

March 2010

# SMALL BUSINESS ADMINISTRATION

## Steps Have Been Taken to Improve Administration of the 8(a) Program, but Key Controls for Continued Eligibility Need Strengthening



GAO

Accountability \* Integrity \* Reliability



Highlights of [GAO-10-353](#), a report to the Chairwoman, Committee on Small Business, House of Representatives

## SMALL BUSINESS ADMINISTRATION

### Steps Have Been Taken to Improve Administration of the 8(a) Program, but Key Controls for Continued Eligibility Need Strengthening

#### Why GAO Did This Study

The Small Business Administration’s (SBA) 8(a) program helps eligible socially and economically disadvantaged small businesses compete in the economy by providing business development activities, such as counseling and technical assistance, and providing opportunities to obtain federal contracts on a set-aside basis. GAO was asked to review SBA’s internal control procedures for determining 8(a) eligibility. Specifically, we (1) evaluated the procedures and processes that SBA has implemented to ensure that only eligible firms participate in the 8(a) program, and (2) assessed the extent to which SBA uses external mechanisms such as complaint information in helping to ensure that only eligible firms participate. To address these objectives, GAO reviewed SBA guidance and prior reports, interviewed SBA officials, and conducted site visits and file reviews of 123 randomly sampled 8(a) firms covering the most recent 2 years of annual reviews at five SBA locations.

#### What GAO Recommends

GAO makes six recommendations to SBA that include providing more guidance to help ensure staff more consistently follow procedures, reassessing BDSs’ workload distribution, and developing more standard processes for documenting and analyzing certain program data. In responding to a draft of this report, SBA agreed with each of the six recommendations and stated that some corrective measures have already been implemented and additional actions are planned to be implemented in the near future.

View [GAO-10-353](#) or [key components](#). For more information, contact William B. Shear at (202) 512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov).

#### What GAO Found

SBA relies primarily on its annual review of 8(a) firms to ensure their continued eligibility in the program, but inconsistencies and weaknesses in annual review procedures limit program oversight. GAO’s review of a random sample of 8(a) firms identified an estimated 55 percent in which SBA staff failed to complete required annual review procedures intended to assess fundamental eligibility criteria, such as being economically disadvantaged (see table). Multiple factors appear to have contributed to the inconsistencies identified, including the lack of specific criteria in SBA’s current regulations and procedures that relate to some eligibility requirements such as determining whether firms exceed program thresholds for industry size averages, personal compensation, and personal asset limits. As a result, firms that may have outgrown the program continued to receive 8(a) program benefits. For example, GAO estimated that 17 percent of the firms we reviewed had exceeded one or more eligibility criteria for 2 consecutive years, but were recommended by SBA for retention. SBA has taken steps to clarify some, but not all, of these rules in recent proposed rule changes. SBA is required by statute to perform annual reviews on 100 percent of 8(a) firms but staff spent significant amounts of time trying to obtain annual review documents from firms—especially firms that did not have 8(a) contracts—which affected the timeliness of reviews. GAO identified a significant number of instances in which firms failed to submit annual review documents as required but still were recommended for retention. The Business Development Specialists’ (BDS) dual role of advocacy for and monitoring of the firms may have contributed in part to the retention of ineligible firms. SBA has been addressing some data integrity and compatibility issues by enhancing its primary electronic system for annual review information. Finally, SBA did not maintain an accurate inventory of 8(a) Mentor-Protégé Program participant data, which limited the agency’s ability to monitor these firms.

SBA’s program offices did not maintain comprehensive data on or have a system in place to track complaints on the eligibility of firms participating in the 8(a) program. District staff were not aware of the types and frequency of complaints across the agency. As a result, SBA staff lacked information that could be used with other information to help identify issues relating to program integrity and help improve the effectiveness of SBA oversight. Although complaint data are not a primary mechanism to ensure program eligibility, continuous monitoring is a key component in detecting and deterring fraud.

**Estimated Percentage of Time That SBA Did Not Complete Selected Annual Review Procedures Relating to 8(a) Eligibility**

Requirement not met	Estimated percentage
Taking action when a firms exceeded industry averages for economic success by	
• notifying firms that exceeded four of seven industry averages for 1 year (intended to make firms aware they may be subject to early graduation )	26
• graduating or explaining retention of firms that exceeded four of seven industry trends for 2 consecutive years	4
• Reviewing net worth or graduating firms in which individuals exceeded adjusted net worth limitations	7
• Performing required eligibility reviews due to a change in the firms’ ownership	4
• Completing required annual reviews	2

Source: GAO analysis of a random sample of 123 8(a) firms.

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## Abbreviations

BDMIS	Business Development Management Information System
BDS	Business Development Specialist
DCI	data collection instrument
FPDS-NG	Federal Procurement Data System-Next Generation
IRS	Internal Revenue Service
NAICS	North American Industry Classification System
OBD	Office of Business Development
OFO	Office of Field Operations
OHA	Office of Hearing and Appeals
OIG	Office of Inspector General
SBA	Small Business Administration

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United States Government Accountability Office  
Washington, DC 20548

March 30, 2010

The Honorable Nydia M. Velázquez  
Chairwoman  
Committee on Small Business  
House of Representatives

Dear Madam Chairwoman:

In fiscal year 2008, the federal government awarded \$93.3 billion in contracts to small businesses. The Small Business Administration (SBA) plays an important role in ensuring that small businesses gain access to federal contracting opportunities. Section 8(a) of the Small Business Act is intended to help small businesses owned by socially and economically disadvantaged individuals compete in the economy by providing business development activities, such as counseling and technical assistance, and providing access to federal contracting opportunities. The 8(a) program does not guarantee that participating firms will obtain federal contracts, but the firms are eligible for competitive (for which only 8(a) firms can compete) and sole-source (for which awards are made without competition) federal contracts when certain requirements are met.<sup>1</sup> As of fiscal year 2008, approximately 9,460 firms were in the program.

However, we and others have identified oversight weaknesses in SBA controls that are intended to help ensure that only eligible small businesses gain access to federal contracting opportunities. For example, in congressional hearings on SBA's Historically Underserved Business Zone (HUBZone) Program that you held on July 17, 2008, we highlighted fraud and eligibility control weaknesses in the program that allowed the

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<sup>1</sup>Section 8(a) authorizes SBA to enter into contracts with government agencies and to, in turn, contract with qualified 8(a) firms for the performance of its requirements. SBA enters into partnership agreements with government agencies that delegate its contracting functions to the agencies and establish the basic procedures for expediting the award of 8(a) contract requirements.

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participation of fictitious and ineligible firms.<sup>2</sup> In a November 2008 report on the 8(a) program, we noted that SBA faced several challenges in its overall administration of the 8(a) program, including competing demands on a limited number of staff. For example, the amount of time staff spent on statutorily mandated annual reviews of all 8(a) firms diminished the amount of time they could devote to business development activities.<sup>3</sup> Our recommendations to SBA included assessing the workloads of business development specialists (BDS) to ensure they could carry out their responsibilities and improving processes to terminate firms. SBA agreed with these recommendations in its written comments on the report.

You asked us to review SBA's internal control procedures for determining 8(a) eligibility, including mentor-protégé arrangements (which provide technical and management assistance as well as assistance in performing federal contracts as a prime contractor through joint-venture arrangements). Specifically, we (1) evaluated the procedures and processes that SBA has implemented to ensure that only eligible firms remain in the 8(a) program, and (2) assessed the extent to which SBA uses external mechanisms, such as complaints by other 8(a) firms, to help ensure that only eligible firms participate.

To address these objectives, we reviewed applicable statutes and the legislative history of the 8(a) program, SBA's regulations and guidance for administering the program, our previous reports, and studies of the program conducted by SBA, the SBA Inspector General, and external organizations. To assess SBA's compliance with its eligibility review procedures, we visited 5 of the 68 SBA districts and reviewed files of 123 randomly sampled 8(a) firms and an additional 13 8(a) firms that had mentor-protégé agreements.<sup>4</sup> For each firm, we reviewed the most recent

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<sup>2</sup>GAO, *HUBZone Program: SBA's Control Weaknesses Exposed the Government to Fraud and Abuse*, [GAO-08-964T](#) (Washington, D.C.: July 17, 2008), and *Small Business Administration: Additional Actions Are Needed to Certify and Monitor HUBZone Businesses and Assess Program Results*, [GAO-08-975T](#) (Washington, D.C.: July 17, 2008). In the HUBZone program, certain small businesses located in economically distressed communities (Historically Underutilized Business Zones) may be eligible for set-aside and sole-source contracts.

<sup>3</sup>GAO, *Small Business Administration: Agency Should Assess Resources Devoted to Contracting and Improve Several Processes in the 8(a) Program*, [GAO-09-16](#) (Washington, D.C.: Nov. 21, 2008).

<sup>4</sup>In addition to the 13 8(a) firms with mentor-protégé arrangements, another 7 firms in our sample of 123 had mentor-protégé agreements on file.

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2 years of annual reviews for the period 2007-2009, and any existing mentor-protégé agreements, related documents, and correspondence. We developed a data collection instrument to collect key annual review information from each file, including SBA documentation and evidence supporting eligibility criteria such as financial disadvantage. We selected SBA districts based on the size of their 8(a) portfolios of firms with contracts and for geographic diversity. These 5 districts represented 29 percent (or 672) of all active fiscal year 2008 8(a) firms with contracts and 37 percent (or about \$2 billion) of contracting obligation dollars. The results of the interviews and sample results cannot be generalized to all 68 district offices; however, the results of our file review sample can be generalized to all files managed by the 5 district offices we included in our review. We also interviewed SBA officials in the Office of Business Development, Division of Program Certification and Eligibility, and district staff to discuss their procedures for determining initial and continuing eligibility, oversight efforts, technical assistance offered, and mechanisms to help identify ineligible firms in the program. Appendix I discusses our scope and methodology in further detail.

We conducted our work in Boston, Massachusetts; Denver, Colorado; San Antonio, Texas; San Francisco, California; and Washington, D.C., between May 2009 and March 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

A firm must meet several initial eligibility requirements to qualify for the 8(a) program (a process known as certification), and then meet other requirements to continue participation. In general, a concern meets the basic requirements for admission to the program if it is a small business that is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and U.S. citizens, and which demonstrates the potential for success. Table 1 summarizes the key requirements.

**Table 1: Key Eligibility Requirements for 8(a) Program Participation**

<b>General requirement</b>	<b>General description<sup>a</sup></b>
Socially disadvantaged individual	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 and without regard to their individual qualities. Members of designated groups are entitled to a rebuttable presumption of social disadvantage; other individuals must prove they are socially disadvantaged by a preponderance of the evidence. <sup>b</sup>
Economically disadvantaged individual	Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired because of diminished capital and credit opportunities as compared with others in the same or similar business area who are not socially disadvantaged. SBA considers various factors, including adjusted net worth, that for initial eligibility must be less than \$250,000, and for continued eligibility must be less than \$750,000.
Ownership	8(a) applicants concerns or participants must be at least 51 percent unconditionally and directly owned by one or more socially and economically disadvantaged individuals who are U.S. citizens.
Control	8(a) applicants or participants must be controlled by one or more socially and economically disadvantaged individuals; control includes both strategic policy setting and day-to-day management and administration of business opportunities, and a participant's management and daily operations must also be conducted by one or more disadvantaged individuals.
Small business	The firm must qualify as a small business concern as defined by SBA's size standards, based on the North American Industry Classification System code. This includes affiliations.
Good character	The applicant or participant and all of its principals must have good character. SBA considers such things as criminal conduct and violations of SBA regulations. Debarred or suspended concerns are ineligible.
Potential for success	The applicant or participant must possess reasonable prospects for success in competing in the private sector. Specifically, applicants or participants must show that they have been in the primary industry for 2 years as of date of application by showing revenues on 2 years of tax returns. This requirement may be waived if the firm shows revenues and adequate business management and technical expertise. Other requirements include demonstrating financial capability, technical expertise, contract success, and contract support for the industry of applicant or participant.
U.S. citizenship	Applicant or participant must be a U.S. citizen. Individuals born outside the United States must show proof of citizenship through a U.S. passport or naturalization papers.

Source: GAO.

<sup>a</sup>Does not include tribal firms, Alaskan Native Corporations, Native Hawaiian Organizations, or Community Development Corporation-owned firms.

<sup>b</sup>Designated groups include (1) Black Americans, (2) Hispanic Americans, (3) Native Americans, and (4) Asian Pacific Americans.

Participation in the 8(a) program lasts 9 years, and once it is completed, a firm and the individual cannot reapply. The 9-year program tenure is divided into two stages—a developmental stage covering years 1 through 4, and a transitional stage covering years 5 through 9. During the transitional years, firms are required to meet certain activity targets for non-8(a) contracts to ensure they do not develop an unreasonable reliance on the program. Additionally, firms in the 8(a) program are eligible to



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receive sole-source and competitively awarded set-aside federal contracts.<sup>5</sup>

As part of the 8(a) program, SBA developed the Mentor-Protégé Program, in which experienced firms mentor 8(a) firms to enhance the capabilities of the protégé, provide various forms of business developmental assistance, and improve the protégé's ability to successfully compete for contracts.<sup>6</sup> To qualify initially as a protégé, an 8(a) firm must meet one of three conditions: (1) be in the developmental stage of the 8(a) program, or (2) never have received an 8(a) contract, or (3) be of a size that is less than half the size standard corresponding to its primary standard industry code. The mentor and protégé enter into a written agreement that sets forth the protégé's needs and details the assistance the mentor commits to provide to address those needs. SBA must review and approve the initial agreement and annually evaluate specific mentor-protégé requirements.

SBA's 8(a) program is delivered collaboratively by two departments of SBA. The Office of Business Development (OBD) is responsible for policy formation and the certifications of 8(a) applications, approval of mentor-protégé applications, as well as the approval of existing 8(a) firms that are exiting the program (early graduations, approval of changes of ownership, approval of voluntary withdrawals, approval of terminations, and suspensions). OBD is also responsible for the virtual training and relevant policy briefings provided to SBA staff across the country responsible for executing the 8(a) program on an ongoing basis throughout the year. The Office of Field Operations (OFO) is responsible for supporting the business development specialists, tasked with executing the 8(a) program, who are located in 68 district offices across the country. Selected BDSs will have 8(a) firms assigned to them. The BDSs work directly with 8(a) firms to help prepare business plans; provide technical assistance; review continuing eligibility; coordinate with resource partners that provide counseling, training, loans, and other assistance to small businesses; and coordinate additional assistance and training for firms through another

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<sup>5</sup>Competitively awarded contracts can be set aside for 8(a) firms if there is a reasonable expectation that at least two 8(a) firms will submit offers and the award can be made at a fair price. Sole-source contracts can be awarded when the dollar thresholds are \$5.5 million or less for acquisitions involving manufacturing and \$3.5 million or less for all other acquisitions.

<sup>6</sup>Under the program, the mentor and protégé may operate a joint venture as a small business for any government contract.

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SBA program.<sup>7</sup> BDS staff also conduct annual reviews of the firms' progress in implementing business plans and analyze firms' year-end financial statements, income tax returns, and records of contracting activity for certain compliance requirements, including program eligibility. The purpose of the annual reviews is to determine if firms continue to meet eligibility requirements and to identify business development needs. SBA long has been required by statute to complete annual reviews of all firms.<sup>8</sup> As of fiscal year 2008, SBA had 182.5 full-time-equivalent BDS staff.

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## While SBA Has Made Improvements to Its 8(a) Annual Reviews, Internal Control Weaknesses and Other Challenges Limit Program Oversight

SBA relies primarily on its annual reviews of 8(a) firms to ensure the continued eligibility of firms enrolled in the program, but we observed inconsistencies and weaknesses in annual review procedures related to determining continued eligibility for the program. For example, we found that SBA did not consistently notify or graduate 8(a) firms that exceeded industry averages for economic success or graduate firms that exceeded the net worth threshold of \$750,000. The lack of specific criteria in the current regulations and procedures may have contributed to the inconsistencies that we observed, and SBA has taken steps to clarify some, but not all, of these requirements in a recent proposed rule change. Although BDSs have been challenged to perform all their responsibilities—in particular the statutory requirement to perform annual reviews on 100 percent of 8(a) firms—SBA has not yet assessed its workload to ensure it could carry out its responsibilities as we recommended in our 2008 report.<sup>9</sup> SBA recently has implemented new procedures intended to streamline terminations that may address some of these inconsistencies that we identified with the lack of termination actions taken against firms that did not submit annual review documents as required. Finally, we found that SBA did not maintain an accurate inventory of Mentor-Protégé Program participants and did not document some annual oversight activities of these firms. As a result of these inconsistencies and weaknesses, there is increased potential that firms

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<sup>7</sup>Through the 7(j) Management and Technical Assistance Program, SBA provides qualifying businesses with counseling and training in the areas of financing, business development, management, accounting, bookkeeping, marketing, and other small business operating concerns. The 7(j) program by its terms applies to 8(a) firms.

<sup>8</sup>Pub. L. No. 100-656, §209, 102 Stat. 3853, 3863 (1988), codified at 15 U.S.C. §637 (a)(6)(B). The requirement to complete annual reviews of all program participants, along with other provisions in the law, was intended to prevent ineligible firms from participating in the program.

<sup>9</sup>GAO-09-16.

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that no longer meet SBA 8(a) continuing eligibility requirements could be allowed to continue in the program and receive 8(a) contracts.

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### SBA's Staff Did Not Follow Required Annual Review Procedures Related to Continuing Program Eligibility in about Half of the Files We Reviewed

In a substantial number of cases we reviewed, SBA staff failed to complete required annual review procedures intended to assess fundamental eligibility conditions, such as the firm's net worth, used to determine if participants continue to meet the criteria for being economically disadvantaged. SBA may terminate firms found to be ineligible based on several conditions, including failure to submit required documentation for the annual review process or failure to maintain ownership and control by a disadvantaged individual. SBA may also graduate firms that have successfully completed the program by substantially achieving the targets, objectives, and goals in their business plans prior to the expiration of their program terms, and demonstrated their ability to compete in the marketplace without assistance from the program, or where one or more of the disadvantaged owners no longer are economically disadvantaged (a process known as early graduation). Criteria used to determine continuing eligibility and associated conditions such as economic disadvantage include factors such as personal assets, income, and net worth, while criteria used to determine if a firm successfully met targets and objectives include exceeding industry averages for economic success and owners making excessive withdrawals of company funds or other assets.

We selected a random sample of files from each of the five district offices we visited to determine if district offices' practices for monitoring 8(a) firms were consistent with requirements in regulations, policies, and procedures.<sup>10</sup> Specifically, we estimated that for the five district offices, SBA failed to complete one or more annual required review procedures 55 percent of the time.<sup>11</sup> Our estimates were based on a statistical sample of 123 annual review files from a population of 672 files. Of the 123 files sampled, we identified 67 instances where SBA failed to complete one or more annual review procedures related to eligibility determinations (a 55 percent rate). We tested seven specific annual review requirements

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<sup>10</sup>Criteria for our selection of five district offices (Boston, Massachusetts; Denver, Colorado; San Antonio, Texas; San Francisco, California; and Washington, D.C.) included the dollar amount of contract obligations in the districts and geographic diversity. See appendix I for more information on our scope and methodology.

<sup>11</sup>Because these estimates are based on a probability sample, they are subject to sampling error. The 95 percent confidence interval for SBA not complying with one or more annual review procedures is (46, 64) percent of all the cases in the five offices.

relating to continuing eligibility: (1) notifying 8(a) firms that they had exceeded industry averages for economic success, (2) reviewing or graduating 8(a) firms or providing an explanation for retention if they had exceeded industry averages for 2 consecutive years, (3) reviewing net worth or graduating firms in which individuals exceeded the net worth threshold of \$750,000, (4) performing eligibility reviews when required for such cases as a change in the firm's ownership, (5) completing the required annual reviews, (6) obtaining required supervisory reviews (and signatures), and (7) imposing remedial actions or obtaining waivers for firms not meeting business activity targets. Table 2 shows information on the extent to which SBA did not complete these annual review requirements.

**Table 2: Estimated Percentage of Time That SBA Did Not Complete Selected Annual Review Procedures Relating to 8(a) Eligibility**

Requirement not met	Estimated percentage
Taking action when a firm exceeded industry averages for economic success by	
• notifying firms that exceeded four of seven industry averages for 1 year	26
• graduating or explaining retention of firms that exceeded four of seven industry averages for 2 consecutive years	4
Reviewing net worth or graduating firms in which individuals exceeded adjusted net worth limitations	7
Performing required eligibility reviews because of a change in the firms' ownership	4
Completing required annual reviews	2
Documenting supervisory reviews	23
Imposing remedial actions or obtaining waivers for firms not meeting business activity targets	10

Source: GAO.

Note: These estimates are based upon a random sample. See table 5 in appendix I for the associated 95 percent confidence intervals.

- *Exceeding industry averages:* Officials from two of the five district offices told us that while the guidance requires notifying 8(a) firms when they have exceeded industry averages for economic success, in practice the districts have been using discretion in notifying the firm after the first year in which this condition occurs. SBA procedures identify exceeding industry averages as a criterion for considering that the firm has met its goals and therefore may no longer be economically disadvantaged. The notification is intended to make participants aware that they may be

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subject to early graduation proceedings if they exceed industry averages for 2 consecutive years. SBA procedures state that if the firm exceeds industry averages for 2 consecutive years, the participant no longer can be considered economically disadvantaged unless the BDS provides evidence that early graduation is not warranted because of compelling reasons. Officials from these district offices explained that they did not follow these procedures, even though they were required, because they did not think that exceeding industry averages always indicated that participants no longer were economically disadvantaged. The level of staff knowledge about calculations for industry averages and the way in which staff entered the calculations into information systems also may have contributed to failures to meet this requirement. One district office told us it was not clear how the ratios were calculated. We also found errors in the calculations of industry averages at another district office. As we discuss in more detail later in the report, the industry ratio calculations require the BDS to manually enter data into a template that will then calculate the ratio of the firm's performance against that of industry. As shown in table 2, we estimate that staff failed to complete this requirement in about 26 percent of the cases in which a notification letter was required, and in about 4 percent of cases in which industry averages were exceeded for 2 consecutive years.<sup>12</sup>

- *Reviewing net worth or graduating firms in which individuals exceeded adjusted net worth limitations:* One of the clearest indicators of economic disadvantage that SBA uses is the net worth requirement. The regulations specifically state that for continued eligibility after admission into the program, adjusted net worth must be less than \$750,000. Our file review shows that SBA retained an estimated 7 percent of the firms we sampled, in which there was no evidence that staff reviewed the firms' net worth, or retained firms in the program despite their exceeding the net worth limits.<sup>13</sup> Similarly, in our companion report investigating the potential for 8(a) program fraud and abuse, we identified cases in which SBA's files clearly indicated that the firms were not eligible for the 8(a) program, yet SBA staff failed to terminate or graduate the firms from the program.<sup>14</sup> Later in this report we discuss different factors that may have contributed to the retention of firms that clearly appeared to be no longer

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<sup>12</sup>The corresponding 95 percent confidence intervals for these estimates are (19, 35) and (1, 9).

<sup>13</sup>The 95 percent confidence interval for this estimate is (3, 13).

<sup>14</sup>GAO, *8(a) Program: Fourteen Ineligible Firms Received \$325 Million in Sole Source and Set-aside Contracts*, [GAO-10-425](#) (Washington, D.C.: March 30, 2010).

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eligible, including the BDSs' dual role of advocacy for and monitoring of the firms and workload constraints.

- *Completing eligibility reviews:* We estimated that about 4 percent of our file sample contained no evidence that SBA staff had performed a separate required eligibility review.<sup>15</sup> Eligibility reviews are required in cases in which the BDS has reason to question a participant's eligibility, including a change in the firm's ownership (the factor we used for our analysis).<sup>16</sup> Eligibility reviews are critical because they could uncover program participants that no longer met control and ownership eligibility requirements. Representatives from one district office we visited explained that these reviews were a low priority compared with other responsibilities, such as completing annual reviews and initial certifications.
- *Completing annual reviews:* Although SBA is statutorily required to perform annual reviews of 100 percent of 8(a) firms, we estimated that in about 2 percent of our sample, the files contained no evidence that SBA had performed the annual reviews.<sup>17</sup> For example, in two cases, a district office had no record on file that annual reviews had been performed, and in three other cases it had bundled 2 years of reviews because of a change in the internal deadline for completing annual reviews (it skipped an annual review). Our sample of 123 files included only firms that received contracts. As a result, SBA could be unaware that a potentially ineligible firm had received contracts because it had not performed an annual review.

We also identified a few instances in which SBA failed to follow procedural requirements related to the annual reviews, including not consistently documenting supervisory reviews in one district and failing to take remedial actions for firms not meeting their business activity targets.

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<sup>15</sup>The 95 percent confidence interval for this estimate is (1, 9).

<sup>16</sup>Upon receipt of specific and credible information alleging that a participant no longer meets the eligibility requirements for continued program eligibility, SBA will review the concern's eligibility for continued participation in the program. As part of an annual review, each participant must certify that it meets the eligibility requirements and that there have been no changed circumstances that could adversely affect its eligibility, and may be required to submit supporting documentation.

<sup>17</sup>The 95 percent confidence interval for this estimate is (1, 7).

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- *Documenting supervisory reviews:* One district office did not always have the required supervisory signatures on the BDSs' annual review recommendations.<sup>18</sup> Of the 64 files that we sampled in that district, 20 lacked evidence of supervisory review signatures. That is, it appeared that only a BDS recommended a firm's retention or dismissal from the program. Overall, we estimated that SBA did not meet this requirement for about 23 percent of the files in the five district offices.<sup>19</sup> The noncompliance rate in this district may be attributable to the large size of its 8(a) portfolio—about 20 percent of all active fiscal year 2008 8(a) firms. According to district officials, the office also had competing priorities, such as the need to review applications for the Mentor-Protégé Program.<sup>20</sup> Nevertheless, SBA officials were not properly monitoring their staff in these cases. Without the quality controls intended by the supervisory reviews, SBA has limited assurances that the annual reviews are fulfilling their intended purpose.
  - *Imposing remedial actions or obtaining waivers for firms not meeting business activity targets:* In about 10 percent of the files we reviewed, district offices did not submit required documentation of remedial actions or a waiver when a firm in the transitional phase of the program did not meet its business activity targets.<sup>21</sup> The remedial action is intended as an incentive for firms to obtain non-8(a) contracts so that they will be prepared to compete in the marketplace without the assistance of the 8(a) program upon graduation. Firms are required to achieve their targets or otherwise are not eligible to receive 8(a) sole-source contracts. By not notifying firms and setting up a remedial plan when required, the BDSs' actions did not appear to be consistent with a key business development activity intended to help firms develop and exit from the program. Furthermore, SBA could be providing opportunities for potentially ineligible firms to receive sole-source contracts.

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<sup>18</sup>We identified one case in another district office without the required supervisory signature.

<sup>19</sup>The 95 percent confidence interval for this estimate is (15, 31).

<sup>20</sup>Applications to the Mentor-Protégé Program are time-sensitive and therefore are prioritized above annual reviews. We discuss additional workload constraints in greater detail later in this report.

<sup>21</sup>The business activity targets require a certain ratio of revenues from 8(a) versus non-8(a) contracts, depending on how many years the firm has been in the program. The 95 percent confidence interval for this estimate is (5, 17).

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## Although SBA Has Proposed Changes to Its Regulations to Improve Eligibility Determinations, It Still Lacks Specific Guidance for Some Criteria

Our file review results and interviews with district office officials identified numerous instances in which staff did not consistently apply objective standards relating to eligibility determinations. SBA lacks specific criteria in its current regulations and procedures that relate to some of the eligibility requirements such as determining whether a firm should be graduated from the program when it exceeds size standards, industry averages (such as total assets, net sales, working capital, or pretax profit), limits for personal compensation and assets, and excessive withdrawals. Furthermore, SBA guidance directs staff to rely on Office of Hearings and Appeals (OHA) decisions to use as thresholds for eligibility criteria, such as total assets and total compensation, in order to make eligibility determinations. However, as we noted in our related investigation, agency staff did not follow case law consistently.<sup>22</sup>

More specifically, we estimate that 17 percent of the firms had exceeded one or more eligibility criteria for 2 consecutive years, indicating that the firms may have been outgrowing the program, but were recommended by SBA for retention.<sup>23</sup> Although each criterion in and of itself may not be a determinant for early graduation based on the current regulations, each is an important factor in determining if these firms continue to meet eligibility requirements and if they should remain in the program. SBA considers the totality of circumstances to determine whether a firm has met its goals and objectives and should be recommended for early graduation.

- In two cases in one district office, firms had exceeded both average compensation limits and the limits for excessive withdrawals for 2 consecutive years, and still were recommended for retention. The District Director and staff at the district office agreed that the two cases were red flags and that the firms should have been recommended for early graduation or termination.
- In another example, at a different district office, one firm that, over its 8-year tenure in the 8(a) program, had exceeded (1) industry averages for 5 years (in 2 of these years, the firm could have been considered for early graduation because it exceeded industry averages for 2 consecutive years), (2) compensation limits by having an average salary of more than \$200,000 for 2 years, (3) the size standard for its primary North American Industry

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<sup>22</sup>GAO-10-425.

<sup>23</sup>The 95 percent confidence interval for this estimate is (11, 25).



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Classification System code, (4) and made excessive withdrawals in 1 year, but in each year was recommended for retention. This firm had more than \$16 million in contracts by its sixth year in the program.<sup>24</sup>

We also found inconsistencies in the use of third-party sources to verify firm-reported data. For instance, two districts told us they reviewed third-party sources such as Internal Revenue Service (IRS) tax transcripts, debarments, and bank information such as withdrawals more routinely as part of their annual review, while two other districts told us they had not performed any third-party verification. At least in part, these inconsistencies can be attributed to lack of specific guidance or criteria regarding the need for third-party verification. Overall, the regulations state that SBA may terminate a firm on the basis of discovering false information, but contain few specific requirements to consult third-party sources for continuing eligibility. For example, participants must submit the IRS 4506-T transcript request form as part of the annual review requirements, which allows SBA to request tax return information. Additionally, the regulations suggest that staff should consult the federal list of debarred and suspended firms, since such firms are ineligible for admission to the 8(a) program. However, we found little evidence of regulatory requirements to obtain other third-party verifications. As noted in our report on the potential for 8(a) program fraud and abuse, validating data against other government or third-party sources is a fraud preventive control meant to keep ineligible firms from entering the program.<sup>25</sup> However, we found that SBA relied heavily on self-reported information from the firms during the initial certification and annual reviews, with limited data validation performed after the firms had entered the program. Additionally, in that report we make a recommendation to assess the feasibility of using additional third-party data sources and site visits, based on random or risk-based criteria, to allow more independent verification of firm-reported data.

SBA recently proposed changes to its Small Business Size and 8(a) Business Development Regulations to address technical issues as well as make more substantive changes resulting from its experience in

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<sup>24</sup>This includes both 8(a) and non-8(a) contracts.

<sup>25</sup>[GAO-10-425](#).

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implementing the current regulations.<sup>26</sup> The agency last updated most of these regulations in 1998. According to a senior SBA official, these changes are intended to help SBA administer the program more effectively. The proposed rules would introduce more detailed guidance and allow for less staff judgment, particularly for the standards that appeared to be associated with the inconsistencies in the annual review procedures in our review of 8(a) case files. For example, the proposed regulations define more specific thresholds for considering an individual's personal assets and compensation, and whether a firm has exceeded size standards. However, the proposed regulations do not introduce more specific requirements relating to exceeding industry averages, and would increase staff flexibility to make judgments relating to excessive withdrawals. Furthermore, the proposed rule changes do not address under what circumstances or to what extent staff should verify firm-reported information with third-party sources. According to SBA, the proposed rules attempt to address areas where the current regulations needed more clarity to ensure consistency with SBA policy as well as areas where the current regulations may unreasonably restrict participants. For example, the proposed rule changes allow for flexibility in judgment regarding excessive withdrawals because SBA believes that it is important that SBA look at the totality of the circumstances in determining whether to include a specific amount as a withdrawal in an effort to prevent some firms from circumventing excessive withdrawal limitations. However, the lack of specific criteria in the current regulations and procedures reduces assurances that the BDSs are making consistent and objective determinations about 8(a) firms' continued eligibility in the program.

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<sup>26</sup>SBA, *Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations*, 74 Fed. Reg. 55694 (proposed Oct. 28, 2009) (to be codified at 13 C.F.R. pts. 121 and 124). The public comment period for the proposed regulations ended on January 28, 2010, and, according to an SBA official, the regulations are expected to be finalized by the end of fiscal year 2010.

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**SBA Has Not Assessed BDS Workload, a Significant Portion of Which Is Devoted to Annual Reviews, a Fact That Limits Other 8(a) Activities**

BDSs devote significant time and resources to complying with the statutory requirement to perform annual reviews on 100 percent of 8(a) firms, a fact that affects the time and resources they can devote to other 8(a) activities. Monitoring the firms' continuing eligibility for the 8(a) program is just one of many responsibilities of the BDS. The BDS also has an advocacy role—maintaining an ongoing responsibility to assist the participant in developing the business to the fullest extent possible. This includes striving to increase both the dollar value and the percentage of 8(a) contracts through communication of procurement activities, training, and counseling. SBA guidance requires the BDS to be the primary provider in helping firms develop business plans, seek loans, and receive counseling on finances, marketing, and management practices.

Officials in all five of the district offices we visited indicated that they met the 100 percent annual review goal for fiscal year 2008 but stated it was a time- and resource-intensive process. For example, district staff estimated that the annual review process consumed from about 40 to 70 percent of their time. BDSs in the district offices told us their individual portfolios ranged from about 30 to 140 firms, depending on their experience level. Three districts noted that BDS turnover resulted in newer staff initially taking more time to process reviews and having smaller portfolios while they were learning their job. One of the districts told us that all available staff in the district office, including staff not assigned to the 8(a) program, had to assist in completing and processing annual reviews in order to meet the review goal. District office staff also told us that they spent a significant amount of time and resources following up with 8(a) firms to have them submit required documentation such as tax and business financial information, which also slowed the review process.<sup>27</sup> District offices indicated that firms that did not have contracts were especially prone to submitting documents late because annual reviews were not a priority for them.<sup>28</sup> These delays, in turn, reduced the amount of time that the BDSs had to spend on firms that exhibited a high risk of

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<sup>27</sup> Annual review documents are due each year, 30 days after a firm's certification date, and BDSs are required to complete the review within 30 days after receiving all required documentation. However, our file review of 123 8(a) firms found about 49 percent of the firms submitted documentation late. The corresponding 95 percent confidence interval for this estimate is (40, 57).

<sup>28</sup> About 50 percent of the firms listed on the 8(a) participant list for fiscal year 2008 had active contracts, which include any contract having a modification in fiscal year 2008 even if those modifications were non-monetary.

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misrepresentation or noncompliance with 8(a) eligibility requirements—monitoring necessary for effective program oversight.

Furthermore, in our November 2008 report we noted that demands of the annual review process and resource constraints affected SBA's ability to conduct other program activities.<sup>29</sup> For this report, some districts noted that the annual review goal affected their ability to perform site visits; follow up on issues that warranted more attention, such as red flags identified in the prior year's annual review; and conduct other core business development activities. For instance, the frequency of site visits varied in the five offices we visited. One district office told us that staff were able to conduct site visits for all firms, but another district conducted site visits for about half of its firms, and the remaining districts performed site visits on a limited basis, citing circumstances such as a firm transferring into the district or confirming that a firm was operating at a bona fide place of business. Another district stated that staff do not have time to follow up on red flags such as concerns identified in prior annual reviews because of the emphasis on meeting the annual review goal. Another district also told us that meeting the 100 percent annual review goal has limited the district's ability to get out and educate agencies and firms. This included providing outreach and awareness training. Finally, another district told us the annual reviews have affected its ability to provide developmental assistance and services to address the 8(a) firm's needs. The officials also stated that it was hard to develop working relationships with the firms because of the amount of work reports, projects, and other duties assigned.

Although BDSs have been challenged to perform all their responsibilities, SBA has not yet assessed their workload to ensure they could carry out their responsibilities, as we recommended in our 2008 report.<sup>30</sup> As we reported, SBA did recognize specifically that staffing constraints affected its ability to perform annual reviews. For example, according to its 2006 Performance and Accountability Report, a main contributing factor in the agency's inability to complete annual reviews of all 8(a) firms was a lack of staff resources in the district offices. However, since our previous work in 2008, the emphasis on meeting annual review compliance requirements has strained staff capacity to conduct other core activities for the 8(a) program.

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<sup>29</sup> GAO-09-16.

<sup>30</sup> GAO-09-16.

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By not assessing BDS workloads, SBA may be bypassing opportunities to better support the mission of the 8(a) program—that is, to develop and prepare small disadvantaged firms for procurement and other business opportunities. In addition, the lack of time to follow up on issues of concern identified in prior-year reviews also undermines SBA’s ability to carry out its monitoring responsibilities.

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### Noncompliant Firms Remain in the 8(a) Program, although Termination Rates Have Increased and New Procedures Should Streamline the Termination Process

On the basis of our file review, we observed instances in which firms were not compliant with 8(a) continuing eligibility requirements related to document submission, but remained in the program. Failure to submit documentation as required is the primary source of noncompliance in the 8(a) program, and is listed in the regulations as an example of good cause for termination.<sup>31</sup> Our file review showed that business development staff frequently accepted incomplete, incorrect, and late documentation from firms and in many cases recommended the noncompliant firms for retention.

### Most Firms Submitted Documents Late, but Few Were Terminated for This Cause

Of the 123 firms we tested, 61 percent were noncompliant because of failures to submit documents as required, but staff recommended 3 percent for termination.<sup>32</sup> According to the regulations and procedures, unless participants are also suspended in conjunction with termination proceedings, 8(a) firms remain eligible to receive program benefits and to compete for contracts during termination proceedings, a fact that affords them the opportunity for notice and an opportunity to appeal a termination decision.<sup>33</sup>

During interviews with district office staff, SBA officials acknowledged that some firms took more time than allowed to submit documents. One

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<sup>31</sup>According to 8(a) regulations, SBA may, but is not required to, terminate a firm for good cause, one example of which is a “pattern of failure” to make required submissions in a timely manner. 13 C.F.R. § 124.303(a)(7).

<sup>32</sup>The corresponding 95 percent confidence intervals for these estimates are (52, 69) and (1, 8), respectively.

<sup>33</sup>SBA may suspend a participant when it is determined that suspension is needed to protect the interests of the federal government, such as cases in which information showing a clear lack of program eligibility or conduct indicating a lack of business integrity exists. This includes cases in which the firm or one of its principals submitted false statements to the government, including false information in its 8(a) application. The criteria that make an 8(a) firm eligible for termination are not the same as the causes for suspension. See 13 C.F.R. § 124.303 and Federal Acquisition Regulation § 9.407-2.

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Advocacy Role of BDSs May  
Contribute to Decisions to  
Retain Firms

district office official stated that some firms did not take deadlines seriously and would delay the annual review process. District staff estimated that despite a 30-day deadline, most firms submitted documents within 30 to 45 days and in some cases, up to 60 days after their anniversary date. As mentioned earlier, our file review of 123 firms showed that 49 percent submitted late documentation. In one case, a firm failed to provide documents on time and SBA staff waited 4 months before recommending the firm for termination. After receiving the letter of intent to terminate, the firm took another 2 months to submit the requested documents. SBA then reinstated the firm after a total of 6 months' delinquency. In another case, a firm failed to submit financial information, and business development staff sent the letter of intent to terminate shortly after the firm's deadline passed. SBA waited another 6 months for the firm to submit the required documentation, which turned out to be incomplete, but upon receipt SBA chose to reinstate the firm. The next year, the firm submitted a personal financial statement identical to the previous year's (including dates), but SBA did not take action.

As previously discussed, the BDS's role as an advocate for 8(a) firms may have contributed to a reluctance to terminate firms even if the BDSs had a basis for doing so. Staff in one district office explained they worked with firms before initiating the termination process, in an attempt to avoid termination and to achieve the program mission of preparing disadvantaged firms to compete in the market. Similarly, as noted in our companion report, SBA staff responsible for annually assessing the eligibility of participants were not actively looking for fraud and abuse in the program—and in some cases, staff supported firms despite eligibility concerns that we raised.<sup>34</sup> Furthermore, our file review provides examples of reluctance to terminate noncompliant firms.

- An 8(a) firm sent an unsigned annual update form 3 months after its deadline. One month later, SBA recommended retention pending receipt of the firm's remaining documents, such as the personal financial statement and tax returns required to demonstrate economic disadvantage. More than 2 months later, the firm provided partial financial documentation. Although SBA's recommendation to retain the firm was based on expecting to eventually receive the firm's remaining documents, these required documents still were outstanding at the time of our file review—which occurred approximately 1.5 years after the initial annual review

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<sup>34</sup>GAO-10-425.

deadline. As a result, it is unknown whether the firm was eligible to continue participating in the 8(a) program because SBA did not have the needed information to fully assess the financially disadvantaged status of the firm.

- We also have observed instances in which the BDS recommended termination but higher levels of management retained the noncompliant firms in the program. For example, one firm did not submit any annual review documentation and the BDS subsequently recommended it for termination. SBA headquarters disagreed with the determination and chose to retain the firm. However, there was no documentation in the file to explain the basis for this decision.

### The Overall Trend in Recent Years Showed an Increase in Terminations

In contrast to these cases, there has been an overall upward trend of firms exiting the 8(a) program through termination or voluntary withdrawal. According to headquarters officials, this trend is a result of the agency's emphasis in recent years on fully meeting its statutory requirements to conduct annual reviews of all firms. By requesting the annual update from the firm in anticipation of completing the annual review, business development staff provide the firms an opportunity to demonstrate basic program compliance.

Table 3 shows exit data trends over the past several years. The most recent data indicate a sharp increase in overall terminations and voluntary withdrawals from the 8(a) program. For example, from 2007 to 2008, the number of terminations increased more than threefold. Firms are given the option to withdraw from the program when faced with termination proceedings. SBA headquarters officials explained that some firms prefer a withdrawal instead of a termination on their record, and that the increase in annual reviews also increased this opportunity.

**Table 3: Number of Terminations and Voluntary Withdrawals from the 8(a) Program, 2005-2008**

	Fiscal year			
	2005	2006	2007	2008
Number of 8(a) firms	9,470	9,667	9,423	9,462
Number of terminations	130	318	143	537
Percentage terminated	1	3	2	6
Number of voluntary withdrawals	98	95	149	228
Percentage of voluntary withdrawals	1	1	2	2

Source: SBA. Percentages calculated by GAO and rounded to the nearest whole number.

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SBA Has Streamlined Termination Procedures, but Has Not Provided Additional Guidance on Conditions That Would Warrant Termination

Effective September 2009, SBA revised its 8(a) program procedures to shorten the termination process and improve internal controls. The procedural change shortens the termination process by 30 days to 135 days.<sup>35</sup> While this falls short of the 75-day reduction SBA officials planned at the time of our November 2008 report, it may succeed in removing more ineligible firms from the program.<sup>36</sup> It remains to be seen what effect this time reduction will have on termination as an eligibility control.

To create the 30-day reduction in the termination procedure, SBA gave the district offices responsibility for sending letters of intent to terminate directly to the firms. Previously, district offices had to submit termination information to headquarters before an intent letter could be mailed. Because of this change, the district office primarily will be in charge of handling new documents the firm submits after receiving the intent letter. By giving the district offices direct responsibility for tracking documentation and communicating with the firm during this phase, SBA intends the process to be more streamlined and straightforward.

While the new procedures reaffirm that firms may be terminated for good cause (as outlined in the program regulations), they provide no additional discussion of what factors or conditions would warrant termination.<sup>37</sup> The 8(a) regulations to which the program procedures refer do provide examples of “good cause,” including a “pattern of failure” to make required submissions in a timely manner.<sup>38</sup> However, they provide no examples or criteria for staff to use in determining what constitutes a pattern of failure. The lack of guidance may have contributed to staff decisions to retain or reinstate noncompliant firms.

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<sup>35</sup>Effective from September 2009, termination proceedings may last approximately 135 days from the firm’s anniversary date, including the time the firm is allowed to appeal its case to OHA.

<sup>36</sup>GAO 09-16.

<sup>37</sup>SBA Standard Operating Procedures 80 05 3B, effective September 22, 2009.

<sup>38</sup>13 C.F.R. § 124.303(a)(7).



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## SBA Plans to Address Compatibility and Functionality Issues in the 8(a) Program's Management Information System to Improve the Efficiency of Annual Reviews

Issues such as data integration, compatibility, and functionality associated with SBA's Business Development Management Information System (BDMIS) for the 8(a) program present challenges that affect effective program management. The agency has been planning to address some data integrity and compatibility issues with BDMIS and E-8(a), a database that provides business status and business contract activity for each participant in the 8(a) program. District office officials indicated that information discrepancies existed between the two systems and required dual data entry of some firm information. SBA officials stated they were reconciling the information in E-8(a) and BDMIS to address discrepancies. Additionally, the officials explained that some information had to be entered separately into the two systems but that they were moving toward a single data feed. The officials expected this change to occur by the end of the third quarter of fiscal year 2010.

As of October 2008, BDMIS was operational in all district offices, allowing 8(a) participants to submit their annual review data electronically and the BDSs to review the documentation electronically. District staff identified benefits and challenges with the implementation of the online annual review process in BDMIS. For example, one district told us that learning the BDMIS system was challenging initially for some 8(a) participants and depended on participants' skills and abilities to enter information into the system. Another district noted that a calculator that assesses a firm's performance in its respective industry was a positive addition to the BDMIS system, allowing the BDS to move through reviews more quickly and efficiently. But the BDS still had to enter firm financial data manually into the calculator, a fact that could increase the likelihood for data entry errors. (The industry ratio calculations require the BDS to manually enter data into a template that calculates the ratio between the firm's performance and that of industry.) For example, at one district we visited, we observed BDS staff manually entering industry performance ratios. District staff also told us that BDMIS's functionality has been limited because the system did not allow staff to access complete firm information, such as contract and historical information, and develop reports. Some district offices also told us that the BDSs' overall workload has not improved and that BDSs spend a significant amount of their time following up with 8(a) firms to submit relevant annual review documents. Despite these challenges, district staff with whom we spoke said BDMIS has been helping to achieve better organization and tracking and anticipated that when fully operational, it could save time and increase transparency.

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SBA officials also told us that they have been planning to upgrade BDMIS, which currently is operating in its first version. SBA expects to complete three upgrades by the end of the fiscal year 2010. As part of the upgrades, SBA plans to integrate an existing federal database, the Federal Procurement Data System-Next Generation, that contains contracting information that could help SBA staff to verify firms' contracting information and enable district staff to run reports on their 8(a) firms. District staff told us they rely on the 8(a) firm and federal agencies to provide contract information that is used in the annual review to determine a firm's ratio of 8(a) and non-8(a) contracts. As the firm matures, the goal for 8(a) firms is to increase the amount of non-8(a) contract work and decrease reliance on 8(a) contracts. However, one district explained that contract information such as contracts pending and awarded is recorded in E8(a) but the information is not complete because it does not contain obligation data.

SBA's planned system upgrades could improve the efficiency of annual reviews, particularly because they would likely address duplicative data entry, make more information readily available to staff, and decrease the amount of time spent on annual reviews. However, it is too early to tell whether these changes, once implemented and fully operational, would achieve their intended purposes.

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### **SBA Did Not Have an Accurate Inventory of Mentor-Protégé Firms and Did Not Follow Important Procedures to Properly Monitor the Program**

SBA did not maintain an accurate list of Mentor-Protégé Program participants. Specifically, the headquarters office has had difficulty verifying which firms actively participate in the program. An SBA headquarters official responsible for the program stated that staff added firms to a working list based on agreements once they were approved at headquarters. However, this list is not systematically updated when mentor-protégé agreements are extended or dissolved, which occurs at the district office level instead of at headquarters. While the list constituted the agency's only central participation roster for the program, officials stated it was not meant to be used as an eligibility control. Most district offices that we visited kept their own lists, which occasionally were used to verify the headquarters list. One district office we visited did not compile a list of its mentor-protégé participants, but instead relied on individual program files and the list from headquarters for information. When we followed up with other district offices, we found contradictory or inconsistent data in comparison with those of headquarters. For example, the headquarters list showed two active mentor-protégé agreements for a district office that stated it had no active participants.

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Because there is no list of active mentor-protégé agreements, SBA may not be able to properly monitor 8(a) protégé firms that submit agreements with more than one mentor, or mentors that submit agreements with more than one 8(a) protégé. Currently, mentors may have more than one protégé if specially approved by SBA. At least 28 mentor firms appeared to have more than one protégé firm, but SBA was unable to confirm whether 5 of these mentors were authorized to do so. SBA has proposed new regulations that would limit mentor firms to a maximum of 3 protégé firms at a time.<sup>39</sup> SBA also has proposed changes to the regulations that would allow protégé firms to have more than 1 mentor under limited circumstances.<sup>40</sup> To date, the regulations have prohibited protégé firms from having more than one mentor at a time.<sup>41</sup> However, we identified 12 protégé firms that appeared to have 2 mentors at the same time. SBA indicated that some of these relationships had been dissolved, but these firms remained on its list of approved mentor-protégé agreements. The current lack of data limits the agency's ability to fully monitor the Mentor-Protégé Program. As a result, unauthorized partnerships could receive 8(a) set-aside contracts.

Maintaining an accurate list of firms participating in SBA's Mentor-Protégé Program is an important control mechanism to ensure participation only by eligible firms and that the agency has relevant and reliable information for management. Monitoring eligibility for the Mentor-Protégé Program is especially important because participants were more successful in earning proceeds from federal contracts in fiscal year 2008 than the larger pool of 8(a) firms.<sup>42</sup> Mentor-protégé participants averaged \$4.1 million in sales compared with \$2.4 million for other 8(a) firms. As a group, these participants earned \$638 million in fiscal year 2008.

In addition to finding high-level data inconsistencies, including unverifiable participation lists and mentors and protégés with multiple agreements, we found cases in which SBA failed to properly document

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<sup>39</sup>SBA, *Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations*, 74 Fed. Reg. 55694, 55707 (proposed Oct. 28, 2009) (to be codified at 13 C.F.R Pt. 121 and 124).

<sup>40</sup>74 Fed. Reg. 55694, 55708.

<sup>41</sup>13 C.F.R. § 124.520(c)(3).

<sup>42</sup>Excludes Alaska Native Corporations, Native Hawaiian Organizations, tribally owned firms, and firms owned by Community Development Corporations.

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analysis and monitoring of the Mentor-Protégé Program. As part of our file review across five district offices, we tested 20 8(a) firms with mentor-protégé agreements. We focused on initial agreement information, annual updates, and recommendations. Our file review results showed that SBA staff failed to comply with certain initial review and annual review procedures for participants in 6 of the 20 mentor-protégé cases that we reviewed. These procedures include providing a written eligibility analysis and ensuring a signed supervisory review of the BDS's recommendation. In our interviews with district office officials, we also found that Mentor-Protégé eligibility information had not been incorporated into BDMIS. District offices were not able to integrate initial approval recommendations and annual review monitoring with the firm's general 8(a) eligibility information held electronically in BDMIS. As a result of the lack of documentation and the data limitations discussed above, SBA has not been able to properly oversee this program.

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## SBA Lacks a Formal Mechanism to Collect and Analyze Complaint Data Related to 8(a) Eligibility

SBA can receive information and complaints from other 8(a) firms, disgruntled 8(a) employees, and anonymous sources, but SBA does not maintain comprehensive data about complaints such as allegations that certain 8(a) firms may not comply with eligibility requirements.<sup>43</sup> Although complaint information is not the primary mechanism for ensuring continuing program eligibility, it can be an additional tool for identifying fraud or wrongdoing. As we noted in our other GAO investigative report on the 8(a) program, detection and monitoring are crucial elements in a well-designed fraud prevention system.<sup>44</sup> Complaints and other allegations regarding the eligibility of firms in the program can serve as red flags for SBA staff to take additional steps to ensure that firms continue to meet program requirements.

District office officials told us that complaints received at the district receive an initial review (to determine if they warrant follow-up), which may include follow-up with other agencies and the specific firm to gather more information. SBA's standard operating procedures instruct staff to refer to SBA's Office of Inspector General (OIG) any possible criminal violations and other wrongdoing involving SBA programs, such as knowingly making or using a statement or document that is false,

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<sup>43</sup>SBA officials stated that there was a great deal of "self-policing" in the program, since firms were aware of which competitor has received contracts.

<sup>44</sup>[GAO-10-425](#).

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fictitious, or fraudulent. If warranted, complaints are to be referred to SBA's OIG for possible investigation. One district told us that the district counsel reviews the evidence, and if the case has merit, the information is referred to the SBA OIG for further investigation. Two other districts told us the BDS will seek more information by checking with the contracting agency involved regarding the nature of the complaint or contacting the 8(a) firm for clarification before making a referral to OIG.

However, because district staff do not collect and maintain comprehensive complaint information involving 8(a) firms, staff are not aware of the types and frequency of complaints across the agency, including potential eligibility concerns. Specifically, none of the five districts that we visited were able to provide us with a list of complaints or allegations that they received over the past year regarding the potential ineligibility of 8(a) firms in their districts. While OIG maintains general complaint information such as the name of the 8(a) firm and type of complaint, a senior OIG official told us that 8(a) complaints involving a single company generally did not rank high in priority for a review because of resource limitations and other priorities but that it might be considered in the OIG's work-planning effort. OIG officials explained that the OIG ultimately also could refer a case to the U.S. Attorney for prosecution, but that the threshold for prosecutions was high and many cases did not meet that threshold.

As a result, it appears that complaint data involving 8(a) firms are not being utilized to the full extent as a means to identify potential areas of concern such as program eligibility issues. Without a standard process for collecting and analyzing complaints, SBA staff—and the agency as a whole—lack information that could be used to help identify issues relating to program integrity and help improve the effectiveness of SBA oversight.

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## Conclusions

SBA's 8(a) program provides opportunities for participating firms to collectively receive billions of dollars in federal contracts on a competitive or noncompetitive basis. As a result, it is critical that SBA's annual reviews of 8(a) firms are performed effectively to help ensure that only eligible firms are allowed to continue to participate in and benefit from the program. However, our file review at five district offices found inconsistencies in the annual review policies and procedures followed by SBA staff related to program eligibility. This suggests a need for greater monitoring by SBA and potentially a need for more guidance and training to ensure greater consistency in the performance of required annual review procedures.

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Furthermore, the lack of specific criteria in the current regulations related to eligibility determinants such as size standards and industry averages and the dual roles of the BDSs—providing oversight and being an advocate for the firm—may have contributed to the variation in annual review practices we observed. By clarifying guidance, further detailing or expanding procedures, and emphasizing the importance of quality controls, SBA could help eliminate ambiguities, improve the quality of reviews, and provide clearer criteria against which to judge eligibility and ensure that only intended recipients benefit from program participation.

Workload constraints of BDS staff may have been a contributing factor to the inconsistencies and deficiencies identified in our review of annual review files in the five districts that we visited. While the annual review process is central to ensuring program integrity, SBA's statutory requirement to conduct annual reviews of 100 percent of 8(a) firms also is time- and resource-intensive. The workload demands associated with the annual review process likely have affected the quality of these reviews as well as detracted from the time staff have been able to devote to other core 8(a) program responsibilities, ranging from technical assistance to mentoring. As we previously recommended and continue to believe, an assessment of the BDS workload could help ensure the BDSs can carry out their responsibilities and determine what mechanisms can be used to prioritize or redistribute their workload. Such an assessment also would be helpful in assessing the multiple roles and responsibilities of BDS staff, including ways to mitigate the conflicting roles of business development, and ensuring that only eligible firms are allowed to participate in the program. In a fiscally challenged environment and with workload constraints as a constant, it is important that the agency review staff and resource allocations and identify process efficiencies wherever possible.

Changes that SBA recently made to termination procedures, coupled with the increase in terminations overall, may help to alleviate workload constraints for district office staff. As we noted in our November 2008 report, the inefficient termination process consumed scarce SBA resources and may have affected business development activities. District staff could take advantage of the revised, more efficient termination process to minimize time spent waiting for documents from firms and free up time for business development and other activities. However, SBA retained some firms that repeatedly did not submit required documentation for annual reviews. By monitoring the implementation of regulations relating to documentation requirements, SBA could help staff more readily identify firms for termination, reduce the time staff spent "chasing" documentation, and help improve the timeliness of annual

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reviews. Additionally, by providing specific examples in the regulations or procedures of what is considered to be a pattern of failure, staff would be able to better justify termination decisions.

The agency also faces a number of challenges in effectively monitoring and managing the Mentor-Protégé Program, which is an important subset of the 8(a) program. For example, SBA headquarters and district offices could not agree or provide current and basic information on the total number of mentor-protégé agreements. Maintaining accurate information on participants is a basic and important control mechanism to monitor 8(a) protégé firms that submit agreements with more than one mentor, or mentors that submit agreements with more than one 8(a) protégé. By developing a centralized process to collect and maintain information on program participants, SBA would have a critical tool necessary to properly monitor and oversee the program.

Finally, SBA also has an opportunity to develop another tool that could enhance its oversight of the 8(a) program. Currently, SBA lacks comprehensive data on complaints involving 8(a) firms because it does not systematically collect and analyze information on the nature of the complaints and their disposition. Although complaint data are not a primary mechanism to ensure program eligibility, continual monitoring is a key component in detecting and deterring fraud. By developing an agencywide process for documenting and analyzing complaints, SBA would have an information resource that could be used with other efforts to provide reasonable assurance that only eligible firms are participating in the program.

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## Recommendations for Executive Action

To improve the monitoring of and procedures used in assessing the continuing eligibility of firms to participate in and benefit from the 8(a) program, we recommend that the Administrator of SBA take the following six actions:

- To help ensure greater consistency in carrying out annual review procedures and improve the overall quality of these reviews, we recommend that the SBA Administrator monitor, and provide additional guidance and training to, district offices on the procedures used to determine continuing eligibility, including
  - taking appropriate action when firms exceed four of seven industry size averages, including notifying firms the first year and enforcing

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- procedures relating to early graduation of firms that exceed industry averages for 2 consecutive years;
  - obtaining appropriate supervisory signatures to finalize annual review decisions;
  - submitting remedial action or a waiver for firms in the transition phase that did not meet business activity targets;
  - graduating firms that exceed the net worth threshold of \$750,000;
  - performing timely eligibility reviews in required cases; and
  - completing required annual reviews.
- To help reduce inconsistencies between districts and BDS staff in annual review procedures requiring judgment, we recommend that SBA review its existing 8(a) program regulations and its proposed changes with the intent of providing additional criteria and examples for staff when assessing key areas of program eligibility and determining whether a firm should be graduated from the program when it exceeds size standards, industry averages (such as total assets, net sales, working capital, or pretax profit), and limits for personal compensation and assets, and excessive withdrawals.
  - To help address competing demands on 8(a) resources, SBA should assess the workload of business development specialists to ensure that they can carry out all their responsibilities. As part of this assessment, SBA should review the roles and responsibilities of the BDSs to minimize or mitigate to the extent possible the potentially conflicting roles of advocacy for firms in the program with the responsibility of ensuring that only eligible firms are allowed to continue to participate in the program. In addition, SBA should review the size of the 8(a) portfolio for all business development specialists and, if necessary, determine what mechanisms should be used to prioritize or redistribute their workload.
  - To reduce the practice of retaining firms that fail to submit annual review documentation as required, SBA should monitor the implementation of regulations relating to termination to see if they are achieving their purpose or whether business development staff need further guidance in interpreting the regulations. SBA should consider providing specific examples of what might be considered a pattern of failure to submit documentation as required.
  - To better manage and monitor participation in the Mentor-Protégé Program, including compliance with the number of allowable mentor and protégé firms, SBA should develop a centralized process to collect and maintain up-to-date and accurate data on 8(a) firms participating in the Mentor-Protégé Program. SBA should consider incorporating information



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on Mentor-Protégé approvals, extensions, and dissolutions in existing electronic data systems used for the annual review process.

- To more fully utilize and leverage third-party complaints to identify potentially ineligible firms participating in the 8(a) program, design and implement a standard process for documenting and analyzing complaint data.

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## Agency Comments and Our Evaluation

We requested SBA's comments on a draft of this report, and SBA's Associate Administrator of the Office of Government Contracting and Business Development provided written comments that are presented in appendix II. SBA agreed with each of the six recommendations and stated that some corrective measures have already been implemented and additional actions are planned to be implemented in the near future. For example, SBA stated it has implemented a comprehensive training curriculum, revised guidance for annual review procedures, and will provide additional examples that will assist staff in assessing key areas in making annual review determinations. SBA also indicated that it had begun to develop a routine centralized process to collect and maintain accurate data related to the Mentor-Protégé Program. Finally, SBA stated that it plans to assess BDS workload and develop a central repository for third-party complaints.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to other interested congressional committees and the Administrator of the Small Business Administration. The report will also be available at no charge on the GAO Web site at <http://www.gao.gov>.

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If you or your office have any questions about this report, please contact me at (202) 512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix III.

Sincerely yours,



William B. Shear  
Director, Financial Markets and  
Community Investment

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# Appendix I: Scope and Methodology

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Our objectives were to (1) evaluate the procedures and processes that the Small Business Administration (SBA) has implemented to ensure that only eligible firms remain in the 8(a) program, and (2) assess the extent to which SBA used external mechanisms, such as complaints by other 8(a) firms, to help ensure that only eligible firms participate in the program.

To evaluate the procedures and processes that SBA has implemented to help to ensure that only eligible firms participate in the 8(a) program, we reviewed applicable statutes and the legislative history of the 8(a) program, SBA's regulations and guidance for administering the program, our previous reports, and studies of the program conducted by SBA, SBA's Office of Inspector General (OIG), and external organizations.

Additionally, we randomly sampled files for review at 5 selected district offices to assess SBA's compliance with its eligibility review procedures for the 8(a) and Mentor-Protégé programs.<sup>1</sup> We selected the 5 district offices based on the high dollar value of contract obligations in these districts and geographic diversity.<sup>2</sup> Our sample population included firms that were active in the 8(a) program in fiscal year 2008 and had 8(a) contracts in fiscal year 2008. We identified these firms by using SBA's list of active fiscal year 2008 8(a) firms and matching these data to the Federal Procurement Data System-Next Generation (FPDS-NG) to determine which of those firms had obligations. For our review, we excluded those firms that joined the program during calendar year 2008, because these firms would not yet have been in the program long enough to have an annual review on file.<sup>3</sup> We also excluded Alaska Native Corporations, tribally owned, Native Hawaiian Organization-owned, other Native American-owned, and Community Development Corporation-owned firms because of the different 8(a) eligibility requirements applied to these entities. The results of our sample are generalizable only to the 5 district offices. We randomly sampled 123 8(a) firms from our population, and an additional 13 8(a) firms that had mentor-protégé agreements, which we

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<sup>1</sup>The 8(a) program is managed from 68 district offices, each one containing the paper documents we wanted to evaluate. Because our compliance review required a site visit to a district office to review the file documents for a particular firm, we narrowed the scope of our review down to 5 district offices: Washington, D.C., San Antonio, Denver, Massachusetts, and San Francisco SBA district offices.

<sup>2</sup>The 5 districts we selected represented 29 percent (or 672) of all active fiscal year 2008 8(a) firms with contracts and 37 percent (or about \$2 billion) of the contracting obligation dollars.

<sup>3</sup>SBA is required by statute to conduct annual reviews to monitor continuing eligibility of 8(a) firms. These reviews begin 1 year after the firm's certification date.

judgmentally selected from SBA’s list of Mentor-Protégé firms as of September 2009.<sup>4</sup> For each firm, we reviewed its most recent 2 years of annual reviews for the period 2007-2009, and any existing mentor-protégé agreements, related documents, and correspondence. We developed a data collection instrument (DCI) to collect key annual review data from each file. The DCI was pretested in 2 district offices and modified based on these tests. We also analyzed mentor- protégé data to identify protégé firms that may have multiple mentors, which are against regulation, and mentor firms that may have multiple protégés, which is allowable only when specially authorized by SBA. To identify these cases, we sorted the data by firm name and searched for duplicate matches. A total of 672 firms met our study criteria and are shown in table 4.

**Table 4: Total Number of Files and Sample Sizes at Five Selected District Offices**

SBA field office	Number of files	Sample size
Washington, D.C.	479	64
Denver	70	14
San Antonio	56	15
Massachusetts	27	15
San Francisco	40	15
<b>Total</b>	<b>672</b>	<b>123</b>

Source: GAO.

We randomly selected the indicated number of cases within each regional office. We treated this as a stratified random sample and weighted the sample cases accordingly for our analysis. Our estimates are statistically representative for all files maintained in these 5 SBA regional offices.

Because we treated our file review as a stratified random sample, we assumed our sample was only one of a large number that could have been drawn. Because each sample could have provided different estimates, we expressed our confidence in the precision of our particular sample’s results as a 95 percent confidence interval. This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. As a result, we are 95 percent confident that each of the confidence intervals based on the file review includes the true values in

<sup>4</sup>In addition to the 13 8(a) firms with mentor-protégé arrangements, another 7 firms in our sample of 123 had mentor-protégé agreements on file.

the sample population. The 95 percent confidence intervals for each of the estimates are summarized in table 5.

**Table 5: 95 Percent Confidence Intervals for Statistical Sample Estimates in Table 2**

<b>Requirement not met</b>	<b>Estimated percentage</b>	<b>Lower endpoint of 95 percent confidence interval</b>	<b>Upper endpoint of 95 percent confidence interval</b>
Taking action when a firms exceeded industry averages by notifying firms that exceeded four of seven industry averages for 1 year	26	19	35
graduating or explaining retention of firms that exceeded four of seven industry averages for 2 consecutive years	4	1	9
Reviewing net worth or graduating firms in which individuals exceeded adjusted net worth limitations	7	3	13
Performing required eligibility reviews	4	1	9
Completing required annual reviews	2	1	7
Documenting supervisory reviews	23	15	31
Imposing remedial actions or obtaining waivers for firms not meeting business activity targets	10	5	17

Source: GAO.

We performed appropriate data reliability procedures for our sample testing at the 5 district offices and analysis of inappropriate mentor-protégé relationships. We compared SBA data with data from other sources such as FPDS-NG and the Central Contractor Registry, performed electronic testing, reviewed related documentation and internal controls, and performed interviews with knowledgeable agency officials. We determined that the data were sufficient to perform our sample testing and project our results to the 5 district offices in our population of 8(a) firms. We also determined through these methods that data relating to mentor-protégé participants were sufficient to report on descriptive statistics of mentor-protégé firms with contracts. The discrepancies we found in the general list of mentor-protégé participants are documented within the report.

To assess the extent that external mechanisms exist, such as complaints by other 8(a) firms, to help ensure that only eligible firms participate, we interviewed agency and SBA Office of Inspector General officials, and we reviewed SBA OIG complaint data. We also interviewed officials in SBA’s Office of Business Development, Division of Program Certification and Eligibility, and district office staff to discuss their procedures for determining initial and continuing eligibility, oversight efforts, technical

assistance offered, and mechanisms to help identify ineligible firms in the program.

We conducted our work in Boston, Massachusetts; Denver, Colorado; San Antonio, Texas; San Francisco, California; and Washington, D.C., between May 2009 and March 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix II: Comments from the Small Business Administration



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

March 10, 2010

Mr. William B. Shear  
Director  
Financial Markets and Community Investment  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Mr. Shear:

The U.S. Small Business Administration (SBA) is pleased to provide a response addressing the issues outlined in your draft Government Accountability Office (GAO) Report Number: GAO-10-353, entitled, "Steps Have Been Taken to Improve Administration of the 8(a) Program, but Key Controls for Continued Eligibility Need Strengthening."

#### **BACKGROUND:**

As you are aware, the SBA's 8(a) Business Development (BD) program seeks to foster the business growth and development of firms deemed socially and economically disadvantaged and offers a number of programmatic benefits which include advocacy support, management, technical, financial, and procurement assistance. While there is a continual need to implement policy and procedural guidance to ensure proper internal controls, oversight, monitoring and compliance, SBA is encouraged by the significant strides that the agency has already made along these lines.

SBA also recognizes that there are weaknesses and areas that require immediate action and implementation of corrective measures. Since the timeframe in which this GAO audit was conducted, the Office of Business Development (OBD) has already implemented (or will implement) corrective measures that will address all of the recommendations outlined in this GAO Report.

One significant step toward addressing many of these weaknesses occurred in October 2009, when SBA announced in the *Federal Register* proposed regulatory revisions aimed at strengthening opportunities for disadvantaged small businesses to benefit from its 8(a) BD program. The proposed 8(a) regulation changes are the result of the first comprehensive review of the 8(a) BD program in a number of years. The rules cover a variety of areas of the program, ranging from providing further clarification on determining economic disadvantage to requirements on Joint Ventures and the Mentor-Protégé program. The public comment period was extended to January 28, 2010, in an effort to obtain comments from our broad customer base as well as other stakeholders.



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The 8(a) BD program has a proven track record as an effective program for helping socially and economically disadvantaged small businesses gain access to training and contracting opportunities to help them grow, create jobs and ultimately succeed in the marketplace upon leaving the program. We believe that the proposed rule changes build on that foundation of success, and will strengthen the program and maximize its benefits for eligible small businesses.

The OBD, in conjunction with the Office of Field Operations, will be conducting an extensive National Training Conference in June 2010 that will include all of the Business Development (BD) personnel from our 68 district offices. This National Training Conference will emphasize all aspects of continuing eligibility for 8(a) BD participants.

The following is SBA's response to the six recommendations made by GAO regarding SBA's need to improve the monitoring of and procedures used in assessing the continuing eligibility of firms to participate and benefit from the 8(a) program. Some of the responses include corrective measures already implemented and actions that are planned to be implemented in the near future.

**GAO's RECOMMENDATIONS FOR EXECUTIVE ACTION:**

**RECOMMENDATION 1:**

To help ensure greater consistency in carrying out annual review procedures and improve the overall quality of these reviews, we recommend that the SBA Administrator should monitor, and provide additional guidance and training to district offices on the procedures used to determine continuing eligibility, including:

- taking appropriate action when firms exceed four of the seven industry size averages, including notifying firms the first year and enforcing procedures relating to early graduation of firms that exceed industry averages for 2 consecutive years;
- obtaining appropriate supervisory signatures to finalize annual review decisions;
- submitting remedial action or waiver for firms in the transition phase that did not meet business activity targets;
- graduating firms that exceeded the net worth threshold of \$750,000;
- performing timely eligibility reviews in required cases; and
- completing required annual reviews.



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**SBA's RESPONSE TO RECOMMENDATION 1:**

**SBA agrees with the recommendation and has already begun implementing corrective measures.**

In an effort to ensure consistency and improve the overall quality of annual reviews, the OBD has implemented a comprehensive Training Curriculum that consists of training sessions (utilizing Ready Talk conferencing) for BD personnel on a variety of programmatic issues and topics. This training (which is recorded and archived on a share portal for access by BD personnel) covered the following aspects of the annual review process:

- an outline of the steps involved in the annual review process;
- procedures related to conducting a "Personal Asset Test" to include reviewing and analyzing financial statements;
- the importance of financial analysis in determining business trends and other growth indicators;
- excessive withdrawals of an individual 8(a) participant or an 8(a) firm
- calculating a disadvantaged individuals average two year income for S Corporations, Partnerships and LLC's

OBD revised and issued Chapter 5 "*Participant Review Process*" of the 8(a) BD program Standard Operation Procedure 80 05 3 (SOP) to provide guidance regarding the process for obtaining appropriate supervisory signatures to finalize annual review decisions; conducting eligibility reviews, where appropriate, and the process for recommending firms for early graduation, where appropriate.

The OBD conducted a training sessions for all BD personnel on October 15 and 22, 2009, solely on newly issued Chapter 10 of the 8(a) BD program SOP shortly after its release.

In addition, the OBD has issued the following procedural and policy guidance to ensure uniformity as it relates to annual review processing:

- SBA Information Notice (issued 5/15/09), "8(a) Business Development Program Application and Continuing Eligibility Processing"
- SBA Procedural Notice (issued 11/18/08), "Oversight of 8(a) Program Participants"

We will evaluate the guidance outlined in the newly revised Chapter 10 (*Leaving the 8(a) Business Development Program*) of the 8(a) SOP concerning procedures related to early graduation of firms that exceed industry averages for two consecutive years and take appropriate action, where necessary.

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**RECOMMENDATION 2:**

To help reduce inconsistencies between districts and BDS staff in annual review procedures requiring judgment, we recommend that SBA review its existing 8(a) program regulations and its proposed changes with the intent of providing additional criteria and examples for staff when assessing key areas of program eligibility and determining whether a firm should be graduated from the program when it exceeds size standards, industry averages (such as total assets, net sales, working capital, pre-tax profit), and limits for personal compensation and assets, and excessive withdrawals.

**SBA'S RESPONSE TO RECOMMENDATION 2:**

**SBA agrees with this recommendation.**

We will continue to conduct training on this topic as well as revise the applicable sections of the 8(a) BD SOP to provide examples that will assist staff in assessing key areas and making determinations – after analyzing a myriad of factors that include taking into consideration that the 8(a) Program is a business development program – as to whether or not early graduation is appropriate.

**RECOMMENDATION 3:**

To help address competing demands on 8(a) resources, SBA should assess the workload of business development specialists to ensure that they can carry out all their responsibilities. As part of this assessment, SBA should review the roles and responsibilities of the BDS to minimize or mitigate to the extent possible the potentially conflicting roles of advocacy for firms in the program with the responsibility of ensuring that only eligible firms are allowed to continue to participate in the program. In addition, SBA should review the size of the 8(a) portfolio for all business development specialists and, if necessary, determine what mechanisms should be used to prioritize or redistribute their workload.

**SBA'S RESPONSE TO RECOMMENDATION 3:**

**SBA agrees with this recommendation.**

SBA's O FO will assess the workload of BDSs to review roles and responsibilities and evaluate staffing levels.

A key component of SBA's mission is advocacy support on behalf of small businesses. To that end, 8(a) BD program participants are small businesses first and foremost, who happen to have an additional tool (8(a) certification) to increase their competitive viability in the Federal marketplace. These 8(a) BD program participants often require advocacy support as well as individual business counseling assistance. The BDS is the primary individual responsible for servicing an 8(a) BD program participant during its

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nine year term and, as such, cultivates a business and professional relationship with that 8(a) BD program participant. There are often occasions where the BDS works with the 8(a) BD program participant to recommend technical assistance and as a result of that technical assistance, the participant (who may not have met its business activity target) will be able to obtain a non-8(a) contract award and; thereby meet the required business activity target. Because the 8(a) BD program is a business development program, the BDS must evaluate and assess the totality of the circumstance and in some cases, make a judgment call.

**RECOMMENDATION 4:**

To reduce the practice of retaining firms that fail to submit annual review documentation as required, SBA should monitor the implementation of regulations relating to termination to see if they are achieving their purpose or whether business development staff needs further guidance in interpreting the regulations. SBA should consider providing specific examples of what might be considered a pattern of failure to submit documentation as required.

**SBA's RESPONSE TO RECOMMENDATION 4:**

**SBA agrees with this recommendation.**

SBA will continue to conduct training on the annual review and termination actions reinforcing the requirements of the regulations and the guidance provided in Chapters 5 and 10 of the 8(a) SOP whereby a pattern of failure (repeated failures to respond to SBA's requests for required submissions or responses in a timely manner) is established.

**RECOMMENDATION 5:**

To better manage and monitor participation in the Mentor-Protégé Program, including compliance with the number of allowable mentors and protégé firms, SBA should develop a centralized process to collect and maintain up-to-date and accurate data on 8(a) firms participating in the Mentor-Protégé Program.

**SBA's RESPONSE TO RECOMMENDATION 5:**

**SBA agrees with this recommendation.**

The OBD has already begun to develop a routine centralized process to collect and maintain accurate data related to 8(a) BD program participants in the Mentor-Protégé Program. We are developing a Procedural Notice that will be issued to the BD field staff outlining this process.

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**RECOMMENDATION 6:**

To more fully utilize and leverage third-party complaints to identify potentially ineligible firms participating in the 8(a) program, design and implement a standard process for documenting and analyzing complaint data.

**SBA's RESPONSE TO RECOMMENDATION 6:**

**SBA agrees with this recommendation.**

We will work with the Office of General Counsel to develop a central repository for third-party complaints that will be accessible on the agency's homepage to provide a centralized location for such complaints. SBA will then maintain this data for follow-up and appropriate action, as necessary.

Again, thank you for the opportunity to provide comments on this draft GAO Report. My staff and I look forward to working with you in resolving the issues outlined in this draft GAO Report as we seek to strengthen the SBA's 8(a) BD program.

If you have additional questions or comments, please contact me directly.

Sincerely,



Joseph G. Jordan  
Associate Administrator  
Office of Government Contracting  
and Business Development

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

William B. Shear, (202) 512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Harry Medina (Assistant Director), Carl Barden, Tania Calhoun, Janet Fong, Cindy Gilbert, Julia Kennon, Amy Moran Lowe, Barbara Roesmann, Verginie Tarpinian, and William Woods made key contributions to this report.

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