

Client Alert: Small Businesses in the 8(a) Program Get Another Year of Eligibility to Make Up for Pandemic Disruption

Publications

January 20, 2021

By: Matthew L. Haws

Congress has been focused on ensuring that small businesses in the 8(a) program receive extra time to make up for disruption from the COVID-19 pandemic. To that end, Congress included language in both the 2021 Consolidated Appropriations Act (CAA) and 2021 National Defense Authorization Act to provide one year of extended eligibility to companies who were 8(a) participants “as of” September 9, 2020. These acts required the Small Business Administration (SBA) to implement that mandate within 15 days of enactment. The CAA was signed on December 27, 2020, and SBA issued an interim final rule—with immediate effect—on January 13, 2021. This interim final rule provides important clarity on the extension of eligibility. Here are the details:

- Any company participating in the 8(a) program between the dates of March 13, 2020 (the date of the pandemic disaster declaration) and September 9, 2020 (the “as of” date in the statutes) is eligible to extend its participation for one year from the end of its program. This eligibility exists regardless of whether the company elected to voluntarily suspend its program participation as a result of the President’s disaster declaration on March 13, 2020.
- The two acts specified an “as of” date of September 9, 2020. The SBA added a start date, using the date of the disaster declaration: March 13, 2020. SBA stated that it sought to include any firms participating in the program as of the date of the national disaster declaration based on its “understanding that Congress extended the term of participation in the 8(a) BD [Business Development] program because it believed that the pandemic has adversely affected 8(a) concerns and their ability to participate in and receive the full benefits of the program.”
- The period of extension will be added to the end of a company’s transitional stage in the 8(a) BD program. Thus, the company will receive the additional benefits of the transitional stage and also must meet the same 50 percent non-8(a) business activity target that applies to program year nine.
- A firm that was participating in the 8(a) BD program as of March 13, 2020, but graduated or otherwise left the program before January 13, 2021 must notify SBA of its intent to be readmitted

for an additional year. SBA must receive the request no later than March 15, 2021, and the company must certify that it continues to meet applicable 8(a) eligibility requirements.

- This extension does not apply to business concerns that graduated from or otherwise left the 8(a) BD program prior to March 13, 2020, or to business concerns that were admitted to the 8(a) BD program after September 9, 2020. In addition, the extension does not apply to companies in the 8(a) BD program between March 13, 2020 and September 9, 2020 that were terminated, early graduated, or voluntarily withdrew from the program in lieu of being terminated or early graduated.

This one year extension provides an important benefit to 8(a) firms. SBA notes that the additional year of eligibility will benefit approximately 4,150 8(a) firms during the course of the next ten years.

Related Attorneys



Matthew L. Haws

Partner

mhaws@jenner.com

+1 202 639 6065

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