

SBA 8(a) Program Under Unprecedented and Widespread Scrutiny: Critical Guidance for Tribally-Owned 8(a) Entities

Client Alerts

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The Small Business Administration's (SBA) 8(a) Business Development Program, aimed to help socially and economically disadvantaged small business owners access federal contracting opportunities, has been under increased scrutiny since an investigation by the United States Department of Justice (DOJ) revealed a significant bribery scheme involving more than half a billion dollars. Citing that investigation, in June 2025, the SBA Administrator directed the SBA's Office of General Contracting and Business Development to launch an immediate and full-scale audit of the agency's 8(a) Business Development Program to "stop bad actors from making the kind of backroom deals that have already cost taxpayers hundred of millions of dollars." In November 2025, the Department of Treasury also announced it would conduct comprehensive audits of contracts awarded under preference-based contracting, including the 8(a) Program.

On December 5, 2025, the SBA sent letters to over 4,300 participants of the 8(a) Program—including Tribally-owned entities—with document requests for detailed financial records, among other things. The SBA announced that this was "part of a comprehensive effort to protect taxpayers and legitimate small businesses by rooting out fraud, waste, and abuse." The SBA letters require participants of the 8(a) Program to produce the following list of data and items for the last three fiscal years by January 5, 2026:

1. General Ledger
2. Trial Balance
3. IRS Form 4506
4. Bank Statements
5. Bank Reconciliation
6. Payroll Register Reconciliation (including any distributions to any owners) monthly

7. List of All Employees (broken out by contracts)
8. List of all Vendors and Joint Ventures
9. Copies of all 8(a) Contracts
10. Subcontract Agreements related to 8(a) Contracts
11. Financial Statements (including year-end balance sheet, year-to-date profit and loss, cash flow statement, and statement of equity)
12. Financial Statement Reconciliation to the year-end Trial Balance
13. Sub-Ledger Schedule (tying year-end trial balance accounts for accounts receivable, accounts payable, and profit and loss accounts)

The letters warn that failure to respond to SBA's document requests by the January 5, 2026 deadline "may result in a determination that your firm is not eligible for continued participation in the 8(a) Program and may result in investigative or additional remedial action."

On the heels of SBA's letters, Senator Joni Ernst (IA-R), who serves as the Chair of the Senate's Small Business Committee, sent letters to 22 agencies requesting they "immediately pause all 8(a) sole-source contracting" and "examine all 8(a) set-aside contracts awarded." Senator Ernst's letter specifically named several Tribally-owned entities, who have since publicly disputed her allegations. Senator Ernst recently introduced the "Stop 8(a) Contracting Fraud Act," which, like her letters, calls for a moratorium on 8(a) sole-source contracts.

WHAT STEPS SHOULD TRIBALLY-OWNED 8(a) ENTITIES TAKE?

With the letter suggesting severe consequences of immediate 8(a) ineligibility, investigation, or other remedial actions for failure to respond, all 8(a) participants should take the letter seriously and treat it as a legal matter. It is important to meet the 30-day time period with as much of the requested information as possible. Tribally-owned entities also have a unique risk that federal auditors will misinterpret tribal structures, as they sometimes do not fit traditional corporate models. 8(a) participants should take the following steps to meet the fast-approaching January 5, 2026 deadline:

1. **Assemble a Team:** Assemble a dedicated team for the response, including engaging experienced 8(a) compliance counsel and contacting financial advisors. Tribally-owned entities should also promptly inform tribal leadership.
2. **Conduct a Privileged Internal Review:** Retained counsel should conduct a privileged self-assessment to identify documentation gaps and potential compliance issues, review contracts and subcontracts, and assess whether voluntary disclosures or corrective actions are needed.

3. **Strategic Response:** The team should organize and clearly index documents for submission. Tribally-owned entities should prepare a narrative explaining tribal governance structures and distribution mechanisms to educate federal auditors. Entities should keep in mind the risk of over-responding to SBA's document requests, being careful not to waive privilege or inadvertently expose minor irregularities that could suggest broader compliance issues.
4. **Submit and Expect Follow-Up:** Submit documents by January 5, 2026, with proof of delivery and retain complete copies of the submission. Firms should expect that SBA will request additional information, ask for clarification, or potentially request interviews with executives.

CONCLUSION

This audit represents an existential moment for the 8(a) Program and Tribally-owned entities. In this heightened enforcement environment, the SBA letter signals severe consequences for non-compliance.

Jenner & Block's **Native American Law Practice** and **Government Contracts and Grants Practice** are uniquely positioned to guide Tribally-owned 8(a) entities through this audit and other agency inquiries. By integrating unmatched Native American Law expertise and Government Contracts excellence, we can address tribal sovereignty and federal procurement compliance dimensions to effectively navigate this enforcement environment.

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