

SBA publishes rule to implement one-year extension for 8(a) Business Development Program participants

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On January 13, 2021, the Small Business Administration issued an interim final rule¹ to implement the one-year extension of 8(a) Business Development status provided for in the National Defense Authorization Act for Fiscal Year 2021 and in the Consolidated Appropriations Act, 2021 (which we previously discussed here²).

The rule contains crucial information on implementation of the extension, as well as explains how the rule will impact firms in different stages of their 8(a) lifecycles.

For starters, all firms in the 8(a) BD Program as of March 13, 2020 will receive the one-year extension, unless they were terminated, graduated early, or voluntarily withdrew prior to September 9, 2020. Whether an entity is eligible to take advantage of the extension and how it is able to do so varies as follows:

	Eligible for a one-year extension of 8(a) participation?	Actions Needed to Be Taken to Benefit from the Extension
8(a) participants in the Program as of January 13, 2021 (that were admitted to the program on or before September 9, 2020)	Yes	No. The extension is automatic.
8(a) participants in the BD Program as of March 13, 2020 BUT graduated or otherwise left before January 13, 2021	Yes — for the period of time equal to one year from the date of the original expiration of the concern's program term.	The extension is not automatic. Such entities are required (1) to notify SBA of their intent to be readmitted by no later than March 15, 2021; and (2) certify that they continue to meet the applicable eligibility requirements as set forth in 13 C.F.R. §§ 124.101 through 124.111.
8(a) participants in the BD Program as of March 13, 2020 BUT were terminated or early graduated by SBA or elected to voluntarily withdraw or early graduate in lieu of termination	No	N/A
8(a) participants that graduated or otherwise left the 8(a) BD Program prior to March 13, 2020	No	N/A
Participants that were admitted to the 8(a) BD Program after September 9, 2020	No	N/A

The rule also clarifies how the extension will affect business activity targets. Specifically, "any period of extension under the Act will be added to a Participant's transitional stage of participation in the 8(a) BD program."

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As a reminder, in the transitional stage of the 8(a) Program (years five through nine), firms must generally achieve certain targets of revenue derived from sources other than sole source or competitive 8(a) contracts.

Here, SBA determined that firms receiving the extension (including firms in year nine of their term as of March 13, 2020), should generate 50 percent of their business activity from sources other than sole source or competitive 8(a) contracts.

This interim rule was immediately effective on January 13, 2021. The deadline for submitting comments is March 15, 2021.

The extension is welcome relief for many firms, and will grant 8(a) participants an additional opportunity to utilize the Program's significant benefits.

Notes

¹ <http://bit.ly/3b5MTsP>

² <http://bit.ly/37YgLpb>

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