

# Frequently Asked Questions

## 8(a) Business Development Program

### 1. What is the 8(a) Business Development (BD) Program?

The SBA's 8(a) BD Program, named for a section of the Small Business Act, is a business development program created to help small disadvantaged businesses compete in the American economy and access the federal procurement market.

### 2. How do I apply to the 8(a) BD program?

Contacting the local SBA district office serving your area is the first step. An SBA representative will answer general questions over the telephone. Some [SBA district offices](#) may also have 8(a) orientation [workshops](#) to provide additional information regarding the eligibility requirements and to review various [SBA forms](#).

### 3. What are the basic requirements an 8(a) applicant firm must meet?

The applicant firm

1. must be a [small business](#),
2. must be unconditionally owned and controlled by one or more [socially and economically disadvantaged individuals](#) who are of good character and citizens of the United States, and
3. must demonstrate potential for success.

### 4. Will having a specific business consultant prepare my 8(a) application increase my chances of being approved?

You do not need to pay anyone to prepare your 8(a) application. SBA designed the application forms so the applicant can complete the application. However, a consultant can assist in completing the application. Please be advised that no one can guarantee that an application for 8(a) program participation will be approved. The application process is intended to assure that each applicant receives a fair review. Any irregularities in the application review process should be immediately referred to the SBA Office of Inspector General.

### 5. What is SBA's definition of a small business concern?

SBA defines a small business concern as one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Examples of SBA general size standards include the following:

1. Manufacturing: Maximum number of employees may range from 500 to 1500, depending on the type of product manufactured;
2. Wholesaling: Maximum number of employees may range from 100 to 500 depending on the particular product being provided;

3. Services: Annual receipts may not exceed \$2.5 to \$21.5 million, depending on the particular service being provided;
4. Retailing: Annual receipts may not exceed \$5.0 to \$21.0 million, depending on the particular product being provided;
5. General and Heavy Construction: General construction annual receipts may not exceed \$13.5 to \$17 million, depending on the type of construction;
6. Special Trade Construction: Annual receipts may not exceed \$7 million; and
7. Agriculture: Annual receipts may not exceed \$0.5 to \$9.0 million, depending on the agricultural product.

Use SBA's [quick tool](#) to see if you qualify as a small business.

## **6. What is a Standard Industrial Classification (SIC) code?**

A SIC code is the Standard Industrial Classification number listed in the Standard Industrial Classification Manual which is published by the Office of Management and Budget. The SIC Manual is available at your local library or on the Internet site <http://www.osha.gov/oshstats>. SIC codes are used by the Federal Government to identify and classify specific categories of business activity that represent the primary line of business of a firm. SBA size standards are based on SIC codes.

Use SBA's [quick tool](#) to find your SIC or NAICS codes.

## **7. Who are socially disadvantaged individuals?**

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group. Social disadvantage must stem from circumstances beyond their control. In the absence of evidence to the contrary, individuals who are members of the following designated groups are presumed to be socially disadvantaged:

1. Black Americans
2. Hispanic Americans
3. Native Americans (American Indians, Eskimos, Aleuts, and Native Hawaiians)
4. Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands [Republic of Palau], Commonwealth of the Northern Mariana Islands, Laos, Cambodia [Kampuchea], Taiwan; Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru; Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal), and
5. Members of other groups designated by the SBA.

## **8. Can an individual who is not a member of a designated group claim social disadvantage?**

Yes. However, an individual who is not a member of a designated group must establish social disadvantage on the basis of a "preponderance of evidence." Generally, preponderance is evidence of quality and quantity which leads the decision maker to conclude, objectively, that the existence or truth of the fact(s) asserted is more probable than not.

**9. What evidence must an individual who is not a designated group member provide to show social disadvantage?**

At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged:

1. Personal experiences of social disadvantage stemming from the objective distinguishing feature or features set forth in the preceding paragraph. The experiences must have been in American society, not in other countries, and must have been substantial and chronic.
2. Negative impact on entry into or advancement in the business world because of the disadvantage. SBA considers any relevant evidence in assessing this element. In every case, however, SBA considers education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering or advancing in the business world.

**10. What types of evidence can be used to assist in meeting the burden of proof?**

Court or administrative findings of discrimination. Statements made under oath to an investigator or in a court or administrative proceeding. Affidavits or statements sworn under oath by an individual owner which have specific recurrent incidents of discrimination or a pattern of discrimination over a significant period of time. Applicant statements alone, without supporting or corroborating evidence will be given less weight than if corroborated. Sworn affidavits or statements from independent third parties, who do not have an interest in or close relationship to the owner, corroborating or supporting assertions made by the owner. Statements by relatives or friends of the owner will have less weight than statements by independent third parties. Documentary evidence which corroborates or supports assertions made by an owner regarding specific incidents or a pattern of discrimination. Such documentation includes these items:

1. Personnel records
2. Payroll records
3. Rejection letters on job applications
4. Denials of credit application Documents relating to rejected contract offers, i.e., bid abstracts, solicitations, etc.
5. Contemporaneous records memorializing meetings, conversations, negotiations, telephone calls, etc.
6. Documents setting forth company policy(ies) which are alleged to be discriminatory.
7. Evidence which tends to show generalized patterns of discrimination against a non-designated group or statistical data showing that businesses owned by a specific non-designated group are disproportionately underrepresented in a particular industry may be used to augment an individual's case. Statistics and generalized patterns are not sufficient by themselves to establish a case of individual social disadvantage. However, an individual's statement of

personal experiences in combination with the generalized evidence may be sufficient to demonstrate social disadvantage.

**11. Must an individual who is not a member of a designated group show discrimination in education, employment, and business history in order to show negative impact on entry into or advancement in the business world because of the disadvantage?**

SBA will consider any relevant evidence in assessing this element. In each case, however, SBA will consider the experiences of the individual, where applicable, in education, employment, and business history to determine whether the totality of the circumstances shows disadvantage in entering into or advancing in the business world. Evidence relating to all three should be addressed, if applicable. For each applicable circumstance the individual applicant should demonstrate how it has affected his/her entrance into and advancement in the business world. The failure to establish disadvantage in any one or these areas (i.e., education, employment, or business history) does not prevent an individual from meeting the negative impact requirement as long as the totality of the circumstances experienced by the individual demonstrates such disadvantage.

**12. What does it mean to be economically disadvantaged?**

Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities.

**13. What factors are considered when SBA evaluates the economic disadvantage of an individual?**

The individual's net worth, after excluding the individual's equity in the firm and the equity in the primary residence, may not exceed \$250,000. SBA will also consider the individual's average two-year income, fair market value of all assets, access to credit and capital, and the financial condition of the applicant firm in evaluating economic disadvantage.

**14. When evaluating economic disadvantage, does SBA include assets that an individual claiming disadvantaged has recently transferred to another individual?**

SBA will attribute to an individual claiming disadvantaged status any assets that the he/she has transferred to an immediate family member (or to a trust where an immediate family member is the beneficiary) for less than market value within two years prior to the firm's application for participation in the 8(a) program. A transfer of assets for "fair market value" based on verifiable independent documentation would be excluded. Also excluded are transfers for education, medical expenses, certain forms of essential support, and transfers that are consistent with the customary recognition of special occasions (e.g. birthdays, graduations, anniversaries, and retirements). The disadvantaged applicant must show proof of the reasons for these asset transfers.

**15. What percentage of ownership in the applicant firm must be owned by socially and economically disadvantaged individuals?**

SBA requires that at least 51% of the applicant firm is directly and unconditionally owned by socially and economically disadvantaged individuals.

**16. Are there special ownership provisions for individuals who reside in a community property or state territory?**

Yes. If only one spouse is claiming disadvantaged status, this spouse's ownership interest will be considered only to the extent it is vested by the community property laws. For this reason, a transfer or relinquishment of interest by the nondisadvantaged spouse may be necessary.

**17. Is ownership by a trust allowed for 8(a) certification?**

8(a) regulations require that ownership in the firm by one or more disadvantaged individual(s) be direct ownership. Generally, SBA does not consider ownership by a trust to be direct ownership. However, ownership by a trust, such as a living trust, may be considered the functional equivalent of direct ownership if the following conditions are met:

1. The trust is revocable;
2. The disadvantaged individual is the grantor of the trust;
3. The disadvantaged individual is a trustee of the trust; and,
4. The disadvantaged individual is the sole current beneficiary of the trust.

**18. Can a disadvantaged individual or firm have ownership in more than one 8(a) Participant?**

Yes. However, one or more disadvantaged individuals determined to be disadvantaged for purposes of qualifying one Participant, their immediate family members, and the Participant itself, may not hold in aggregate, more than 20% equity in any other single 8(a) firm.

**19. Are there any 8(a) ownership restrictions placed on nondisadvantaged individuals or firms?**

Yes. SBA places two general ownership restrictions on nondisadvantaged individuals and firms:

1. A nondisadvantaged individual, in aggregate with all immediate family members, or firm that is a general partner or stockholder with at least a 10% ownership interest in an 8(a) firm, may simultaneously hold up to 10% ownership interest in any number of 8(a) firms in the developmental stage of program participation and up to 20% interest in any number of 8(a) firms in the transitional stage of program participation.
2. A non-participant concern in the same or similar line of business may own up to 10% of an 8(a) firm in the developmental stage and up to 20% in an 8(a) firm in the transitional stage. Former 8(a) participants or a principal of a former participant (except those that have been terminated from the 8(a) program) may own up to 20% in an 8(a) firm in the developmental stage and up to 30% in an 8(a) firm in the transitional stage.

**20. How does SBA view control of an applicant or 8(a) concern?**

Control is not the same as ownership, although both control and ownership may reside in the same person. Control includes both strategic policy setting and the day-to-day management and administration of business operations by disadvantaged individuals.

**21. Does SBA require the disadvantaged individual to have the technical expertise and hold the critical license in order to demonstrate that he or she controls and manages the applicant firm?**

No. SBA requires only that the disadvantaged individual(s) controlling the firm have management experience to the extent and of the complexity necessary to run the firm. However, the disadvantaged individual must demonstrate that he or she has the ultimate managerial and supervisory control over those in the firm with the technical or licensing expertise. If the critical license is held by a nondisadvantaged individual who has an equity interest in the applicant firm, SBA may find that the nondisadvantaged individual controls the firm.

**22. How does SBA determine disadvantaged control of a corporate Board of Directors?**

There are six situations where SBA may determine disadvantaged individuals control a Board of Directors:

1. If a single disadvantaged individual owns 100% of all issued and outstanding voting stock of an applicant firm, regardless of the composition of the Board of Directors.
2. If a single disadvantaged individual owns at least 51% of issued and outstanding voting stock of the applicant firm, is a legally elected voting member of the Board of Directors, and no super majority voting requirements exist for shareholders to approve corporate actions.
3. If a single disadvantaged individual owns at least 51% of all issued and outstanding voting stock of the applicant firm, is a legally elected voting member of the Board of Directors, and owns at least the percentage of voting stock needed to overcome the super majority voting requirements that exist for shareholders to approve corporate actions.
4. If more than one disadvantaged individual owns at least 51% of all issued and outstanding voting stock of the applicant firm; are all legally elected voting members of the Board of Directors; no super majority voting requirements exist for shareholders to approve corporate actions; and the disadvantaged shareholders can demonstrate they have made enforceable arrangements to permit one of them to vote the stock of all as a block to nondisadvantaged shareholders' actions, without holding a shareholder meeting.
5. If more than one disadvantaged individual owns at least 51% of all issued and outstanding voting stock of the applicant firm; are all legally elected voting members of the Board of Directors; in total all own at least the percentage of voting stock needed to overcome the super majority voting requirements which exist for shareholders to approve corporate actions; and can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block to nondisadvantaged shareholders' actions, without holding a shareholder meeting.
6. If the disadvantaged individual(s) can control the formation of a quorum for the purpose of holding a board meeting and have a majority vote at board

meetings either through actual number of voting directors or through weighted voting, where permitted by state law.

**23. What is a super majority?**

A super majority is the percentage of votes above a simple majority (51%) required to make decisions on behalf of the firm.

**24. Are there restrictions placed on nondisadvantaged individuals in terms of their relationships with disadvantaged individuals and/or applicant firm?**

Yes. Nondisadvantaged individuals may be involved in the ownership and management of an applicant firm, as stockholders, limited liability members, partners, directors, and/or officers. However, no such nondisadvantaged individual or immediate family member may

1. Exercise actual control or have the power to control the applicant firm;
2. Be a former employer or principal of a former employer of any disadvantaged owner of the applicant firm; and
3. Receive compensation from the applicant in any form as directors, officers, or employees, including dividends that exceed the compensation to be received by the highest officer. The highest ranking officer may elect to take a lower salary than a nondisadvantaged individual only upon demonstrating that it helps the applicant firm. If one or more of these situations exist, the nondisadvantaged individual will be found to control the firm. Additionally, nondisadvantaged individuals or entities having an equity interest in an applicant firm and who provide critical financing, bonding, or a critical license, may be found to control the firm.

**25. What factors are considered by SBA in evaluating the potential for successful 8(a) requirement?**

SBA will evaluate the following:

1. the technical and managerial experience of the applicant firm's managers,
2. the firm's operating history, ability of the firm to access credit and capital,
3. the firm's financial capacity,
4. the firm's record of performance, and
5. whether the applicant firm or individuals employed by the firm hold the requisite licenses if the firm is engaged in an industry requiring professional licensing.

**26. Does SBA have a minimum length of time in business requirement for 8(a) program certification?**

Yes. The applicant firm must have been operational for at least two full years as evidenced by business income tax returns for each of the two previous tax years which show operating revenues in the primary industry in which the applicant firm is seeking 8(a) program certification.

**27. Can a firm still apply for participation in the 8(a) BD Program if it has not been in business for two full years?**

Yes. However, the firm must obtain a waiver of the two years in business requirement by meeting all of the following conditions:

1. The individual or individuals upon whom eligibility is based must have substantial business management experience.
2. The applicant firm must demonstrate the technical experience to carry out its business plan with a substantial likelihood for success.
3. The applicant firm must have adequate capital to sustain its operations and carry out its business plan.
4. The applicant firm must have a record of successful performance on contracts from governmental or non-governmental sources in its primary industry category.
5. The applicant firm must have, or must be able to demonstrate that it has, the ability to timely obtain the personnel, facilities, equipment, and any other requirements needed to perform on contracts if it is admitted to the 8(a) program.

**28. Can a firm be declined entry into the 8(a) Program for reasons of character?**

Yes. The regulations stipulate that the applicant concern and all its principals must have good character. SBA may determine that a lack of character demonstrated by any one of the following circumstances:

1. Adverse information regarding possible criminal conduct by the applicant and its principals;
2. Violations of SBA regulations; Debarment or suspension of firms and/or individuals;
3. Lack of business integrity as demonstrated by information related to an indictment or guilty plea, conviction, civil judgment, or settlement;
4. Principals of the firm are currently incarcerated, or on parole or probation; or
5. Evidence that the firm knowingly submitted false information during the application process.

**29. Are brokers eligible for the 8(a) BD Program?**

**No.** Brokers are not eligible for the program. A broker adds no material value to an item supplied to a procuring activity, does not take ownership or possession, and does not handle the item procured with its own equipment or facilities. If the applicant firm is a broker, but does not meet this definition, the firm may be eligible for 8(a) program participation.

**30. What happens if an 8(a) Program applicant firm or any of its principals fail to pay significant financial obligations owed to the federal government?**

If an applicant firm or any of its principals fail to pay significant financial obligations owed to the federal government, including unresolved tax liens and defaults on federal loans or other federally assisted financing, the applicant firm will be ineligible for 8(a) program participation.

**31. How long does the 8(a) BD application process take?**

The regional Division of Program Certification and Eligibility (DPCE) has 15 days to review the application for completeness. If the application is incomplete, the applicant will have 15 days to provide additional information. If the DPCE determines the application is complete, a final decision regarding 8(a) BD Program eligibility will be made within 90 days after SBA's determination that the application is complete.

### **32. What if an 8(a) Business Development Program application is declined?**

Each program applicant has the right to request that SBA reconsider a declined application by filing a written request for reconsideration within 45 days after receiving notice that the application was declined. The applicant has the burden of overcoming each reason cited in SBA's decision to decline the application. During the reconsideration process, the applicant must provide any additional information and documentation necessary to overcome the reason(s) for the initial decline. If an application is declined after reconsideration, SBA will not accept a new application until twelve (12) months after the date of the final Agency decision on reconsideration. In addition, if an applicant is declined solely on issues of social disadvantage, economic disadvantage, ownership, control, or any combination of these four criteria, the declined applicant may appeal the decline decision to SBA's Office of Hearings and Appeals (OHA). This can happen either after receiving the initial decision to decline the application or after receiving a negative decision on reconsideration. OHA examines the decline decision to determine whether it was arbitrary, capricious, or contrary to law. No new or revised information is considered during the appeal process.

### **33. How long can a company participate in the 8(a) program?**

Program participation is divided into two stages: the developmental stage and the transitional stage. The developmental stage is four years and the transitional stage is five years. The developmental stage is designed to help 8(a) certified firms overcome their economic disadvantage by providing business development assistance. The transitional stage is designed to help participants overcome the remaining elements of economic disadvantage and to prepare participants for leaving the 8(a) program.

### **34. Are 8(a) firms reviewed by SBA annually for compliance with eligibility requirements?**

Yes. As part of an annual review, each Participant firm must submit to the servicing district office the following:

1. A certification that it meets the 8(a) BD program eligibility requirements;
2. A certification that there have been no changed circumstances which could adversely affect the Participant's program eligibility;
3. Personal financial information for each disadvantaged owner;
4. A record from each individual claiming disadvantaged status regarding the transfer of assets for less than fair market value to any immediate family member, or to a trust in which an immediate family member is a beneficiary, within two years of the date of the annual review. The record must provide the name of the recipient(s) and family relationship and the difference

between the fair market value of the asset transferred and the value received by the disadvantaged individual;

5. A record of all payments, compensation, and distributions (including loans, advances, salaries, and dividends) made by the Participant to each of its owners, officers, directors, or to any person or entity affiliated with such individuals;
  6. IRS Form 4506, Request for Copy or Transcript of Tax Form; and
  7. Such other information that SBA may deem necessary.
- When a Participant fails to provide documentation for annual review, SBA may initiate termination proceedings

### **35. What does it mean to be "terminated" from the 8(a) BD Program?**

The term "terminate" is used to refer to a Participant's exit from the 8(a) BD Program prior to the expiration of its program term for good cause. Examples of good cause include, but are not limited to the following:

1. Submission of false information in the concern's 8(a) BD application, regardless of whether correct information would have caused the concern to be denied admission to the program, and regardless of whether correct information was given to SBA in accompanying documents or by other means.
2. Failure by the concern to maintain its eligibility for program participation.
3. Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by disadvantaged individuals.
4. Failure by the concern to obtain prior written approval from SBA for any changes in ownership or business structure, management, or control.
5. Failure by the concern to disclose to SBA the extent to which non-disadvantaged persons or firms participate in the management of the Participant business concern.
6. Failure by the concern or one or more of the concern's principals to maintain good character.
7. A pattern of failure to make required submissions or responses to SBA in a timely manner, including a failure to provide required financial statements, requested tax returns, reports, updated business plans, information requested by SBA's Office of Inspector General, or other requested information or data within 30 days of the date of request.
8. Cessation of business operations by the concern.
9. Failure by the concern to pursue competitive and commercial business in accordance with its business plan, or failure in other ways to make reasonable efforts to develop and achieve competitive viability.
10. A pattern of inadequate performance by the concern of awarded section 8(a) contracts.
11. Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.
12. Failure by the concern to obtain and keep current any and all required permits, licenses, and charters, including suspension or revocation of any professional license required to operate the business.
13. Excessive withdrawals, including transfers of funds or other business assets, from the concern for the personal benefit of any of its owners or any person or entity affiliated with the owners that hinder the development of the concern.

14. Unauthorized use of SBA direct or guaranteed loan proceeds or violation of an SBA loan agreement.
15. Conduct by the concern, or any of its principals, indicating a lack of business integrity. Such conduct may be demonstrated by information related to a criminal indictment or guilty plea, a criminal conviction, or a judgment or settlement in a civil case.
16. Willful failure by the Participant business concern to comply with applicable labor standards and obligations.
17. Material breach of any terms and conditions of the 8(a) BD Program Participation Agreement.
18. Willful violation by a concern, or any of its principals, of any SBA regulation pertaining to material issues.

### **36. What does it mean to "graduate" from the 8(a) BD Program?**

The term "graduate" is used to refer to a Participant's exit from the 8(a) BD Program at the expiration of the Participant's term.

## **8(a) Business Development Program - Suspension Appeals**

### **1. What is an 8(a) BD suspension appeal?**

An 8(a) BD suspension appeal is an appeal of an SBA determination suspending assistance to a firm under the 8(a) BD program, pursuant to [13 C.F.R. sec. 124.305](#).

For regulations governing the 8(a) BD program, go to [13 C.F.R. part 124](#).

For regulations governing OHA appeals, go to [13 C.F.R. part 134](#).

### **2. How do I file an 8(a) BD suspension appeal?**

To file an 8(a) BD appeal, you must meet all the filing, service, and timeliness requirements. See Questions 3-11 of this FAQ area.

### **3. What information must be in my petition for an 8(a) BD suspension appeal?**

Your petition must contain:

1. the basis of OHA's jurisdiction;
2. a copy of the Notice of Suspension;
3. a clear and concise statement of the factual basis of the case;
4. the relief being sought; and
5. the name, address, phone number, and signature of the petitioner or attorney. See 13 CFR Sec. 134.203(a).

The petition must state why the SBA erred in its determination that suspension is needed to protect the interest of the Government. See [13 CFR Sec. 134.405\(c\)](#).

The appeal petition should request, as relief, that the Judge lift the suspension.

**4. What does filing an 8(a) BD appeal mean and what are the filing requirements?**

Filing means the submission of a pleading, which includes an appeal, or other document to OHA. Only the original of a pleading or other submission must be filed with OHA. In the case of a document offered as evidence, an authenticated copy may be filed instead of the original. See [C.F.R. sec. 134.204\(c\)](#).

All pleadings and other submissions must be filed with OHA by personal delivery, first-class mail, express mail, facsimile transmission, or commercial delivery service. The address for filing is: Office of Hearings and Appeals, Small Business Administration, 409 Third Street, S.W., Washington, DC 20416. See [13 C.F.R. sec. 134.204\(b\)\(1\)](#).

File by personal delivery or commercial delivery service only between 8:30 a.m. and 5:00 p.m. See 13 C.F.R. sec. 134.204(b)(2).

If filing is by facsimile transmission, the fax number is 202-205-7059.

**5. What does service mean and what are the service requirements ?**

Service means the delivery to all other parties of a copy of every pleading or other submission filed with OHA. Each party must serve all pleadings or other submissions upon all other parties (or their attorneys) at the time of filing. Unless otherwise ordered by the Judge, acceptable methods of service are personal delivery, first-class mail, express mail, facsimile transmission, or commercial delivery service. See [13 C.F.R. sec. 134.204\(a\)](#).

**6. On whom must I serve an 8(a) BD suspension appeal?**

When you file your appeal, you must separately serve a complete copy of the appeal petition, including all attachments, to SBA's Associate Administrator/8(a) BD and to SBA's Associate General Counsel for Procurement Law. Their address is: Small Business Administration, 409 Third Street, S.W., Washington, DC 20416. See [13 C.F.R. sec. 134.403](#).

**7. What is a certificate of service?**

A signed certificate stating how and when service was made on all parties must be attached to each pleading, which includes an appeal, or other submission filed with OHA. See [13 C.F.R. sec. 134.204\(d\)](#). In addition to providing the required certificate of service to OHA, you should provide a copy of the certificate of service to each party served.

SBA's website offers an [example of a certificate of service](#).

**8. How do I ensure my 8(a) BD suspension appeal is timely?**

You must file your appeal petition with OHA within 45 days after the Notice of Suspension is served upon you. See [13 C.F.R. sec. 124.305\(c\)](#).

**9. How is the date of filing or service determined?**

Unless otherwise specified by the Judge, the date of service or filing is as follows:

1. If by facsimile transmission, the date of transmission.
2. If by first-class mail, the date of postmark.
3. If by personal delivery, express mail, or commercial delivery service, the date of receipt. See [13 C.F.R. sec. 134.204\(e\)](#).

**10. How are days counted when filing my 8(a) BD suspension appeal?**

The first day is not counted, but the last day is counted, unless it is a Saturday, Sunday, or Federal holiday. See [13 C.F.R. sec. 134.103\(a\)](#). A day means a calendar day unless a Judge specifies otherwise. See [13 C.F.R. sec. 134.101](#).

**11. May the Judge extend the time for filing an appeal to an 8(a) BD suspension?**

No. The Judge cannot accept jurisdiction over any matter if the appeal is not timely. See [13 C.F.R. sec. 134.405\(a\)\(2\)](#).

**12. During an appeal for an 8(a) BD suspension, must I have a representative/lawyer to appear before OHA?**

No. A party may represent itself, or be represented by a duly-licensed attorney. A member of a partnership may represent the partnership, and an officer may represent a corporation, trust, or association. See [13 C.F.R. sec. 134.208\(a\)](#).

**13. How do I get an extension of time to file a pleading after filing the appeal petition?**

At the Judge's initiative, or upon the motion of a party showing good cause, the Judge may modify any of the applicable time limits, other than those established by statute and those governing when a case may be commenced. Any motion to extend a time limit must be filed and served before the expiration of that time limit. See [13 C.F.R. sec. 134.103\(b\)](#).

**14. May I talk to a Judge?**

No, except after prior notice to all parties, and with the opportunity for all parties to participate. See [13 C.F.R. sec. 134.220](#).

**15. How can I determine the status of my case?**

OHA staff cannot estimate the time a Judge will take to decide your appeal.

**16. May I see my file, or the file in other cases?**

Yes. Docket files are available for public inspection, except for confidential and proprietary information. You may purchase copies of publicly-available file documents by paying a copying fee. See [13 C.F.R. sec. 134.225](#).

**17. How are 8(a) BD appeals decided?**

An Administrative Law Judge, who exercises independent decision-making powers, decides all 8(a) BD appeals.

The Judge generally will decide the case based on the written record. In most suspension cases, the Judge also may hold an oral hearing with witnesses if you request one. The decision to conduct an oral hearing, however, is at the discretion of the Judge.

An appeal is decided in a written decision or order addressing the relevant issues. A decision consists of findings of fact and conclusions of law, based on statute, regulation, and prior case law. An 8(a) BD suspension appeal may result in an order either lifting or upholding the suspension, or an order dismissing the appeal.

**18. Are previous OHA decisions available on the Internet?**

Yes. They are available on [the Office of Hearings and Appeals decisions search page](#).

## **Academic Research on Small Businesses**

**1. Office of Advocacy Resources**

Office of Advocacy Resources

[www.sba.gov/advo/research](http://www.sba.gov/advo/research) )

The Small Business Economy: A Report to the President:

[www.sba.gov/advo/research/sbe.html](http://www.sba.gov/advo/research/sbe.html)

Quarterly Indicators: The Economy and Small Business:

[www.sba.gov/advo/research/sbei.html](http://www.sba.gov/advo/research/sbei.html)

Small Firm Lending Studies:

[www.sba.gov/advo/research/lending.html](http://www.sba.gov/advo/research/lending.html)

State and Territory Small Business Economic Profiles:

[www.sba.gov/advo/research/profiles](http://www.sba.gov/advo/research/profiles)

Regulatory Research:

[www.sba.gov/advo/research/regulation.html](http://www.sba.gov/advo/research/regulation.html)

Research on Owner Demographics (women, minorities, veterans, etc.):

[www.sba.gov/advo/research/demographic.html](http://www.sba.gov/advo/research/demographic.html)

Advocacy Working Paper Series:

[www.sba.gov/advo/research/wkpapers.html](http://www.sba.gov/advo/research/wkpapers.html)

Chronological List of Other Advocacy Research Reports:

[www.sba.gov/advo/research/chron.html](http://www.sba.gov/advo/research/chron.html)

**2. Advocacy Conference Proceedings**

Advocacy Conference Proceedings

([www.sba.gov/advo/conferences.html](http://www.sba.gov/advo/conferences.html))

1. Global Perspectives on Entrepreneurship Policy (2005) Putting It Together: The Role of Entrepreneurship in Economic Development (2005)
2. Entrepreneurship in the 21st Century (2004)
3. Tax Policy and Small Business: New Firm Formation, Growth, and Survival (2001)
4. The Changing Banking Structure and Its Impact on Small Business (2000)
5. The Invisible Part of the Iceberg: Research Issues in Industrial Organization and Small Business (2000)
6. Are Small Firms Important? Their Role and Impact. Zoltan Acs, ed. Boston: Kluwer Academic Publishers, 1999 (proceedings of a 1997 Advocacy conference).

### 3. Small Business Journals

Entrepreneurship Theory and Practice:

<http://www.blackwellpublishing.com/journal.asp?ref=1042-2587>

International Small Business Journal:

<http://www.sagepub.com/journal.aspx?pid=306>

Venture Capital: An International Journal of Entrepreneurial Finance:

<http://www.tandf.co.uk/journals/titles/13691066.asp>

Journal of Applied Management and Entrepreneurship:

<http://www.huizenga.nova.edu/jame/section1.html>

Journal of Entrepreneurial Finance and Business Ventures:

<http://whitman.syr.edu/people/institutes/journal/>

Journal of Business Venturing:

[www.elsevier.com/wps/find/journaldescription.cws\\_home/505723/description?navopenmenu=1](http://www.elsevier.com/wps/find/journaldescription.cws_home/505723/description?navopenmenu=1)

Journal of Small Business Management:

<http://www.blackwellpublishing.com/journal.asp?ref=0047-2778>

Small Business Economics:

[www.kluweronline.com/issn/0921-898X/contents](http://www.kluweronline.com/issn/0921-898X/contents)

### 4. Select Literature

1. Acs, Zoltan J. and David B. Audretsch. *Handbook on Entrepreneurial Research*. Boston: Kluwer Pub., 2003.
2. Acs, Zoltan J. and David B. Audretsch. "Innovation in Small and Large Firms: An Empirical Analysis." *American Economic Review*. 78(4), 1988. 678-90.
3. Brock, William and David Evans. "Small Business Economics." *Small Business Economics*. 1(1), 1989, 7-20.
4. *Frontiers of Entrepreneurial Research*. Proceedings from the Babson-Kauffman Entrepreneurial Research Conferences, 1981 to present.  
[www.babson.edu/entrep/fer](http://www.babson.edu/entrep/fer)
5. Hart, David M., ed. *The Emergence of Entrepreneurship Policy: Governance, Start-Ups, and Growth in the U.S. Knowledge Economy*. Cambridge: Cambridge University Press, 2003.
6. Holtz-Eakin, Douglas and Harvey S. Rosen, eds. *Public Policy and the Economics of Entrepreneurship*. Cambridge: MIT Press, 2004.  
Jovanovic, Boyan. "Selection and the Evolution of Industry." *Econometrica*. 50(3), 1982. 649-70.

7. Katz, Jerome A., ed. *Databases for the Study of Entrepreneurship*. New York: JAI/Elsevier Science, 2000.
8. Lucas, Robert. "On the Size Distribution of Business Firms." *Bell Journal of Economics*. 9(2), 1978. 508. Schumpeter, Joseph A. *The Theory of Economic Development*, Cambridge: Harvard University Press, 1934.
9. Sexton, Donald L. and John D. Kasarda, eds. *The State of the Art in Entrepreneurship*. Boston: PWS/Kent Publishing, 1992.
10. Sexton, Donald L. and Raymond W. Smilor, eds. *Entrepreneurship 2000*. Chicago: Upstart Publishing, 1997

## 5. Web-Based Resources

Center for Women's Business Research:

[www.nfwbo.org](http://www.nfwbo.org)

Kauffman Entrepreneurial Research:

[www.kauffman.org](http://www.kauffman.org)

Kauffman-RAND Center for Study of Small Business and Regulation:

[www.rand.org/icj/centers/small\\_business](http://www.rand.org/icj/centers/small_business)

National Bureau of Economic Research Working Paper Series:

[www.nber.org/papers](http://www.nber.org/papers)

National Women's Business Council:

[www.nwbc.gov](http://www.nwbc.gov)

Organization for Economic Cooperation and Development, SMEs and Entrepreneurship Dep't:

[www.oecd.org](http://www.oecd.org)

Research Papers in Economics:

<http://econpapers.repec.org>

Social Science Research Network:

[www.ssrn.com](http://www.ssrn.com)

The World Bank's Doing Business Project:

[www.doingbusiness.org](http://www.doingbusiness.org)

## 6. Data Sources

### U.S. Department of Commerce, Bureau of the Census

1. 1997 Economic Census: [www.census.gov/epcd/www/econ97.html](http://www.census.gov/epcd/www/econ97.html)
2. 2002 Economic Census (Survey of Business Owners): [www.census.gov/econ/census02/](http://www.census.gov/econ/census02/)
3. American FactFinder: <http://factfinder.census.gov>
4. Nonemployer Statistics: [www.census.gov/epcd/nonemployer/](http://www.census.gov/epcd/nonemployer/)
5. Center for Economic Studies (CES) Data and Working Papers [www.ces.census.gov](http://www.ces.census.gov). CES Data is available at Research Data Centers for approved research proposals.
6. Statistics of U.S. Businesses (partially funded by Advocacy): [www.census.gov/csd/susb/susb.htm](http://www.census.gov/csd/susb/susb.htm)
7. County Business Patterns: <http://www.census.gov/epcd/cbp/view/cbpview.html>
8. Survey of Income and Program Participation: [www.sipp.census.gov/sipp/sipphome.htm](http://www.sipp.census.gov/sipp/sipphome.htm)

### U.S. Department of Labor, Bureau of Labor Statistics

9. Business Employment Dynamics: [www.bls.gov/bdm/home.htm](http://www.bls.gov/bdm/home.htm)

10. Current Population Survey: <http://www.bls.gov/cps/home.htm> and <http://ferret.bls.census.gov/cgi-bin/ferret>  
**Federal Reserve Board**
11. Federal Reserve Bulletin: [www.federalreserve.gov/pubs/bulletin/default.htm](http://www.federalreserve.gov/pubs/bulletin/default.htm)
12. Survey of Small Business Finances: [www.federalreserve.gov/pubs/oss/oss3/nssbftoc.htm](http://www.federalreserve.gov/pubs/oss/oss3/nssbftoc.htm)
13. Survey of Consumer Finances: [www.federalreserve.gov/pubs/oss/oss2/scfindex.html](http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html)
14. Senior Loan Officer Survey on Bank Lending Practices: [www.federalreserve.gov/boarddocs/SnLoanSurvey](http://www.federalreserve.gov/boarddocs/SnLoanSurvey)  
**Internal Revenue Service**
15. Statistics of Income Division: [www.irs.gov/taxstats](http://www.irs.gov/taxstats)  
**Ewing Marion Kauffman Foundation**
16. Kauffman Index of Entrepreneurial Activity: [www.kauffman.org](http://www.kauffman.org)  
**National Federation of Independent Business**
17. Small Business Economic Trends: [www.nfib.com](http://www.nfib.com)
18. Small Business Polls: [www.nfib.com](http://www.nfib.com)  
**Other Longitudinal Databases**
19. Global Entrepreneurship Monitor: [www.gemconsortium.org](http://www.gemconsortium.org)
20. Panel Study on Entrepreneurial Dynamics: [projects.isr.umich.edu/psed/index.cfm](http://projects.isr.umich.edu/psed/index.cfm)

## 7. Literature on The Use of Small Business Data

1. Acs, Zoltan C., Catherine Armington, and Alicia Robb. *Measures of Job Flow Dynamics in the U.S. Economy*. Office of Advocacy, Research Summary 192, 1999.
2. Armington, Catherine. *Development of Business Data: Tracking Firm Counts, Growth, and Turnover by Size of Firms*. Office of Advocacy, Research Summary 245, 2004.
3. Bitler, Marianne, Alicia Robb, and John D. Wolken. "Financial Services Used by Small Businesses: Evidence from the 1998 Survey of Small Business Finances." *Federal Reserve Bulletin*, 87(4), April 2001: 183-205.
4. Fairlie, Robert. *Kauffman Index of Entrepreneurial Activity*. Kauffman Foundation, September 2005.
5. Gartner, William B., et al. *Handbook of Entrepreneurial Dynamics: The Process of Business Creation*. Thousand Oaks, CA: Sage Publications, 2004.
6. Hipple, Steven. "Self-Employment in the United States: An Update." *Monthly Labor Review*, 127(7), July 2004: 13-23.
7. Knaup, Amy E. "Survival and Longevity in the Business Employment Dynamics Data." *Monthly Labor Review*, 128(5), May 2005: 50-56.

## 8. Research Funding

Traditional sources of funding are available, such as the National Science Foundation ([www.nsf.gov/sbe/ses/](http://www.nsf.gov/sbe/ses/)); many colleges and universities will provide money for faculty and student research. Some subscription-based services also provide information on grant opportunities.

The Office of Advocacy contracts with external researchers for many of its studies. All research contracts are small business set-asides. Although Advocacy does not contract with colleges and universities, individual professors, students, or teams can submit proposals as consultants with their own firm. Like all federal

agencies, Advocacy notifies potential contractors of these opportunities through FedBizOpps (<http://www1.epa.gov/spg/index.html>). Notifications of Requests for Quotations (RFQ) are posted on Advocacy's Research Listserv. To subscribe, visit <http://web.sba.gov/list>.

Other organizations fund research on small business and entrepreneurship; the Ewing Marion Kauffman Foundation ([www.kauffman.org](http://www.kauffman.org)) is one example. In addition, many academic conferences promote best paper competitions that reward quality research. Internship opportunities are available for students to help them to gain practical experience while also researching small business issues.

## 9. To Learn More

For more detailed information from the Office of Advocacy, visit [www.sba.gov/advo](http://www.sba.gov/advo). Sign up at <http://web.sba.gov/list> for e-mail delivery of news releases, The Small Business Advocate monthly newsletter, small business research findings and statistics, and regulatory communications.

Office of Advocacy economic research is located at [www.sba.gov/advo/research](http://www.sba.gov/advo/research). The site is searchable by keyword. Questions may be directed to (202) 205-6533 or [advocacy@sba.gov](mailto:advocacy@sba.gov).

## 10. Is a PDF version of the Research Resource available?

**Yes.** You can access the PDF version of the Research Resources at: <http://www.sba.gov/advo/research/rrsb.pdf>

# Advocacy Small Business Statistics and Research

## 1. What is a small business?

**The Office of Advocacy defines a small business for research purposes as an independent business having fewer than 500 employees.**

Firms wishing to be designated small businesses for government programs such as contracting must meet size standards specified by the U.S. Small Business Administration (SBA) Office of Size Standards. These standards vary by industry; see [www.sba.gov/size](http://www.sba.gov/size).

## 2. How important are small businesses to the U.S. economy?

### Small firms

- Represent 99.7 percent of all employer firms.
- Employ half of all private sector employees.
- Pay 45 percent of total U.S. private payroll.
- Have generated 60 to 80 percent of net new jobs annually over the last decade.

- Create more than 50 percent of nonfarm private gross domestic product (GDP).
- Supplied more than 23 percent of the total value of federal prime contracts in FY 2004.
- Produce 13 to 14 times more patents per employee than large patenting firms. These patents are twice as likely as large firm patents to be among the one percent most cited.
- Are employers of 41 percent of high tech workers (such as scientists, engineers, and computer workers).
- Are 53 percent home-based and 3 percent franchises.
- Made up 97 percent of all identified exporters and produced 26 percent of the known export value in FY 2002.

Sources: U.S. Bureau of the Census; Advocacy-funded research by Joel Popkin and Company (Research Summary #211); Federal Procurement Data System; Advocacy-funded research by CHI Research, Inc. (Research Summary #225); Bureau of Labor Statistics, Current Population Survey; U.S. Department of Commerce, International Trade Administration.

### 3. How many small businesses are there?

**In 2004, there were approximately 24.7 million businesses in the United States, according to Office of Advocacy estimates.** The Internal Revenue Service (IRS) estimates there were 29.3 million nonfarm business tax returns in 2004; however, this number may overestimate the number of firms, as one business can operate more than one taxable entity.

Census data show there were 5.7 million firms with employees and 17.6 million without employees in 2002 (and 18.6 million without employees in 2003).

Applying the sole proprietorship growth rates to the nonemployer figures and similar Department of Labor growth rates to the employer figures produces the 24.7 million figure. Small firms with fewer than 500 employees represent 99.9 percent of the 24.7 million businesses, as the most recent data show there are 17,000 large businesses.

### 4. How do regulations affect small firms?

**Very small firms with fewer than 20 employees spend 45 percent more per employee than larger firms to comply with federal regulations.** These very small firms spend 4\_ times as much per employee to comply with environmental regulations and 67 percent more per employee on tax compliance than their larger counterparts. For data broken down by industry, see [www.sba.gov/advo/research/rs264tot.pdf](http://www.sba.gov/advo/research/rs264tot.pdf)

**Cost of Federal Regulations by Firm size,  
All Business Sectors (Dollars)  
Cost per Employee for Firms with:**

Type of Regulation	<20 Employees	500+Employees
All Federal Regulation	\$7,647	\$5,282
Environmental	3,296	710
Economic	2,127	2,952
Workplace	920	841
Tax Compliance	1,304	780

Source: [The Impact of Regulatory Costs of Small Firms](#), an Advocacy-funded study by W. Mark Crain, September 2005 ([Research Summary](#))

## 5. How many businesses open and close each year?

Estimates for businesses with employees indicate there were **580,900 new firms** and **576,200 closures** (both about 10 percent of the total) in 2004.

### Starts and Closures of Employer Firms, 2000–2004

Category	2000	2001	2002	2003	2004
New Firms	574,300	585,140	569,750	553,500e	580,900e
Firm Closures	542,831	553,291	586,890	572,300e	576,200e
Bankruptcies	35,472	40,099	38,540	35,037	34,317

e=Estimate. For more information, see "[Business Estimates from the Office of Advocacy: A Discussion of Methodology](#)", a working paper by Brian Headd, June 2005 ([Research Summary #258](#)).

Sources: U.S. Bureau of the Census; Administrative Office of the U.S. Courts; U.S. Department of Labor, Employment and Training Administration.

## 6. How many new jobs do small firms create?

**Over the past decade, small business net job creation fluctuated between 60 and 80 percent.** For a more complete look at employment dynamics by firm size from 1989 to 2002, see [www.sba.gov/advo/research/data.html#us](http://www.sba.gov/advo/research/data.html#us).

Source: U.S. Bureau of the Census.

## 7. What is small firms' share of employment?

**The small business share of employment remains around 50 percent.**

Although small firms generally create 60 to 80 percent of the net new jobs, some firms will become large firms as the new jobs are created. Of 112.4 million nonfarm private sector workers in 2002, small firms with fewer than 500 workers employed 56.4 million and large firms, 56.0 million. Smaller firms with fewer than 100 employees employed 40.5 million.

Source: U.S. Bureau of the Census.

## 8. What is the survival rate for new firms?

### **Two-thirds of new employer establishments survive at least two years, and 44 percent survive at least four years, according to a new study.**

These results were similar for different industries. Firms that began in the second quarter of 1998 were tracked for the next 16 quarters to determine their survival rate. Despite conventional wisdom that restaurants fail much more frequently than firms in other industries, leisure and hospitality establishments, which would include restaurants, survived at rates only slightly below the average.

Earlier research has explored the reasons for a new business's survivability. Major factors in a firm's remaining open include an ample supply of capital, the fact that a firm is large enough to have employees, the owner's education level, and the owner's reason for starting the firm in the first place, such as freedom for family life or wanting to be one's own boss.

Sources: "Survival and Longevity in the Business Employment Dynamics Database" by Amy E. Knaup, *Monthly Labor Review*, Volume 128, Number 5 (May 2005), pp. 50-6; "Redefining Business Success: Distinguishing Between Closure and Failure" by Brian Headd, *Small Business Economics*, Volume 21, Number 1 (August 2003), pp. 51-61.

## 9. How are small businesses financed?

**Commercial banks are the most important suppliers of debt capital to small firms, supplying more than 80 percent of lending in the credit line market and more than 50 percent in other markets, such as commercial mortgages and vehicle, equipment, and other loans.** In June 2004, small business loans outstanding owed to commercial banks amounted to \$522 billion, but small firms are not just receiving loans from smaller, relationship-driven banks. Very large banks with assets of at least \$10 billion are making a significant percentage of small loans of less than \$100,000.

### **Shares of the Number and Amount of Small Business Loans by Banks and BHCs by Asset Size, June 2004**

Credit Type	<500M	500-10B	<10B	All Banks & BHCs
Number of Banks/BHCs	5,706	645	72	6,423
SBLs<\$100k				
Share of Amount	31.1%	19.2%	49.7%	\$125.3B
Share of Number	11.0%	21.5%	67.5%	13.6M
SBLs100k<\$1M				
Share of Amount	26.8%	28.2%	45.0%	\$397.0B
Share of Number	27.2%	28.2%	44.6%	1.7M
SBL<\$1M				
Share of Amount	27.8%	26.0%	46.2%	\$522.3B
Share of Number	12.8%	22.3%	65.0%	15.3M

Abbreviations: BHC, Bank Holding Company; SBL, Small Business Loan.  
 Source: Federal Reserve Board, Survey of Small Business Finances; special tabulations of the June call reports (Consolidated Reports of Condition and Income for U.S. Banks) prepared for the Office of Advocacy by James Kolari, Texas A&M University.

#### **10. What role do women, minority, and veteran entrepreneurs play in the economy?**

- Women owned 6.5 million businesses that generated \$950.6 billion in revenues, employed 7.2 million workers, and had \$179.6 billion in payroll in 2002. In addition, another 2.7 million firms are owned equally by both women and men; these firms add another \$731.1 billion in revenues and employ another 5.7 million workers.
- Of the 23 million firms in 2002, 6.9 percent were owned by Hispanic Americans, 5.2 percent by African Americans, 4.8 percent by Asian Americans, 0.9 percent by American Indians and Alaskan Natives, and 0.14 percent by Native Hawaiian and other Pacific Islanders. In 2002, minorities owned 4.1 million firms that generated \$694.1 billion in revenues and employed 4.8 million workers.
- Male veterans' self-employment rates were higher than those of nonveterans from 1979 to 2003. The rate was 13.7 percent in 2003.
- According to a study on veteran business ownership, about 22 percent of veterans in the U.S. household population were either purchasing or starting a new business or considering purchasing or starting one, and almost 72 percent of these new veteran entrepreneurs planned to employ at least one person at the outset of their new venture.

Sources: Preliminary data from the 2002 Survey of Business Owners from the U.S. Census Bureau; Advocacy-funded research by Robert Fairlie ([Research Summary #243](#)); Advocacy-funded research by Waldman Associates ([Research Summary #242](#)).

#### **11. What research is there on the cost of health insurance?**

According to a National Federation of Independent Business membership survey, the number one small business issue is the cost and availability of insurance. Aspects of insurance that may drive small business concern are premium increases and administrative costs. Advocacy research shows that insurers of small health plans have higher administrative expenses than those that insure larger group plans.

Sources: National Federation of Independent Business; Kaiser Family Foundation; Advocacy-funded research by Rose C. Chu and Gordon R. Trapnell ([Research Summary #224](#)).

#### **12. Whom do I contact about regulations?**

To submit comments on proposed regulations, send email to [advocacy@sba.gov](mailto:advocacy@sba.gov) Advocacy's regulatory alerts page at [www.sba.gov/advo/laws/law\\_regalerts.html](http://www.sba.gov/advo/laws/law_regalerts.html). To follow up on regulatory enforcement issues, email [ombudsman@sba.gov](mailto:ombudsman@sba.gov).

### 13. How can I get more information?

**For more detailed information, visit [www.sba.gov/advo/](http://www.sba.gov/advo/).** Sign up at <http://web.sba.gov/list> for email delivery of news releases, The Small Business Advocate newsletter, small business research findings and statistics, and regulatory communications. Office of Advocacy economic research can be found at [www.sba.gov/advo/research](http://www.sba.gov/advo/research). Specific points of interest include:

- Firm size data (static/dynamic for the U.S., states and metropolitan statistical areas): [www.sba.gov/advo/research/data.html](http://www.sba.gov/advo/research/data.html)
- Small firm lending studies (1994-present): [www.sba.gov/advo/research/lending.html](http://www.sba.gov/advo/research/lending.html)
- State economic profiles (1998-present): [www.sba.gov/advo/research/profiles](http://www.sba.gov/advo/research/profiles)
- The Small Business Advocate monthly newsletter (1996- present): [www.sba.gov/advo/newsletter.html](http://www.sba.gov/advo/newsletter.html). Direct questions to (202) 205-6533 or [advocacy@sba.gov](mailto:advocacy@sba.gov).

### 14. Is there a PDF version of the FAQ?

Yes. The pdf version is located at: <http://www.sba.gov/advo/stats/sbfaq.pdf>

## FOIA

### 1. How can I get records from SBA?

- (a) You can go to the SBA office at which the records are kept, and photocopy any final SBA decision, policy statement, or standard operating procedure.
- (b) For copies of all other records, you must send a letter request to the SBA office at which the records are kept. The letter must describe specific records you want. If you don't know which SBA office keeps the records, you may send your letter to the nearest SBA District Office. You may also send your letter to the Chief, FOIA & PA Office, 409 Third Street S.W., Suite 5900, Washington D.C. 20416. The office receiving your letter will forward it to the correct office.

### 2. How long will it take for SBA to respond to my request for records?

- (a) If you have met the fee requirements of Sec. 102.8, SBA will respond within 10 working days after the correct office receives your request, unless you have requested an especially large number of records, the records are not located in the office handling the request, or SBA needs to consult with another government office.
- (b) If you make your request on behalf of another person, SBA will respond within 10 working days after you present a document signed by that person authorizing you to request information on his or her behalf. If you make your request on behalf of another person without including such signed authorization, SBA will inform you of the authorization needed.

- (c) If you send your request to the wrong office, that office will send it to the correct office within 10 working days and will send you an acknowledgment letter.
- (d) If SBA determines that one of the circumstances described in paragraph (a) of this section apply, it will respond within 20 working days of the date upon which the correct office receives your request, and will notify you that the extra time is required.

### **3. How will SBA respond to my request?**

Within the time limit described in Sec. 102.3, SBA will either:

- (a) Give you all the records you requested;
- (b) Give you some or none of the records you requested, explain why SBA has decided not to comply fully with your request, citing specific exemptions where applicable, and explain how to appeal that decision; or
- (c) Tell you that you will not receive a response until you have either paid your fee or committed to the amount of fee you will pay, as applicable.

### **4. If SBA grants my request, which records will be supplied?**

SBA will give you copies of all records or portions of records requested which are in the processing office as of the close of the day upon which that office received your request.

### **5. How will SBA respond to requests for business information?**

- (a) Business information is a trade secret, or commercial or financial information, contained in records provided to SBA by any person and which may be protected from disclosure under Exemption Four of FOIA (5 U.S.C. 552(b)(4)).
- (b) The submitter is the business entity to which the business information pertains and which submitted the information to SBA, either directly or through an intermediary, such as a bank.
- (c) SBA will disclose upon request business information that has previously been released to the general public.
- (d) If you request business information submitted to SBA prior to March 1, 1996 which has not previously been released to the general public, SBA will notify the submitter of your request upon SBA's receipt of it if SBA intends to release that information. SBA will give the submitter 5 working days to identify information the disclosure of which would likely cause substantial competitive harm and why that harm would occur unless SBA intends to deny your request in full.
- (e) If you request business information submitted to SBA after March 1, 1996 which has not previously been released to the general public, SBA will notify the submitter if it intends to release business information which either the

submitter has previously claimed or which SBA believes to be confidential and the disclosure of which would cause substantial competitive harm. The submitter will have 5 working days to object to the disclosure, explaining why the harm would occur.

- (f) Whenever a submitter objects to disclosure, SBA will consider the submitter's objections, but will not be bound by it. If SBA discloses information despite a submitter's objection, SBA will give the submitter the maximum notice possible before disclosure without violating the time constraints imposed by FOIA. In this notice, SBA will tell the submitter when and what it intends to disclose.
- (g) SBA will promptly notify the submitter of any suit filed against SBA to compel disclosure.

#### **6. What are the procedures for submitters of business information to SBA after March 1, 1996?**

Submitters may identify business information at the time of submission which would likely cause them substantial competitive harm if disclosed. The identification shall lapse after 10 years, unless renewed in writing.

#### **7. What fees will SBA charge?**

(a) Basic fees.

- (1) For manual record search. SBA will charge \$18 per hour.
- (2) For computer record searches. SBA will charge the actual costs.
- (3) For review and disclosure determinations. SBA will charge \$18 per hour.
- (4) Duplication. SBA will charge 10 cents per page for photocopy duplication, and the actual cost of reproduction for other methods.
- (5) Certifying records. SBA will charge actual costs.
- (6) For requested special types of delivery other than first-class mail. SBA may charge the actual cost.

(b) If you are a representative of an educational institution, a non-commercial scientific institution, or a member of the news media. SBA will charge you only for the cost of duplication after the first 100 pages.

(1) What is an educational institution? A state-certified preschool, elementary or secondary school, an accredited college or university, an accredited institution of professional education, or any accredited or state-certified institute of vocational education which operates a program or programs of scholarly research.

(2) What is a non-commercial scientific institution? An organization which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

- (3) What is a representative of an educational or non-commercial scientific institution? A requester seeking records on behalf of that institution who is authorized by that institution to do so, and who is seeking those records for scholarly or scientific reasons, as long as there is no commercial purpose to the request for records.
- (4) What is a representative of the news media? An individual who is actively gathering news for an entity that is organized and operated to disseminate information to the general public. To be considered "news media", this organization may provide information by subscription and may target its dissemination to a narrow section of the general public as long as any member of the general public may purchase information from it. If you are not employed by the news media, but have a reasonable expectation that you will sell the information you obtain to the news media, SBA may conclude that you are a representative of the news media. SBA will not consider you to be a representative of the news media if your request has a commercial purpose, beyond the commercial purpose of selling information to the general public.
- (c) Member of the general public. If you are a member of the general public, SBA will not charge you for the first two hours of search time, the first hundred pages of photocopy duplication, or for review and disclosure determinations. The general public is anyone who is not a representative of an educational institution, a representative of the news media, or a commercial requester.
- (d) Commercial requester. If you are a commercial requester you must pay all the basic fees set forth in paragraph (a) of this section. A commercial requester is anyone seeking information for commercial, trade, or profit interests of the requester or someone he or she is trying to help.
- (e) How does SBA determine what category of requester I am? The SBA office processing your request will determine the appropriate category. If you are not a commercial requester, you must show us what category of requester you are.
- (f) Tell us how much you are willing to pay. To get the quickest possible response, you must tell SBA how much money you are willing to pay in fees when you make your request for records.
- (g) If you don't tell us how much you are willing to pay and SBA estimates that the fee will exceed \$25.00, SBA will estimate the fee and will not process your request until you tell SBA that you are willing to pay the estimated amount, or until you narrow the request so that the fee is less than \$25.
- (h) SBA will waive fees less than \$25.
- (i) If the fee is more than \$250, or if you have a history of failing to pay FOIA fees in a timely manner, SBA will ask you to remit the estimated amount and any past due charges before sending you the records.
- (j) Who determines the fee? The SBA office which processes your request.
- (k) When do you pay the fee? SBA will bill you when it responds to your request.

You must pay within thirty-one calendar days.

(l) Failure to pay fees.

(1) If you do not pay by the thirty-first day after the billing date, SBA will charge interest at the maximum rate allowed under Title 31 of the United States Code, section 3717.

(2) If you do not pay the amount due within ninety calendar days of the due date, SBA may notify consumer credit reporting agencies of your delinquency.

(3) If you owe fees for previous FOIA responses, SBA will not respond to further requests unless you satisfy the amount due.

(m) Unsuccessful searches. If SBA's search for records is unsuccessful, it will still bill you for the search.

(n) Multiple requests. If you make multiple requests at or about the same time, SBA will aggregate your requests for records. In no case will SBA give you more than the first two hours of search time, or more than the first 100 pages of duplication without charge.

(o) Reduction of fees in the public interest. If SBA determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information in your own commercial interests, SBA may waive or reduce the fee.

**8. How may I appeal a denial of my request for information or a fee determination?**

(a) You must write to the Chief, FOIA & PA Office at 409 Third Street S.W., Suite 5900, Washington, D.C. 20416.

(b) The Chief must receive your written appeal within 45 calendar days of the date of the SBA determination from which you are appealing.

(c)(1) If you are appealing a denial of your request for information, the appeal must contain the following information:

(i) What records were denied.

(ii) The name and title of the individual who denied the request and the address of his or her office.

(iii) Any other information you deem appropriate.

(2) If you are appealing a fee determination, the appeal must contain the following information:

(i) The address of the office which made the fee determination from which you are appealing.

- (ii) The fee that office charged.
  - (iii) The fee, if any, you believe should have been charged.
  - (iv) The reasons you believe that your fee should be lower than the fee which the Agency charged.
  - (v) Any other information you deem appropriate.
- (d) The Chief will decide your appeal, unless the Chief originally made the determination you are appealing. In that case, SBA's Assistant Administrator for Hearings and Appeals will decide your appeal.
- (e) SBA will decide your appeal within 20 working days from the date of its receipt. SBA may have an additional 10 working days if unusual circumstances require.
- (f) (1) If you are appealing a decision to deny your request for records, SBA will either:
- (i) Give you the records you requested; or
  - (ii) Decline to give you the records you requested, tell you why SBA has concluded that the records were exempt from disclosure under FOIA, and tell you how to obtain judicial review of SBA's decision.
- (2) If you are appealing a fee determination, SBA will either charge the fee you request or charge another fee and explain why SBA has concluded that the fee it has decided to charge is appropriate.

**9. How can I get the Public Index of SBA materials?**

- (a) The Public Index is a document which provides identifying information about official documents which SBA has issued.
- (b) SBA has administratively determined, as permitted by FOIA, that periodic publication and distribution is unnecessary and impracticable.
- (c) The Public Index is set forth in Appendix 3 of SBA Standard Operating Procedure 40 03. You can obtain the Public Index from any SBA office.

**10. What happens if I ask SBA for a record that another Federal agency generated?**

Such a request is a request directed to the wrong office, as that term is used in SBA will forward your request to the generating agency.

**11. What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding or administrative proceeding to which SBA is not a party?**

- (a) The person to whom the subpoena is directed must consult with SBA counsel in the relevant SBA office, who will seek approval for compliance from the

Associate General Counsel for Litigation. Except where the subpoena requires the testimony of an employee of the Inspector General's office, or records within the possession of the Inspector General, the Associate General Counsel may delegate the authorization for appropriate production of documents or testimony to local SBA counsel.

(b) If SBA counsel approves compliance with the subpoena, SBA will comply.

(c) If SBA counsel disapproves compliance with the subpoena, SBA will not comply, and will base such noncompliance on an appropriate legal basis such as privilege or a statute.

(d) SBA counsel must provide a copy of any subpoena relating to a criminal matter to SBA's Inspector General prior to its return date.

## **12. What privacy rights does this subpart regulate?**

This subpart establishes SBA's policy and procedures safeguarding an individual against an invasion of personal privacy.

(a) Except as otherwise provided by law or regulation, SBA will permit you to do the following:

(1) Determine what records pertaining to you are collected, maintained, used, or disseminated by SBA;

(2) Object when records pertaining to you are obtained by SBA for a particular purpose and are proposed to be used or made available for another purpose without your consent; and

(3) Gain access to information pertaining to you in records, have a copy made of all or any portion of those records, and correct or amend such records as appropriate.

(b) SBA will collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(c) SBA will permit exemptions from the requirements of 5 U.S.C. 552a (Privacy Act of 1974) ("PA") only where an important public policy need for such exemption has been determined pursuant to or under specific statutory authority.

## **13. How will SBA maintain records?**

SBA records will:

(a) Contain only such information about an individual as is relevant and necessary to accomplish a purpose required of SBA by statute, regulation, or by Executive Order of the President.

(b) Be comprised, to the maximum practical extent, of an individual's own statements when the information may result in an adverse determination about an individual's rights, benefits, or privileges under a Federal program.

#### **14. When will SBA disclose records?**

SBA will not disclose to anyone any record which is contained in a system of records, except that it will disclose a record:

- (a) To the person about whom the record is maintained, or to that person's agent, within the limits discussed in this subpart;
- (b) To those SBA employees who have a need for the record to perform their duties;
- (c) When required under 5 U.S.C. 552 (FOIA);
- (d) For a routine use of the record compatible with the purpose for which it was collected;
- (e) To the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity pursuant to Title 13, United States Code;
- (f) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, where the record is transferred in a form that is not individually identifiable;
- (g) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his or her designee to determine whether the record has such value;
- (h) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if:
  - (1) The activity is authorized by law; and
  - (2) The head of the agency or instrumentality has made a written request to the PA Officer specifying the particular portion desired and the law enforcement activity for which the record is sought;
- (i) To a person showing compelling circumstances affecting the health or safety of an individual. Upon disclosure, SBA will notify such individual at his or her last known address;
- (j) To either House of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;
- (k) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

- (l) Pursuant to the order of a court of competent jurisdiction; or
- (m) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

**15. Are there special rules about personnel and equal employment opportunity files?**

- (a) The provisions of parts 293 and 297 of Title 5 of the Code of Federal Regulations govern all SBA files which the Office of Personnel Management determines are personnel files.
- (b) The provisions of part 1611 of Title 29 of the Code of Federal Regulations govern all Equal Employment Opportunity complaint files.

**16. What is a record?**

A record is information which SBA maintains on an individual and which includes either his name or an identifying symbol (such as a fingerprint, a social security number ("SSN"), or a photograph.

**17. What is a system of records?**

A system of records is one or more records which SBA routinely keeps for official purposes, and from which SBA can retrieve records by using a name or personal identifier.

**18. What does this subpart mean by "person to whom a record pertains" or "you"?**

When this subpart refers to the "person to whom a record pertains" or uses the pronoun "you", it refers to a United States citizen or a lawfully admitted alien. It does not refer to a corporation, partnership, or sole proprietorship.

**19. What records are partially exempt from the provisions of the Privacy Act?**

- (a) The following systems of records are exempt from certain provisions of the PA: Audit Reports (system of records #SBA 015), Litigation and Claims Files (#SBA 070), Personnel Security Files (#SBA 100), Security and Investigations Files (#SBA 120), Office of Inspector General Referrals (#SBA 125), Investigations Division Management Information System (#SBA 130), and Standards of Conduct Files (#SBA 140).
- (b) The provisions of the PA from which these systems of records are exempt are subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), 4G, H, and I (Agency Requirements), and (f) (Agency Rules).
- (c) The systems of records described in paragraph (a) of this section are exempt from the provisions of the Privacy Act described in paragraph (b) of this section in order to:

- (1) Prevent the subject of investigations from frustrating the investigatory process;
- (2) Protect investigatory material compiled for law enforcement purposes;
- (3) Fulfill commitments made to protect the confidentiality of sources and to maintain access to necessary sources of information; or
- (4) Prevent interference with law enforcement proceedings.

(d) In addition to the foregoing exemptions in paragraphs (a) through (c) of this section, the systems of records described in paragraph (a) of this section numbered SBA 015, 100, 120, 125 and 130 are fully exempt from the Privacy Act to the extent that they contain:

- (1) Information compiled to identify individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status;
- (2) Information, including reports of informants and investigators, associated with an identifiable individual compiled to investigate criminal activity; or
- (3) Reports compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision associated with an identifiable individual.

(d) The systems of records described in paragraph (d) of this section are fully exempt from the PA to the extent described in that paragraph because they are records maintained by the Investigations Division of the Inspector General, which is a component of SBA which performs as its principal function activities pertaining to the enforcement of criminal laws within the meaning of 5 U.S.C. 552a(j)(2). They are exempt in order to:

- (1) Prevent the subjects of Office of Inspector General (OIG) investigations from using the PA to frustrate the investigative process;
- (2) Protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, 5 U.S.C. App. I;
- (3) Protect the confidentiality of other sources of information;
- (4) Avoid endangering confidential sources and law enforcement personnel;
- (5) Prevent interference with law enforcement proceedings;
- (6) Assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems;
- (7) Prevent the disclosure of investigative techniques; or
- (8) Prevent the disclosure of classified information.

**20. What about information compiled for a civil action?**

No individual shall have access to any information compiled by SBA in reasonable anticipation of a civil action or proceeding. In the event of a question as to disclosure, the Systems Manager for the system of records involved will rely on the opinion of the General Counsel or designee, and will also consult with the PA Officer.

**21. Who administers SBA's responsibilities under the Privacy Act?**

The PA Officer has overall responsibility for administering the PA for SBA. A Systems Manager is responsible for administering the PA as to systems of records within an SBA Office.

**22. How can I write to the Privacy Act Officer?**

You can write to the PA Officer at 409 Third Street S.W., Suite 5900, Washington, D.C. 20416.

**23. Who appoints Systems Managers?**

The senior official in each field office and each Headquarters program area designates himself or herself or appoints another as the Systems Manager for that office.

**24. What do Systems Managers do?**

Systems Managers have the following responsibilities, among others, for the offices for which they are appointed:

- (a) Acting as the initial contact person for individuals seeking access to or amendment of their records.
- (b) Responding to requests for information.
- (c) Discussing the availability of records with individuals.
- (d) Amending records in cases where amended information is not controversial and does not involve policy decisionmaking.
- (e) Informing individuals of any reproduction fees to be charged.
- (f) Assuring that their systems of records contain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity.

**25. How can I write to a Systems Manager?**

You can write to a Systems Manager by writing to the SBA Office which maintains the record you are seeking. If you do not know which office that is, or you do not know the address of that office, you can write to the PA Officer at 409 3rd Street

SW, Suite 5900, Washington, D.C. 20416, who will forward your request to the proper Systems Manager.

**26. How can I see records kept on me?**

(a) You may look at any information pertaining to yourself contained in any SBA system of records unless some law or regulation prohibits it.

(b) In order to see this information, you must ask for it in writing, identifying what records you want. The writing should be addressed to the Systems Manager overseeing the system of records containing the record you wish to see.

(c) The Systems Manager (or, when appropriate, the PA Officer) may ask for more specific information about the system of records in which the document you are seeking is kept, and may ask you for identification. The Systems Manager may ask you for your social security number but you are not obliged to present it and your request will not be denied simply because you do not provide it. The Systems Manager may, however, deny your request if he or she cannot determine that you are the person to whom the information pertains.

**27. How long will it take SBA to respond to my request?**

The Systems Manager will respond within 10 working days.

**28. How will SBA respond to my request?**

The Systems Manager will inform you that:

(a) Your request is denied, in which case he or she will set forth the reasons for denial and your rights to appeal; or

(b) Your request is granted and you may view your record, in which case he or she will set forth the time and date for you to review your record in the presence of an SBA employee; or

(c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

**29. How may I appeal a decision to deny me access to my records?**

Your appeal should be in writing and should set forth any information you think would show that you should have access to your records.

**30. To whom should my appeal be addressed?**

(a) Denial of a personnel file. Address an appeal of a denial of a request for a personnel file to the Office of Personnel Management, 1900 E Street N.W., Washington, D.C. 20006.

(b) Denial of an Equal Employment Opportunity Complaint File. Address an appeal of a denial of a request for an Equal Employment Opportunity Complaint

File to the Equal Employment Opportunity Commission, 1801 L Street N.W., Washington, D.C. 20036.

(c) All other appeals. Appeal the denial of any other record to the PA Officer. See Sec. 102.30.

**31. By when must I appeal to the Privacy Act Officer?**

Your appeal must reach the PA Officer on or before 30 calendar days after the date the denial was issued. If your appeal is based on the failure of the Systems Manager to answer your request, your appeal must reach the PA Officer on or before 90 calendar days after the date by which the Systems Manager should have responded under Sec. 102.35.

**32. When will SBA respond to my appeal?**

The PA Officer will respond to you within 30 working days of the date when your appeal was received.

**33. How will SBA respond to my appeal?**

The PA Officer will inform you that:

(a) Your request is denied, in which case the reasons for denial will be set forth along with your rights to judicial review of SBA's decision; or

(b) Your request is granted and you may view your record, in which case the time and date for you to review your records in the presence of an SBA employee will be set forth; or

(c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

**34. How can I get SBA to amend a record kept on me?**

You can petition to have records kept on you amended by writing to the Systems Manager who oversees the system of records in which the record you wish amended is kept. If you are unable to determine who that Systems Manager is, you may send your petition to the PA Officer, who will forward it to the right Systems Manager. See Sec. 102.30.

**35. What should my petition say?**

Your petition should include the following:

(a) In what system of records the record you want amended is kept. (b) What record you want amended. (c) What specific information in that record you want amended. (d) Why you want the record amended. (e) Any information you have, including copies of evidence, which you think will persuade the Systems Manager to amend the record. (f) What the record should say.

**36. For what reasons will SBA amend my record?**

SBA seeks to maintain only accurate, complete, and up-to-date records which are relevant to accomplish some purpose required by law, regulation, or Executive Order of the President. There are four grounds for amending a record. They are:

- (a) The record is not accurate.
- (b) The record is not relevant to any legitimate SBA concern.
- (c) The record is out-of-date. For example, there may have been events since the date of the record which have affected some of the information contained in the record.
- (d) The record is incomplete. There may be additional information relevant to the material contained in the record.

**37. Will SBA ask me for more information after I make my request?**

Perhaps, in which case the procedures of Sec. 102.34(c) shall apply.

**38. When will SBA respond to my request?**

The Systems Manager will acknowledge receipt of your request within 10 working days and issue a written response within 30 working days.

**39. How will SBA respond to my request?**

The Systems Manager will:

- (a) Make the amendment you request, and send all individuals who had previously received a copy of that record a copy of the amended record; or
- (b) Amend the record, in a different manner, sending all individuals who had previously received a copy of that record a copy of the amended record and, in addition, telling you why your request was not granted in full and what appeal rights you have; or
- (c) Decline to amend the record, explaining why your request was not granted and telling you of your appeal rights.

**40. How do I appeal a refusal to amend a record kept on me?**

Your appeal should be in writing and include the following:

- (a) All of the information contained in your original request to amend the record;
- (b) Any response of the Systems Manager, including any reasons for denying your request; and
- (c) Any information you wish to submit in response to the Systems Manager's findings.

**41. To whom should I address my appeal?**

(a) Personnel file. Address your appeal to the Office of Personnel Management, 1900 E Street NW., Washington, DC 20006.

(b) Equal Employment Opportunity Complaint File. Address your appeal to the Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20036.

(c) All other appeals. Address your appeal to the PA Officer. See Sec. 102.30.

**42. By when must I submit my appeal?**

Your appeal must be received by the PA Officer within 30 calendar days of the date the Systems Manager declined to amend your records, or within 90 calendar days of the date the Systems Manager should have responded under Sec. 102.46 if the Systems Manager did not so respond.

**43. By what standards will the Privacy Act Officer review my appeal?**

The PA Officer will decide your appeal using the criteria of accuracy, relevance, timeliness, and completeness described in Sec. 102.44. The PA Officer will review all relevant information and may seek the views of other SBA personnel. The PA Officer may review information not available to or not used by the Systems Manager.

**44. When will SBA respond to my appeal?**

The PA Officer will respond to your appeal within 30 working days of its receipt, unless the Administrator determines that unusual circumstances exist, in which case the PA Officer will notify you of the presence of these unusual circumstances within 30 working days of the date upon which he or she received your appeal, and will respond to your appeal within 60 working days of the date of receipt.

**45. How will SBA respond to my appeal?**

The PA Officer will:

(a) Make the amendment you request, sending all individuals who had previously received a copy of that record a copy of the amended record; or

(b) Amend the record in a different manner; or decline to amend it at all:

(1) Sending all individuals who had previously received a copy of that record a copy of the amended record;

(2) Telling you why your request was not granted in full and that you can seek judicial review; and

(3) Marking the areas of dispute, including your statement of disagreement in the file, and, if appropriate, a concise statement of why SBA refused to amend the record as you requested, sending this material to all individuals who had previously received a copy of that record.

**46. How can I obtain judicial review of an SBA Privacy Act decision?**

You may bring a civil action against SBA in a United States district court if the SBA:

- (a) Makes a final determination not to provide you with access to or to amend your record in accordance with your request;
- (b) Fails to maintain your records with such accuracy, relevance, timeliness and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities of, or benefits to you that may be made on the basis of such records, and consequently a determination is made which harms you; or
- (c) Fails to comply with any other provisions of the PA (5 U.S.C. 552a) or the implementing regulations in this subpart, in such a way as to cause harm to you.

**47. What must SBA tell the individuals from whom it collects information?**

When SBA collects information from an individual, it must, either on the form which collects the information or on a separate form which the individual may keep, state:

- (a) Whether disclosure of the information is voluntary or mandatory;
- (b) By what authority SBA is collecting the information;
- (c) For what principal purpose or purposes SBA is collecting the information;
- (d) What routine uses might be made of that information; and
- (e) What will happen if the information isn't supplied.

**48. Will SBA release my name or address?**

No, unless compelled to by law.

**49. Do I have to give SBA my SSN?**

- (a) No. You need not give SBA your SSN, even if SBA asks for it.
- (b) If SBA asks you for your SSN, it must tell you under what authority it seeks your SSN, and for what purpose.
- (c) SBA cannot withhold a benefit solely because you refuse to tell it your SSN.

**50. When will SBA show personnel records to a representative?**

- (a) If you go to where the records are kept, SBA will permit one person of your choosing to inspect the records with you.
- (b) If you want your representative to inspect the records without you, you must give SBA a written authorization.

(c) SBA will mail a copy of the record to your representative if you direct SBA to do so in writing.

(d) You may inspect the records of a minor if you present evidence that you are the custodial parent (including joint custodial parent) or legal guardian of that minor. An affidavit or declaration, signed by you under penalty of perjury, is normally sufficient evidence unless SBA has information to the contrary.

(e) You may inspect the records of an adult incompetent if you present evidence that you are the legal guardian of that person. A guardianship order is sufficient evidence of your guardianship. Other evidence may be considered.

### **51. What fees will SBA charge me for my records?**

SBA will charge you only for photocopying at the rate of 10 cents per page. SBA will not charge you for finding or reviewing your records. Fees less than \$25 will be waived.

### **52. May I be informed of disclosures made of my records?**

SBA will tell you what disclosures it made of your records if you ask, except that SBA will not tell you about disclosures it made to another federal agency or government entity for law enforcement purposes.

### **53. Are there Matching Program procedures?**

(a) SBA will comply with the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a, 552a notes). This Act establishes procedures federal agencies must use if they want to match their computer lists.

(b) If SBA adopts any procedures to supplement its compliance with the Computer Matching and Privacy Protection Act of 1988 which are not mandated in that Act, SBA will publish those procedures in Standard Operating Procedure (SOP) 40 04. You can get a copy of SOP 40 04 at any SBA Office.

(c) If SBA enters into an agreement with any federal agency, contractor of any federal agency, state or local government, or agency of any state or local government to disclose records for purposes of a computer matching program, SBA will make a copy of that agreement available to the general public. You can get a copy of any such agreement by writing to the Privacy Act Officer.

## **Government Contracting**

### **1. How does SBA define a business?**

In making a detailed definition, SBA may use a number of criteria, including the number of employees, annual receipts, affiliates, or other applicable factors. These specific criteria are set forth in the SBA Small Business Size Regulations, Title 13, Part 121 of the Code of Federal Regulations. For information on specific

industry classifications (manufacturing, construction, services, transportation, refined petroleum products, and research development and testing), or more information on general small business definitions, please contact the SBA's Office of [Size Standards](#).

## **2. How do I find out who in the government purchases my product or service?**

This web site contains links to "Federal Acquisition and Procurement Opportunities," and to Federal Government Acquisition sites under "Programs to Assist You."

## **3. How can I get a DUNS number?**

DUNS stands for "Data Universal Numbering System" and is used by the government to identify contractors and their locations. The number is also required to register with the Central Contractor Register (CCR) that is used by the government's electronic commerce/electronic data interchange (EC/EDI) system called FACNET. If you do not have a [DUNS number](#), you can obtain one from Dun and Bradstreet (D&B) at no cost. Contact the company at 800-333-0505.

## **4. What is the FedBizOpps?**

FedBizOpps.gov is the single government point-of-entry (GPE) for Federal government procurement opportunities over \$25,000. Government buyers are able to publicize their business opportunities by posting information directly to FedBizOpps via the Internet. Through one portal - [FedBizOpps](#) (FBO) - commercial vendors seeking Federal markets for their products and services can search, monitor and retrieve opportunities solicited by the entire Federal contracting community.

## **5. What is the 8(a) Program?**

The 8(a) Business Development program is designed to provide business development assistance and technical assistance to help socially and economically disadvantaged American businesses gain access to the mainstream American economy. The program is named for the section of the Small Business Act that authorizes its policies and procedures.

## **6. What is the Vendor Identification Program?**

The Vendor Identification Program (VIP) assists small businesses by identifying government purchasers for the items they produce for large defense contractors. The program helps SBA to increase competition by adding qualified sources to bidder lists and creating prime contracting opportunities for small businesses. Through the Vendor Identification Program, SBA matches the past procurement history and acquisition needs of the government and identifies the actual manufacturer of systems, subsystems, components, and spare parts. This expedites the procurement process and facilitates the participation of small businesses as prime contractors.

## Eligible Firms

If your company has manufactured weapons system parts or items for a defense contractor, and you are interested in selling directly to the Government, the SBA's VIP program may benefit your firm.

## Getting Started

It's easy and convenient to determine if the SBA's VIP program can benefit you. Just pick an option below, complete the information in the requested format, and submit it to the VIP Coordinator. In a few weeks you will receive a listing of government offices where your firm's parts are purchased.

### Option #1:

#### [E-mail "CAGE" Code and Parts List to the VIP Coordinator](#)

Your Firm's CAGE Code must be entered on the first line of the E-mail and each Part Number must be entered on a separate line below the CAGE Code.

EXAMPLE:

8Z483

1234567890

0987654321

6019462986

(FAQs about CAGE Codes or Search for a CAGE Code)

### Option #2:

If you prefer, you can send your firm's parts list on a 3 1/2" floppy disk to the VIP Coordinator, in ASCII text format with the fields arranged as shown above.

Mail floppy disks to the following address:

Pro-Net Program Manager

Attn: Oliver Snyder,

U.S. Small Business Administration

Office of Government Contracting and Business Development

409 3rd Street, S.W.

Washington, DC 20416

Telephone: (202) 205-7650

[oliver.snyder@sba.gov](mailto:oliver.snyder@sba.gov)

## 7. What is the Certificate of Competency Program?

The Certificate of Competency (COC) program allows a small business to appeal a contracting officer's determination that it is unable to fulfill the requirements of a specific government contract on which it is the apparent low bidder. When the small business applies for a COC, SBA industrial and financial specialists conduct a detailed review of the firm's capabilities to perform on the contract. If the

business demonstrates the ability to perform, the SBA issues a COC to the contracting officer requiring the award of that specific contract to the small business.

### **8. What is the 7(j) program?**

Section 7(j) of the Small Business Act authorizes SBA to enter into grants, cooperative agreements or contracts, with public or private organizations that can deliver management or technical assistance to eligible individuals and enterprises. This assistance is delivered to 8(a) certified firms, small disadvantaged businesses, businesses operating in areas of high unemployment or low-income or firms owned by low-income individuals. [More...](#)

## **Government-wide Procurement Preference - Goaling Program**

### **1. How does SBA ensure that agencies meet the government-wide 23 percent small business goal?**

SBA negotiates with each agency mutually acceptable prime and subcontract goals for each small business category. SBA must ensure that the mutually established cumulative goals for all agencies meet or exceed the government-wide 23 percent small business goal. SBA can not accept an individual agency's goal until in the aggregate, the government-wide goal is established. Subsequently, SBA compiles and analyzes agencies' achievements against their individual goals and reports the results to the President.

### **2. Why doesn't SBA approve goals as soon as they are received?**

SBA's responsibility under the Small Business Act 15(g)(1) is to ensure that the Government-wide goal for participation of small business concerns be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year. The Small Disadvantaged Business (SDB) and Women-owned Small Business (WOSB) goal are also required to be established at not less than 5 percent.

### **3. What are the due dates for all the goaling actions?**

The goaling "Calendar of Events" established the dates actions are due on the part of each agency. It is updated for each fiscal year and listed in the Goaling Guidance.

### **4. Are there any rewards for a Federal Agency in exceeding its goals?**

Yes, the Office of Government Contracting annually accepts nominations, including self-nominations, for the Gold Star Awards that are presented at the Annual Joint Industry/SBA Procurement Conference, Business Opportunity Expo and Awards Celebration, in Washington, D.C.

The Gold Star Awards were established to recognize the Federal personnel within the Office of Small and Disadvantaged Business Utilization (OSDBU) who have the primary responsibility for the aggressive goals and strategic initiatives that ensure small business a role in the Federal marketplace. The Gold Star Awards were established to recognize those Federal personnel for their exemplary performance. In addition, any Federal department or agency that has a winner of a Gold Star Award will receive a special agency award.

**5. For SBA's goaling program, is there a minimum subcontract percentage that prime contractors must have when bidding or submitting a proposal for a Federal contract?**

**No.** Prime contractors shall propose a subcontract percentage (or goal) on each contract that represents the maximum practicable opportunity for small businesses. This means that the prime contractors have to do market research to determine how many small businesses may be able to perform the subcontract requirements. Prime contractors shall propose as subcontractors, if available, small business concerns; small business concerns owned and controlled by service disabled veterans; qualified HUBZone small business concerns; small business concerns owned and controlled by socially and economically disadvantaged individuals; and small business concerns owned and controlled by women.

**6. If an option is being exercised on a contract with a company that self-certified they are a small-disadvantaged-business (SDB) before the formal SDB certification requirements became effective, can the agency still count this company as an SDB?**

**Yes.** On the SF279, block 30 under "type of contractor." the agency would check "A" which is SDB. However, on block 33B, the agency would check "F" which is that the SDB preference was "not applicable."

**7. Can an agency count prime contract awards to small businesses toward more than one goal in the Goaling Program?**

**Yes.** The Small Business (SB) Category shows the total procurement dollars to small businesses. All other categories are sub-sets of the SB Category. A procurement can be additionally counted in more than one sub-set category, as applicable, except 8(a) and small disadvantage business (SDB) that are reported separately, but together form the SDB Government-wide achievement.

In fact, all prime contract awards to small businesses, women-owned small businesses, small disadvantaged businesses, 8(a) firms, HUBZone small businesses, service-disabled veteran-owned small businesses all count toward the government-wide small business goal.

For example, if a business is awarded a contract and they are 8(a), small disadvantaged business, and a woman-owned small business, the agency counts the contract award in all categories that apply.

**8. Can an agency get 8(a) credit for ordering from a Federal Supply Schedule from a company certified by SBA under the 8(a) program?**

**Yes, if** the company has elected for its orders to be counted toward its 8(a) competitive mix and to allow for its orders to be counted as sales under the 8(a) program. If a company does not elect for them to be counted as 8(a) orders, then the agency will get credit for the order under the small disadvantage business (SDB) category. The agency will get credit toward its SDB goals, even if the FSS order was awarded under full-and-open-competition.

**9. How are the GSA Federal Supply Schedules (FSS) counted in the goaling process?**

Starting in FY 1998, each individual agency included Federal Supply Service (FSS) Schedule buys as part of their estimate of all of their prime contracts and resultant goals. In addition, each individual agency's goal achievements included all of their FSS Schedule buys.

**10. If a small business wins a procurement that was not "set-aside for small business competition" but rather under the "full and open" competition, does the Agency receive small business credit toward its small business goals?**

**Yes.** The total dollars awarded to small business concerns are derived from the "type of contractor" they are not based on the solicitation procedures. As stated in the Goaling Guidance, the dollars awarded to Small Business Concerns will be derived from the SF-279 which the type of contractor should be a Small Business or Small Disadvantaged Business or from the SF-281 for a Small Business.

**11. Which categories of small business must be certified by SBA, and must these companies be listed in PRO-Net?**

Small Disadvantaged Businesses (SDB), HUBZone small business concerns, and 8(a) firms must be certified by SBA. PRO-Net is the official SBA database for verifying their certification. Other categories, including small businesses, women-owned small businesses, veteran-owned small businesses, and service-disabled veteran small businesses may self-certify as to their status. PRO-Net may be used to verify their "self-certification" but they are not required to be listed in PRO-Net.

When prime contractors submit their SF-294 and SF-295 reports to the Government, they are allowed to take credit for only those SDBs that are listed in PRO-Net. (For the SDB certification requirement, this applies only to solicitations issued by the Government on or after October 1, 1999, the effective date of the regulation.) SBA also recommends that you use PRO-Net to also confirm the firms that "self-certify" they are HUBZone certified as stated in the Federal Acquisition Regulations (FAR) 52.219-8(c)(2). Companies may accept self-certification for all the other categories.

**12. Who do I call if I have questions on the Goaling Program?**

Please contact [goaling@sba.gov](mailto:goaling@sba.gov).

**13. Can SBA approve the goals without all goals submitted?**

SBA has the responsibility to ensure that agencies' goals, in the aggregate, meet the Government-wide goals established at 15(g)(1) of the Act. This can only be done if SBA has received all the proposed goals to statistically calculate that we can achieve the Government-wide statutory goals.

## **HUBZone Empowerment Contracting Program**

### **1. What is the HUBZone Empowerment Contracting Program?**

The HUBZone Empowerment Contracting Program stimulates economic development and creates jobs in urban and rural communities by providing Federal contracting preferences to small businesses. These preferences go to small businesses that obtain HUBZone (Historically Underutilized Business Zone) certification in part by employing staff who live in a HUBZone. The company must also maintain a "principal office" in one of these specially designated areas. [A principal office can be different from a company headquarters, as explained later in this document.] The program resulted from provisions contained in the Small Business Reauthorization Act of 1997.

### **2. What's the easiest way to find the location of a HUBZone in my area?**

Simply log onto the web at <http://www.sba.gov/hubzone> and select the option 'Find Out If You Are in a HUBZone.' You can search the system using several designations, including a specific address, a county or a full state.

### **3. How does a firm qualify for this program?**

To qualify for the program, a business must meet the following criteria:

- It must be a small business by SBA size standards;
- Its principal office must be located within a HUBZone, which includes lands on federally recognized Indian reservations;
- It must be owned and controlled by one or more U.S. citizens (N.B.- this means any level of ownership in an applicant small business by another company would result in a decline). Approved ownership can also be by a Community Development Corporation or Indian tribe; and
- At least 35% of its employees must reside in a HUBZone.

### **4. If I own the company applying for HUBZone certification, should I include myself when calculating the number of employees?**

Yes. You count regardless of whether you serve in a paid or unpaid status, so long as you consider yourself to be a principal employee of the firm and spend full-time equivalent hours devoted to the business.

### **5. How does SBA define the term "reside" in reference to the residency requirement?**

The term reside means to live in a primary residence at a place for at least 180 days, or as a currently registered voter, and with intent to live there indefinitely. Employers should be aware that it makes no difference which HUBZone their employees reside in. An employee can reside in one HUBZone and work in another and meet the standards for this residency requirement.

#### **6. How does SBA define the term "principal office?"**

It's the location where the greatest number of employees at any one location actually perform their work, except for construction and service industries, which have exemptions based on their occasional need to assign employees at the contract location. Notice that the 'principal office' definition can mean something very different from a company's headquarters. It could happen that a small business might have a headquarters in a non-HUBZone location and establish a principal office within a HUBZone locality and still qualify legitimately for program participation.(more details - see 'Regulatory Amendments' that follows).

#### **7. I understand that some regulatory amendments became effective Feb. 20, 2001. What's changed?**

Those amendments to our rules appeared in the Federal Register on Jan. 18, 2001. The amendments impact four areas:

##### ***Clarification on applicability to state and local governments***

- This makes clear that the HUBZone program does not apply to contracts awarded by state and local governments, since the HUBZone Act only applies to the federal government.

##### ***Definition of 'principal office***

- The amended rule says that for concerns whose primary industry is services or construction (i.e., other than manufacturing), the principal office would be the location where the greatest number of the concern's employees perform their work, but excluding those employees who perform their work at job-site locations to fulfill specific contract obligations.

##### ***Rules on affiliation***

- Before the amendment, regulations permitted a qualified HUBZone SBC to have affiliates only if those affiliates are qualified HUBZone SBCs, participants in the 8(a) Business Development Program, or woman-owned businesses (WOBs). But this was all seen as overly restrictive.
- Accordingly, SBA eliminated these restrictions on affiliation and allows a qualified HUBZone SBC to have affiliates as long as it, when combined with its affiliates, is still small pursuant to SBA's size regulations.
- In addition, the removal allows SBCs in non-HUBZone areas to establish new business ventures in HUBZones. This is especially critical due to the historical lack of investment capital in HUBZones and the

need for such capital to establish new businesses that will promote economic development and create jobs.

***Procurement requirements for non-manufacturers***

- SBA amended the provisions concerning non-manufacturers.
- Under the amended rule, non-manufacturer HUBZone concerns no longer are required to demonstrate that they can provide product or products manufactured by qualified HUBZone SBCs.
- SBA now allows a qualified HUBZone SBC to use any manufacturer, including a large business, for HUBZone contracts at or below \$25,000 in total value. This provision encourages the participation of small business non-manufacturers that are located in HUBZones.
- Contracts above \$25,000 will still require that the HUBZone non-manufacturer provide the product of a HUBZone manufacturer.

**8. If my small business has several offices and one is qualified as a 'principal office' that serves as the basis for a HUBZone designation, can all my offices claim HUBZone certification?**

Yes, HUBZone is a status that applies to the entire business. This designation will remain in effect as long as any of the firm's locations meet the test for and are certified as a "principal office" for HUBZone certification (assuming all other eligibility requirements are similarly maintained).

**9. What benefits are small businesses receiving under this program?**

Generally speaking, there are two levels of benefit. The first relates directly to Federal contracts, while the second involves specialized assistance.

***Federal Contract Benefits -***

There are four types of HUBZone contract opportunities:

***Competitive:*** Contracts can be set-aside for HUBZone competition when the contracting officer has a reasonable expectation that at least two qualified HUBZone small business concerns (SBCs) will submit offers and that the contract will be awarded at a fair market price.

***Sole-source:*** HUBZone contracts can be awarded if the contracting officer determines that:

- only one qualified HUBZone SBC is responsible to perform the contract,
- two or more qualified HUBZone SBCs are not likely to submit offers and
- the anticipated award price of the proposed contract, including options, will not exceed:
  - \$5 million for a requirement within the North American Industry Classification System (NAICS) code for manufacturing or
  - \$3 million for a requirement within all other NAICS codes

**Full and open** competitive contracts can be awarded with a price evaluation preference. The offer of the HUBZone small business must not be 10 percent higher than the offer of a non-small business.

**Subcontracting:** All subcontracting plans for large business Federal contractors must include a HUBZone subcontracting goal.

**Other Specialized Assistance –**

- Eligible HUBZone firms can qualify for higher SBA-guaranteed surety bonds on construction and service contract bids.
- Firms in Federal Empowerment Zones and Enterprise Communities (EZ/EC) can also benefit from employer tax credits, tax-free facility bonds, and investment tax deductions.

**10. Can HUBZone certified firms receive any special loans, grants or tax credits through the HUBZone Program?**

No, the Federal benefits are limited to those listed above.

**11. I've submitted a HUBZone application, but haven't heard anything yet. How can I check the status?**

The application system available on the web (<http://www.sba.gov/hubzone>) has a built-in function that allows an applicant to check the status at any time. Just activate the certification function on the opening page and select the "Check Application Status" operation.

**12. Does this program only apply to small businesses that are currently located in HUBZones, or can firms move to these areas and then become eligible to participate?**

This program applies to firms that are currently located within HUBZones and can include any start-up business that chooses to start operation in a HUBZone. An existing small business that chooses to relocate to a HUBZone can also become certified provided it meets the remaining criteria outlined earlier.

**13. Where is there a list of all HUBZone certified companies?**

A state-by-state listing is available on the HUBZone web page, but a more comprehensive search capability is offered through the SBA's PRO-Net database, which now contains more than 210,000 small businesses that have expressed an interest in working with the Federal government or teaming with other small businesses. If you're searching for one or more HUBZone certified firms, just indicate that in your search criteria. That listing is available at <http://pro-net.sba.gov>.

**14. Now that I'm HUBZone certified, what should I do next?**

Market your firm's products and services to the appropriate Federal agencies, perhaps with the assistance and guidance of the SBA employee most responsible for being your advocate, the Procurement Center Representative. Identify your local PCR through this document link: <http://www.sba.gov/GC/contacts.html>.

Look at the third entry, which also includes an option for downloading this list as a PDF (Adobe) file.

**15. Does a business that attempts to qualify for the HUBZone Program based upon its location on an Indian reservation have to be Indian owned?**

No. As long as the principal office of the business is located on an Indian reservation and meets all other eligibility criteria, it can earn the HUBZone designation.

**16. The HUBZone Program is based on a geographical designation. Are there differences in these geographical assignments and approximately how many current locations are there for each?**

There are three HUBZone categories -- Urban, Rural and Native American:-

1. Urban = Metropolitan Area Census Tracts (HUD) - 7,000 total in U.S.
2. Rural = Non-metropolitan Counties – 900 total in U.S.
  - Rural designation results when median household income is less than 80% of the non-metropolitan state level (Census)
  - Rural designation can also occur when analysis shows an unemployment rate that is not less than 140% of the state-wide average (BLS)
3. Native American = All federally recognized Indian reservations as defined by external boundary – exceeds 340 total in U.S.

**17. How often can these designations change?**

Urban is concurrent with the census (change is every ten years).  
 Rural reflects employment and income adjustments (employment levels determined annually).  
 Native American involves Federal recognition and boundary changes (no fixed time).

**18. Will small businesses participating in the SBA's 8(a) Business Development Program that are already in or relocate to a HUBZone area be eligible to receive both 8(a) and HUBZone contracting opportunities?**

Yes. This dual status can be quite beneficial, so a firm that has one designation and legitimately qualifies for the other is strongly urged to obtain both.

**19. How can a firm's eligibility as a HUBZone participant be challenged?**

The specific process for challenging a firm's eligibility as a HUBZone participant is detailed in the SBA's operating regulations. Generally, these regulations allow an interested party to challenge the accuracy of an existing certification based on allegedly falsified applicant information or substantive changes that might have occurred since certification was first obtained. The SBA will have final authority in this regard.

**20. Which agencies participate in the HUBZone program and where are these contract opportunities posted for general public review?**

As of Oct. 1, 2000, all Federal buying agencies must abide by the HUBZone Program requirements and many of these contracts are posted in the Commerce Business Daily, a publication that has a no cost, on-line version that can be accessed at <http://www.sba.gov/GC/indexresources.html>.

**21. Can the SBA protest a contracting officer's decision not to award a contract opportunity to a qualified HUBZone small business?**

Yes. The SBA's Administrator may file a written request for re-consideration of the contracting officer's decision with the Secretary of the Department, or Agency head.

**22. What is the SBA's responsibility under the program?**

SBA is responsible for formulating regulations to implement and administer the program. SBA is also required to submit a report no later than March 2002 to the Small Business Committee concerning the degree to which the HUBZone Program has resulted in increased employment opportunities and investment in HUBZones. Further, SBA is required to periodically examine and verify participant eligibility and investigate challenges to HUBZone certification.

## **NAICS**

**1. What is NAICS?**

NAICS is the North American Industry Classification System. It replaced the Standard Industrial Classification (SIC) system. Federal Government agencies that collect establishment based statistics are now required to use NAICS instead of SIC.

**2. Why did SBA issue a new table of size standards?**

NAICS describes how industries do business in today's economy better than SIC does. SBA has always established size standards for industries as they are described in SIC. Size standards based on NAICS industries will provide more opportunities for small businesses to participate in Federal programs that give preference to small businesses.

**3. Why does SBA think that NAICS is better than SIC?**

NAICS describes how industries do business in today's economy better than SIC does. SBA has always established size standards for industries as they are described in SIC. Size standards based on NAICS industries will provide more opportunities for small businesses to participate in Federal programs that give preference to small businesses.

#### **4. Why does SBA think that NAICS is better than SIC?**

NAICS, first of all, classifies over 350 more industries than SIC does - that's 15% more. Most of these new industries are in the Services Sectors.

NAICS identifies industries that SIC does not, industries that are more relevant to today's economy. For example, NAICS includes industries that manufacture semiconductor machinery and fiber optic cable, reproduce software, provide satellite telecommunications, paging, cellular and other wireless telecommunications. Warehouse clubs and superstores, telemarketing bureaus, hazardous waste collection and casinos are also new in NAICS.

NAICS is more consistent than SIC. Businesses that use similar production processes are grouped together.

NAICS gives special attention to new and emerging industries, service industries in general, and industries that produce advanced technology. The SIC system, which was last revised in 1987, does not include many of these industries, or at least does not describe them well, and it will never be updated or changed.

#### **5. Since this is a new table, do any size standards change? What about my size standard?**

Some size standards that are assigned to SIC codes do change. However, their number is small. Most likely you will continue as a small business eligible for federal small business programs under NAICS size standards. You need to identify the NAICS code for your business and check its size standard.

#### **6. How do I find out what my NAICS code is?**

Go to SBA's NAICS Lookup at [https://eweb1.sba.gov/naics/dsp\\_naicssearch2.cfm](https://eweb1.sba.gov/naics/dsp_naicssearch2.cfm).

Simply enter your product or service in the description area and then locate your business area.

#### **7. How do I find the size standard for my NAICS code?**

Use SBA's NAICS Lookup at [Type in your NAICS code or business description and then locate your business area on the resulting table.](#)

#### **8. How will the change from SIC to NAICS affect federal contracting opportunities for small businesses?**

Federal procuring agencies, starting October 1, 2000, must use the proper NAICS codes and size standards in their procurement solicitations. They will use the NAICS code, instead of the SIC code, that best describes the principal purpose of the product or service they intend to acquire.

#### **9. What about outstanding procurements on which agencies have solicited bids or offers, but which they have not yet awarded - will the SIC code they used be changed to the NAICS code?**

The contracting officer has some discretion here, if the agency has not yet awarded the contract. SBA suggests you ask the contracting officer what he intends to do.

**10. Where can I find more information about size standards?**

Go to SBA's Website about Size Standards. You can also email SBA's Office of Size standards at [sizestandards@sba.gov](mailto:sizestandards@sba.gov), or call us at (202) 205-6618.

**11. Where can I find more information about NAICS?**

Go to the Bureau of Census Website.

**12. Where can I find more information about small business size standards and NAICS together?**

Go to Small Business Size Standards and the North American Industry Classification System (NAICS) on SBA's Website.

**13. When did NAICS replace SIC?**

NAICS replaced SIC on January 1, 1997.

## **Service Corps of Retired Executives - SCORE**

**1. What is the SCORE Association?**

The SCORE Association (Service Corps of Retired Executives) "Counselors to America's Small Business" is a nonprofit association comprised of 11,500 volunteer business counselors throughout the U.S. and its territories. There are 389 SCORE chapters in urban, suburban and rural communities. SCORE members are trained to serve as counselors advisors and mentors to aspiring entrepreneurs and business owners. These services are offered at no fee, as a community service. SCORE was formed in 1964 and nearly 4.5 million Americans have utilized SCORE services.

**2. How can the SCORE Web site help me?**

This site offers practical "how to" information to help you run your business. You can also get free and confidential business advice from SCORE with [Get Email Counseling](#). You can Find SCORE in your community to find the location and even a map of the location of your nearest SCORE office.

**3. How can SCORE help me in a changing economic environment?**

In times of economic change, you must be diligent in preparing advance plans. Begin developing a business plan with realistic sales projections and a plan to hold the line on costs. SCORE can provide advice to help you develop or update your plan. You can Get Email Counseling right now through the SCORE Web Site.

SCORE & Visa U.S.A also offer a FREE financial management workbook, How to Secure Financing. This guide can help you build a relationship with a bank, so you can obtain a loan when you apply for a loan.

#### **4. Can I contact SCORE via email?**

Yes. This Web site offers a special feature called Get Email Counseling. You can go to email counseling and pose a business question to one of the SCORE business counselors who have joined the SCORE CyberChapter to provide you with email answers to business questions. You choose from a list of counselors with expertise in the business areas that interest you and write a question to the counselor who is the best match for your business or industry.

#### **5. What is email counseling?**

Email counseling is an email exchange between you a soon-to-be entrepreneur or small business owner and a volunteer, SCORE business counselor. Email counseling gives you the opportunity to send email questions about small business to a SCORE counselor anywhere in the country. Just Get Email Counseling to get business advice. Send a questions and your SCORE counselor will reply with his or her answer. Keep the dialog going as long as you have questions for your business counselor.

#### **6. What qualifies SCORE members to give business advice?**

The key qualification SCORE counselors bring to clients is real-world experience. SCORE business counselors have general management and specific industry experience that can benefit your business. SCORE business counselors may be working or retired business owners, business executives or operations managers. All SCORE counselors receive specialized training in counseling and mentoring.

#### **7. What kind of counseling does SCORE provide?**

SCORE's experienced business experts provide general business advice on everything from how to write a business plan, to cash flow management, to developing a small business advisory board. Assistance for aspiring entrepreneurs may involve investigating the market potential for a product or service and assessing the capital needs to start a business. Counselors can provide insight into how to start a business, operate a business, buy a business or franchise and sell a business.

#### **8. Does SCORE offer other services?**

Yes. SCORE offers low-cost workshops and seminars. Workshops and seminars are offered at the local chapter level. Topics are planned to help address specific interests in a given community. Basic workshop fees generally range from \$20-\$75 depending upon the program. Workshop topics have included: Developing Your Business Plan, Starting and Operating Your Own Business, Getting Financing For Your Business, Basic Business Accounting, Expanding Your Business and Marketing-A Do-It-Yourself Approach for Small Business.

#### **9. How can I contact SCORE for assistance?**

You can contact SCORE a number of ways. You can call 1 (800) 634-0245 for a referral to the SCORE chapter nearest you and make an appointment for face-to-face counseling. You can use Find SCORE to locate a chapter near you complete with address, phone number and a map you can print right now. Or you can Get Email Counseling to send an email message to a counselor and begin electronic counseling.

## **Size Standards**

### **1. What are small business size standards?**

The term "size standard" describes the numerical definition of a small business. In other words, a business is considered "small" if it meets or is below an established "size standard."

See [SBA's Quick Lookup Table](#).

### **2. How does the SBA define a small business?**

A. SBA has established a size standard for most industries in the economy. The most common size standards are as follow:

- 500 employees for most manufacturing and mining industries
- 100 employees for all wholesale trade industries
- \$6 million for most retail and service industries
- \$28.5 million for most general & heavy construction industries
- \$12 million for all special trade contractors
- \$0.75 million for most agricultural industries

About one-fourth of industries have a size standard that is different from these levels. They vary from \$0.75 million to \$28.5 million for size standards based on average annual revenues and from 100 to 1500 employees for size standards based on number of employees. Several SBA programs have either alternative or unique size standards, such as the [Small Business Investment Company Program](#).

### **3. How does SBA develop or revise a size standard?**

A. At SBA, only the Administrator can approve creating or changing size standards. Before this can happen, the Office of Size Standards (OSS) makes recommendations to the SBA's [Size Policy Board](#). The Board must concur and recommend approval to the Administrator. Both establishing and modifying size standards involve the examination and analysis of industry structural characteristics and the relative position of firms within an industry in terms of size. Before OSS makes any recommendation to the Size Policy Board, it completes economic studies of the various industry structures, prepares issue papers, and makes preliminary or interim presentations to the Board.

In general, we consider these factors in establishing or reviewing size standards:

- industry structure analysis,
- degree of competition,
- average firm size,
- startup cost,

- entry barriers,
- distribution of sales and employment by firm size,
- impact of different size standard levels on the objectives of SBA programs, and
- comments from the public on notices of proposed rulemaking.

We also take into account all other factors that may distinguish a small business in an industry.

#### **4. What is the SBA Size Policy Board?**

The Size Policy Board considers and makes recommendations to the Administrator on small business size eligibility regulations, including size standards. The Deputy Administrator chairs the Board consisting of Agency's major program offices and offices with size responsibilities. The Board has ten members, six voting and four nonvoting. The voting members are the Deputy Administrator, the Office of Financial Assistance, the Office of Government Contracting, the Office of Minority Enterprise Development, the Office of Technology, and the Office of Advocacy. The nonvoting members are the Office of General Counsel, the Office of Hearings and Appeals, the Office of Size Standards, and one Regional Administrator.

#### **5. Does SBA keep lists of eligible small businesses or issue certificates for firms to qualify as small businesses?**

Summary: SBA does not issue certificates or maintain lists establishing the eligibility of firms as small businesses. However, SBA maintains lists of [small disadvantaged businesses](#) and [HUBZone](#) businesses.

#### **6. My firm desires to team with another firm to bid on a Government contract. We both are below the size standard individually, but not when combined. Are we eligible to bid as a small business?**

No. This would constitute a joint venture whereby both firms share, in some proportion, the responsibility and the profits or loss on a contract. They are considered [affiliated](#) for the purpose of that contract. The revenues from all sources or the [employees](#) of both firms are added together to determine the size of the joint venture.

#### **7. How can I restructure my firm or firms so I still maintain ownership, but become eligible as a small business? I am not now a small business.**

Restructuring your firm for the primary purpose of becoming small under a size standard would not change your size status.

#### **8. Another Federal agency wishes to grant regulatory relief for small business entities. Must it use SBA's size standards to define small business?**

Generally, federal agencies use the SBA's size standards, which are defined in the Regulatory Flexibility Act. However, if another small business definition is more appropriate to its needs, that agency may consult with SBA's Office of Advocacy to find a more suitable small business definition.

**9. How do Federal Agencies use the SBA size standards?**

With few exceptions, all Federal Agencies use the size standards established by SBA. In addition, many other political entities, such as state and local governments, adopt SBA size standards. Most Federal Agencies reserve all or some of their programs for small businesses. For instance, the SBA has a number of loan programs for qualified small businesses. Most Agencies set aside a share of their procurement activity exclusively for small businesses.

**10. Can a Federal agency making a small business set-aside procurement use, at its discretion, a size standard other than what SBA has designated?**

No. Under law, an agency must use the SBA's size standards on small business [set-aside procurements](#). Unlike the use of size standards for regulatory analyses discussed in the previous question, an agency has no authority to establish different size standards from the SBA's size standards on set-aside procurements.

**11. My business operates under a franchise. Am I affiliated with the franchiser or with similar franchisees?**

A franchisee operating under its own ownership, own management, and for its own profit (or loss) would generally not be [affiliated](#) with the franchiser or other franchisees through the franchise arrangements, except under unusual circumstance.

**12. A solicitation was issued under an NAICS code with a \$6 million size standard. In my opinion, a different NAICS with a \$12 million size standard should have been used. How can I correct this?**

A. You have the right to [appeal the contracting officer's NAICS designation](#) to [SBA's Office of Hearings and Appeals](#) usually no later than 10 working days before bid opening or deadline for proposal submission. Please note that in some cases we accept appeals no later than five working days from the bid opening. Specific procedures are contained in [13 CFR § 121](#). Informal discussions with the contracting officer to change the designation voluntarily may be an alternative solution.

**13. I am convinced a firm which bid in competition with me on a Federal set-aside procurement is not a small business. How can I prevent it from receiving the award?**

If you are a small business bidder, you are an interested party in this procurement and may challenge your competitor's small business self-certification. Notify the contracting officer of the matter according to the procedures set forth in [13 CFR § 121.1001 1103](#). Your challenge must be timely and set forth specific alleged grounds. The contracting officer is required to forward the challenge to SBA for a size determination.

**14. What about small business size standards?**

SBA has issued a new table of small business size standards for industries as they are described in NAICS. The new standards took effect on October 1, 2000. SBA revised the size standards for inflation effective February 22, 2002.

**15. Where can I find the new table of size standards based on NAICS?**

SBA has posted the Table of Small Business Size Standards matched to North American Industry Classification System (NAICS) on its Website.

## **Small Business Innovation Research - SBIR**

**1. What is the SBIR Program?**

The Small Business Innovation Research (SBIR) Program is a highly competitive three-phase award system which provides qualified small business concerns with opportunities to propose innovative ideas that meet the specific research and research and development needs of the Federal Government.

**2. What are the three phases of the SBIR Program?**

Phase I is a feasibility study to evaluate the scientific and technical merit of an idea. Awards are for periods of up to six months in amounts up to \$100,000. Phase II is to expand on the results of and further pursue the development of Phase I. Awards are for periods of up to two years in amounts up to \$750,000. Phase III is for the commercialization of the results of Phase II and requires the use of private sector or non-SBIR Federal funding.

**3. Do you have to be a Phase I awardee in order to be considered for Phase II of a project?**

Yes.

**4. What is the small business size standard for purposes of the SBIR Program?**

A small business concern for purposes of award of any funding agreement under the SBIR Program is one which, including its affiliates, has a number of employees not exceeding 500.

**5. How can a small business concern obtain funding under SBIR?**

A small business can obtain funding under SBIR by being the recipient of a competitively awarded SBIR funding agreement.

**6. What is an SBIR funding agreement?**

An SBIR funding agreement is a contract or grant entered into between an SBIR participating Federal agency and a small business concern for the performance of experimental, developmental, or research work funded by the Federal Government.

**7. Does the Small Business Administration make any awards under the SBIR Program?**

No. The SBA has authority and responsibility for monitoring and coordinating the Government-wide activities of the SBIR Program and reporting its results to Congress.

The Federal agencies participating in SBIR have the responsibility for:  
(a) selecting SBIR topics (b) releasing SBIR solicitations (c) evaluating SBIR proposals (d) awarding SBIR funding agreements on a competitive basis

**8. Who are the participants in the SBIR Program?**

The following Federal agencies are eligible to participate:  
Department of Agriculture Department of Commerce Department of Defense  
Department of Education Department of Energy Department of Health and  
Human Services Department of Transportation Environmental Protection Agency  
National Aeronautics and Space Administration National Science Foundation

**9. Can a firm go directly to a Phase II award without having to compete for Phase I?**

No. The SBIR Program was created for NEW innovations to meet existing Federal R&D needs. The results of a Phase I are a determining factor in deciding whether there will be a Phase II award to continue the effort.

**10. Does SBA designate any of the topics cited in SBIR solicitations or make any awards under SBIR?**

No. The legislation governing the SBIR Program gives unilateral authority and responsibility for these functions to each of the Federal agencies participating in the program.

**11. Since SBIR is a program to assist small business innovators, can SBA or the other Federal participating agencies provide direct funding for a project which a firm has initiated on its own?**

No. SBA does not fund SBIR projects and such an endeavor would be considered an unsolicited proposal, which is outside the scope of the SBIR Program.

**12. Is a small US firm still eligible to compete for an SBIR award if it forms a 50-50 joint venture with a nonprofit or foreign firm?**

No.

**13. Are foreign-based firms eligible for SBIR awards?**

No. To be eligible for award of SBIR funding agreements, a small business concern has to meet the following qualifications:  
be independently owned and operated principal place of business is located in the United States at least 51 percent owned or in the case of a publicly owned

business, at least 51% of its voting stock is owned by United States citizens or lawfully admitted permanent resident aliens.

**14. Are nonprofit concerns eligible for SBIR awards?**

No.

**15. May a portion of an SBIR award be subcontracted?**

For Phase I, a minimum of two thirds of the research and/or analytical effort must be performed by the proposing firm, and for Phase II, a minimum of one-half of the research and/or analytical effort must be performed by the proposing firm.

**16. Can a Federal agency other than the one originating the Phase I award make the Phase II award under the same SBIR topic?**

No. Awards of this type would be the result of an unsolicited proposal, and therefore, would be considered outside the scope of the SBIR Program.

**17. What is the difference between SBIR solicitations and the SBIR Pre-Solicitation Announcement?**

SBIR solicitations are specific Requests for Proposals released by the Federal agencies participating in the program which may result in the award of Phase I SBIR funding agreements.

SBIR Pre-Solicitation Announcements, released by SBA, contain pertinent data on SBIR solicitations that are about to be released by the participating Federal agencies.

**18. Will SBA provide funds for SBIR commercialization?**

No. Private sources of capital should be used. However, SBIR awardees are encouraged to seek information on all of the services that SBA makes available to the small business community.

**19. How does the Small Business Administration define "small business concern" for the purposes of the SBIR program?**

It is defined as a concern that, on the date of award for both Phase I and Phase II funding agreements:

is organized for profit, with a place of business located in the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor; is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture; is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and has, including its affiliates, not more than 500 employees.

**20. Will innovations that have been patented or have patents pending be considered under SBIR?**

No. SBIR is a program for NEW high tech innovations.

**21. Can participating Federal agencies provide funds for SBIR commercialization?**

No. Private sources of capital should be used. However, the agencies can provide support for technical assistance. SBIR awardees are encouraged to seek information on all of the services made available to the small business community.

**22. Are data rights protected and for what length of time?**

Data rights are protected by agencies for a period of not less than 4 years from delivery of the last deliverable under the Phase I, II, or III award.

## **Small Business Investment Companies (SBIC)**

**1. What is the SBIC Program?**

The Small Business Investment Company (SBIC) program, part of the U.S. Small Business Administration (SBA), was created in 1958 to fill the gap between the availability of venture capital and the needs of small businesses in start-up and growth situations.

**2. What is the current size of the program?**

It's a little-known fact, but the federal government is the largest single investor in U.S. private equity funds. At the end of FY 2003, SBA had close to \$5.5 billion invested in 435 funds, plus another \$3.7 billion in available commitments. Together with private capital topping \$12 billion, the program totals over \$21 billion in private equity capital dedicated to America's entrepreneurs.

**3. What has the SBIC program done to expand the availability of capital in the private equity market?**

SBIC investing, as a subset of the overall venture capital industry, is responsible for the creation of millions of jobs, billions of dollars in corporate revenues, billions of dollars in federal and state taxes paid, and countless improvements to our health, safety and way of life. Venture capitalists are very "hands-on" investors, adding corporate value in many ways beyond financing growth.

**4. How does the SBA participate in an SBIC?**

The government itself does not make direct investments or target specific industries. Essentially, the SBIC program is a "fund of funds" – meaning that portfolio management and investment decisions are left to qualified private fund

managers. As a result, SBA has very minimal direct involvement in an SBIC's portfolio management operations.

## **5. What are the requirements for obtaining an SBIC license?**

SBICs must be privately managed, for-profit investment companies formed to provide equity and/or debt capital to U.S. small businesses. SBICs are licensed by the SBA, which invests alongside private investors.

An experienced team of private equity managers must secure minimum commitments from private investors of either \$5 million (for a debenture fund) or \$10 million (for an equity fund). For every \$10 million in private equity, SBIC licensees are eligible to receive up to a \$20 million SBA commitment (2:1 public-private leverage), substantially enhancing prospective portfolio returns.

The total size of an SBIC typically ranges from \$30 million to \$170 million. SBICs may only invest in "small businesses" defined as: net worth less than \$18 million and prior two years' average after-tax income less than \$6 million.

## **6. What are the benefits to fund managers of forming an SBIC?**

SBICs supplement their own private capital through guarantees of debentures or participating securities up to three times private capital, depending on which security the SBIC chooses. This capital is provided at a significantly lower cost than traditional limited partner equity investments. The effect of the leverage can have a very powerful impact on return enhancement to fund managers.

Additional benefits to fund managers include:

- Concentration of a large portion of funding in one LP reduces fundraising burden and administrative / reporting requirements
- Community Reinvestment Act credits available to financial institutions that invest in SBICs open up a source of private funds to SBICs that they might not have otherwise
- Enhanced deal sourcing through network of over 400 SBICs
- SBIC MAQ application process helps to crystallize strategy and can be presented to private investors as part of a larger marketing package
- SBA's financial reporting criteria help SBICs develop standardized and comprehensive investor relations processes
- SBA's licensing process is well defined, with early milestones which help potential licensees assess their likelihood of funding early on.

## **7. What investment styles and fund types fit best with the SBIC Program?**

No particular style or type is preferred. Among the existing SBICs, SBA holds a diversified portfolio across multiple investment styles and fund types. It is important to note that both the Participating Securities and Debentures are a 10 year obligation. Therefore, strategies with investment time horizons in excess of 10 years, such as early stage (pre-FDA approval) bio-tech, are often not a good fit for the Program.

Our [SBIC Program Basics](#) (under the About Us section of the website) summarizes your fund's structure choices.

## **8. How do I know if I have what it takes to receive an SBIC license?**

The first step is to evaluate your team and strategy relative to the SBIC Program's general management qualification guidelines, including:

- Private equity investing experience and strong "deal flow" of the same type that the proposed fund would perform.
- At least two general partners who have five or more years of "decision-making" experience as a principal in a private equity fund (rather than as an agent such as consultant, investment banker, broker, etc.)
- Realized track record of superior returns, placing a fund in the upper half of performance for venture funds of the same vintage year and style.
- Managerial, operational or technical experience that can add value at the portfolio company level.
- Cohesive management team, with complementary skills and history of working together.

The full SBIC licensing process is outlined in detail at <http://www.sba.gov/INV/rightforyou.pdf>

## **9. What are Low/Moderate Income ("LMI" ) Debenture Securities?**

Licensed debenture SBICs are eligible to use LMI Debentures, which are deferred interest debentures that are issued at a discount and require no interest payments or SBA annual charge for the first five years. LMI Debentures are available in 5 and 10 year maturities. The use of LMI Debentures is restricted to LMI qualified investments. Qualified investments are small businesses in which 50% or more of the employees or tangible assets are in a LMI Zone (as defined by applicable government agencies) or 35% of the full time employees of the small business have primary residences in a LMI Zone.

## **10. What portion of state economic development or state government agency capital can be counted toward regulatory capital?**

A maximum of 33% of regulatory capital can come from state or local government entities.

## **11. Can an SBIC have a single private LP?**

No. An SBIC must have diversity in its private LP funding base. Investment by a single large LP is restricted to 70% of private capital.

## **12. Are claw backs permitted for private LPs?**

No, "claw back" provisions to protect private limited partners are not permitted. For more information on acceptable provisions refer to the Model Participating Partnership Agreement at <http://www.sba.gov/INV/modelparticipating.doc>

## **13. How does the SBA's liquidity preference affect private limited and general partners?**

In exchange for a substantially lower portion of the SBIC's profits, the SBA requires a liquidity preference ahead of the other private partners of the fund. This liquidity preference mandates that the SBA receive its principal plus Prioritized Payments prior to any distributions being made to private Limited or General Partners.

**14. How do SBIC profit distributions differ from non-SBIC funds?**

Profit distributions are applicable to Participating Securities SBICs only. As a Preferred Limited Partner, the SBA is entitled to receive a preferred return (referred to as the "Prioritized Payment") prior to any distributions being made to Private General and Limited Partners. The rate for the Prioritized Payment is a function of the 10 Year Treasury Bond Rate plus a spread (current rates posted at <http://www.sba.gov/INV/trustrates.html>) plus an annual charge by SBA (current rates posted at <http://www.sba.gov/INV/annual.html>).

SBA also receives a Profit Participation when profit distributions are made to the Private General and Limited Partners. The amount of SBA's Profit Participation is determined using two factors: the 10 Year Treasury Bond Rate and the ratio of Participating Securities to Private Capital. For example, if Rates are 4.00% and an SBIC has utilized two full tiers of leverage, the Profit Participation rate charged by SBA would be 6.00%.

This structure differs from a traditional fund structure in that the SBA has an interest in a substantially lower portion of the investment company profits than a traditional LP.

**15. How does SBA calculate the "Prioritized Payment" amount?**

The "Prioritized Payment" is calculated using the 10 Year US Treasury Bond rate plus a spread and an applicable SBA fee. Current rates are posted at <http://www.sba.gov/INV/trustrates.html>

**16. How does the SBA calculate the "Profit Participation Rate"?**

The amount of SBA's Profit Participation is calculated using two factors: the 10 Year Treasury Bond Rate and the ratio of Participating Securities to Private Capital. For example, if Rates are 4.00% and an SBIC has utilized two full tiers of leverage, the Profit Participation rate charged by SBA would be 6.00%.

**17. How is the Debenture rate of interest calculated?**

The rate of interest is based on the 10-year Treasury rate plus a market-driven spread, currently about 70-80 basis points.

**18. What are the historical returns of SBICs as an asset class?**

The SBIC program is involved in a medium term project to develop historical returns of SBICs as an asset class, particularly since the inception of the Participating Security (equity) funds in 1994.

**19. What are the rules governing control situations by an SBIC?**

An SBIC is permitted to control, either directly or indirectly, a small business for a maximum period of 7 years. With SBA's prior written approval, an SBIC may retain control for such additional period as may be reasonably necessary to complete divestiture of control or to ensure the financial stability of the portfolio company.

**20. How does SBA protect against fraud and other wrongdoing in the SBIC program?**

Prior to receiving an SBIC license, the applicant must undergo a rigorous licensing process. Upon receiving a license, the SBIC is subject to an annual regulatory audit by the Office of SBIC Examinations. These audits are designed to ensure that SBICs operate in conformance with the regulations or to uncover those instances when they have failed to do so. Potential fraud is most usually uncovered after an SBIC has been transferred to the Office of SBIC Liquidation. These cases may be referred to the Office of the Inspector General for investigation and possible referral to the Assistant US Attorney for prosecution.

## **Small Business Technology Transfer - STTR**

**1. What is the STTR Program?**

STTR is a highly competitive three-phase program that reserves a specific percentage of Federal research and development funding for award to small businesses in partnership with nonprofit research institutions to move ideas from the laboratory to the marketplace, to foster high-tech economic development and to address the technological needs of the Federal Government.

**2. What are the three phases of the STTR Program?**

Phase I is the startup phase for the exploration of the scientific, technical, and commercial feasibility of an idea or technology. Awards are for periods of up to one year in amounts up to \$100,000. Phase II is to expand Phase I results. During this period the R&D work is performed and the developer begins to consider commercialization potential. Awards are for periods of up to two years in amounts up to \$500,000. Phase III is the period during which Phase II innovation moves from the laboratory into the marketplace. There is no STTR funding in this phase.

**3. Must you be an established business when you propose?**

No. However, you must be organized as a business at the time of award.

**4. Who can propose?**

Only small for-profit businesses can propose.

**5. What is size criteria?**

A small business concern with 500 or fewer employees including subsidiaries and/or affiliates. The size of the nonprofit collaborator is not relevant.

**6. How are future rights to projects developed under STTR determined?**

The small business concern and the research institution must develop a written agreement prior to a Phase I award. This agreement must be submitted to the awarding agency if requested.

**7. Who are the Federal participants in the STTR Program?**

The following five Federal departments and agencies are eligible to participate: Department of Defense Department of Energy National Aeronautics and Space Administration Department of Health and Human Services National Science Foundation.

**8. Can I skip Phase I and begin at Phase II?**

No. Phase II awards can only be awarded to firms having successfully completed Phase I at the same awarding agency.

**9. Does SBA make any STTR awards?**

No. The five participating Federal agencies have unilateral procurement authority.

**10. Can you subcontract in STTR -- either party or both?**

Yes. Either party may subcontract or they may jointly fund a subcontractor.

**11. Can a small business concern participate in both SBIR and STTR simultaneously at the same or differing agencies?**

Yes, but they may not perform the same or essentially similar work under more than one contract or grant. Collecting funds more than once for the same work is fraud.

**12. Must a successful Phase I small business concern use the same institution in Phase II?**

No. The small business concern can change research institutions in Phase II.

**13. Will an unsolicited proposal be accepted in the STTR Program?**

No. Proposals must respond to the solicitation as published by one or more of the participating agencies.

**14. Who is the prime contractor or grantee?**

The small business concern.

**15. Must the small business concern and/or the research institution be located in the United States?**

Yes. Both the small business concern and the institution must be on U.S. soil.

**16. Can a Phase III follow-on contract for funding be made, without competition, to the firm that successfully completes Phase I and II.?**

Yes, the firm may be given a sole source contract in Phase III for further work or production.

**17. What is the minimum percent breakout for small firms and institutions in conducting research?**

Small business concerns must perform at least 40% and research institutions must perform at least 30% of the work.

**18. Who resolves problems concerning STTR topics, awards, audits, etc.?**

The agency issuing the Program Solicitation. SBA handles program policy for across the board uniformity, reporting to Congress and program oversight.

**19. Where can I go for further information on how I get started or if there is other assistance available?**

Information can be obtained from SBA Online Bulletin Board by dialing: 1-800-697-4636.

To receive information on other SBA programs, please contact your local SBA office or call the SBA Answer Desk: 1-800-8-ASK-SBA.

## **Small Disadvantaged Business (SDB)**

**1. What is the difference between 8(a) certification and SDB certification?**

The 8(a) program is a business development program that offers a broad scope of assistance to socially and economically disadvantaged firms. SDB certification strictly pertains to benefits in Federal procurement. 8(a) firms automatically qualify for SDB certification.

**2. What are SDB program benefits?**

The program offers several important incentives:

1. **price evaluation adjustment:** qualified SDBs receive a price evaluation adjustment of up to 10 percent on procurements where mandated by regulation. The price evaluation adjustment for SDBs bidding as primes became effective October 1, 1998. Regulations mandate this approach in competitive acquisitions over the simplified acquisition threshold (usually \$100,000) where the SIC Code for the prime contract is authorized by U.S. Department of Commerce benchmarks. The price evaluation adjustment does not apply to 8(a) acquisitions and small business set-asides.

2. **evaluation factor:** qualified prime contractors can receive a credit when using SDBs as subcontractors. This evaluation factor for SDB participation became effective January 1, 1999. The incentive applies only to competitive negotiated acquisitions over \$500,000, or \$1,000,000 in construction. The evaluation factor does not apply to small business set asides, 8(a) acquisitions, or contracts performed entirely outside the United States. The evaluation factor for SDB participation allows credit for subcontractors only in the SIC codes authorized by the US Department of Commerce benchmarks and requires that all SDBs be certified by the SBA. Once certified, firms remain on the SBA's list of SDB-certified firms for a period of three years.

### 3. How do I apply for SDB certification?

You must fill out an application and send it to:

Office of Small Disadvantaged Business Certification and Eligibility  
409 Third Street, S.W. - 8th Floor  
Washington, D.C. 20416

[There are several different applications](#) for various business legal structures. The SBA notifies applicants within 15 days, if the application is complete. SBA renders its decision within 60 days.

Private Certifiers are no longer available. All applications are being processed by the Office of Small Disadvantaged Business Certification and Eligibility in Washington DC.

### 4. Checking on the status of your SDB Application?

If you are checking on the status of your SDB application, please send an e-mail to [SDB@sba.gov](mailto:SDB@sba.gov) ([SDB answer desk](#)). Please allow at least 15 days from the date the application is sent, for the application to be received and assigned. The SDB answer desk will respond identifying which Business Opportunity Specialist (BOS) is working on your case and you may then contact the Business Opportunity Specialist (BOS) directly.

## Women's Business Ownership

### 1. Does SBA have grants for businesses?

No. The SBA does not provide start-up grants or other grants to individuals or businesses. See Federal grant opportunities at <http://www.sba.gov/expanding/grants.html>. SBA does offer a variety of loan programs, which can be found at the following link: <http://www.sba.gov/financing/indexloans.html>.

The SBA does have a grant program available to private, non-profit organizations to run women's business centers. These centers provide business training, counseling and other assistance to women business owners and women who want to start businesses.

## **2. How do I finance my business?**

Women entrepreneurs have many options available to them to finance their businesses. Due diligence and gathering the facts are your most important first steps. You need to determine how much capital is needed, available sources of funds, how to write a loan proposal, how to prepare financial statements, and other information. The following key links will be very helpful:

<http://www.business.gov/topics/finances/> and  
<http://www.sba.gov/expanding/grants.html>.

## **3. How do I get federal contracts?**

Federal contracts can be lucrative to any business. The first step is understanding how to successfully obtain such contracts. The SBA has prepared a Guide to Federal Contracts for Women. [Guide to Federal Contracts for Women](#).

Also, the government sponsors a web portal designed to assist women to sell to the federal government. The powerful portal can be accessed at:  
<http://www.womenbiz.gov/>.

## **4. How do I find a mentor?**

A business mentor can be very helpful to a starting or growing a business. SBA sponsors the WNET program (Women's Network for Entrepreneurial Training) to help women entrepreneurs find mentors. More information about this program can be found at: <http://www.wnet.bz/>.

## **5. How do I sell overseas?**

Much information is available to women business owners who want to export. An excellent resource is a publication prepared by SBA's Office of International Trade. It is titled, Breaking Into the Trade Game – A Small Business Guide to Exporting. The comprehensive publication can be found at:

<http://www.sba.gov/oit/info/Guide-To-Exporting/BITG3rd.pdf>.

## **6. Is there help for women with special needs?**

Information and resources for women with special needs can be accessed at:  
<http://http://www.sba.gov/ada/>.

## **7. Is there special help for young women entrepreneurs?**

The future of American enterprise is being shaped by young people of today who are filled with dreams, have a passion for change, hope for the future and a desire to succeed. Pursuing business knowledge at an early age is an important ingredient for future success.

The following resources are designed specifically for young people who are interested in following their entrepreneurial dreams.

[Teen Entrepreneur Guide](#)  
[Discover Business](#)  
[YoungBiz](#)

[Kids Learning Programs](#)  
[Center for Entrepreneurial Leadership](#)

## **8. Is help available for business owners after a natural disaster?**

Assistance is available at: <http://www.sba.gov/DISASTER/>.

## **9. What is the Women-Owned Small Business (WOSB) Procurement Program?**

The Federal Acquisition Streamlining Act of 1994 (P.L.103-355) (FASA) established the government wide goal for participation by small business concerns owned and controlled by women at not less than 5% of the total value of all prime contract and subcontract awards for each fiscal year.

The WOSB Procurement Program has a required goal set by law, but there are no set-aside procurement programs or incentives for awarding a contract to a woman-owned small business. Therefore, at the U.S. Small Business Administration (SBA), we are determined to work with other federal departments and agencies to establish aggressive goals and to develop meaningful initiatives in cooperation with other SBA program areas to ensure that the goal for WOSB is achieved.

SBA is actively working to foster women's share of the Federal marketplace. At SBA we are implementing initiatives that will help increase women's share of the Federal procurement dollars, and we are actively searching for new and innovative methods. Following are the current WOSB Procurement Initiatives underway at SBA to help women-owned small businesses do business with the federal government and meet the government wide goal established by FASA.

## **10. How does the federal government define a "women-owned small business"?**

The Federal Acquisition Regulations (FAR) defines a "women-owned small business concern" in Part 19.001 Definitions, as follows:

"Women-owned small business concern means a small business concern—(a) which is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (b) whose management and daily business operations are controlled by one or more women."

## **11. Is there any advantage to being a woman-owned business when attempting to do business with the federal government?**

Because of the 5 percent procurement goal for women established by FASA, agencies have a strong incentive to look for qualified women-owned businesses when filling contractual needs.

Most federal agencies have designated a point of contact for women business owners in the Offices of Small and Disadvantaged Business Utilization (OSDBUs). These contacts, or the OSDBUs, can help you determine the appropriate procurement personnel to whom you should market.

Also, you can request information on procurement fairs, agency procurement forecasts, and other research that will help you profit in the federal marketplace. SBA ON-LINE FOR LISTINGS: 1-800-697-4636.

**12. Must a woman-owned small business be certified in order to do business with the federal government?**

The federal government does not require any formal certification for women-owned small businesses that are proposing as prime contractors on federal procurements. If your business meets the definition, as stated in question 2, and you are submitting a proposal for Federal procurement, you can "self-certify." The reason that there is no certification requirement for prime contracts is because there are no preference programs to award prime contracts to women-owned small business. However, if you are submitting a proposal for a federal subcontract (and sometimes in the private sector as a prime) the prime contractor may require certification that your business is in fact woman-owned.

NOTE: To self-certify your firm as a WOSB with the federal government, you must meet the definition listed in FAR 19.001.

If you are interested in checking on the requirements for WOSB certification, you can contact the following organizations regarding the procedures and benefits of being certified as a woman-owned business.

Women's Business Enterprise National Council 1120 Connecticut Avenue, NW, Suite 950 Washington, DC 20036 Phone: (202) 872-5515 Fax: (202) 872-5505 Internet: <http://www.wbenc.org/>

National Association of Women Business Owners Corp. 1411 K Street, NW, Suite 1300 Washington, DC 20005-3407 Phone: (202) 347-8686 Fax: (202) 347-4130 Internet: <http://www.nawbo.org>

**13. What type of training is available for women interested in starting or expanding their businesses?**

The SBA offers current and potential businesses access to a variety of services and resources, including pre-business workshops, and technical and management assistance. An excellent resource for these programs is the Service Corps of Retired Executives. SCORE volunteers provide expert advice and business counseling based on their many years of firsthand experience and shared knowledge on virtually every aspect of business. To locate the nearest SCORE volunteer call the SBA Answer Desk at 1-800-U-ASK-SBA or go to [www.sba.gov](http://www.sba.gov).

In addition, SBA offers specific assistance to women-owned businesses through women's business ownership representatives in SBA district offices. Your WBOR will be able to inform you about local resources and schedules of specific SBA programs that may be useful to you. To locate the nearest WBOR, call the SBA Answer Desk at 1-800-827-5722 or go to [www.sba.gov](http://www.sba.gov).

You may want to check the SBA home page for business resources such as small business development centers (SBDCs) and business information centers (BICs)

in your area. The SBDC Program is designed to provide up-to-date counseling, training, and technical assistance in all aspects of small business development. The BICs are a resource with counselors, business reference material, and computer software to help you with all aspects of starting or expanding your business. You can locate the closest SBDC or BIC on the Internet at: [www.sba.gov](http://www.sba.gov) and click on "Local SBA Services."

The SBA's Online Women's Business Center ([www.onlinewbc.gov](http://www.onlinewbc.gov)), is a state-of-the-art Internet site to help women expand their businesses. This free, interactive Web site, offers women information about business principles and practices, management techniques, networking, industry news, market research and technology training, free, online counseling, and hundreds of links to other sites, as well as information about the many SBA services and resources available to them.

#### **14. How can I get a grant or loan to start up my business?**

There is no federal grant money for individual business owners. Even though many publications and talk shows publicize grants to small businesses, the only grants available are for non-profit women's business centers that provide training for women who want to start or expand their businesses. The other grant program is for research and development for technology-based products and services for the government. However, the SBA has an excellent financial assistance program, which encourages bankers to help small businesses. This "loan guaranty" program is the agency's priority. Apply for a business loan at your bank. If financing is unavailable on reasonable terms from the lender, ask the bank to submit your loan application to the SBA for consideration. In partnership with your local bank, the SBA may offer a government guaranty of a loan to be made by that lender. SBA programs are especially valuable for new business start-ups and in instances where collateral is weak and/or a longer repayment term is needed. The SBA loan application package can be as simple as a one-page form, and the SBA can approve an application in 1-7 days.

Credit-worthy potential small business owners and existing small business owners who require capital to start or expand their business may find that SBA's financial assistance programs can help them secure the financing that they need. SBA has no funding for direct loans.

For information on SBA loan programs contact the SBA office closest to you or call the SBA Answer Desk at 1-800-8-ASK-SBA. Information is also available on the SBA Website at: [www.sba.gov](http://www.sba.gov) ; click on "Financing" to see the variety of loan programs that are available through the SBA. Once you choose a loan program, you will see how the program works and whom to contact for more information about that specific loan program.

#### **15. Where do I get information on small business taxes?**

Assistance can be found at the IRS Web site: <http://www.irs.treas.gov/>.

#### **16. Do I need my own money to start a business?**

Yes. Any lenders or investors want to see that you have a considerable amount of your money in the business: your money is at risk as much as their money. If a

business owner does not have owner equity in the firm, it is more tempting to walk away from a failing business because there is little to lose.

### **17. Where do I get "start-up" money?**

The answer will vary depending on the amount of money you need, the length of time you have been in business, your geographic location, your personal credit rating, your ability to provide collateral, the viability of your business idea, whether you are looking for debt or equity financing, etc.

Explore the following sources of capital: banks (developing a relationship with a bank and a banker is key); small business development centers (while they may not have access to funds, they will almost certainly have resources and contacts); the "Friends and Family" bank (this is probably the most common and most successful source of funds for start ups); community development centers (many of them have money to lend); venture capital (for those who don't mind giving up "control" of their business); angel investors; the use of supplier/vendor financing (have a supplier extend 120 – day terms instead of the usual 30 while you extend only 30-day terms to your customers); seller financing; end-user funding (having the ultimate customer finance the research and development of the product).

The SBA also offers the Prequalification Loan Program, which may permit you to pre-qualify for an SBA loan guarantee before applying to a financial institution. SBA approval is based on ability to pay, not collateral. Another option is the SBA Microloan Program, which provides short-term start-up or expansion loans of up to \$25,000. Loans are made through non-profits with experience in lending and technical assistance. For more information, see [www.sba.gov](http://www.sba.gov), and click on "Financing."

### **18. Are there other sources of financing for start-up businesses?**

Yes. First consider your personal resources. Ask your bank about a personal loan and remember that a home equity loan is still the cheapest and fastest loan to obtain. Next, approach family and friends – those who know you best and who want to see you succeed. Show them the opportunity of investing in your business. Let them have an equity stake in your business, or if they prefer to lend you the money, write up an informal contract and pay back the loan as if you were working with a bank.

Factoring companies provide money lent upon receivables. If you have a product or service that you have already provided and billed for, but you do not expect payment for several weeks, a factoring company will quickly provide you up to 80 percent of the total invoice. This cash helps to cover the cash flow of the company until you get paid.

### **19. Should I go to a venture capitalist?**

It depends on the type of business you own. Venture capital firms want to invest in companies where they can invest over \$1 million and receive a 30 percent return in three to five years.

**20. I am working on a new computer theory and need research funds to continue my work. How can I get financing for my project?**

The Small Business Innovation Research (SBIR) program may be useful. It is accessed electronically, through the SBA Online Bulletin Board. To access the SBA online Bulletin Board, dial: 1-800-697-4636. To access this information, go to the SBA Web site at: [www.sba.gov/](http://www.sba.gov/). If you do not have access to a personal computer, you may be able to find Internet capability at your public library or local university.

**21. I have been rejected by my bank and I am looking for a loan for a start up business in my home. What do I do?**

We would suggest that you contact a small business development center or women's business center in your area for help in strengthening your current business plan and loan application. Consider submitting a loan application to another bank, or work with your SBA district office to prequalify for an SBA guaranteed loan. If the amount of money that you need is less than \$25,000, consider SBA's Microloan Program. This program was created to reach new markets, such as women, minorities, and businesses in rural and urban areas. For more information on SBA's small business development centers and women's business centers, see the SBA's Website, [www.sba.gov](http://www.sba.gov) or the Online Women's Business Center at [www.onlinewbc.gov](http://www.onlinewbc.gov).

**22. I recently received a small business loan because my business is expanding. What other services can you provide?**

If you have been in business at least one year, check with your local SBA office about the Women's Network for Entrepreneurial Training (WNET). This program was launched in 1990 and was designed to match successful women business owners with newer women business owners to share their experiences and expand the network for women business owners. You may also investigate organizations in your community, such as the National Association of Women Business Owners (NAWBO), National Association of Female Executives (NAFE), and the Business and Professional Women (BPW). Your Chamber of Commerce may also be able to identify programs of interest and services available in the area.

**23. How do I determine if my product/service will sell? Do I need to hire someone else to do my market research?**

There is no easy answer to this question. Generally speaking, there are many low-cost or free resources that can assist you in your market research. For example, many public libraries have Info-Connect services that can provide valuable information. The Department of Commerce has census data available. You can certainly conduct their own market surveys -- both written and verbal (by telephone or mail). You must understand your competition (their strengths and weaknesses and how their business stacks up); you must understand what your business's "added value" is -- what positively distinguishes your product or service from your competition's. You may conduct your own informal focus groups to determine if there is a demand for your product or service and/or contact the association(s) under which your product or service falls for information on markets (many associations have departments that collect market

data on an ongoing basis). You may even choose to hire an outside market research firm, but in many cases, this is not necessary.