Frequently Asked Questions (FAQs)

Q. What is the 8(a) Business Development (BD) Program?
The SBA's 8(a) BD Program, named for a section of the Small Business Act, is a business development program created to help small disadvantaged businesses compete in the American economy and access the federal procurement market.

Q. How do I apply to the 8(a) BD program?
Contacting the local SBA district office serving your area is the first step. An SBA representative will answer general questions over the telephone. Some district offices may also have 8(a) orientation workshops to provide additional information regarding the eligibility requirements and to review various SBA forms.

Q. What are the basic requirements an 8(a) applicant firm must meet?

The applicant firm

- must be a small business,
- must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States, and
- must demonstrate potential for success.

Q. Will having a specific business consultant prepare my 8(a) application increase my chances of being approved?
You do not need to pay anyone to prepare your 8(a) application. SBA designed the application forms so the applicant can complete the application. However, a consultant can assist in completing the application. Please be advised that no one can guarantee that an application for 8(a) program participation will be approved. The application process is intended to assure that each applicant receives a fair review. Any irregularities in the application review process should be immediately referred to the SBA Office of Inspector General.

Q. What is SBA's definition of a small business concern?
SBA defines a small business concern as one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Examples of SBA general size standards include the following:

- Manufacturing: Maximum number of employees may range from 500 to 1500, depending on the type of product manufactured;
- Wholesaling: Maximum number of employees may range from 100 to 500 depending on the particular product being provided;
- Services: Annual receipts may not exceed $2.5 to $21.5 million, depending on the particular service being provided;
- Retailing: Annual receipts may not exceed $5.0 to $21.0 million, depending on the particular product being provided;
- General and Heavy Construction: General construction annual receipts may not exceed $13.5 to $17 million, depending on the type of construction;
- Special Trade Construction: Annual receipts may not exceed $7 million; and
- Agriculture: Annual receipts may not exceed $0.5 to $9.0 million, depending on the agricultural product.

Q. What is a Standard North American Industry Classification System (NAICS)?
An NAICS code is the Standard Industrial Classification number listed in the Standard Industrial Classification Manual which is published by the Office of Management and Budget. The NAICS Manual is available at your local library or on the Internet site http://www.osha.gov/oshstats. NAICS codes are used by the Federal Government to identify and classify specific categories of business activity that represent the primary line of business of a firm. SBA size standards are based on NAICS codes.

Q. Who are socially disadvantaged individuals?
Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group. Social disadvantage must stem from circumstances beyond their control. In the absence of evidence to the contrary, individuals who are members of the following designated groups are presumed to be socially disadvantaged:

- Black Americans
- Hispanic Americans
- Native Americans (American Indians, Eskimos, Aleuts, and Native Hawaiians)
- Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands [Republic of Palau], Commonwealth of the Northern Mariana Islands, Laos, Cambodia [Kampuchea], Taiwan; Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru; Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal), and
- Members of other groups designated by the SBA.

Q. Can an individual who is not a member of a designated group claim social disadvantage?
Yes. However, an individual who is not a member of a designated group must establish social disadvantage on the basis of a "preponderance of evidence." Generally, preponderance is evidence of quality and quantity which leads the decision maker to conclude, objectively, that the existence or truth of the fact(s) asserted is more probable than not.

Q. What evidence must an individual who is not a designated group member provide to show social disadvantage?
At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged:

- Personal experiences of social disadvantage stemming from the objective distinguishing feature or features set forth in the preceding paragraph. The experiences must have been in American society, not in other countries, and must have been substantial and chronic.
- Negative impact on entry into or advancement in the business world because of the disadvantage. SBA considers any relevant evidence in assessing this element. In every case, however, SBA considers education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering or advancing in the business world.

Q. What types of evidence can be used to assist in meeting the burden of proof?
Court or administrative findings of discrimination. Statements made under oath to an investigator or in a court or administrative proceeding. Affidavits or statements sworn under oath by an

individual owner which have specific recurrent incidents of discrimination or a pattern of discrimination over a significant period of time. Applicant statements alone, without supporting or corroborating evidence will be given less weight than if corroborated. Sworn affidavits or statements from independent third parties, who do not have an interest in or close relationship to the owner, corroborating or supporting assertions made by the owner Statements by relatives or friends of the owner will have less weight than statements by independent third parties. Documentary evidence which corroborates or supports assertions made by an owner regarding specific incidents or a pattern of discrimination. Such documentation includes these items:

- Personnel records
- Payroll records
- Rejection letters on job applications
- Denials of credit application
- Documents relating to rejected contract offers, i.e., bid abstracts, solicitations, etc.
- Contemporaneous records memorializing meetings, conversations, negotiations, telephone calls, etc.
- Documents setting forth company policy(ies) which are alleged to be discriminatory.
- Evidence which tends to show generalized patterns of discrimination against a non-designated group or statistical data showing that businesses owned by a specific non-designated group are disproportionately underrepresented in a particular industry may be used to augment an individual's case. Statistics and generalized patterns are not sufficient by themselves to establish a case of individual social disadvantage. However, an individual's statement of personal experiences in combination with the generalized evidence may be sufficient to demonstrate social disadvantage.

Q. Must an individual who is not a member of a designated group show discrimination in education, employment, and business history in order to show negative impact on entry into or advancement in the business world because of the disadvantage?
SBA will consider any relevant evidence in assessing this element. In each case, however, SBA will consider the experiences of the individual, where applicable, in education, employment, and business history to determine whether the totality of the circumstances shows disadvantage in entering into or advancing in the business world. Evidence relating to all three should be addressed, if applicable. For each applicable circumstance the individual applicant should demonstrate how it has affected his/her entrance into and advancement in the business world. The failure to establish disadvantage in any one or these areas (i.e., education, employment, or business history) does not prevent an individual from meeting the negative impact requirement as long as the totality of the circumstances experienced by the individual demonstrates such disadvantage.

Q. What does it mean to be economically disadvantaged?
Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities.

Q. What factors are considered when SBA evaluates the economic disadvantage of an individual?
The individual's net worth, after excluding the individual's equity in the firm and the equity in the primary residence, may not exceed $250,000. SBA will also consider the individual's average two-year income, fair market value of all assets, access to credit and capital, and the financial condition of the applicant firm in evaluating economic disadvantage.

Q. When evaluating economic disadvantage, does SBA include assets that an individual claiming disadvantaged has recently transferred to another individual?
SBA will attribute to an individual claiming disadvantaged status any assets that the he/she has

transferred to an immediate family member (or to a trust where an immediate family member is the beneficiary) for less than market value within two years prior to the firm's application for participation in the 8(a) program. A transfer of assets for "fair market value" based on verifiable independent documentation would be excluded. Also excluded are transfers for education, medical expenses, certain forms of essential support, and transfers that are consistent with the customary recognition of special occasions (e.g. birthdays, graduations, anniversaries, and retirements). The disadvantaged applicant must show proof of the reasons for these asset transfers.

Q. What percentage of ownership in the applicant firm must be owned by socially and economically disadvantaged individuals?
SBA requires that at least 51% of the applicant firm is directly and unconditionally owned by socially and economically disadvantaged individuals.

Q. Are there special ownership provisions for individuals who reside in a community property or state territory?
Yes. If only one spouse is claiming disadvantaged status, this spouse's ownership interest will be considered only to the extent it is vested by the community property laws. For this reason, a transfer or relinquishment of interest by the nondisadvantaged spouse may be necessary.

Q. Is ownership by a trust allowed?
8(a) regulations require that ownership in the firm by one or more disadvantaged individual(s) be direct ownership. Generally, SBA does not consider ownership by a trust to be direct ownership. However, ownership by a trust, such as a living trust, may be considered the functional equivalent of direct ownership if the following conditions are met:

- The trust is revocable;
- The disadvantaged individual is the grantor of the trust;
- The disadvantaged individual is a trustee of the trust; and,
- The disadvantaged individual is the sole current beneficiary of the trust.

Q. Can a disadvantaged individual or firm have ownership in more than one 8(a) Participant?
Yes. However, one or more disadvantaged individuals determined to be disadvantaged for purposes of qualifying one Participant, their immediate family members, and the Participant itself, may not hold in aggregate, more than 20% equity in any other single 8(a) firm.

Q. Are there any ownership restrictions placed on nondisadvantaged individuals or firms?
Yes. SBA places two general ownership restrictions on nondisadvantaged individuals and firms:

- A nondisadvantaged individual, in aggregate with all immediate family members, or firm that is a general partner or stockholder with at least a 10% ownership interest in an 8(a) firm, may simultaneously hold up to 10% ownership interest in any number of 8(a) firms in the developmental stage of program participation and up to 20% interest in any number of 8(a) firms in the transitional stage of program participation.
- A non-participant concern in the same or similar line of business may own up to 10% of an 8(a) firm in the developmental stage and up to 20% in an 8(a) firm in the transitional stage. Former 8(a) participants or a principal of a former participant (except those that have been terminated from the 8(a) program) may own up to 20% in an 8(a) firm in the developmental stage and up to 30% in an 8(a) firm in the transitional stage.

Q. How does SBA view control of an applicant or 8(a) concern?
Control is not the same as ownership, although both control and ownership may reside in the

same person. Control includes both strategic policy setting and the day-to-day management and administration of business operations by disadvantaged individuals.

Q Does SBA require the disadvantaged individual to have the technical expertise and hold the critical license in order to demonstrate that he or she controls and manages the applicant firm?
No. SBA requires only that the disadvantaged individual(s) controlling the firm have management experience to the extent and of the complexity necessary to run the firm. However, the disadvantaged individual must demonstrate that he or she has the ultimate managerial and supervisory control over those in the firm with the technical or licensing expertise. If the critical license is held by a nondisadvantaged individual who has an equity interest in the applicant firm, SBA may find that the nondisadvantaged individual controls the firm.

Q. How does SBA determine disadvantaged control of a corporate Board of Directors?
There are six situations where SBA may determine disadvantaged individuals control a Board of Directors:

- If a single disadvantaged individual owns 100% of all issued and outstanding voting stock of an applicant firm, regardless of the composition of the Board of Directors.
- If a single disadvantaged individual owns at least 51% of issued and outstanding voting stock of the applicant firm, is a legally elected voting member of the Board of Directors, and no super majority voting requirements exist for shareholders to approve corporate actions.
- If a single disadvantaged individual owns at least 51% of all issued and outstanding voting stock of the applicant firm, is a legally elected voting member of the Board of Directors, and owns at least the percentage of voting stock needed to overcome the super majority voting requirements that exist for shareholders to approve corporate actions.
- If more than one disadvantaged individual owns at least 51% of all issued and outstanding voting stock of the applicant firm; are all legally elected voting members of the Board of Directors; no super majority voting requirements exist for shareholders to approve corporate actions; and the disadvantaged shareholders can demonstrate they have made enforceable arrangements to permit one of them to vote the stock of all as a block to nondisadvantaged shareholders' actions, without holding a shareholder meeting.
- If more than one disadvantaged individual owns at least 51% of all issued and outstanding voting stock of the applicant firm; are all legally elected voting members of the Board of Directors; in total all own at least the percentage of voting stock needed to overcome the super majority voting requirements which exist for shareholders to approve corporate actions; and can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block to nondisadvantaged shareholders' actions, without holding a shareholder meeting.
- If the disadvantaged individual(s) can control the formation of a quorum for the purpose of holding a board meeting and have a majority vote at board meetings either through actual number of voting directors or through weighted voting, where permitted by state law.

Q. What is a super majority?
A super majority is the percentage of votes above a simple majority (51%) required to make decisions on behalf of the firm.

Q. Are there restrictions placed on nondisadvantaged individuals in terms of their relationships with disadvantaged individuals and/or applicant firm?
Yes. Nondisadvantaged individuals may be involved in the ownership and management of an

applicant firm, as stockholders, limited liability members, partners, directors, and/or officers. However, no such nondisadvantaged individual or immediate family member may

- Exercise actual control or have the power to control the applicant firm;
- Be a former employer or principal of a former employer of any disadvantaged owner of the applicant firm; and
- Receive compensation from the applicant in any form as directors, officers, or employees, including dividends that exceed the compensation to be received by the highest officer. The highest ranking officer may elect to take a lower salary than a nondisadvantaged individual only upon demonstrating that it helps the applicant firm.

If one or more of these situations exist, the nondisadvantaged individual will be found to control the firm. Additionally, nondisadvantaged individuals or entities having an equity interest in an applicant firm and who provide critical financing, bonding, or a critical license, may be found to control the firm.

Q. What factors are considered by SBA in evaluating the potential for success requirement? SBA will evaluate the following:

- the technical and managerial experience of the applicant firm's managers,
- the firm's operating history,
- ability of the firm to access credit and capital,
- the firm's financial capacity,
- the firm's record of performance, and
- whether the applicant firm or individuals employed by the firm hold the requisite licenses if the firm is engaged in an industry requiring professional licensing.

Q. Does SBA have a minimum length of time in business requirement?
Yes. The applicant firm must have been operational for at least two full years as evidenced by business income tax returns for each of the two previous tax years which show operating revenues in the primary industry in which the applicant firm is seeking 8(a) program certification.

Q. Can a firm still apply for participation in the 8(a) BD Program if it has not been in business for two full years?
Yes. However, the firm must obtain a waiver of the two years in business requirement by meeting all of the following conditions:

- The individual or individuals upon whom eligibility is based must have substantial business management experience.
- The applicant firm must demonstrate the technical experience to carry out its business plan with a substantial likelihood for success.
- The applicant firm must have adequate capital to sustain its operations and carry out its business plan.
- The applicant firm must have a record of successful performance on contracts from governmental or non-governmental sources in its primary industry category.
- The applicant firm must have, or must be able to demonstrate that it has, the ability to timely obtain the personnel, facilities, equipment, and any other requirements needed to perform on contracts if it is admitted to the 8(a) program.

Q. Can a firm be declined entry into the Program for reasons of character?
Yes. The regulations stipulate that the applicant concern and all its principals must have good character. SBA may determine that a lack of character demonstrated by any one of the following circumstances:

- Adverse information regarding possible criminal conduct by the applicant and its principals;
- Violations of SBA regulations;
- Debarment or suspension of firms and/or individuals;
- Lack of business integrity as demonstrated by information related to an indictment or guilty plea, conviction, civil judgment, or settlement;
- Principals of the firm are currently incarcerated, or on parole or probation; or
- Evidence that the firm knowingly submitted false information during the application process.

Q. Are brokers eligible for the 8(a) BD Program?
No. Brokers are not eligible for the program. A broker adds no material value to an item supplied to a procuring activity, does not take ownership or possession, and does not handle the item procured with its own equipment or facilities. If the applicant firm is a broker, but does not meet this definition, the firm may be eligible for 8(a) program participation.

Q. What happens if an applicant firm or any of its principals fail to pay significant financial obligations owed to the federal government?
If an applicant firm or any of its principals fail to pay significant financial obligations owed to the federal government, including unresolved tax liens and defaults on federal loans or other federally assisted financing, the applicant firm will be ineligible for 8(a) program participation.

Q. How long does the 8(a) BD application process take?
The regional Division of Program Certification and Eligibility (DPCE) has 15 days to review the application for completeness. If the application is incomplete, the applicant will have 15 days to provide additional information. If the DPCE determines the application is complete, a final decision regarding 8(a) BD Program eligibility will be made within 90 days after SBA's determination that the application is complete.

Q. What if an application is declined?
Each program applicant has the right to request that SBA reconsider a declined application by filing a written request for reconsideration within 45 days after receiving notice that the application was declined. The applicant has the burden of overcoming each reason cited in SBA's decision to decline the application. During the reconsideration process, the applicant must provide any additional information and documentation necessary to overcome the reason(s) for the initial decline. If an application is declined after reconsideration, SBA will not accept a new application until twelve (12) months after the date of the final Agency decision on reconsideration In addition, if an applicant is declined solely on issues of social disadvantage, economic disadvantage, ownership, control, or any combination of these four criteria, the declined applicant may appeal the decline decision to SBA's Office of Hearings and Appeals (OHA). This can happen either after receiving the initial decision to decline the application or after receiving a negative decision on reconsideration. OHA examines the decline decision to determine whether it was arbitrary, capricious, or contrary to law. No new or revised information is considered during the appeal process.

Q. How long can a company participate in the 8(a) program?
Program participation is divided into two stages: the developmental stage and the transitional stage. The developmental stage is four years and the transitional stage is five years. The developmental stage is designed to help 8(a) certified firms overcome their economic disadvantage by providing business development assistance. The transitional stage is designed to help participants overcome the remaining elements of economic disadvantage and to prepare participants for leaving the 8(a) program.

Q. Are 8(a) firms reviewed by SBA annually for compliance with eligibility requirements?
Yes. As part of an annual review, each Participant firm must submit to the servicing district office the following:

- A certification that it meets the 8(a) BD program eligibility requirements;
- A certification that there have been no changed circumstances which could adversely affect the Participant's program eligibility;
- Personal financial information for each disadvantaged owner;
- A record from each individual claiming disadvantaged status regarding the transfer of assets for less than fair market value to any immediate family member, or to a trust in which an immediate family member is a beneficiary, within two years of the date of the annual review. The record must provide the name of the recipient(s) and family relationship and the difference between the fair market value of the asset transferred and the value received by the disadvantaged individual;
- A record of all payments, compensation, and distributions (including loans, advances, salaries, and dividends) made by the Participant to each of its owners, officers, directors, or to any person or entity affiliated with such individuals;
- IRS Form 4506, Request for Copy or Transcript of Tax Form; and
- Such other information that SBA may deem necessary.

When a Participant fails to provide documentation for annual review, SBA may initiate termination proceedings.

Q. What does it mean to be "terminated" from the 8(a) BD Program?
The term "terminate" is used to refer to a Participant's exit from the 8(a) BD Program prior to the expiration of its program term for good cause. Examples of good cause include, but are not limited to the following:

- Submission of false information in the concern's 8(a) BD application, regardless of whether correct information would have caused the concern to be denied admission to the program, and regardless of whether correct information was given to SBA in accompanying documents or by other means.
- Failure by the concern to maintain its eligibility for program participation.
- Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by disadvantaged individuals.
- Failure by the concern to obtain prior written approval from SBA for any changes in ownership or business structure, management, or control.
- Failure by the concern to disclose to SBA the extent to which non-disadvantaged persons or firms participate in the management of the Participant business concern.
- Failure by the concern or one or more of the concern's principals to maintain good character.
- A pattern of failure to make required submissions or responses to SBA in a timely manner, including a failure to provide required financial statements, requested tax returns, reports, updated business plans, information requested by SBA's Office of Inspector General, or other requested information or data within 30 days of the date of request.
- Cessation of business operations by the concern.
- Failure by the concern to pursue competitive and commercial business in accordance with its business plan, or failure in other ways to make reasonable efforts to develop and achieve competitive viability.
- A pattern of inadequate performance by the concern of awarded section 8(a) contracts.
- Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

- Failure by the concern to obtain and keep current any and all required permits, licenses, and charters, including suspension or revocation of any professional license required to operate the business.
- Excessive withdrawals, including transfers of funds or other business assets, from the concern for the personal benefit of any of its owners or any person or entity affiliated with the owners that hinder the development of the concern.
- Unauthorized use of SBA direct or guaranteed loan proceeds or violation of an SBA loan agreement.
- Conduct by the concern, or any of its principals, indicating a lack of business integrity. Such conduct may be demonstrated by information related to a criminal indictment or guilty plea, a criminal conviction, or a judgment or settlement in a civil case.
- Willful failure by the Participant business concern to comply with applicable labor standards and obligations.
- Material breach of any terms and conditions of the 8(a) BD Program Participation Agreement.
- Willful violation by a concern, or any of its principals, of any SBA regulation pertaining to material issues.

Q. What does it mean to "graduate" from the 8(a) BD Program?
The term "graduate" is used to refer to a Participant's exit from the 8(a) BD Program at the expiration of the Participant's term.