

What Do the Small Business Administration's New Rules Mean for Government Contractors?



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An Overview of SBA-Administered Small Business Certifications

SBA-Certified:

HUBZone Empowerment Contracting Program

8(a) Business Development Program

Self-Certified:

Small Disadvantaged Businesses

Service Disabled Veteran-Owned Businesses

Women-Owned Small Businesses



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HUBZone Empowerment Contracting Program

**Designed to simulate economic development and
create jobs in urban and rural communities.**

HUBZone = Historically Underutilized Business Zone

HUBZones are defined by Census Tract, and are
redefined after every 10-year National Census



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8(a) Business Development Program

9-year business development program that helps eligible socially and economically disadvantaged business owners grow and sustain their companies

The 8(a) program provides:

- Training in business management & marketing
- Support for teaming with other companies
- Access to set-aside contracting opportunities



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Small Disadvantaged Business (SDB) Program

- Self-certifying program as of October 2008
- Subcontracting opportunities
- SDBs are eligible for special bidding benefits
- Prime contractors get credit towards small business goals for using SDBs as subs



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Service-Disabled Veteran-Owned Business (SDVOB) Program

- Self-certifying program
- SDVOBs are eligible to bid on set-aside contracts
- Subcontracting opportunities
- Prime contractors get credit towards small business goals for using SDVOBs as subs



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Federal contracting is undergoing sweeping changes

- Small Business Jobs Act
- Women-Owned Small Business Federal Contracting Program
- 8(a) Business Development Program revisions
- Revised Size Standards
- Upgrades to CAPLines Working Capital Loans

RESULT = More small businesses than ever before will be able to participate in federal procurement contracts.



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Small Business Jobs Act

Includes reforms recommended by President's Task Force on Federal Contracting Opportunities for Small Businesses

- “**Parity**” among HUBZone, 8(a), Service-Disabled Veteran, Women-Owned small businesses
- Agencies to publish their bundling policies and justify bundled contracts
- Stronger subcontracting plan requirements for large primes
- Late payments from primes to small subs penalized
- Stronger enforcement against unfair competition
- Small Business Teaming Pilot Program



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Small Business Teaming Pilot Program

- Designed to help small firms work together to compete for federal contracts
- Grants given to 11 organizations to train small businesses, help them find partners, locate and bid on contracts.
- DC-based National Community Reinvestment Coalition (NCRC) received \$500,000 (highest award value) to help area firms.



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Women-Owned Small Business Federal Contracting Program

Launched: February, 2011



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Women-Owned Small Business (WOSB) Federal Contracting Program

- Authorizes contracting officers to set-aside certain federal contracts for Women-Owned Small Businesses or Economically-Disadvantaged Women-Owned Small Businesses
- Levels the playing field for WOSBs to compete for federal contracts
- Provides agencies with tool to meet WOSB goal (Federal government must award minimum 5% prime contracting dollars to WOSBs)
- Also known as the “8(m) Program” after authorizing section of the Small Business Act



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WOSB Program: Set-asides

I. RAND Study = 83 NAICS Codes (list at www.sba.gov/wosb)

45 NAICS Codes =

Women-owned businesses “under-represented”

Competition may be restricted to certified **EDWOSBs**

38 NAICS Codes =

Women-owned businesses “substantially under-represented”

Competition may be restricted to **ALL** certified **WOSBs**

II. Award < \$3 million (\$5 million for manufacturing)

III. “Reasonable expectation” of two or more WOSBs or EDWOSBs bidding

IV. “Fair and reasonable” price



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WOSB Certification: Who is eligible?

Size: Must be small according to SBA size standards

Ownership: Must be at least 51% directly and unconditionally owned by a woman or women.

Citizenship: Majority owner or owners must be U.S. citizens

Management: Woman must hold highest officer position, make long-term decisions, manage day to day operation.



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EDWOSB Certification

An Economically-Disadvantaged Woman-Owned Small Business (EDWOSB) is a WOSB which is owned by a woman or women whose:

Personal Net Worth < \$750,000

Average Annual Income < \$350,000

Total Assets < \$6,000,000 (including primary residence and business)



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WOSB Joint Ventures

- Size: **Combined annual receipts or employees** of joint venture must meet NAICS code assigned to contract
- EDWOSB/WOSB must be **managing venturer**
- EDWOSB/WOSB employee must be **project manager** responsible for performance of the contract
- EDWOSB/WOSB must receive **at least 51%** of net profits
- The joint venture agreement **must be in writing**
- Joint venture must meet **subcontracting limitations**

Note: Joint venture agreement **does not** have to be approved by SBA



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8(a) Business Development Program Revisions

**First comprehensive revisions in more
than 10 years.**

**Includes technical and substantive
changes (only covering highlights today)**

Effective: March 14, 2011



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Revisions to 8(a) Business Development Program

GOALS:

- Make regulations more consistent with existing and recent legislation
- Reduce potential waste, fraud and abuse
- Ensure program benefits flow to intended beneficiaries



New Suspension Rule

For Military Service

If the disadvantaged individual owner(s) of the 8(a) firm are called to **active military status**, firm may elect to:

- be suspended from program participation until original owner returns from duty (nine-year clock stops during suspension, resumes from that point), or
- continue participation if another disadvantaged individual(s) assume control of the firm



Determining Economic Disadvantage

New regulations add objective criteria to determine economic disadvantage.

SBA will examine:

- Personal **income** for the past three years
- Personal **net worth**
- Fair market value of all **assets**
- Spouse's financial condition (if the spouse has a role in the business **or** if spouse has lent money to, provided credit support to, or guaranteed a loan for the business)



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Determining Economic Disadvantage

- **Personal Income** must not exceed \$250,000 (averaged over three years) for initial eligibility or \$350,000 for continuing eligibility.
- **Adjusted Net Worth** must not exceed \$250,000 for initial eligibility or \$750,000 for continuing eligibility.
- **Total Assets** must not exceed \$4 million for initial eligibility and \$6 million for continued eligibility (allows for growth during the 9 year term).



Early Graduation for Excess Size

8(a) participants
must generally remain small.

SBA now authorized to graduate a participant early **if firm exceeds size for its primary NAICS code**, as adjusted, for **three successive program years**.



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How to Change Primary NAICS Code:

- 8(a) participant may request the change
- Must file request with its SBA District Office.
- SBA will grant request where the Participant can demonstrate that the **majority of total revenues** during three-year period have evolved from one NAICS code to another.
- If granted, business plan must reflect the change



8(a) Joint Ventures:

Structure

- Requirements tightened for joint ventures (JV) so that non-participants do not unduly benefit from the 8(a) program
- JV agreement may be informal or formal (separate business structure) but must be in writing
- Can be unpopulated or populated (JV employs separate employees). Rules are different for each.



8(a) Joint Ventures:

Awards vs. Contracts

Change from no more than 3 **awards** over a 2 year period to no more than 3 **contracts** over a 2 year period without a finding of general affiliation

Same two entities may form additional JVs and each may be awarded 3 contracts over 2 years



8(a) Mentor Protégé Program:

- **Non-profits** can be Mentors
- Mentor can have **up to 3 protégés** at one time
- A firm **cannot be both** a Protégé and a Mentor at the same time
- Protégé can have **second Mentor**, corresponding to an unrelated, secondary NAICS code
- Assistance provided by the Mentor **must** be tied to the Protégé's SBA-approved business plan
- SBA **prohibited** from approving a new Mentor/Protégé relationship **within six months** of the end of an 8(a) Participant's program term



8(a) Mentor Protégé Program:

- Mentor/Protégé Agreement must be approved by SBA **before** the firms can submit a JV offer on a procurement as a small business
- In order to receive the **exclusion from affiliation** on any non-8(a) contracts, the agreement **must comply** with all 8(a) JV requirements
- SBA approved Mentor/Protégé joint ventures are **small** for federal **subcontracts** (DOE)
- Contracting benefits derived from Mentor/Protégé relationship end once the protégé leaves the 8(a) program



8(a) Mentor Protégé Program:

Failure to Provide Assistance

Consequences if Mentor does not provide agreed-to assistance:

- SBA may terminate the Mentor/Protégé Agreement
- Mentor is ineligible to participate for 2 years
- SBA may recommend a stop work order for each contract the Mentor and Protégé are performing as a JV and where they have received the exclusion from affiliation
- SBA may authorize substitution of protégé firm for the JV
- May constitute grounds for Government-wide suspension or debarment



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CAPLines

Working Capital Loan Programs

**Re-engineered to help meet the working
capital needs of small businesses**

Effective: September 15, 2011



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Re-engineered CAPLines Loan Programs

- SBA engaged community lenders in all 50 states to find ways CAPLines could better serve borrowers **and** lenders.
- CAPLines program reworked to help more small businesses access SBA-backed revolving credit lines.
- Small businesses often do not have on-hand cash needed to hire workers or buy materials to fulfill orders. CAPLines offers opportunity to cover short-term needs while avoiding high interest rates.



Re-engineered CAPLines Loan Programs

Contract CAPLines – loan program that provides working capital to cover period between contract award and payment

- Small Business Jobs Act: Maximum line amount increased from \$2 million to \$5 million
- Proceeds can be used to finance all costs, excluding profit (previously only labor and materials allowed)
- Credit can be secured with Purchase Order, binding contract, inventory, or accounts receivable
- Subcontractors can now finance their work for a federal prime contractor.
- Business owners without building or equipment no longer required to pledge personal assets.



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Revisions to Industry Size Standards

(ongoing)



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Revisions to Size Standards

(details at www.sba.gov/size)

Size standards increased:

- **NAICS Sector 44-45** – Retail Trade (47 industries)
- **Sector 72** – Accommodation and Food Services (5 industries)
- **Sector 81** – Other Services (18 industries)
- **Sector 48-49** – Transportation and Warehousing
- **Sector 54** – Professional, Technical, and Scientific Services



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Revisions to Size Standards

(details at www.sba.gov/size)

Final Rules in progress:

- **Sector 51** – Information
- **Sector 56** – Administrative, Support, Waste Management, and Remediation Services
- **Sector 53** – Real Estate, Rental, and Leasing (OMB)
- **Sector 61** – Education Services (OMB)



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Revisions to Size Standards

(details at www.sba.gov/size)

Proposed Rules issued, comments accepted through April 24, 2012:

- **Sector 22** – Utilities
- **Sector 62** – Health Care and Social Assistance Services
- **Sector 71** – Arts, Entertainment, and Recreation



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Revisions to Size Standards

(details at www.sba.gov/size)

Sectors in line for review:

- **Sector 23** – Construction
- **Sector 52** – Finance and Investment
- **Sector 55** – Management of Companies
- **Sector 21** – Mining
- **Sector 11** – Agriculture
- **Sector 42** – Wholesale Trade
- **Sector 31-33** – Manufacturing (including others with employee-based standards)



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For More Information :

- Assistance is available through SBA resource partners at Women's Business Centers, Small Business Development Centers, and SCORE
- WOSB Compliance Guide, Fact Sheets, NAICs Code lists, and other materials are available for download at www.sba.gov/wosb
- 8(a) Compliance Guide and other materials are available for download at www.sba.gov/8abd
- You can contact the Washington Metro Area District Office at **202-272-0345** or www.sba.gov/dc



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Thank You!



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