# Changes To the 8(a) Program

**John L. Banks**
**Lead Economic Development Specialist**
(610) 382-3087
John.Banks@sba.gov

# Highlights of Substantive Changes

- Economic Disadvantage
- Excessive Withdrawals
- Completion of Program Term
- Size for Primary NAICS Code
- Change of Primary NAICS Code
- Suspension for Call Ups to Active Duty
- Joint Venture Requirements
- Mentor – Protégé Program

# Economic Disadvantage

- SBA will examine
  - income for the past *three years*
  - personal net worth
  - fair market value of all assets
  - spouse’s financial condition, *in certain circumstances*

# Economic Disadvantage

- Objective criteria to determine **economic disadvantage**
- Applicants must demonstrate economic disadvantage;
  - **Adjusted Net Worth** must not exceed $250,000 for initial eligibility or $750,000 for continuing eligibility.
  - **Personal Income** must not exceed $250,000 (averaged over <u>three</u> years) for initial eligibility or $350,000 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).

# Econ Disadv for Married Individuals

- SBA will consider a spouse’s financial situation in determining an individual’s access to credit and capital where the spouse
  - has a role in the business (e.g., an officer, employee or director) or
  - has lent money to, provided credit support to, or guaranteed a loan of the business.

# Excessive Withdrawals

- New definition  for withdrawal–

- Officers' salaries generally not considered withdrawals

SBA will count those salaries as withdrawals where SBA believes that a firm is attempting to circumvent the excessive withdrawal limitations though the payment of officers' salaries

A large salary to a non-disadvantaged individual will be treated as an excessive withdrawal.

# Excessive Withdrawals

- New definition  for withdrawal–
  - Includes, but is not limited to, the following:
    - cash dividends;
    - distributions in excess of amounts needed to pay S Corporation, LLC or partnership taxes;
    - cash and property withdrawals;
    - payments to immediate family members not employed by the Participant;
    - bonuses to officers;
    - investments on behalf of an owner

# Excessive Withdrawals

- The withdrawal amounts will be in the aggregate and are as follows:

  – Firms with sales up to $1M, $250,000

  – Firms with sales between $1M and $2M, $300,000

  – Firms with sales exceeding $2M, $400,000

# Completion of Program Term

A concern may leave the program by:

- Expiration of the program term (Exits after nine years)
- Voluntary withdrawal or voluntary early graduation
- Graduation ( § 124.302)
- Early graduation ( § § 124.302 and 124.304)
- Termination ( § § 124.303 and 124.304)

# Early Graduation and Size

- Early graduation is <u>not</u> warranted where firm exceeds its primary NAICS AND
  - Firm can demonstrate that primary industry is changing
    - Must be a related *secondary* NAICS code
    - Must determine primary industry, using Part 121 (13 CFR 121.107)
    - Business Plan indicates firm's growth & development
      - Must show that *secondary* NAICS code, and
      - Must contain specific targets, objectives, and goals in that new industry/new primary NAICS
  - Firm can demonstrate by clear evidence that the majority of its total revenues during a **three-year** period have *evolved* from one NAICS code to another

# New Suspension Rule

- If the disadvantaged individual owner(s) of the 8(a) firm called to **active military status**
  – SBA will no longer terminate the firm

  Firm may elect to
  – be suspended from program participation or
  – continue participation if another disadvantaged individual(s) can control the firm

# Joint Ventures

- Tightens requirements for joint ventures (JV) so that
  - non-disadvantaged firms do not unduly benefit from the 8(a) BD program
- JV agreement may be informal or formal (separate business structure) but
  - Must be in writing
- Can be unpopulated or populated (own separate employees) and
  - Different rules for each.
- Change from no more than 3 offers to **contracts** over **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

# Mentor Protégé Program

- **Non-profits** can be Mentors
- Mentor can have **up to 3 protégés** at one time
- Protégé can have **second Mentor**, corresponding to an unrelated, secondary NAICS code
- A firm **cannot be both** a Protégé and a Mentor at the same time
- Assistance provided by the Mentor **must** be tied to the Protégé's SBA-approved business plan
- Mentor/Protégé Agreement must be approved by SBA **before** the firms can submit a joint venture 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 the 8(a) JV requirements (other than SBA approval).
- SBA approved Mentor/Protégé joint ventures are **small** for federal **subcontracts** (DOE)
- SBA **prohibited** from approving a new Mentor/Protégé relationship **within six months** of the end of an 8(a) Participant's program term.
- Benefits derived from Mentor/Protégé relationship end once the protégé leaves the 8(a) BD program
- Specific **reconsideration process** when a Mentor/Protégé Agreement is declined

# Failure to Provide Assistance

- Mentor is notified and provided an opportunity to respond
- 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 the protégé firm for the JV
- Failure to provide the agreed-upon assistance may constitute grounds for Government-wide suspension or debarment

# QUESTIONS

- Who to contact with additional questions?
  - George Murray, george.murray@sba.gov;
  - Jennifer Tilden;

    jennifer.tilden@sba.gov
  - Gedell Hawkins; gedell.hawkins@sba.gov