

CLIENT ALERT

One Way or Another, Congress Will Allow a One-Year Extension of 8(a) Status for Participants Who Were in the 8(a) Program on or Before September 9, 2020

December 24, 2020

Participants in the Small Business Administration's 8(a) Business Development Program have faced a hard year—using up one of their nine years in the program during a time of unprecedented economic uncertainty. For participants that are about to graduate, things are even bleaker. Normally, those firms would have been preparing to compete without the ability to claim 8(a) status. Instead, many were debating whether to voluntarily suspend their 8(a) status as a result of the pandemic and the declared disaster. In light of these circumstances, Congress has repeatedly sought to aid 8(a) participants by allowing a one-year extension of 8(a) status for participants that were in the program on or before September 9, 2020.

Congress first included a proposed extension to the 8(a) program at Section 869 of the FY2021 National Defense Authorization Act. The proposed extension provides that 8(a) participants admitted “on or before September 9, 2020” will be allowed to extend their participation in the program by an additional year (allowing for up to 10 years) regardless of whether the participant previously elected to suspend participation. Additionally, the NDAA includes language requiring SBA to “issue regulations to carry out this section” within 15 days after the NDAA is enacted.

While both the House and Senate have passed the FY2021 NDAA, President Trump has yet to sign it as of December 22, 2020. Anticipating a Trump veto, the House has moved forward with scheduling an override vote on December 28, 2020.

Congress has now included the same provision in the Omnibus Spending Bill. Per Section 330 of the Spending Bill, the SBA administrator is to ensure that small business concerns participating in the 8(a) program on or before September 9, 2020, may elect to extend participation in the program by a period of 1 year, regardless of whether the small business concern previously elected to suspend participation in the program pursuant to guidance of the Administrator. As with the FY2021 NDAA, the Spending Bill requires that SBA issue regulations to carry out this section not later than 15 days after the date of enactment of this Act.

One way or another, a one-year extension to the 8(a) program appears imminent, granting participants an additional opportunity to utilize the program's benefits.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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