only be devastating to minority business development, but would send a strong negative message to many minorities regarding the federal government's commitment to bettering the economic well-being of historically underutilized businesses.

Three key factors that NAMC believes would improve the 8(a) Program are: (1) setting up an independent board or panel to oversee questions of fairness and efficiency; (2) implementing a competitive matching requirement as a key basis for increasing sole-source awards to 8(a) Program participants; and (3) enhancing the business development functions of the 8(a) Program while allowing the SDB Program under FASA to develop as a competitive contract letting tool for small disadvantaged businesses.

We thank Chairman Kit Bond and others on the Senate Committee on Small Business for the opportunity of a hearing on the 8(a) Program, and also for the opportunity to submit this written statement. We also welcome an invitation from the Committee to further discuss our ideas under the dialogue on 8(a) reform.

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WRITTEN STATEMENT OF
RON LAVERDURE
PRESIDENT
OF THE NATIONAL INDIAN BUSINESS ASSOCIATION
ALBUQUERQUE, NEW MEXICO

Chairman Bond and Members of the Committee, thank you for the opportunity to present written testimony for your hearing on the Small Business Administration's 8(a) Minority Business Development Program. The actual hearing was conducted on April 4, 1995, with the record remaining open until April 18, 1995, to receive additional written testimony.

The National Indian Business Association (NIBA), represents over 24,000 Indian-owned businesses across the United States. Established in 1992, our national headquarters is located in Albuquerque, New Mexico. NIBA's central role is to promote the successful development and growth of American Indian-owned businesses.

I am an enrolled member of the Turtle Mountain Band of Chippewa Indians. In addition, I am Chief Executive Officer and General Manager of Uniband, Inc., a computer service firm owned and operated by the Turtle Mountain Band of Chippewa Indians in North Dakota. I also serve as President of the National Indian Business Association.

NIBA strongly believes that the Small Business Administration's 8(a) Minority Business Development Program has been of assistance to Native American and other minority businesses. Consequently, we believe that the program should be retained. So much is mentioned today with regard to a "Contract With America". We, as Native American people, made our "Contract With America" many years ago through treaties. We contracted to give our land in exchange for health, education and other opportunities. The treaties were contracts not welfare. We ask only that they be honored and that business development programs such as the SBA 8(a) opportunities be continued.

NIBA is concerned that Congressional focus on the SBA 8(a) Minority Business Development Program is misplaced. Most reports on federal procurement contracting show that approximately 93% of federal contracting dollars are awarded to large, white-owned businesses. The remaining 7% of federal contracting dollars are awarded as follows: 5% to minority businesses and 2% to women-owned businesses. For all the imperfections that can exist in any program, why should we lose track of this central fact? If the federal government spends \$200 billion a year on the purchase of goods and services, the major Congressional focus should be on the \$186 billion awarded annually to large majority companies not the \$14 billion awarded to minority and women-owned businesses.

The 8(a) program is not perfect. NIBA believes that any government program should be reviewed to insure that taxpayer dollars are being used properly and wisely. The SBA 8(a) program is no exception. The 8(a) program should be made to work better but it should not be eliminated or placed in other agencies, such as the Department of Commerce, which are not created or based on public law, which do not have experience on the issues, or do not have the broad scope of minority business assistance programs as does the Small Business Administration.

One of the recurring themes mentioned by opponents of the 8(a) program and 8(a) participants is that the program is full of "front" companies; ie, companies that use a minority to qualify but which are controlled by non-minorities. NIBA believes that "front" companies exist but certainly not in the numbers intimated. We have seen no factual basis for the concerns articulated at the hearing--only anecdotal stories. NIBA recommends that enforcement of the law against "front" companies rather than the denial of business opportunities for minority businesses is the best way to address this perceived problem. We believe that public policy should not be made or based on anecdotal information. The Congress has more important issues to address and the public will be better served by addressing issues of more pressing national concern.

We further recommend that the Congress not become involved in the effort to make "affirmative action" programs a "wedge" issue for political purposes. There is a certain amount of anxiety in the country over jobs, saleable skills, the future of our children, and the future of our country. We in the Native American community live with these concerns every day. However, it is a time for us all to come together not divide along ethnic groups. Minorities know that for many years there have been forms of "negative action" in this country. Both political parties, in the past, have risen above "negative action" and have advocated government programs for minorities. Affirmative action programs such as the 8(a) program are not handouts, it is not welfare. It is a business development program. It is an opportunity for people who did not come from money or social position to participate in the American dream.

NIBA is watching the developments in California concerning an anti-affirmative action proposal which may be placed on the November, 1996 ballot. We understand that a candidate for president, who is on the "wrong" side of the affirmative action issue (for California purposes), could loose 20% of the electoral votes and, therefore, the presidency. NIBA is also watching and waiting for the U.S. Supreme Court decision in *Adarand v. Pena*. Nevertheless, we suggest that the Congress rise above petty politics and rise to the occasion. Do not deny to minorities the opportunities possessed by most of the majority from birth.



With regard to the Small Business Administration and the SBA's 8(a) Minority Business Development Program, NIBA recommends the following actions:

1. Keep the SBA and the 8(a) program.
2. Eliminate needless duplication of programs on a factual basis not on anecdotal information.
3. Remove the SBA from the contracting process so that qualified 8(a) companies contract directly with the federal agency which needs the requested goods or services not through the SBA.
4. Review the level of concentration of federal contracts to some 8(a) businesses so that all qualified 8(a) companies receive a meaningful opportunity to participate in the program.
5. The current 9-year 8(a) program term should not begin for a participating company until the company receives its first government contract.

As stated on the Witness List for the committee hearing of April 4, 1995, Mr. Pete Homer, Jr., Co-Founder and Member of NIBA, testified at the hearing. NIBA respectfully requests that you and the other committee members give strong consideration to Mr. Homer's specific recommendations not enumerated above.

This concludes NIBA's written testimony. We thank you again for the opportunity to participate in this matter of such vital importance to Native Americans and Native American businesses.

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NATIONAL MINORITY BUSINESS COUNCIL, INC.

235 East 42nd Street, New York, NY 10017 • (212) 573-2385

March 6, 1995

Honorable Dale Bumpurs
 Senator
 Chairman, Committee on Small Business
 United States Senate
 SD-229 Dirksen Senate Office Building
 Washington, DC 20510-0401

Dear Senator Bumpurs:

We are writing to urge you to stand firm on preserving affirmative action programs. These programs provide the crucial leverage to allow minority business owners to get into the economy, create new jobs and establish their professional credentials. If there is fat in government, let's eliminate it. However, we cannot sacrifice programs that have demonstrated their effectiveness.

Affirmative Action gives women and minority-owned business owners the means of conquering decades of old prejudice, allowing them to enter the market place on a level playing field. We need to strengthen and enhance those programs because a reduction in affirmative action programs will have a particularly negative impact on the ability to create jobs within the minority community. We know affirmative action programs do not sustain a business -- but they do provide the boost needed to enter the marketplace. If these cuts happen, one out of every 20 women and minority-owned businesses would have to close their doors -- primarily impacting new companies in their first year or two of operation.

We realize the ability of the minority business executive to function in our global economy is not going to rise or fall based on affirmative action. However, the NMBC believes the minority business community is an important part of the economy and will assume a larger role in the marketplace as we move toward the next century. In the interest of fairness, morality and common sense as we seek to create a larger job based in the minority community, you need to know affirmative action is working for all of us.

We look forward to meeting with you in the coming months. Please feel free to contact our national headquarters at (212)573-2385 if you would like to schedule a meeting with the NMBC Board of Directors or if you have any questions.

With warmest regards,

John F. Robinson
 John F. Robinson
 President and CEO

Raymond Daughtry Jr.
 EB Enterprise Group, Inc.
 Chairman, Board of Directors

cc: NMBC Board of Directors



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