



WHITE PAPER: Achieve Parity for Native Hawaiian Organizations (NHOs) Economic Disadvantaged Status

NACA Policy: NACA strongly supports parity in federal contracting opportunities for *all* Native enterprises. Parity eliminates potential confusion in federal procurement, and increases the availability of qualified and capable vendors to be considered for federal contract awards.

NHOs were the third category of Native Americans to be added to the Small Business Administration's (SBA's) 8(a) Business Development program. However, NHOs have essential differences in statute which leave them short on parity with Tribal and Alaska Native enterprises.

Ask: The words "economic disadvantaged" be *removed* from Section 8(a)(4)(A), and *inserted* in Section 8(a)(15), the section that defines eligible NHOs. Specifically, the amendment should place the words "economic disadvantage" in subpart (C) of Section 8(a)(15). Subpart (C) would then read, "*whose business activities will principally benefit such economically disadvantaged Native Hawaiians.*" This squares up with the express language of Section 2 of the Act and SBA regulations, as a program that is based upon the historical status of "members" of certain groups who have suffered discrimination beyond their control.

Abstract: NHOs were established by public law in 2002, and since then, have provided outstanding products and services to their Department of Defense (DOD) customers. However, NHOs do not fully benefit from parity with tribal and Alaska Native entities. The SBA recently implemented a regulatory change to treat all Native business entities the same when determining "economic disadvantage." To align with the new regulations, the SBA is in full support of a companion *legislative change* that results in its interpretation of "economic disadvantage," shifting to being one that is community-focused.

Background: Section 2(f)(1)(A) of the Small Business Act expressly states that in order to improve the functioning of the national economy, it's necessary to provide the opportunity, through federal business development programs, for full participation in the free enterprise system by those members of groups historically deemed socially and economically disadvantaged as a result of being exposed to discriminatory practices beyond their control. Section 2(f)(1)(C) identifies NHOs as a group that comprises "members" who have suffered the effects of discrimination. It's important to recognize that this section refers to the discriminatory effects on the *members* (i.e. Native Hawaiians, tribal members) of such groups.

Within the Small Business Act is Section 8(a) that defines a small business development program designed to achieve the goals expressed in Section 2 of the Act. Section 8(a)(4)(A) defines the term "socially and economically disadvantaged small business concern" as one that is majority owned by (i) one or more socially and economically disadvantaged individual, (ii) an economically disadvantaged Indian Tribe, and (iii) an economically disadvantaged NHO.

The Small Business Administration (SBA) manages the 8(a) Business Development Program, and determines which entities are eligible to participate in the program. When accessing "economic disadvantage" for entities owned by an Indian Tribe, consistent with Section 2, the determination of "economic disadvantage" is based upon the status of community (tribal) members, and not with the business entity's board or management. However, contrary to the language in Section 2, when determining if an NHO is "economically disadvantaged," until late last year when the SBA finalized a regulatory change, the agency did not look at the Native Hawaiian community (the "members" that make up the group represented by the NHO), it evaluated the status of the individual board members. When doing so, the SBA candidly admitted that this review differed from other Native entities, but at that time, stated it was the only way it could interpret the statutory meaning of "*economic disadvantaged Native Hawaiian Organization*" as expressly stated in Section 8(a)(4)(A)(iii).

The SBA agrees that should the words "economic disadvantaged" be *removed* from Section 8(a)(4)(A),

and *inserted* in Section 8(A)(15), the section that defines eligible NHOs, legislatively the focus would be off the board of directors and properly placed on the Native Hawaiian community served. The amendment should place the words “economic disadvantage” in subpart (C) of Section 8(a)(15). Subpart (C) would then read, “whose business activities will principally benefit such economically disadvantaged Native Hawaiians.” This squares up with the express language of Section 2 of the Act and SBA regulations, as a program that is based upon the historical status of “members” of certain groups who have suffered discrimination beyond their control.

NACA contends it is crucial that Native Hawaiians engage in self-determination to regain the sovereign status over their ancestral homelands. As this issue continues to evolve, NACA pledges to support Native Hawaiians in their crusade for recognition and self-determination through the economic development opportunities resulting from federal contracting.