

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

MEMORANDUM

TO: Members, Subcommittee on Contracting and Infrastructure
FROM: Kweisi Mfume, Chairman
DATE: March 2, 2022
RE: Subcommittee Hybrid Hearing: “The 8(a) Program: Overview and Next Steps to Promote Small Business Success”

The Committee on Small Business Subcommittee on Contracting and Infrastructure will meet for a hybrid hearing titled “The 8(a) Program: Overview and Next Steps to Promote Small Business Success.” The hearing is scheduled to begin at **11:00 A.M. on Wednesday, March 2, 2022, in person in 2360 Rayburn House Office Building and via the Zoom platform.**

The SBA’s 8(a) Program is a business development program that helps disadvantaged small businesses better compete in the American economy. The hearing will examine how the program currently works as well as the resources it provides to small businesses. Members will have an opportunity to hear from stakeholders about ways to modernize the program and improve its effectiveness.

Panel:

- Mr. Darryl K. Hairston, Retired, Small Business Advisor, Woodbridge, VA
- Ms. Jackie Robinson-Burnette, CEO, Senior Executive Strategic Solutions Woodbridge, VA
- Mr. Arshdeep Khurana, President & CEO, Avosys Technology, Inc., San Antonio, TX
- Ms. Qin Li, CEO, Soliel LLC, Vienna, VA

Background

The Small Business Act states that “full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy.”¹ It is only through full participation of all those interested in entrepreneurship and business ownership that competition can be preserved and expanded, which in turn results in more employment, more innovation, higher quality, and lower prices- all of which strengthens our economy.

Unfortunately, there are many disparities in our public and private institutions, as well as in our social constructs, that deny or severely restrict the participation of socially and economically disadvantaged individuals in our economy. One of the ways in which the Small Business Act

¹ 15 U.S.C. §631(f)(1)(A).

equalizes the scales and supports these entrepreneurs is through the 8(a) Business Development Program, better known as the 8(a) Program.

Program Overview and Eligibility

The 8(a) program is a 9-year program that offers participating small businesses with training, technical assistance and contracting opportunities to promote their competitive viability and ultimately ensure they can compete on an equal basis in the economy. The program was authorized in the Small Business Act in 1978 for small businesses owned by socially and economically disadvantaged individuals.² It was further expanded in the 1980s to include small businesses owned by four disadvantaged groups: Indian tribes, Alaska Native Corporations (ANCs), Native-Hawaiian Organizations (NHOs), and Community Development Corporations (CDCs).³ As of August 19, 2021, there were 4,906 small businesses in the program.⁴

To qualify for the program, small businesses owned by disadvantaged individuals must meet the following requirements:

- Be small,
- Be at least 51 percent unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who:
 - are citizens of and residing in the US,
- Both the business and the individual are of good character,
- Must demonstrate potential for success,
- Both the business and the individual can participate only once in the program.

Additional details of the different eligibility requirements are presented in Table 1:

Table 1: Requirement	Description
Small	A small business is one that is independently owned and operated, not dominant in its field of operation and meets the size standard set by the SBA Administrator. ⁵
Unconditionally Owned and Controlled	Unconditional ownership means not subject to any conditions, restrictions or other arrangements causing or potentially causing ownership benefits to go to another. ⁶ Ownership also needs to be direct (without an intermediary). ⁷

² To amend the Small Business Act and the Small Business Investment Act of 1958, P.L. 95-507, 92 Stat. 1757, (October 24, 1978).

³ Robert Jay Dilger, Cong. Research Serv., R44844, *SBA’s “8(a) Program”: Overview, History and Current Issues* (Upd. Nov. 2021) [hereinafter Dilger R44844]. Small businesses owned by any of these groups participate in the Program under slightly different requirements than those presented in this section and applicable to individually-owned firms.

⁴ U.S. Small Bus. Admin., Off. of Inspector Gen., Report 22-08, *SBA’s Business Development Assistance to 8(a) Program Participants* (Feb. 14, 2022).

⁵ 15 U.S.C. §632(a)(1)- (a)(2).

⁶ 13 C.F.R. §124.3.

⁷ 13 C.F.R. §124.105.

	In contrast, control includes “strategic policy setting [...] and day-to-day management and administration of business operations.” ⁸
Socially Disadvantaged Individual	<p>“Are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities.”⁹</p> <p>There is a rebuttable presumption that certain individuals are socially disadvantaged, including: African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Subcontinent Asian Americans.¹⁰</p> <p>An individual that is not a member of one of the groups above may prove through preponderance of the evidence that they are socially disadvantaged. In particular, they must show an objective distinguishing feature that has contributed to being socially disadvantaged such as: race, ethnic origin, gender, physical handicap, etc.¹¹</p>
Economically Disadvantaged	<p>Are “socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.”¹²</p> <p>Economic disadvantage is shown by submitting financial documentation about one’s income, assets, and net worth. These values must fall below regulatory amounts. For example: The net worth of the individual must be less than \$750,000.¹³</p>
Good Character	The SBA determines good character considering any credible source regarding possible criminal conduct, violations of SBA’s regulations, debarred or suspended concerns or persons, among other matters. ¹⁴
Potential for success	Generally, by being in business in its primary business classification for, at least, two years before the date of application. ¹⁵
One time eligibility	Once a concern or individual upon whom eligibility was based has participated in the program, neither will be eligible again. ¹⁶

Main Benefits of the 8(a) Program and How It Works

Once in the program, 8(a) participants are eligible for numerous benefits, including contracting opportunities. Section 8(a) of the Act allows agencies to enter into contracts with the SBA, which in turn subcontracts to 8(a) firms to provide goods or services, or to perform construction work.

⁸ 13 C.F.R. §124.106.
⁹ 13 C.F.R. §124.103.
¹⁰ *Id.*
¹¹ *Id.*
¹² 13 C.F.R. §124.104.
¹³ *Id.*
¹⁴ 13 C.F.R. §124.108(a)(1)-(5).
¹⁵ 13 C.F.R. §124.107.
¹⁶ 13 C.F.R. §124.108(b)(1)-(5).

Nevertheless, the SBA can, and often, delegates the function of executing contracts to the agencies, allowing them to directly contract with 8(a) firms.¹⁷

These contracting opportunities come in the form of sole source contracts (contracts awarded without competition) and set asides (in which competition is restricted to 8(a) participants). Individually-owned small businesses can receive sole-source contracts of less than \$4.5 million for goods and services without having to compete (\$7 million for manufacturing).¹⁸ Above those thresholds, individually-owned small businesses generally compete for awards, but competition is limited to 8(a) participants only.¹⁹ These benefits are further enhanced by the statutory goal of awarding 5% of all prime eligible contracts and subcontracts to small and disadvantaged businesses, which includes awards to 8(a) businesses.²⁰ According to SAM.gov, 10.4% of federal prime contracting dollars were awarded to small disadvantaged businesses in FY2020, out of which 3.5% was awarded through the 8(a) program.²¹

Moreover, 8(a) firms are eligible to receive technical and management assistance through the 7(j) program. According to regulations, they can receive “(a) counseling and training in the areas of financing, management, accounting, bookkeeping, marketing and operation of small business concerns and; (b) the identification of new business opportunities.”²² In FY2020, 9,941 small businesses received 7(j) assistance.²³

Small businesses in the 8(a) program can also participate in the All Small Mentor Protégé Program.²⁴ Through this program, proteges receive valuable business development assistance from their mentors. This assistance may include: technical and management assistance; financial assistance in the form of equity investment and/or loans; subcontracts (either from the mentor to the protégé or from the protégé to the mentor); trade education; and assistance in performing prime contracts through joint venture arrangements.²⁵ Finally, small businesses in the 8(a) program can take advantage of other types of assistance such as SBA financial assistance and the transfer of technology or surplus property owned by the Federal government.²⁶

Small businesses participate in the 8(a) Program for up to nine years, after which they graduate. However, participation can be terminated if the company no longer meets the eligibility criteria or reduced by early graduation or voluntary withdrawal.²⁷ Recognizing the adverse impact of the

¹⁷ 15 U.S.C. §637. See also Dilger R44844, *supra*, note 3.

¹⁸ 13 C.F.R. §124.506 & FAR §19.805-1.

¹⁹ *Id.*

²⁰ 15 U.S.C. 644(g).

²¹ Data generated using U.S. Gen. Services Admin., Sam.gov “*Data Bank: Standard Reports/ Small Business Goaling*” (retrieved on Feb 15, 2021).

²² 13 C.F.R. § 124.702.

²³ U.S. Small Bus. Admin., “*FY2022 Congressional Budget Justification and FY2020 Annual Performance Report*,” p.73.

²⁴ SBA used to have 2 Mentor Protégé programs: One specifically for 8(a)s and another for all other small businesses. Given that the programs had identical purposes, they were recently consolidated to eliminate confusion and duplication. See: U.S. Small Bus. Admin., “*Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments*,” 85 Fed. Reg. 66146 (Oct. 16, 2020).

²⁵ 13 C.F.R. §125.9.

²⁶ 13 C.F.R. §124.404.

²⁷ 13 C.F.R. §124.2.

pandemic on small businesses and on conducting business, in 2020 Congress provided eligible 8(a) participants the option to extend participation in the program for an additional year.²⁸

Furthermore, the 9-year term is divided into two stages: a developmental stage of 4 years and a transitional stage of 5 years.²⁹ To ensure firms do not develop an unreasonable reliance on 8(a) awards and ease transition, they must make good faith efforts to obtain non-8(a) revenue in the transitional stage. Thus, every year businesses must meet increasingly higher targets in terms of the percentage of total revenue obtained from non-8(a) contracts. These targets are known as 8(a) business activity targets (BAT).³⁰

Once in the program, small businesses submit a business plan and are assigned to a Business Opportunity Specialist who, among other things, provides 8(a) firms with guidance, counseling, and referrals; provides comprehensive assessments; and monitors compliance with program requirements.³¹ There are two mechanisms through which the SBA monitors 8(a) firms: through annual reviews that focus on the firms' progress in the program and annual continuing eligibility reviews that focus on compliance with program requirements.³²

Challenges in the 8(a) Program

Small businesses report a number of concerns and challenges in the 8(a) Program. For instance, many report concerns with its duration. Once admitted, on average, it takes multiple years for a business to navigate the federal marketplace and receive their first award, which takes valuable time from the program. At the same time, there are concerns with graduation and whether firms are adequately prepared to leave the program. Many are also concerned with the level of technical assistance and training provided through 7(j) and whether it is fully preparing small businesses, specially at the front and back-end of the program. Furthermore, many businesses report concerns with procurement trends and how it impacts the program. For example, while contracts are becoming larger in terms of dollars and scope, sole-source thresholds have remained stagnant, which results in fewer sole-source 8(a) contracts. Similarly, consolidation of contract requirements limits small business' ability to pursue 8(a) opportunities by themselves, often leading them to join ventures with large businesses. In turn, this is disadvantageous for those businesses that are not able to team up because they are no longer able to compete with similarly situated companies. These challenges and more will be the subject of the hearing.

Conclusion

The 8(a) Program was created to promote the competitive viability of small businesses owned by socially and economically disadvantaged individuals. One of the hallmarks of the program is that it provides contracting opportunities through which small businesses increase their footprint in Federal marketplace, thereby preparing small firms to compete in the American economy. This hearing will allow members to learn more about the particularities of the program and hear about these and other issues from the perspective of 8(a) participants and stakeholders.

²⁸ 15 U.S.C. 637 note.

²⁹ 13 C.F.R §124.404.

³⁰ 13 C.F.R. §124.509.

³¹ 15 U.S.C. §633(g). See also: See SBA, Office of Business Development, S.O.P. 80 05 5 "Standard Operating Procedure for the Office of Business Development," (Effective on Sept. 23, 2016) (hereinafter "S.O.P. 80 05 5").

³² S.O.P. 80 05 5.