

8(a) Business Development Program

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***What are the eligibility
requirements of the 8(a)
Business Development
Program?***

Eligibility Criteria for the 8(a) Program

- U. S. Citizens 13 CFR § 124.101
- Size 13 CFR § 124.102
- Socially Disadvantaged 13 CFR § 124.103
- Economically Disadvantaged 13 CFR § 124.104
- Ownership 13 CFR § 124.105
- Control and Management 13 CFR § 124.106
- Potential for Success 13 CFR § 124.107
- Other 13 CFR § 124.108
- ANC's and AIT's 13 CFR § 124.109
- NHO's 13 CFR § 124.110
- CDC's 13 CFR § 124.111

U.S. CITIZENSHIP

Applicants ***not*** born in the U.S. must provide documentation to show that they are U.S. citizens.

Size

Firms, including affiliates, must be small based on the applicant firm's primary NAICS Code.

Size is determined either by:

- average 3 years revenues, or
- # of employees (manufacturers, dealers, wholesalers)

See 13 CFR 121 Size Regulations or visit our website:
www.sba.gov/size.

How SBA determines affiliation has changed. For specific questions regarding affiliation, contact your local SBA Government Contracting Size Specialist.

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Size

The processing center will, at the minimum, request the following regarding each alleged affiliate:

- a. interim 2011 financial statements;
- b. 2008- 2010 business tax returns, including all schedules, attachments, and proof of tax paid;
- c. **If the firm is a corp:**
 - 2009/10 shareholder meeting minutes showing the election of the board of directors;
 - 2009/10 board of director meeting minutes showing the election of the officers;
 - stock certs and ledger;
- d. **If the firm is a LLC:**
 - articles of organization and operating agreement;
- e. **If the firm is a sole prop,** provide:
 - assumed/fictitious name registration.
- f. **If the firm is a partnership:**
 - partnership agreement;

Ownership

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- At least 51% unconditional *direct* ownership by the disadvantaged individual(s). Ownership through another entity *is not* direct. **13 CFR §124.105(a)**
- **Partnerships:** Agreements *must* reflect unconditional ownership. Each class of interest must be at least 51% owned by disadvantaged individual(s). **13 CFR §124.105(b)**
- **Limited Liability Company:** Disadvantaged individuals *must* own at least 51% of *each class* of member interest. **13 CFR §124.105(c)**

➤ **Corporations:**

- Disadvantaged individuals must own at least 51% of *each class* of voting stock and at least 51% of the aggregate of all outstanding stock. (***13 CFR §124.105(d)***)
- Stock option plans for nondisadvantaged individuals will be viewed as if they have been exercised. (***13 CFR §124.105(e)***)

SBA will look at the:

- *stock certificates and ledger;*
- *IRS 1040 Schedule E, if applicable;*
- *Firm's tax returns.*

Control and Management

- Partnerships: Agreements must reflect unconditional management by disadvantaged partner(s). DVD individual(s) ***must be*** named as the General Partner(s). ***13 CFR §124.106(b)***

SBA will examine the partnership agreement, and any amendments.

- Limited Liability Company: One or more disadvantaged individuals ***must*** serve as management members with unconditional control. ***13 CFR §124.106(c)***

SBA will examine the LLC's operating agreement , and any amendments.

Corporations: How control is established. *13 CFR §124.106(d)*

SBA will examine the corporations articles, by-laws, and meeting minutes, among other things.

A. Disadvantaged directors of the board must control the board by actual number of votes and must be able to establish a quorum without the presence of nondisadvantaged directors.

OR

B. Control without considering the board of directors :

1. A single disadvantaged individual owns 100% of the voting stock.
2. A single disadvantaged individual owns at least 51% of the voting stock, is on the board of directors and no supermajority* voting requirements exist. If a supermajority requirement exists, the disadvantaged individual must own at least the percentage of voting stock necessary to overcome any supermajority requirements.
3. If more than one disadvantaged individual, each disadvantaged individual is on the Board of Director and together own at least 51% of the voting stock and no supermajority voting requirements exist, and there are enforceable agreements of the shareholders permitting one of them to vote all stock as a block without a shareholders meeting. If a supermajority requirement exists, the disadvantaged individuals must own at least the percentage of voting stock necessary to overcome any supermajority requirements.

* ***A supermajority is a percentage of votes required by shareholders to make decisions on behalf of the concern. For example, if a 2/3 vote is required to approve a bylaw change, disadvantaged individuals must have at least 2/3 of the votes necessary to control the concern.***

What constitutes Control?

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A Disadvantaged Individual must:

- Hold the position of President or Chief Executive Officer, Managing/ General Partner, or LLC Managing Member;
- Be physically located in the U.S.;
- Be the highest compensated individual;
- Have the ability to Hire and Fire;
- Set Policies;
- Have the ability to commit firm to contracts;
- Have the ability to the control Budget and Financial Disbursement;

Do you control the Operations?

Tests:

- Does a disadvantaged individual or individuals devote full-time to the business?
- Do you have sufficient managerial experience to run the concern?
- Do you have ultimate managerial control over individuals with technical expertise and/or critical licenses?

***Do Non-disadvantaged Individuals
have the Ability to Control your firm?***

TESTS:

- Do contractual arrangements exist that allow a nondisadvantaged individual to control the firm?
- Is the nondisadvantaged individual a previous employer or supervisor?
- Does a nondisadvantaged individual:
 - hold the critical license and have an equity interest in the applicant concern;
 - provide the necessary licenses or bonding;
 - have unlimited access to the business bank accounts;
 - provide critical financing;
 - control through business loan arrangements; and/or
 - receive excessive compensation.

***Potential
for
Success***

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Factors considered:

- Proof of two years operation in the firm's primary industry as verified by revenues reported in business tax returns, **NOT** the applicant's anniversary date.
- Financial capability: sufficient capitalization, financial performance, bonding capacity, manageable debts.
- Managerial and Technical capability: performance on previous contracts, firm has the necessary personnel, licenses, certifications, facilities, prior experience.
- Management capability: Education, experience and training of CEO and other managers, magnitude and complexity of past/current jobs, management systems.
- Qualifications for ability to perform on Federal contracts: relevant contracting experience, ability to meet Federal procurement policies.

***Ineligible Businesses
&
Individual Disqualification***

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- Ineligible businesses: brokers *; debarred or suspended persons or concerns; nonprofit organizations. Franchises may be allowed contingent upon SBA's review of the franchise agreement.
 - A business may participate only once. Even if ownership and control has completely changed, firm may not re-apply.
 - Any person who has used his/her disadvantaged status to qualify another firm shall be regarded as non disadvantaged.
- * *A broker is a concern that adds no material value to an item being supplied to procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities.*

Good Character

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What shows lack of good character?

- Adverse information regarding possible criminal conduct by the applicant or its principals.
- Violations of any SBA regulations.
- Debarred or suspended individuals or firms.
- Applicant firms and principals that lack business integrity as shown by an indictment, guilty plea, or civil judgment.
- Any principal who is incarcerated or on parole or probation.
- Evidence that the firm knowingly submitted false information during the application process.
- Any firm or any of its principals that fail to pay financial obligations to the Federal Government.

The 8(a) BD Application

Forms include:

- 1010- references to the SDB program are omitted and not part of this discussion.
- 1623
- 1790
- 912
- 413

8(a) BD Application (cont'd)

Dynamic Small Business Search#: _____

Mandatory for 8(a) & SDB Certification

fka the ProNet id number. It is located in the address bar of your web browser, and consists of the last 8 digits- starts with the letter 'P'.

http://dsbs.sba.gov/dsbs/search/dsp_profile.cfm?User_Id=P1*****3

8(a) BD Application (cont'd)

Section II
Business Management and Administration

Provide the following information on all individuals who are owners, directors, management members, partners and officers
(Add additional pages if necessary)

Name	Position in Business concern	Percentage of Ownership Interest in Business Concern	Hours Per Week Devoted to the Management of Business Concern	Socially Disadvantaged (Y/N)	Economically Disadvantaged (Y/N)

If the “Percentage of Ownership Interests” identified do not total 100% because a certain percentage of the applicant concern is owned by a another business concern or other organization, identify those owners in your response to Question Number 6 below.

8(a) BD Application (cont'd)

Information regarding:

- **All** owners of 10% or more;
- **All** officers;
- **All** directors;
- **All** partners; and/or
- **All** LLC members

Must be recorded herein regardless of ownership and regardless of whether or not the person is claiming disadvantage.

8(a) BD Application (cont'd)

- Ownership **MUST** total 100%.
- Hours **MUST** reflect the devotion of full-time by one or more soc/ec disadvantaged individuals.
- Those claiming soc/ec disadvantage **MUST** indicate **BOTH** here.
 - If an individual claims social disadvantaged and does not indicate economic disadvantage, SBA may decline the application;
 - If an individual claims economic disadvantage and does not indicate social disadvantage, SBA may decline the application.

8(a) BD Application- SBA Form 1010 Questions 1- 20

- If you answer “Yes” to *any* of these questions you ***MUST*** provide an explanation.

8(a) BD Application- SBA Form 1010 Questions 1- 20

1. Is the business concern delinquent in filing any applicable business tax returns?
2. Does the business concern have any past due taxes or any other delinquent Federal, state or local financial obligations outstanding or liens filed against it? If yes, provide information about any tax liens or unsatisfied judgments, evidence of repayment arrangements and proof of compliance with repayment arrangements.

13 CFR §124.108(a)(4)(i) requires ALL applicants to have good character. Applicants are ineligible if it is found that an applicant and its principals lack “...business integrity as demonstrated by information related to [a]... civil judgment...”

13 CFR §124.108(e)- Applicants are ineligible if it is found that the firm, or any of its principals, has failed to pay Federal financial obligations.

FYI- CHECK YOUR BUSINESS AND PERSONAL CREDIT REPORTS. All liens and/or judgments must be released and/or satisfied, or documentation must be provided to show the payment arrangements.

8(a) BD Application- SBA Form 1010 Questions 1- 20

3. Does the business concern have any existing management, joint venture, indemnity, consulting, distributorship, licensing, trust or franchise agreements? If yes, include copies of these agreements.
4. Have there been any changes in ownership of the business concern in the past two years? If yes, identify prior owners by name, percentage of ownership, and dates of ownership.
5. Does the business concern have an ownership interest in, or an affiliation with (see definition of “affiliation” on page 1), any other business concern? If yes, for each affiliate and/or subsidiary provide the seven categories of information listed in question 6.
6. Does any other business concern or other organization have an ownership interest in the business concern? If yes, provide for each business concern or organization the following information: (1) the name and address; (2) the type of business or organization; (3) the names of every owner, director, and officer; (4) if the owner is a business concern, the Primary NAICS code; (5) the nature of the entity’s relationship with the applicant business concern; (6) the percentage of ownership of the applicant business concern; and (7) a statement as to whether the other business concern is a current or former 8(a) BD program participant.

Any “YES” answers may indicate affiliation and size issues (*13 CFR §124.102*), issues regarding control (*13 CFR §124.106*), and/or potential for success (*13 CFR §124.107*).

8(a) BD Application- SBA Form 1010 Questions 1- 20

7. Does the business concern buy from, sell to, or use the services or facilities of any other business concern, or otherwise conduct business with any other business concern, in which a principal of the applicant business concern has a financial or any other interest? If yes, provide the name of the other business concern, the name of that concern's president or CEO, the name(s) of the principal(s) of that concern, and type of interest.

Any "YES" answers may indicate affiliation and size issues (*13 CFR §124.102*), issues regarding control (*13 CFR §124.106*), and/or potential for success (*13 CFR §124.107*).

8. Has the business concern previously applied and been approved for the 8(a) BD? If yes, provide the dates of participation in the 8(a) BD program, reason for ending participation (e.g., graduation, termination), and SBA servicing office of record.

13 CFR §124.108- Participation is ONE TIME ONLY for firm's and individuals.

8(a) BD Application- SBA Form 1010 Questions 1- 20

9. Does (or do) any outside entity(ies) or individual(s) provide financial or bonding support, licenses or required professional certification, office space or equipment to the applicant business concern? If yes, provide the name of the entity(ies) or individual(s), the nature of assistance (in the case of licenses and professional certifications, include the type of license and/or certification) and copies of any existing agreements governing that relationship.

10. Does anyone other than an economically and socially disadvantaged individual (see discussion in Individual Information Form 1010-IND) hold the highest position in the business concern (President/CEO, Managing Member, Managing Partner, Sole Proprietor)?

11. Does any employee, owner, director, officer, partner or management member who is not economically and socially disadvantaged receive compensation or dividends from the applicant business concern that exceeds the compensation of the highest ranking individual of the business concern?

Any “YES” answers may indicate affiliation and size issues (*13 CFR §124.102*), issues regarding control (*13 CFR §124.106*), and/or potential for success (*13 CFR §124.107*).

8(a) BD Application- SBA Form 1010 Questions 1- 20

12. Did a third party (person or entity) not employed by the applicant business concern complete or help the business concern complete this form (e.g., attorney, accountant, appraiser, agent, or other representative)? If yes, complete SBA Form 1010-REP and submit it with your application materials.

13 CFR §124.4- provides restrictions regarding what third party reps are permitted to charge.

13. Is the applicant business concern a party to any pending civil lawsuit? If yes, summarize its interest in the suit, a summary of the claims, the current status, and provide a copy of the complaint filed in the suit.

13 CFR §124.108(a)(4)(i) requires ALL applicants to have good character. Applicants are ineligible if it is found that an applicant and its principals lack “...business integrity as demonstrated by information related to [a]... civil judgment...”

8(a) BD Application- SBA Form 1010 Questions 1- 20

14. Has the business concern previously received an SBA loan, or has the business concern ever been an owner, stockholder or guarantor for another business concern which has received an SBA loan? If yes, provide the loan recipient's name, date approved, and current status of the loan.
15. Has the business concern filed for bankruptcy or insolvency in the past 7 years? If yes, provide details and a copy of the bankruptcy court's final order.

13 CFR §124.108(e)- Applicants are ineligible if it is found that the firm, or any of its principals, has failed to pay Federal financial obligations. A bankruptcy, in and of itself, does not disqualify an applicant and/or its principals. However, documentation regarding the bankruptcy (esp. what debts were discharged) will need to be reviewed to determine eligibility in this area.

8(a) BD Application- SBA Form 1010 Questions 1- 20

16. Does the business concern own any assets of a previously certified 8(a) BD Program participant? If yes, provide the business name of the previous 8(a) BD Program participant, name and title of individual(s) claiming disadvantage for previous participant, address of previous participant business concern, dates of participation, and SBA servicing office of record.

13 CFR §

- *124.108(b)*- Participation is ONE TIME ONLY for firm's and individuals.
- *124.108(b)(4)*- if the applicant firm has obtained 50% of more of its assets from a former 8(a), it is not eligible.

8(a) BD Application- SBA Form 1010 Questions 1- 20

17. Does the business concern have a negative net worth or working capital position?

13 CFR § 124.107- Applicant firm's MUST demonstrate potential for success.

- **124.107(c)-** SBA will examine, among other things the firm's access to capital (long term financing, working capital financing, trade credit, and bonding capability)
- **124.107(d)-** SBA will also examine, in this regard, the concern's financial capacity.

18. Does the individual holding the business concern's highest position devote less than fulltime to the operation of the applicant business concern?

13 CFR § 124.106(a)(1)- a disadvantaged individual MUST manage the applicant full-time.
Also

- **124.106(a)-** a disadvantaged individual MUST hold the highest position in the firm and be physically located in the U.S.; and
- **124.107(2)-** one or more disadvantaged managers MUST devote full-time during normal working hours of firm's in the same or similar line of business.

8(a) BD Application- SBA Form 1010 Questions 1- 20

19. Has the business concern earned revenues in its primary NAICS code for less than the immediate past two years?
20. Has the business concern been in business for less than two years? If yes, you will need to seek SBA's approval for a waiver of the rule that the business concern must be in business for two years prior to application by submitting information to demonstrate the business concern's potential for success. Guidance on the two-year waiver rule can be found in 13 C.F.R. 124.107 and the 8(a) website (see Internet address on page 1).

13 CFR §124.107- Applicant firm's **MUST** "*be in business in its primary industry... for at least two full years immediately prior to the date of its 8(a) BD application*". These 'two full years' have nothing to do with anniversary dates.

- **124.107(a)-** tax returns for the two prior tax years will be examined.
- **124.107(b)-** Applicant firm's not meeting the two year requirement **MUST** meet all five waiver requirements.

Waiver of the Two Year Rule

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SBA may waive the two-year rule if:

- The individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;
- The applicant firm has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success if admitted to the 8(a) BD Program;
- The applicant firm has adequate capital to carry out its business plan as a Participant;
- The applicant firm has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category;
- The applicant firm has, or can demonstrate its ability to timely obtain the personnel, facilities, equipment, and any other requirements needed to perform such contracts as a Participant.

8(a) BD Application- SBA Form 1010 (excerpt)

Read the following paragraphs carefully. Your signature below indicates acceptance and understanding of these conditions.

- A. Payment of any fee or gratuity to SBA employees is illegal and will subject the parties of such a transaction to prosecution.
- B. Applicant agrees to allow SBA access and the right to examine corporate records including, but not limited to, books, documents, papers and other material considered by SBA to be necessary.

Please see 13 CFR §124.203

- C. SBA, in its sole discretion, may at any time request clarification of information contained in this application or any other documents submitted as part of the application process, and may request additional information or documents as it deems appropriate to complete its review of the application.

Please see 13 CFR §124.204(b)

- D. If the applicant business concern fails to provide any requested information or documents, SBA may presume that disclosure of the information would demonstrate that the business concern is not eligible for 8(a) BD Program or SDB certification.

Please see 13 CFR §124.204(c)

8(a) BD Application- SBA Form 1010 Rep and Fees

It is not necessary for an applicant concern to retain representation to assist in the preparation and presentation of this 8(a) BD Program application. If you do, SBA will:

- Will determine if the compensation/fees paid are reasonable; and
- May require a full itemization by representatives of actual services rendered.

You must make the attorneys, accountants, appraisers, agents, or other representatives who assisted in the preparation or filing of the application aware of the above before contracting with them.

8(a) BD Application- SBA Form 1623

- (1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions(Federal, State, or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

8(a) BD Application- SBA Form 1623 (cont'd)

If you answer “False” to ***any*** of these questions you ***MUST*** provide an explanation.

13 CFR §124.108(a)(3)- Ineligible if firm is debarred or suspended; or firm’s owners are debarred or suspended.

13 CFR §124.108(a)(4)- Ineligible if firm or firm’s principals or key employees;

- *124.108(a)(4)(i)* - Lacks good character as evidenced by indictment/guilty plea, conviction, civil judgment/ settlement; or
- *124.108(a)(4)(ii)*- if firm’s principals or key employees are currently incarcerated, on parole/probation for a felony or crime involving business integrity.

8(a) BD Application- SBA Form 1010-IND

Questions 1- 15

INDIVIDUAL INFORMATION

Each person owning 10% or more of the applicant business concern and each director, management member, partner, and officer of the applicant business concern must complete this form and attach the documents required below.

The information on each 1010-IND must match that recorded on the 1010 regarding:

- position
- %-age owned
- avg.hrs/week

SBA Form 1010-IND Questions 1- 15 (con't)

Are you authorized to make withdrawals from, or have access to, the business concern's bank account?

Any "NO" answer may indicate issues regarding control (*13 CFR §124.106*).

Each nondisadvantaged individual having access to the firm's account(s) MUST provide his/her:

- Resume; and
- SBA Form 912.

An explanation regarding the relationship between the applicant firm and the disadvantaged applicant's to the nondisadvantaged individual, and why he/she has access, must also accompany the application.

SBA Form 1010-IND Questions 1- 15 (con't)

1. Have you filed for personal bankruptcy in the past 7 years? If yes, provide details and a copy of the bankruptcy court's final order or discharge.
2. Have you previously obtained an SBA loan? If yes, provide the name(s) of the borrower(s) on the loan, date approved, and current status of the loan.
3. Have you ever been an owner, stockholder, or guarantor for a business concern which has received an SBA loan? If yes, provide the name(s) of the borrower(s) on the loan, date approved, and current status of the loan.

13 CFR §124.108(e)- Applicants are ineligible if it is found that the firm, or any of its principals, has failed to pay Federal financial obligations. A bankruptcy, in and of itself, does not disqualify an applicant and/or its principals. However, documentation regarding the bankruptcy (esp. what debts were discharged) will need to be reviewed to determine eligibility in this area.

SBA Form 1010-IND Questions 1- 15 (con't)

4. Are you a party to any pending civil lawsuit? If yes, summarize your interest in the suit, a summary of the claims, and the current status of the suit.

13 CFR §124.108(a)(4)(i) requires ALL applicants to have good character. Applicants are ineligible if it is found that an applicant and its principals lack “...business integrity as demonstrated by information related to [a]... civil judgment...”

5. Are you a former employer or an officer of a former employer, of any individual(s) claiming disadvantage?

Any “YES” answers by nondisadvantaged individuals may indicate affiliation and size issues (*13 CFR §124.102*) and issues regarding control (*13 CFR §124.106*).

SBA Form 1010-IND Questions 1- 15 (con't)

6. Other than any publicly traded stock, bonds, and mutual funds you may own, do you have an ownership interest in any other business, and/or are you an officer or director in any other business concern? If yes, provide the following information: (1) identify your percentage of ownership in that(those) concern's (s'); (2) identify the number of employees in that(those) concern(s); (3) identify that(those) concern(s) revenues for the past three years; and (4) identify all other owners, partners, directors, officers, and principal stockholders in that(those) concern(s) by name, address, position held, and percentage of any ownership interest.

Any “YES” answers may indicate affiliation and size issues (*13 CFR §124.102*), issues regarding control (*13 CFR §124.106*), and/or potential for success (*13 CFR §124.107*).

7. Are you, or is any member of your household, a Federal employee?

If the household member's pay grade is equal to, or greater than, a GS-13 (*when compared to the GS pay scale*) then a letter of no objection will be required from this family member's employer.

NOTE: FEDERAL ACQUISITION REGULATIONS (3.601) DO NOT PERMIT A CONTRACTING OFFICER TO KNOWINGLY AWARD A FEDERAL CONTRACT TO A GOVERNMENT EMPLOYEE OR BUSINESS CONCERN OWED OR SUBSTANTIALLY OWNED OR CONTROLLED BY ONE OR MORE FEDERAL GOVERNMENT EMPLOYEES.

SBA Form 1010-IND Questions 1- 15 (con't)

8. Were you born outside of the United States? If yes, provide evidence of U.S. citizenship.

If a disadvantaged applicant was not born in the U.S., proof of citizenship will be required.
See *13 CFR §124.101*

9. Do you have any delinquent Federal obligations, past due taxes or liens or have you been delinquent in filing your personal Federal or local tax returns? If yes, your explanation must include a discussion of and copies of any tax liens or unsatisfied judgments, evidence of repayment arrangements and proof of compliance with repayment arrangements.

13 CFR §124.108(a)(4)(i) requires ALL applicants to have good character. Applicants are ineligible if it is found that an applicant and its principals lack "...business integrity as demonstrated by information related to [a]... civil judgment...'

13 CFR §124.108(e)- Applicants are ineligible if it is found that the firm, or any of its principals, has failed to pay Federal financial obligations.

FYI- CHECK YOUR BUSINESS AND PERSONAL CREDIT REPORTS. *All liens and/or judgments must be released and/or satisfied, or documentation must be provided to evidence the payment arrangements.*

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SBA Form 1010-IND Questions 1- 15 (con't)

10. Have you previously used your socially disadvantaged status to qualify a business concern for the 8(a) BD Program or have you ever been an owner (full or partial), director, officer or partner in another business concern that was admitted to the 8(a)/BD program? If yes, your narrative statement must include the name of the other business concern and describe the percentage of any ownership interest in that business concern.

13 CFR §

- ***124.108(b)***- Participation is ONE TIME ONLY for firm's and individuals.
- ***124.108(b)(3)***- if you have previously utilized your disadvantaged status for one firm, then you will be deemed as nondisadvantaged when qualifying another and must meet the preponderance standard (***13 CFR §124.103(c)***).

SBA Form 1010-IND Questions 1- 15 (con't)

11. Has an immediate family member (see definition on Form 1010) ever been an owner (full or partial) of another business concern that was admitted to the 8(a)/BD program? If yes, your narrative statement must include the name of the business concern and describe the percentage of any ownership interest.

Any “YES” answers may indicate affiliation and size issues (*13 CFR §124.102*).

SBA at *13 CFR §124.3* defined immediate family members as parents, spouse, sibling, offspring, grand children/parents, parents-in-law.

You *may not* qualify the firm if that family member has ever qualified a firm for the 8(a)BD program This may be waived by the AA/BD if;

- There are NO connections regarding ownership, control, contracts;
- YOU have industry related management/technical experience; and
- The firms are in different lines of business. If no, you must provide clear and compelling evidence of no connections. (*13 CFR §124.105(g)(1)*)

SBA Form 1010-IND Questions 1- 15 (con't)

12. Have you ever been debarred, suspended, voluntarily excluded or otherwise the subject of an action that rendered you ineligible for procurement or non-procurement purposes from any department or agency of the Federal Government? If yes, provide a brief description of the cause of action.

If you answer “YES” to this question you **MUST** provide an explanation.

13 CFR §124.108(a)(3)- Ineligible if firm’s owners are debarred or suspended.

13 CFR §124.108(a)(4)- Ineligible if firm or firm’s principals or key employees;

- *124.108(a)(4)(i)* - Lacks good character as evidenced by indictment/guilty plea, conviction, civil judgment/ settlement; or
- *124.108(a)(4)(ii)*- if firm’s principals or key employees are currently incarcerated, on parole/probation for a felony or crime involving business integrity.

SBA Form 1010-IND Questions 1- 15 (con't)

13. Have you transferred any personal assets during the last two years to any immediate family member for less than fair market value? If yes, provide a detailed explanation, including the nature and amount of the asset(s) transferred and the recipient of each transferred asset.

A “YES” answer may indicate net worth issues (*13 CFR §124.104(c)(2)*) and issues regarding the fair market value of all assets (*13 CFR §124.104(c)(4)*).

Assets transferred to an immediate family or trust of which the immediate family member is a beneficiary will be attributed to you, unless said transfer is demonstrated to be for the immediate family members;

- Education;
- Medical expenses, or
- Other form of essential support. (*13 CFR §124.104(c)(1)(i)*)

*Assets as stated above will not be attributed if transferred for the customary recognition of special occasions (birthdays, graduations, anniversaries, retirements). Substantiating documentation **MUST** be provided. (*13 CFR §124.104(c)(1)(ii)*)*

SBA Form 1010-IND Questions 1- 15 (con't)

14. Are you currently employed outside the applicant business concern? If yes, provide information on this employment and evidence that the activity does not conflict with the day-to-day management of the applicant business concern. Please indicate the number of hours per week and the normal working hours of this outside employment.

A “YES” answer may indicate control issues (*13 CFR §124.106*).

13 CFR §124.106(a)(1)- a disadvantaged individual **MUST** manage the applicant full-time.

Also:

- *124.106(a)*- a disadvantaged individual **MUST** hold the highest position in the firm and be physically located in the U.S.; and
- *124.107(2)*- one or more disadvantaged managers **MUST** devote full-time during normal working hours of firm’s in the same or similar line of business.

SBA will request, among other things, a letter- on company letterhead, from your current employer attesting to your day/week and hrs/day.

SBA Form 1010-IND Questions 1- 15 (con't)

15. Identify which of the following presumed socially disadvantaged group(s) you are in (you should review *13 CFR §124.103(b)* before answering):



Socially disadvantaged individuals are persons who have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups, without regard to individual qualities.



Individuals are presumed to be socially disadvantaged if they are **U.S. Citizens** and members of one of the following groups (*13 CFR §124.103(b)(1)*):

➤ Black American

➤ Asian Pacific American

➤ Individuals with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia, Vietnam, Korea, The Philippines, U.S. Trust Terr. Of the Pacific Islands, Rep. of the Marshall Islands, Fed. States of Micronesia, Comm. Of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru

Socially Disadvantaged Groups (cont'd)

- Hispanic American (*includes individuals of Spanish & Portuguese descent*).

- Native American
 - American Indians, Native Hawaiians, or enrolled members of Federally or State recognized Indian Tribe

- Subcontinent Asian American
 - Individuals with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal.

Persons *not* members of the presumed groups must establish their individual social disadvantage by a preponderance of the evidence (*13 CFR §124.103(c)*):



- The disadvantage may stem from race, ethnic origin, gender, physical handicap, long term environmental isolation, or other similar causes;
- The applicant **must** have personally suffered disadvantage in the United States;
- The disadvantage **must** be chronic & substantial;
- The discrimination **must** have negatively impacted business advancement.



What is “Preponderance”?

Generally, preponderance is evidence of a quality and quantity which leads the decision maker to objectively conclude that the existence or truth of the facts asserted is more probable than not.

Types of Evidence for Preponderance (1)

- Court or Administrative findings of discrimination.
- Statements made under oath to an investigator, in court or in an administrative proceeding.
- Affidavits or sworn statements by the individual claiming disadvantage.
- Affidavits or sworn statements by independent third parties.

Types of Evidence for Preponderance (2)

- Documentary evidence which corroborates or supports assertions made by an applicant such as:
 - Personnel Records
 - Payroll Records
 - Rejection letters on job applications.
 - Denials of credit applications.
 - Financial statements.
 - Documents relating to rejected contract offers, i.e., bid abstracts, solicitations.
 - Contemporaneous records memorializing meetings, conversations, negotiations, telephone calls, etc.
 - Documents setting forth company policy(ies) which are alleged to be discriminatory.

Types of Evidence for Preponderance (3)

Evidence which tends to show generalized patterns of discrimination against a nondesignated group or statistical data showing that businesses owned by a specific nondesignated 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.

Types of Evidence for Preponderance (4)

SBA will consider any relevant evidence in assessing a claim of social disadvantage. In every case, however, SBA will consider the experiences of the individual, where applicable, in education, employment and business history to see if the totality of the circumstances shows disadvantage in entering into or advancing in the business world. Evidence relating to all three areas should be addressed, if applicable, to the individual's case, and each circumstance should demonstrate how it has affected the individual's entrance into and advancement in the business world. The failure to establish disadvantage in any one or two areas 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.

8(a) BD Application- SBA Form 912

Boxes 1- 6 must be completed

Re: box 1- *ALL* prior names must be recorded.

Re: box 5- if not born in the U.S., provide proof of citizenship. See *13 CFR §124.101*

IF YOU ANSWER "YES" TO 7, 8, OR 9, FURNISH DETAILS ON A SEPARATE SHEET. INCLUDE DATES, LOCATION, FINES, SENTENCES, WHETHER MISDEMEANOR OR FELONY, DATES OF PAROLE/PROBATION, UNPAID FINES OR PENALTIES, NAME(S) UNDER WHICH CHARGED, AND ANY OTHER PERTINENT INFORMATION.

AN ARREST OR CONVICTION RECORD WILL NOT NECESSARILY DISQUALIFY YOU. HOWEVER AN UNTRUTHFUL ANSWER WILL CAUSE YOUR APPLICATION TO BE DENIED AND SUBJECT YOU TO OTHER PENALTIES.

Applicant's indicating an arrest **MUST** provide a fingerprint card with the SBA Form 912. This may be obtained from your local SBA office.

8(a) BD Application- SBA Form 912 (cont'd)

ALL arrests must be disclosed regardless of when occurred. If arrested **after** submitting an application, this, too, must be disclosed.

13 CFR §124.108(a)(1)- SBA will suspend processing when information relative to an applicant's criminal conduct is obtained.

Ineligible if firm or firm's principals or key employees;

- **124.108(a)(4)(i)** - Lacks good character as evidenced by indictment/guilty plea, conviction, civil judgment/ settlement; or
- **124.108(a)(4)(ii)**- if firm's principals or key employees are currently incarcerated, on parole/probation for a felony or crime involving business integrity.

13 CFR §124.108(a)(5)- SBA will decline an application, if any any time it is determined false information has been provided

Economic Disadvantage

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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.

Net worth criterion:

After excluding the individual's legitimate retirement account(s), equity in the firm, and equity in the primary residence, net worth may not exceed:

\$250,000.00 for 8(a) eligibility*.

NET WORTH (*assets less liabilities*)
less legitimate IRA/retirement account value(s)
less equity (*value - mtg. bal.*) in primary residence
less equity in business
equals ***adjusted net worth***



* 13 CFR §124.104(b)(2)(i)- Contingent liabilities do not reduce the net worth.

Each individual claiming economic disadvantage must explain it in a narrative and provide personal financial information (*on SBA Form 413*) for themselves and his/her spouse, unless legally separated. (*13 CFR §124.104(b)(1)*)

When reporting assets and liabilities each individual must record *ALL* his/her assets (*whether wholly or partially owned*) and *ALL* his/her liabilities (*whether wholly or partially responsible*).

SBA *will* consider a spouse's financial situation when determining the disadvantaged applicant's access to capital and credit where the spouse:

- Has a role in the applicant concern;
- Has loaned money to the applicant concern;
- Provided credit support to, or guaranteed a loan for, the applicant concern.

Unless information is provided to show that the couple are legally separated.

SBA, when determining an applicant individual's economic disadvantage, *does not* take into consideration community property statutes.

13 CFR §124.104(b)(2)

IRA/Retirement Accounts and adjusted net worth

Funds invested in IRA's of other qualified retirement account(s) will not be included in adjusted net worth if these funds are unavailable until retirement age without significant penalties.

Applicant must provide, for *each* retirement account,

- Information regarding the terms and restrictions; and
- Certification that the account is legitimate.

13 CFR § 124.104(b)(2)(ii)

Personal Income and adjusted net worth

Income from S-Corps, LLC's (*not filing on Schedule- C*), or partnerships will not be included in adjusted net worth calculations if:

- Income was reinvested in the firm; or
- Used to pay taxes arising out of normal business operations.

Losses will not be used to reduce the adjusted net worth calculations.

13 CFR § 124.104(b)(2)(iii)

FAIR MARKET VALUE OF ALL ASSETS

FOR INITIAL ELIGIBILITY- an individual will *not* be considered economically disadvantaged if the fair market value of *ALL* of her/her assets exceeds \$4MM.

The *ONLY* exception to this are funds invested in a legitimate IRA/retirement account.

13 CFR §124.104(c)(4)

8(a) BD Application- SBA Form 413

When submitting the SBA Form 413 the individual(s) claiming soc/ec disadvantage must:

- Verify that the information is no older than 30 days;
- Provide a SEPARATE form for his/her spouse;
- Submit documentation to verify EACH asset and liability*;
- Provide the terms and restrictions for ALL of his/her retirement accounts.

NOTE: Disadvantaged applicants *MUST* disclose **all assets and liabilities and may not make exclusions on their own. SBA makes the exclusions.**

* Other personal property (clothing, jewelry, etc.) may be estimated.

Personal Income

FOR INITIAL ELIGIBILITY:

If a disadvantaged individual's adjusted gross income, averaged over three years, exceeds \$250,000, he/she will be presumed by SBA to *not* be economically disadvantaged. (*13 CFR §124.104(c)(3)(i)*)

Unless:

- Income was unusual & not likely to occur in the future;
- Losses commensurate with, and related to, earnings were suffered;
- Evidence that income is not indicative of lack of economic disadvantage.

Personal Income (cont'd)

Income from S-Corps, LLC's (*not filing a Schedule- C*), or partnerships will not be included in personal income calculations if:

- Income was reinvested in the firm; or
- Used to pay taxes.

Losses will not be used to reduce the personal income calculations. (*13 CFR § 124.104(c)(3)(ii)*)

Personal Income (cont'd)

SBA will examine the individual income tax returns for the prior three (3) years. Applicant's must provide:

- Three most recent income tax returns*, inc'l all schedules and attachments;
- All corresponding W-2's and all 1099 forms verifying the income received during the year.
 - W-2's **MUST** total line seven (7) of each income tax return;
 - 1099 and other forms/documentation must be provided to determine income and related adjustments.

* Extension requests will not suffice in lieu of tax returns.

Alaskan Native Corp.(ANC) *13 CFR § 124.109*

13 CFR § 124.109(a)- ANC's are subject to the same conditions of AIT's. except that the following apply **only** to ANC's.

Alaska Native and their descendants **MUST**:

- Own a majority of the ANC's equity; and
- Total voting powers to elect ANC directors through holdings of settlement common stock.

If so, the ANC is ec disadvantaged. *13 CFR § 124.109(a)(1)*

Applicant's owned/controlled by ANC **MUST** be for profit.

ANC own/controls applicant through:

- Majority of stock or other ownership; and
- Total voting power is held by ANC and settlement common stock holders. *13 CFR § 124.109(a)(3)*

Alaskan Native Corp.(ANC) *13 CFR §124.109*

Per the Alaska Native Claims Settlement Act (ANCSA), a concern majority owned by ANC is owned/controlled by Alaska Natives and is ec disadvantaged. Individuals responsible for management/control need not establish soc/ec disadvantage. *13 CFR §124.109(a)(4)*

American Indian Tribes (AIT) *13 CFR § 124.109*

13 CFR § 124.109(b)-Tribes must establish their economic disadvantage once. Thereafter, it is not necessary.

13 CFR § 124.109(b)(1)- tribes meeting the definition in *13 CFR § 124.3* are deemed socially disadvantaged.

*13 CFR § 124.109(b)(2)**- to establish economic the *tribe* must provide, among other things:

- # of tribal members;
- present tribal unemployment rate;
- per capita income of members, inc'l judgment awards;
- %-age of local Indian population below poverty level;
- its access to capital;
- **ALL** assets as disclosed in a financial statement, incl'd
 - those encumbered, or
 - held in trust (both must be clearly delineated)
- **ALL** wholly/partially owned tribal enterprises/affiliates
 - their NAICS codes
 - tribal mbrs managing/controlling, to include directors/officers.

* *Not applicable to ANC's*

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American Indian Tribes- Cont'd

13 CFR § 124.109(b)(3)-Tribes must provide the following:

- All governing documents (such as tribe's constitution or business charter)*;
- Evidence of eligibility for special programs/services provided by Federal or state government*;
- Article of incorporation and by-laws, or similar documents necessary to establish and govern a non-corporate legal entity; and
- Documents/materials necessary to establish tribe's economic disadvantage*.

* Not applicable to ANC's if its status as an ANC is clearly stated in its articles.

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American Indian Tribes- Cont'd

13 CFR § 124.109(c)(1)-*

- tribally owned concerns must be separate a distinct legal entities;
- Articles of incorporation/organization or partnership agreement MUST contain a waiver of sovereign immunity or “sue and be sued” clause designating UD Fed. Courts as courts of competent jurisdiction for all matters relative to SBA’s programs;
- Concern must be for profit
- Tribe must possess ec development powers in tribe’s governing documents.

* Not applicable to ANC’s to the extent it requires waiver of sovereign immunity or “sue and be sued” clause.

American Indian Tribes- Cont'd

13 CFR § 124.109(c)(2)- tribally owned firm must qualify as small based on its primary NAICS code:

- Must certify to SBA it is small for purposes of performing each individual contract it is awarded;
- Size is determined independent of concern's affiliation with the tribe, an entity of tribal gov't, or firm's owned by the tribe, unless otherwise determined by the Administrator.

American Indian Tribes- Cont'd

13 CFR § 124.109(c)(3)(i)- tribe must unconditionally own at least :
51% of voting stock (if firm is a corporation); and
51% of Aggregate of all classes of stock (if firm is a corporation); or
51% interest (if a non- corporate entity)

13 CFR § 124.109(c)(3)(ii)- tribe may not own 51% or more of a firm, which at the time of application or w/in prior two years, has been operating in the 8(a) program in the same primary NAICS code as the applicant firm. Tribe may own an applicant or 8(a) firm that conducts or will conduct secondary business in the applicant's primary NAICS code.

Example: app's primary (236220) other firm's primary (236220)= bad
App's primary (236220) other firm's secondary (238120)= good

American Indian Tribes- Cont'd

13 CFR § 124.109(c)(4)(i)- management & daily business operations MUST be controlled by tribe through:

- **124.109(c)(4)(i)(A)**- committees, teams, or board of directors controlled by one or more members of ec disadvantaged tribe; or
- **124.109(c)(4)(i)(B)**- management by non-tribal members of controlled by the tribe And a written mngt. Development plan exists showing how tribal members will develop mngt. skills to run firm or other tribally owned firms in the future.
- **124.109(c)(4)(ii)**- individuals responsible for management of firm are precluded from engaging in outside business or employment interfering with management of firm. Does not preclude tribal or other activities not interfering with management of firm.

13 CFR § 124.109(c)(5)- firm's management is not deemed to have utilized their individual eligibility, as stated in §124.108(b).

American Indian Tribes- Cont'd

13 CFR § 124.109(c)(6)- concerns must possess potential for success, as demonstrated by:

- **124.109(c)(6)(i)**- having been in business for at least two years as evidenced by tax returns showing revenues generated in its primary industry;
- **124.109(c)(6)(ii)**- managers has substantial managerial/technical expertise, the firm has a successful track record and adequate capital to sustain operations and carry out its business plan; and
- **124.109(c)(6)(iii)**- tribe has a firm written agreement to support the firm's operations and has the finances to do so.

13 CFR § 124.109(c)(7)- except for the tribe, the firm's principals must demonstrate good character.

Native Hawaiian Organizations (NHO)

13 CFR § 124.110(a)- Firm's owned by NHO's must meet the eligibility requirements of ***13 CFR § 124.101- 124.108***.

13 CFR § 124.110(c)- NHO must establish ec disadvantage and that its activities principally benefit Native Hawaiians.

- ***124.110(c)(1)***- majority of NHO's member's must qualify as ec disadvantaged.
 - For the first firm initial eligibility requirements apply.
 - For any additional firms, continuing eligibility requirements apply
 - If NHO has no members, the majority of the board of directors must qualify as ec disadvantaged.

Native Hawaiian Organizations (NHO)

13 CFR § 124.110(c)(2)- NHO should describe benefits to Native Hawaiians at the time firm applies. Additionally, NHO must:

1. Include statements in governing documents identifying benefits to Native Hawaiians; and
2. Provide a detailed plan showing how NHO revenue will principally benefit Native Hawaiians.

13 CFR § 124.110(d)- NHO must control firm. The firm must show that its board is controlled by NHO. Individuals managing the firm need not establish soc/ec disadvantage.

Native Hawaiian Organizations (NHO)

13 CFR § 124.110(e)- NHO may not own 51% or more of a firm, which at the time of application or w/in prior two years, has been operating in the 8(a) program in the same primary NAICS code as the applicant firm. NHO may own an applicant or 8(a) firm that conducts or will conduct secondary business in the applicant's primary NAICS code.

Example: app's primary (236220) other firm's primary (236220)= bad
App's primary (236220) other firm's secondary (238120)= good

13 CFR § 124.110(f)- firm's management is not deemed to have utilized their individual eligibility, as stated in §124.108(b).

Native Hawaiian Organizations (NHO)

13 CFR § 124.110(g)- concerns must possess potential for success, as demonstrated by:

- **124.110(g)(1)**- having been in business for at least two years as evidenced by tax returns showing revenues generated in its primary industry;
- **124.110(g)(2)**- managers has substantial managerial/technical expertise, the firm has a successful track record and adequate capital to sustain operations and carry out its business plan; and
- **124.110(g)(3)**- NHO has a firm written agreement to support the firm's operations and has the finances to do so.

Community Development Corporation(CDC)

13 CFR § 124.111(a)- Firm's owned by CDC's must meet the eligibility requirements of ***13 CFR § 124.101- 124.108***.

13 CFR § 124.111(b)- Firm's owned by CDC's or wholly owned business owned by a CDC are eligible to the extent it meets the requirements specified in 124.111 and/or referred to in that section and its management and daily business operations are conducted by those having the managerial experience of the extent and complexity necessary to run the firm.

Community Development Corporation(CDC)

13 CFR §124.111(c)- CDC owned firm must qualify as small based on its primary NAICS code:

- Size is determined independent of concern's affiliation with the CDC, or firm's owned by the CDC, unless otherwise determined by the Administrator.

Community Development Corporation(CDC)

13 CFR § 124.111(d)- CDC may not own 51% or more of a firm, which at the time of application or w/in prior two years, has been operating in the 8(a) program in the same primary NAICS code as the applicant firm. CDC may own an applicant or 8(a) firm that conducts or will conduct secondary business in the applicant's primary NAICS code.

Example: app's primary (236220) other firm's primary (236220)= bad

App's primary (236220) other firm's secondary (238120)= good

13 CFR § 124.111(e)- firm's management is not deemed to have utilized their individual eligibility, as stated in §124.108(b).

Community Development Corporation(CDC)

13 CFR § 124.111(f)- concerns must possess potential for success, as demonstrated by:

- **124.111(f)(1)**- having been in business for at least two years as evidenced by tax returns showing revenues generated in its primary industry;
- **124.111(f)(2)**- managers has substantial managerial/technical expertise, the firm has a successful track record and adequate capital to sustain operations and carry out its business plan; and
- **124.111(f)(3)**- CDC has a firm written agreement to support the firm's operations and has the finances to do so.

Questions?

Questions relative to the 8(a) BD
Program may be directed to Division
of Program Certification & Eligibility
at (202) 205-6417