

**“THE 8(a) PROGRAM: OVERVIEW AND NEXT STEPS TO PROMOTE  
SMALL BUSINESS SUCCESS”**

**TESTIMONY**

**BY**

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**BEFORE THE**

**The COMMITTEE ON SMALL BUSINESS SUBCOMMITTEE ON CONTRACTING  
AND INFRASTRUCTURE**

**HEARING - 11:00 A.M. - RAYBURN HOUSE OFFICE BUILDING**

**ROOM 2350**

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Chairman Mfume and other distinguished Members of this Committee, I am pleased to present testimony in support of your examination of how the U. S. Small Business Administration’s (SBA) 8(a) Business Development (BD) Program currently works and the resources it provides to small businesses. The purpose of this examination is to identify ways to modernize the program and improve its effectiveness.

**PROGRAM HISTORY AND PURPOSE**

The origin of the 8(a) program can be found in Public Law 77-603, June 11, 1942, which created the Smaller War Plants Corporation. This Corporation had broad authority to contract with the United States to furnish goods and services to the government and to arrange for the performance of these contracts by subcontracting to small businesses or others. The Defense Production Act amendments of 1951, Public Law 82-96, created the independent Small Defense Plants Administration, which was generally given the same authorities as the Smaller War Plants Corporation

The 8(a) authority under Public Laws 82-96 and 77-603 was not used but the concept survived when SBA was established. In this regard, the Small Business Act of 1953 authorized SBA to enter into contracts with federal agencies and to subcontract the

work to small businesses. However, for 15 years SBA did not use this authority which was Section 8(a) authority because it believed that the effort to start and operate such a program was not worthwhile in terms of developing small businesses.

The 8(a) program was started as a result of Executive Orders issued by President Johnson in response to the 1967 Report of the Commission on Civil Disorders, commonly called the Kerner Commission. The finding that triggered the 8(a) effort was that disadvantaged individuals did not play an integral role in America's free enterprise system, in that they enjoyed no appreciable ownership of small businesses and did not share in the community redevelopment process. The report recommended that steps be taken to increase the level of business ownership by minorities so that they would have a better opportunity to materially share in the competitive free enterprise system.

In 1967, President Johnson ordered that the section 8(a) authority be used to direct contracts to businesses locating plants in distressed urban areas in order to create jobs. After rioting in inner cities in 1967, section 8(a) authority was used for the first time in support of the Test Cities Program in 12 cities. Sole source federal contracts were provided to induce businesses to locate in areas of high unemployment. This effort was short lived. The effort to promote more employment in inner cities was turned over to the National Alliance for Business JOBS Program.

In 1969, SBA redesigned the program to provide federal contract support for small firms owned by socially or economically disadvantaged individuals. This use of the Section 8(a) authority was accomplished through SBA administrative regulations. The 8(a) program grew to include, in a 10-year period from 1970 to 1980, approximately 2000 firms. Throughout this period the program was subject to abuse and fraud, particularly due to the intrusion of "front" companies.

In an attempt to correct the abuses, Congress enacted Public Law 95-507 in 1978 to provide the program with statutory authority. The law provided a number of measures to shift the program's focus to business development and required program participants be at least 51% owned and controlled by socially and economically disadvantaged individuals. The legislation was designed to foster business ownership by socially and economically disadvantaged persons and to promote the viability of businesses run by such persons by providing contract, financial, technical and management assistance.

The law created the position of Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD) to administer the 8(a) and 7(j) management and technical assistance programs. As a result of the inequitable determinations of eligibility by the field offices, P. L. 95-507 provided specific eligibility criteria and required that the AA/MSB&COD, now referred to as the Associate Administrator for 8(a) Business Development, make final determinations of program eligibility.

The law clarified the intent that the primary beneficiaries of the program would be socially and economically disadvantaged individuals. Socially disadvantaged

individuals were defined as those who have been “subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. The Law also included congressional findings that Black Americans, Hispanic Americans, Native Americans are presumed to be socially disadvantaged. Economically disadvantaged was defined for purposes of the 8(a) Program, as those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. Consequently, while the law provided a presumption of social disadvantage for members of certain minority groups, no one was presumptively economically disadvantaged. By regulation, SBA further defined an economically disadvantaged individual as one having an adjusted net worth of less than \$250,000 at the time of entry into the 8(a) Program (\$750,000 for continuing eligibility), unless SBA determined that such individual, despite not exceeding these thresholds, otherwise demonstrated that he/she had access to capital and credit.

Therefore, under the law, a minority or a non-minority could establish his/her eligibility to participate in the program if they could demonstrate that they met both of these requirements, along with all other conditions of eligibility. Additionally, SBA’s Associate Administrator for Minority Small Business and Capital Ownership Development was granted the authority to make determinations regarding the recognition of other groups or individuals as presumptively socially disadvantaged based upon criteria promulgated in regulations.

Under Section 7(j) the law authorized SBA, among other things, to provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under various SBA programs, noting that SBA shall give preference to projects which promote the ownership, participation in ownership, or the management of small business owned by low-income individuals and small businesses eligible to receive contracts pursuant to Section 8(a) of the Small Business Act. This authority was later further clarified by Public Law 100-656, to include the provision of financial assistance to individuals or entrepreneurs eligible for program assistance.

Unfortunately, even with P. L. 95-507 the program failed to develop viable competitive firms that graduated from the program. As a result of so few firms graduating from the program, Congress passed P. L. 96-481 in October 1980. This law required SBA to negotiate with all 8(a) firms a fixed period of time to participate and definite graduation dates.

Through regulations to implement P. L. 96-481, SBA established the fixed program participation term (FPPT) which limited a firm's participation in the program to an original term of up to 5 years with a possible extension of 2 years. Full implementation of these regulations took place on April 21, 1982.

On November 15, 1988, President Reagan signed into law the "Business Opportunity Development Reform Act of 1988", P. L. 100-656. This law provided for, among other things, competition in the 8(a) program for contracts above certain dollar thresholds; a nine year participation term divided into a four (4) year developmental stage and a five (5) year transitional stage requiring attainment of non-8(a) revenue at certain levels during program years five (5) through nine (9); an 8(a) loan program; establishment of the Division of Program Certification and Eligibility that would process applications within 90 days and conduct annual continuing eligibility reviews; Miller Act surety bond exemptions; the transfer of technology or surplus property; Walsh-Healey Act exemptions; business plan approvals after certification but prior to award of any 8(a) contracts; a transition management plan during the first year of participation in the transitional stage; required SBA to submit an annual report on the program to the Congress; and, made the AA/MSB&COD position career reserved.

In passing P. L. 100-656, Congress found that the 8(a) program remained a primary tool for improving opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals in the Federal procurement process and bringing such concerns into the nation's economic mainstream. Congress also found that although some progress had resulted from the program, it had generally failed to meet its objectives, which remained as valid in 1988 as when the program was initiated.

Evidence before the Congress in 1988 showed that the disadvantaged business program had thus far made unsatisfactory progress in removing discriminatory barriers to minority business success. That is, "Only six percent of minorities owned businesses and the average receipts per minority firm was less than 10 percent of the average receipts for all businesses." Minority businesses still only accounted for less than 1 percent of the nation's gross business receipts and employment.

Although the 8(a) Program was originally established for the benefit of disadvantaged individuals, in the 1980s, Congress expanded the program to include small businesses owned by four "disadvantaged" groups. The first owner-group to be included was Community Development Corporations (CDCs). A CDC is: a nonprofit organization responsible to residents of the area it serves which is receiving financial assistance under part 1 [42 USCS §§9805 et seq.] and any organization more than 50 percent of which is owned by such an organization, or otherwise controlled by such an organization, or designated by such an organization for the purpose of this subchapter [42 USCS §§9801 et seq.]. Congress created CDCs with the Community Development Act of 1981<sup>36</sup> and instructed the SBA to issue regulations ensuring that CDCs could participate in the 8(a) Program. In 1986, two additional owner-groups, Indian tribes and Alaska Native Corporations, became eligible for the 8(a) Program when Congress passed legislation providing that firms owned by Indian tribes, which included Alaskan Native Corporations (ANCs), were to be deemed "socially disadvantaged" for purposes of the 8(a) Program. In 1992, ANCs were further deemed to be "economically disadvantaged." The final owner-group, that of Native Hawaiian Organizations (NHOs), was recognized in 1988. An NHO was defined as: any community service organization serving Native Hawaiians in the State of Hawaii which—(A) is a nonprofit corporation

that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency, (B) is controlled by Native Hawaiians, and (C) whose business activities will principally benefit such Native Hawaiians.

Additionally, the list of presumptively socially disadvantaged individuals was expanded to include Asian Pacific Americans and Subcontinent Asian Americans and recent changes updated the economic disadvantaged eligibility thresholds. In that regard to be considered economically disadvantaged an individual must have an adjusted personal net worth that does not exceed \$750,000; an adjusted gross personal income averaged over the three preceding years that does not exceed \$350,000; and, the fair market value of all his or her assets (including his or her primary residence and the value of the applicant/Participant firm) does not exceed \$6 million.

## **PROGRAM OVERVIEW AND BENEFITS**

The 8(a) program can be a valuable tool for socially and economically disadvantaged small business owners. The program offers unique and valuable business assistance. Certified firms in the 8(a) program can:

- Efficiently compete and receive competitive and sole-source contracts;
- Receive one-on-one business development assistance for their nine-year term from dedicated Business Opportunity Specialists focused on helping firms grow and accomplish their business objectives;
- Pursue opportunity for mentorship from experienced and technically capable firms through the SBA Mentor-Protégé program;
- Connect with procurement and compliance experts who understand regulations in the context of business growth, finance, and government contracting;
- Pursue joint ventures with established businesses to increase capacity;
- Qualify to receive federal surplus property on a priority basis; and
- Receive free training from SBA's 7(j) Management and Technical Assistance program.

### *Competitive and Sole Source Contracts*

The 8(a) certification qualifies your business as eligible to compete for the program's sole-source and competitive set-aside contracts. The government authorizes sole-source contracts to 8(a) participants for up to \$7.5 million for acquisitions assigned manufacturing North American Industry Classification System (NAICS) codes and \$4.5 million for all other acquisitions. Entity-owned 8(a) program participants are eligible for sole-source contracts above these thresholds, but the Department of Defense requires approval of a formal justification if the 8(a) sole-source contract exceeds \$100 million; all other federal agencies require approval for sole-source 8(a) contract actions that exceed \$25 million.

### *Business Opportunity Specialists*

BOSs assist both prospective and existing 8(a) firms with questions related to the

application process, required forms, and the program's various eligibility, reporting, and performance requirements. BOSs also provide general business development assistance, assist with the firm's planning and establishment of goals, work with the firm as it develops and submits its required business plan, and ensure that the firm is on track regarding anticipated business growth. BOSs "on-going responsibility is to assist the Participant in developing its business to the fullest extent possible so that it attains competitive viability during its program participation term, and maintains viability thereafter." As directed, BOSs accomplish this by (1) helping the firm identify its strengths and weaknesses; (2) providing advice, counsel, and guidance in the areas of marketing to the federal government, prime contracting, and contract administration; (3) referring the firm to appropriate internal and external resources for assistance in technical, management, and financial matters; and (4) monitoring the firm's progress in the program and its compliance with program requirements.

### *Mentor-Protégé Program Participation*

8(a) participants can get valuable business development help from their mentors in several areas, including:

- Guidance on internal business management systems, accounting, marketing, manufacturing, and strategic planning
- Financial assistance in the form of equity investments, loans, and bonding
- Assistance navigating federal contract bidding, acquisition, and the federal procurement process
- Education about international trade, strategic planning, and finding markets
- Business development, including strategy and identifying contracting and partnership opportunities
- General and administrative assistance, like human resource sharing or security clearance support.

A mentor and its protégé can joint venture as a small business for any small business contract, provided the protégé individually qualifies as small. The joint venture may also pursue any type of set-aside contract for which the protégé qualifies, including contracts set aside for 8(a), service-disabled veteran-owned, women-owned, and HUBZone businesses. Visit the Joint Venture program page more information.

### *JOINT VENTURES*

Joint venture benefits to participants include:

- Collective representation of past performance;
- Shared costs and resources; and,
- Leveraging the other partner's experience and market share.

A mentor and its protégé can joint venture as a small business for any small business contract, provided the protégé individually qualifies as small. The joint venture may also pursue any type of set-aside contract for which the protégé qualifies, including contracts set aside for 8(a), service-disabled veteran-owned, woman-owned,

and HUBZone businesses.

### *SURPLUS PROPERTY*

Pursuant to 15 U.S.C. 636(j)(13)(F), eligible Participants may receive surplus Federal Government property from State Agencies for Surplus Property (SASPs). To be eligible to receive Federal surplus property, on the date of transfer a concern must:

- Be in the 8(a) BD program;
- Be in compliance with all program requirements, including any reporting requirements;
- Not be debarred, suspended, or declared ineligible under Title 2 or Title 48 of the Code of Federal Regulations;
- Not be under a pending 8(a) BD program suspension, termination or early graduation proceeding;
- Be engaged or expect to be engaged in business activities making the item useful to it; and,
- Not have received property an eligible Disaster Area business, during the applicable 2-year period described 13 CFR Part 129 Subpart B.

### *7(j) MANAGEMENT AND TECHNICAL ASSISTANCE PROGRAM*

8(a) participants can receive free training, executive education, and one-on-one consulting in a wide range of activities, and the opportunity to participate in courses in the following areas:

- Accounting
- Marketing
- Strategic and operational planning
- Financial analysis
- Business development
- Contract management
- Compliance
- Various business-related software

## **Program Improvement Recommendations**

In support of the Passage of P.L. 95.507, the Law that statutorily authorized the Section 8(a) program, Congress concluded that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy and, that many such persons are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control. Congress further found that ownership and control of productive capital was concentrated in the economy of the United States and certain groups, therefore, own and control little productive capital; that certain groups in the United

States own and control little productive capital because they have limited opportunities for small business ownership; that the broadening of small business ownership among groups that presently own and control little productive capital is essential to provide for the well-being of this Nation by promoting their increased participation in the free enterprise system of the United States; and that such development of business ownership among groups that presently own and control little productive capital will be greatly facilitated through the creation of a small business ownership development program, which shall provide services, including, but not limited to, financial, management, and technical assistance.

While there have been improvements since 1978, there have been many reviews and studies, some recent, that have concluded that the goals of P.L. 95-507 have not been realized. Additionally, during this time there have been a number of reports prepared by the SBA's Office of the Inspector General Inspector and the General Accounting Office noting instances of fraud, and the lack of quality and consistent SBA monitoring and oversight. In this regard, it is my opinion that the following recommendations for 8(a) BD Program improvements will have a significant impact on its administration and effectiveness:

1) *SBA Infrastructure*

The SBA's Office of Business Development (BD), housed within the Office of Government Contracting and Business Development, oversees the 8(a) Program. Under the direction of the AA/8(a) BD, this Office is responsible for the oversight of all matters related to the 8(a) BD program. However, the Business Opportunity Specialist (BOSs) who are the primary face of the SBA to an 8(a) participant and who are the employees responsible for delivering the programs and services of the 8(a) BD Program to program participants work in district offices under the general supervision of the District Director who reports to SBA's Office of Field Operations (OFO). Although BOSs report to the SBA's OFO, they interact extensively with BD, which is located in the SBA's headquarters building in Washington, DC. In my view this overlapping organizational structure creates programmatic challenges.

First, while the AA/BD develops and/or modifies program policies, he or she has little to no control or the implementation of such initiatives and changes without the cooperation and commitment of the leadership of the Office of Field Operations and the District Offices.

Additionally, the BOS role is the most critical role in the assistance provide to 8(a) program participants. Therefore, it is imperative that the recruiting process for these positions places emphasis on the appropriate skill sets and that training to enhance the employee's ability to provide relevant assistance and support to program participants is provided on an ongoing basis. Again, because of the noted organization structure, the role of the AA/BD or his/her designee in this process is limited top the cooperation of the leadership of the Office of Field

Operations.

Finally, of great importance is the overall performance of the BOSs. Here, where it appears that a BOS may not be performing his/her duties as prescribed by the law and/or his/her performance plan or is utilized for purposes not associated with the 8(a) BD Program, the AA/BD has no input.

Absent a restructuring that would give the AA/BD more control and input into the management of these program issues, I recommend the following:

- *A written agreement should be developed between the Office of the AA/BD and the AA/OFO delineating the roles and responsibilities associated with the field office responsibilities of the Office of the AA/BD and the AA/OFO;*
- *The annual performance goals developed by the AA/BD should be communicated clearly to the AA/OFO and should be incorporated in his/her annual performance standards; and,*
- *The performance standards should also be included in the annual performance requirements of the District Directors and the BOSs.*

## 2) *7(j) Management and Technical Assistance*

The 7(j) Management and Technical Assistance program authorizes SBA to extend financial, management, technical, and other services to socially and economically disadvantaged small businesses. The SBA's current regulations indicate that the 7(j) Management and Technical Assistance Program will, "through its private sector service providers [deliver] a wide variety of management and technical assistance to eligible individuals or concerns to meet their specific needs, including: (a) counseling and training in the areas of financing, management, accounting, bookkeeping, marketing, and operation of small business concerns; and (b) the identification and development of new business opportunities."

While it is a widely used program to support 8(a) BD program participants, it is my view that there are opportunities to improve its effectiveness and the associated outcomes. SBA should consider allocating some 7(j) resources to the development and delivery of specific programs/ curriculums for new and transitioning program participants. For new program participants such courses might focus on the Federal acquisition process; understanding Federal contract solicitations; preparing successful proposals, building networks/relationships in the public and private sector, how to successfully market to the Federal government; effective business planning, etc. Such a curriculum could be most effectively developed with the input of prior program participants. Similarly, for transitioning companies, such coursework might include a focus on long-term planning; considerations for market expansion, i.e. mergers and acquisitions; diversification, etc.

For new participants, the availability of such training in their beginning stage may help alleviate the lag many experience in receiving their first contract opportunity.

### 3) *8(a) Loan Program*

As noted, P. L.100-656 amended Section 7(a) of the Small Business Act to include an 8(a) Loan Program. Specifically, the Administration was empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j) (10) and section 8(a). Prior to the authorization of the 8(a) Loan two critical financing program associated with the 8(a) BD program had been eliminated, those being the Business Development Expense Program and the Advance Payments Program.

The Business Development Expense Program authorized SBA to assist an 8(a) Program participant by purchasing equipment that would enhance its ability to perform on instant and future contracts in its line of business. After successfully completing the contract for which the equipment was purchased the 8(a) participant retained title to the equipment. Advanced Payments was a revolving fund that allowed SBA to provide working capital to an 8(a) participant which was repaid out of the firm's progress payments on the job for which it was provided.

While it seemed that the 8(a) Loan Program was legislated as a financial tool to replace those that were eliminated, I have no recollection that it was ever implemented. The implementation of this program would provide a source of critical financing for 8(a) program participants

### 4) *Annual Forecast*

Under Section 8(a)12) (A) each concern eligible to receive subcontracts pursuant to this subsection is required to annually prepare and submit to the SBA a capability statement. The statement shall briefly describe the concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The SBA shall separate the statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

Contracting activities receiving capability statements shall, within 60 days after

receipt, contact the relevant Business Opportunity Specialist to indicate the number, type and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of \$50,000,000 in fiscal year 1988, or in any succeeding fiscal year, shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing.

Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify: (i) The approximate number of individual contract opportunities (and the number of opportunities within a class) (ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities. (iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request. (iv) The activity responsible for the award and administration of the contract.

The head of each executive agency shall within 10 days of completion furnish such forecasts to— (i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) for such agency; and (ii) the Administrator.

While the majority of the current 8(a) portfolio provides an updated capability statement annually and, most Federal Agencies prepare an annual forecast, I am not aware of adherence to the processing requirements stipulated in this section of the Small Business Act. In my view, adherence to the provisions of this Section of the Act would greatly improve the likelihood of a new 8(a) program participant receiving contract assistance earlier in its 8(a) program participation. Further, it would most likely result more program participants realizing greater access to suitable contract opportunities during their program participation.

##### 5) *Mentor-Protégé Program*

The small business mentor-protégé program is designed to enhance the capabilities of protégé firms by requiring approved mentors to provide business development assistance to protégé firms and to improve the protégé firms' ability to successfully compete for federal contracts. This assistance may include technical and/or management assistance; financial assistance in the form of equity investments and/or loans; sub contracts (either from the mentor to the protégé or from the protégé to the mentor); trade education; and/or assistance in performing prime contracts with the Government through joint venture arrangements. Mentors are encouraged to provide assistance relating to the

performance of contracts set aside or reserved for small business so that protégé firms may more fully develop their capabilities.

The Mentor-Protégé program is an excellent opportunity for transitional 8(a) participants to continue their growth and developmental while supporting the developmental needs of less season program participants. However, to ensure the effectiveness of this program and to make certain that its objectives are being met, SBA must improve its oversight to ensure that both Mentors and Proteges are adhering to the Mentor-Protégé Agreement and that program rules and regulations are being followed.

Chairman Mfume and other distinguished Members of this Committee, thank you for the opportunity to submit this written statement in connection with the Subcommittee's hearing on SBA's 8(a) Program. I am happy to answer any questions you may have.