PILIERO MAZZA PLLC
ATTORNEYS AT LAW

MEMORANDUM

To: Clients and Friends

From: Pamela J. Mazza
Antonio R. Franco
Devon E. Hewitt
Jonathan T. Williams

Date: February 15, 2011

Re: SBA Issues Final Changes to Its Small Business Size and 8(a) Business Development Regulations

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As we indicated in our earlier communications, on February 11, 2011, the Small Business Administration ("SBA") issued a final rule, amending its small business size and 8(a) Business Development Program ("8(a) Program") regulations. See 76 Fed. Reg. 8251 (February 11, 2011). The final rule makes some technical changes to the regulations, and implements several of SBA's current policies that are not currently expressed in the regulations. However, the final rule also makes significant changes to the SBA's rules governing joint ventures, the mentor/protégé program, the nonmanufacturer rule, participation of Tribes, Alaska Native Corporations and Native Hawaiian Organizations in the 8(a) Program, size issues, economic disadvantage, and other miscellaneous 8(a) eligibility issues. As such, we wanted to alert you to these particular rule changes, as they may affect the way your company does business.

The enclosed chart identifies the most significant amendments to the SBA's regulations. So that you can see how the amended regulations differ from those now in effect, it also outlines the current regulations as well as the changes that the SBA originally proposed to make to these regulations. Also enclosed is a notice of a series of breakfast seminars that PilieroMazza is hosting, in conjunction with Goodman & Company and Sandy Spring Bank, to further explain the changes made by the final rule.

The majority of the new regulations have an effective date of March 14, 2011. If you would like our assistance in understanding any of these final amendments to the regulations and how they may impact your business, please do not hesitate to contact us at 202-857-1000.

With kind regards,

Pamela J. Mazza

Antonio R. Franco

Jonathan T. Williams

Devon E. Hewitt

Overview of Final Changes to SBA's Small Business Size and 8(a) Business Development Regulations

CURRENT RULE	PROPOSED RULE	FINAL RULE
Non-Manufacturer Rule 13 C.F.R § 121.106		
Procurements for supplies must be classified under the appropriate manufacturing NAICS code, not under the wholesale trade NAICS code.	SBA proposed to modify this rule to clarify that a procurement for supplies also cannot be classified under a retail trade NAICS code.	Finalized as proposed. 13 C.F.R § 121.402(b)
The SBA's so-called "nonmanufacturer rule" permits a nonmanufacturer to provide the product of another small business, or, if the rule is waived, the product of a large business.	SBA proposed to clarify the nonmanufacturer rule to explicitly state that the rule applies only to a manufacturing procurement with a manufacturing NAICS code, but not to a supply contract. SBA also proposed to make clear that when a manufacturing contract involves some services, the nonmanufacturer must supply the product of a small business but need not perform any specific portion of the services, which cannot be considered primary and vital.	Finalized as proposed. 13 C.F.R § 124.406
To be eligible as a nonmanufacturer, a firm must be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied under the contract.	SBA proposed to add that the nonmanufacturer must take possession of the item with its personnel.	The final rule requires the nonmanufacturer to take *either* possession *or ownership* of the item with its personnel. 13 C.F.R § 124.406(b)(1)(iii)
Joint Ventures 13 C.F.R § 121.103(h)		
The so-called "3 in 2" rule states that two firms are limited to pursuing three contract opportunities under one JV over a period of two years. To pursue an opportunity means to submit an offer.	The "3 in 2" limitation would change from three *offers* to three *contract awards* under one JV.	The "3 in 2" limitation has changed from three *offers* to three *contract awards* under one JV within two years. The two years begins at the date of award of the first contract. JV partners may be affiliated if they violate this rule. A JV may ultimately be awarded more than three contracts, and not be deemed generally affiliated, if: (1) the fourth (or more) offer occurred during the two year period; and (2) the offer was made before the third contract was awarded. The two JV partners may form additional JVs, and each JV may be awarded three contracts over two years. 13 C.F.R § 121.103(h)
As OHA confirmed in Size Appeal of SES-TECH Global Solutions, SBA No. SIZ-4951 (2008), the 8(a) JV rules apply only to MP JVs that pursue 8(a) contracts.	SBA proposed to make clear that any JV seeking to use 8(a) MP status as a basis for an exception to affiliation must follow the 8(a) JV rules set forth in 13 C.F.R § 124.513(c), (d).	Finalized as proposed. 13 C.F.R § 121.103(h)(3)(iii)
A mentor and protégé may JV as a small business for *any government procurement.*	SBA requested comment on whether MP JVs should be considered small for federal subcontracts. SBA also sought comment on whether to permit the MP JV exclusion from affiliation for only 8(a) contracts. This would mean that a large business mentor could not JV with a protégé for small business set-asides.	Permits MP JVs to be small for federal prime contracts or subcontracts under certain circumstances. 13 C.F.R §121.103(h)(3)(iii) <– Did not adopt

CURRENT RULE	PROPOSED RULE	FINAL RULE
8(a) Joint Ventures 13 C.F.R § 124.513		
Historically, SBA has permitted sole source 8(a) contracts above the competitive threshold amounts both directly to 8(a) Participants owned and controlled by tribes or ANCs and to JVs with one or more tribally or ANC-owned 8(a) Participants.	Because SBA believes this rule has permitted large businesses to unfairly benefit by forming a JV and then also serve as a subcontractor to the JV, SBA proposed to modify the rule to provide that non-8(a) JV partners to 8(a) sole source contracts above the competitive thresholds *cannot* be subcontractors to the JV on 8(a) sole source contracts.	On *any* 8(a) contract: For populated JVs, neither the non-8(a) JV partner, nor any of its affiliates, may act as a subcontractor to the JV, itself, or to any subcontractor of the JV. 13 C.F.R § 124.513(d)(2)(ii) A JV between one or more eligible Tribally-owned, ANC-owned or NHO-owned Participants and one or more non-8(a) concerns may be awarded a sole source 8(a) contract above the competitive threshold amount, provided it meets the above requirement (as well as complies with the other JV requirements)
The 8(a) JV partner must receive 51% of the profits from the JV.	Recognizing the inequity this requirement causes when the non-8(a) firm performs more of the work in the JV, SBA proposed to amend this rule to provide that the 8(a) JV partner must receive profits from the JV commensurate with the work the 8(a) partner actually performs.	The 8(a) Participant must receive profits from the JV commensurate with the work performed by the 8(a) Participant *or* In the case of a separate legal entity JV, the 8(a) Participant must receive profits from the JV commensurate with their ownership interests in the JV. 13 C.F.R §124.513(c)(4)
For 8(a) JVs, the performance of work rule is satisfied through the JV. This means the JV partners may also serve as subcontractors for a significant portion of the JV prime contract.	SBA requested comment on whether it should prohibit non-8(a) JV partners from being subcontractors under *any* 8(a) prime contract awarded to a JV.	For populated JVs only: neither the non-8(a) JV partner, nor any of its affiliates, may act as a subcontractor to the JV, itself, or to any subcontractor of the JV. 13 C.F.R §124.513(d)(2)(ii)
The 8(a) JV partner must perform a "significant portion" of the work done by the JV. There is no definition of "significant portion" in the regulation.	SBA proposed to define "significant portion" to mean that the 8(a) JV partner must perform at least 40% of the work done by the JV. This would mean that if the JV performs 50% of a contract, the 8(a) must perform 40% of 50%, or 20% of the entire project.	Unpopulated JVs: the 8(a) partner must perform at least 40% of all of the work done by JV partners (including all work done by the non-8(a) partner and any of its affiliates at any subcontracting tier). Populated JVs: the 8(a) partner must demonstrate how it will benefit or otherwise develop its business from the JV relationship. 13 C.F.R §124.513(d)(2(i)
No current rule	No proposed rule	8(a) joint venture partner must describe how it is meeting or has met its applicable performance of work requirement: (i) as part of its annual review; and (ii) upon contract completion. 13 C.F.R §124.513(i)
Mentor/Protégé 13 C.F.R § 124.520		
A MP agreement must set forth an assessment of the protégé's needs and describe the assistance the mentor is committing.	The MP agreement must specifically address how the assistance to be provided through the agreement will help the protégé firm meet the goals established in its business plan.	Finalized as proposed. 13 C.F.R § 124.520(e)(1)(i)
In order to demonstrate its favorable health, a firm seeking to be a mentor must submit its federal tax returns for the last two years to SBA for review.	The SBA proposed to permit the mentor to submit evidence other than tax returns to demonstrate its financial health.	Finalized as proposed. 13 C.F.R § 124.520(b)(3)

CURRENT RULE	PROPOSED RULE	FINAL RULE
This rule provides an exemption from affiliation when one firm provides assistance to another under a federal MP program.	SBA did not intend the MP exemption to be triggered by MP programs from other federal agencies. Therefore, SBA proposed to modify its rules to clarify that the MP affiliation exception will only apply to firms in a MP program specifically authorized by statute (i.e., the SBA or DOD MP programs) or where SBA has authorized an exception for another federal agency's MP program.	Finalized as proposed.
Nonprofits cannot serve as mentors because they are not considered to be a "concern" as that term is used in this regulations and defined in 13 C.F.R. § 121.105.	SBA considered changing the regulation to permit nonprofits to serve as mentors.	Finalized as proposed. 13 C.F.R § 124.520(b)
Generally, mentors may have only one protégé at a time unless SBA approves more.	Under the proposed rule, SBA would impose an absolute limit of three protégés per mentor at a time	Finalized as proposed. 13 C.F.R § 124.520(b)(2)
Only firms in good standing in the 8(a) Program are eligible to be a protégé.	SBA intended to clarify that once the 8(a) firm exits the 8(a) Program or the MP agreement is terminated, the 8(a) firm is not eligible for further benefits from its MP relationship. A JV between a mentor and protégé would be expected to complete any contract awarded to the JV while the protégé was in the 8(a) Program.	Finalized as proposed. 13 C.F.R § 124.520(d)(1)(iii)
Protégés may have only one mentor.	Recognizing that in some cases a second MP relationship is warranted, SBA proposed to allow a second mentor in limited circumstances when the second mentor relationship pertains to an unrelated, secondary NAICS code and the first mentor does not have the specific expertise that the second mentor can provide.	Finalized as proposed. Adds that the second MP relationship must not conflict with the business development assistance set forth in the first mentor/protégé relationship. 13 C.F.R § 124.520(c)(3)
An 8(a) firm is eligible to be a protégé if it is in the developmental stage of the 8(a) Program, has never received an 8(a) contract, or is half their applicable size standard.	SBA proposed to prohibit an 8(a) firm in the last year of the program from being eligible as a mentor. SBA sought comments on the appropriate time before the end of a firm's program term when protégé eligibility would end.	An 8(a) firm in the last six months of the program may not be eligible as a protégé. 13 C.F.R § 124.520(5) Added an additional "or" to the regulation. Restricts a firm from serving both as a protégé and a mentor at the same time. 13 C.F.R § 124.520(c)(4)
A mentor and protégé may JV as a small business for any government procurement.	Proposed to clarify that the MP agreement must be approved *before* the two firms can submit a JV offer as a small business	Finalized as proposed. 13 C.F.R § 124.520(d)(1)(i)
There are no procedures for reconsideration of SBA's decision to deny a proposed MP agreement.	Where SBA declines to approve a specific MP agreement, the protégé may request the SBA to reconsider the Agency's initial decline decision by filing a request for reconsideration with its servicing SBA district office within 45 calendar days of receiving notice that its MP agreement was declined. If the SBA declines to approve the MP agreement on reconsideration, the 8(a) firm seeking to become a protégé could not submit a new MP agreement with that same mentor for one year. It may, however, submit a proposed MP agreement with a different proposed mentor at any time after the SBA's final decline decision.	Finalized as proposed, *except* changes the one year timeline to 60 calendar days from the date of the final decision. 13 C.F.R § 124.520(f)

CURRENT RULE	PROPOSED RULE	FINAL RULE
There are no specific consequences set forth in the regulations for a mentor that fails to provide the assistance it agreed to provide in its MP agreement.	If SBA determines that the mentor has not provided the agreed upon assistance, the mentor will have an opportunity to respond. If the mentor does not respond, does not supply adequate reasons for its failure to provide the agreed upon assistance, or does not set forth a definite plan to provide the assistance: (i) SBA will recommend a stop work order for every contract the MP is performing as a JV (ii) SBA will terminate its MP agreement; and (iii) the firm will be ineligible to again act as a mentor for a period of two years from the date SBA terminates the MP agreement. Under some circumstances, the SBA may authorize substituting another Participant for the JV so the JV can continue performance. Also, the SBA may consider a mentor's failure to comply with the terms and conditions of an SBA-approved MP agreement as a basis for debarment.	Finalized as proposed, *except* : (1) The SBA has discretion to recommend a stop work order for every contract the MP is performing as a JV; and (2) The SBA may authorize a substitution of the protégé firm for the JV so the JV can continue performance. 13 C.F.R § 124.520(h)
Size issues		
SBA's IG is not currently identified in the regulations as an individual who can request a formal size determination.	The IG would have authority to ask for a formal size determination, particularly in the context of an investigation or other review of SBA programs by the IG.	Finalized as proposed. 13 C.F.R § 124.1001(b)(10)
Currently the regulations do not permit an 8(a) Participant to change its primary NAICS code, even if it can demonstrate that its revenues have evolved from one primary NAICS code to another.	The definition of primary NAICS code would be amended to specifically recognize that a Participant may change its primary NAICS code where it can demonstrate that the majority of its revenues during a two year period have evolved from its former primary code to another code.	Finalized as proposed. 13 C.F.R § 124.3
13 C.F.R. § 124.102 provides that a firm must qualify as small under its primary NAICS code when it applies for the 8(a) Program. Historically, SBA has permitted firms to remain in the 8(a) Program and receive 8(a) contracts in their secondary NAICS codes as long as they remained small for such secondary codes, even if they no longer qualified as small under their primary NAICS code. In determining whether to graduate an 8(a) firm early, SBA considers a number of factors under section 124.302, including sales trends, degree of sustained profitability and current ability to obtain bonding.	SBA proposed to amend section 124.102(a) to require that a firm *remain* small for its primary NAICS code during its term of participation in the 8(a) Program. Additionally, in determining whether to early graduate an 8(a) firm, this rule proposed to revise section 124.302 to *permit* SBA to consider, among other factors, whether the firm exceeds the size standard corresponding to its primary NAICS code for two successive program years.	Finalized as proposed, *except* that the SBA changed the applicable period of measurement from two successful program years to three successive program years. The final rule also clarifies that graduation may not be warranted if the firm demonstrates that its primary industry is changing to a related secondary NAICS code that is contained in its most recently approved business plan. 13 C.F.R § 124.102(a)(2)
Economic Disadvantage		
This regulation authorizes SBA to use personal income as a basis for determining economic disadvantage, but does not identify a specific level of income below which an individual would be considered economically disadvantaged. An AGI threshold of $200,000, on average, over the *two* years preceding submission of the 8(a) application, has been established through OHA cases.	SBA proposed to codify the $200,000 AGI threshold.	Increases the AGI threshold to $250,000, on average, over the past *three* years. If the individual's average AGI exceeds the threshold, SBA will presume that the individual is not economically disadvantaged. 13 C.F.R § 124.104(c)(3)(i)

CURRENT RULE	PROPOSED RULE	FINAL RULE
The regulations do not currently provide that any particular AGI renders an 8(a) firm ineligible for continued 8(a) participation. However, recently, SBA district offices have been questioning socially disadvantaged 8(a) owners whose income exceeds $200,000.	SBA proposed to require a two year average income of $250,000 for continued 8(a) Program eligibility.	Increased the threshold AGI to $350,000, on average, over the past *three* years. Presumption may be rebutted by a showing that the income was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or by evidence that the income is not indicative of lack of economic disadvantage. 13 C.F.R § 124.104(c)(3)(i)
The SBA's SOP provides that S Corporation income that was reinvested in the firm or used to pay S Corp taxes should not be counted towards SBA's calculations of personal income; however the regulations do not provide the same.	The proposed regulation would codify the SOP guidance. Specifically, the proposed regulation states that S Corporation income will *not* be considered in determining an individual's annual income or net worth if the S Corporation owner submits evidence that such income was reinvested in the firm or used to pay corporate taxes within 12 months of the distribution of income.	Finalized as proposed. 13 C.F.R § 124.104(c)(3)(ii)
When married, an individual claiming economic disadvantage also must submit separate financial information for his or her spouse.	SBA may consider spouse's financial situation in determining an individual's access to capital and credit.	Finalized as proposed, but clarifies that spouse's financial situation will only be considered where the spouse has a role in the business (*e.g.*, an officer, employee or director) or has lent money to, provided credit support to, or guaranteed a loan of the business. 13 C.F.R § 124.104(b)(2)
When determining an owner's economic disadvantage, SBA excludes the ownership interest in the applicant or Participant and the equity in the primary personal residence in its calculation of net worth.	SBA proposed that IRAs and other retirement funds will not count toward an applicant's personal net worth, so long as the funds cannot be withdrawn early without a significant penalty.	Finalized as proposed. 13 C.F.R § 124.104(c)(2)(ii)
This regulation provides that SBA may consider "the fair market value of all assets, whether encumbered or not" in determining whether an individual is economically disadvantaged. The rule does not provide a bright line rule regarding what level of total assets would be impermissible.	An individual would generally not be considered economically disadvantaged if the fair market value of all his or her assets (including the value of his or her ownership interest in (1) his or her primary residence; and (2) the applicant/Participant firm) exceeds $3 million for an applicant concern and $4 million for continued 8(a) BD eligibility. The only assets excluded from this determination would be funds being invested in a qualified IRA account.	Final Rule increases the thresholds from $4 million for applicants and $6 million for continued 8(a) eligibility. 13 C.F.R § 124.104(c)(4)
Miscellaneous 8(a) Eligibility Issues		
This rule currently provides that "individuals determined to be disadvantaged for purposes of one Participant, their immediate family members, and the Participant itself, may not hold, in the aggregate, more than a 20 percent equity ownership interest in any other single Participant."	SBA interpreted this rule as precluding an individual from using his or her disadvantaged status to qualify a firm for the 8(a) Program if he has an immediate family member who has used his/her disadvantaged status to qualify another firm for the program. SBA proposed to clarify this interpretation in the new rule. SBA can waive this prohibition. However, where the concern seeking a waiver is in the same or similar line of business as the current or former 8(a) concern, there is a presumption against granting the waiver.	Finalized as proposed. 13 C.F.R § 124.105(g)

CURRENT RULE	PROPOSED RULE	FINAL RULE
This rule addresses control of an 8(a) applicant or Participant.	The disadvantaged owner must reside in the U.S. and spend part of every month working in the firm's principal office. SBA asked for comments regarding whether control should be determined on a case-by-case basis, or should it require physical presence by the individual(s) claiming disadvantage in the headquarters of the applicant or Participant for a minimum amount of time each month. Allows a disadvantaged owner that is a U.S. military reserve component member to maintain his company's 8(a) status when called to active duty by either: (1) designating one or more individuals to control the participant on his behalf during the active duty call-up period; or (2) suspend its 8(a) participation during the active duty call-up period.	The disadvantaged full-time manager must be physically located in the United States. Finalized as proposed with respect to the disadvantaged owner/U.S. military reserve component member who has been called to active duty during his company's 8(a) Program term. 13 C.F.R § 124.106(a)(2)
The regulations currently prohibit non-Participant concerns in the same or a similar line of business as an 8(a) concern from owning more than a 10 percent interest in an 8(a) concern in the developmental stage of program participation or more than a 20 percent interest in a Participant in the transitional stage of the program.	SBA proposed to also prohibit *principals* of such concerns from owning these same percentages.	Finalized as proposed. 13 C.F.R § 124.105(h)(2)
SBA has permitted firms applying to the 8(a) program and Participants in the program seeking contracts to hire agents or representatives to assist them in that process. However, this rule is currently not codified in the SBA's regulations.	The proposed regulations do not discuss this policy.	In response to concerns that SBA's policy is not set forth in the regulations, this final rule adds a new provision to address fees for agents and representatives. The final rule provides that the compensation received by any agent or representative of an 8(a) applicant or Participant for assisting the applicant in obtaining 8(a) certification or for assisting the Participant in obtaining 8(a) contracts must be reasonable in light of the service(s) performed by the agent or representative. Compensation that is a percentage of the gross contract value will be prohibited. Additionally, compensation that is a percentage of profits may be found to be unreasonable. The final rule sets out procedures by which SBA will suspend or revoke an agent's or representative's privilege to assist applicants. 13 C.F.R § 124.4
The current rule requires: i) Participants with gross annual receipts of more than $5 million to submit to the SBA audited annual financial statements. ii) Separate audited financial statements for each individual ANC/NHO/Tribally-owned 8(a) firm with gross annual receipts of more than $5 million.	SBA proposed to increase the threshold over which audited financials are required from $5 million in gross annual receipts to $10 million. The proposed rule did not address the requirement of separate audited financial statements for each ANC/NHO/Tribally-owned 8(a) firms.	Increases the threshold over which audited financials are required from $5 million in gross annual receipts to $10 million. Native-owned 8(a) firms with gross annual receipts over $10 million may elect to submit unaudited financial statements, provided that that they also submit annually (1) audited financial statements for the parent company; and (2) certified unaudited financial statements for the participant. As an alternative option, Native-owned 8(a) firms with gross annual receipts over $10 million may submit consolidated audited financial statements prepared by their respective parent entity, as long as these statements include audited schedules for each 8(a) Participant. 13 C.F.R. §124.602(a), (g)

CURRENT RULE	PROPOSED RULE	FINAL RULE
The Excessive Withdrawals Rule: Firms with sales up to $1 million can withdraw $150,000; (ii) firms with sales between $1 million and $2 million can withdraw $200,000; and (iii) firms with sales exceeding $2 million can withdraw $300,000. Includes officers' salaries within the definition of "withdrawal."	SBA proposed to increase the excessive withdrawals thresholds by $50,000 at the two lower levels, and by $100,000 for the highest level. Proposed to exclude officer's salaries from the definition of "withdrawal."	Increased the excessive withdrawals thresholds as follows: (i) firms with sales up to $1 million can withdraw $250,000; (ii) firms with sales between $1 million and $2 million can withdraw $300,000; and (iii) firms with sales exceeding $2 million can withdraw $400,000. Generally excludes officers' salaries. Levels are tied to the firm as a whole. Excessive withdrawal prohibition does not apply to firms owned by Tribes, ANCs, NHOs or CDCs. However, if withdrawals are for the benefit of a non-disadvantaged manager or owner that exceed the withdrawal thresholds, SBA may find that withdrawal to be excessive. 13 C.F.R. §124.112(d)(1), (3), (5)
Specifies that Participants must make maximum efforts to obtain business outside the 8(a) Program.	Clarifies that work performed by an 8(a) Participant for any Federal department or agency other than through an 8(a) contract, including work performed on orders under the General Services Administration (GSA) Multiple Award Schedule program, and work performed as a subcontractor, including work performed as a subcontractor to another 8(a) Participant on an 8(a) contract, qualifies as work performed outside the 8(a) BD program.	Finalized as proposed. 13 C.F.R. § 124.509(a)(1) Adds that a firm receiving a waiver of the sole source prohibition will be able to self market its capabilities and receive one or more sole source 8(a) contracts during the next program year. At its next annual review, SBA will reevaluate the firm's circumstances and determine whether the waiver should be extended an additional program year. 13 C.F.R. §124.509(e)(1)
ANCs, Tribes, & NHO 13 C.F.R §§ 124.109, 124.110		
This regulation requires tribes to demonstrate their economic disadvantage through the submission of data, including information relating to tribal unemployment rate, per capita income of tribal members, and the percentage of the tribal population below the poverty level.	Tribes were requested to comment on how SBA should assess economic disadvantage for tribal 8(a) companies. Some options included a bright line assets or net worth test. SBA also requested comments on whether a tribe should be required to determine its economic disadvantage more than one time.	Retains the current language in the regulation. Adds that tribes are only required to determine economic disadvantage one time, unless specifically requested by the SBA. 13 C.F.R § 124.109(b)
A tribally-owned 8(a) applicant cannot have the same primary NAICS code as another tribal entity that has already been admitted into the 8(a) Program, or that has left the Program within the last two years. However, the regulation allows the applicant to perform secondary work in the same NAICS code as another tribal firm.	One tribal entity cannot receive a contract in a secondary NAICS code that is the primary NAICS code of another 8(a) tribal entity. As an alternative, SBA also considered allowing the applicant to perform no more than 20% or 30% in the secondary code.	Retains the current language in the regulation. Adds that: Tribes/ANCs are prohibited from receiving a sole source 8(a) contract that is a follow-on contract to an 8(a) contract immediately previously performed by another Participant (or former Participant) owned by the same Tribe/ANC. 13 C.F.R § 124.109(c)(3)(ii) NHOs are subject to the same prohibition; however this restriction only applies for two years after they enter the 8(a) Program. 13 C.F.R § 124.110(e)
Managers of tribal 8(a) firms must be individuals that are members of the tribe that owns the concern and must individually qualify as economically disadvantaged.	SBA requested comments on whether this rule is too restrictive and whether membership in any tribe should suffice.	Deletes the requirements that managers must qualify as economically disadvantaged. Clarifies that managers need not be member of the tribe that owns the concern. 13 C.F.R § 124.109(c)(4)(i)

CURRENT RULE	PROPOSED RULE	FINAL RULE
ANCs must certify as to certain eligibility requirements as part of the annual review process.	Annual ANC reviews will require information on the extent to which benefits are reaching individual Alaska natives or the native community. The same reporting requirements may also be applied to 8(a) Participants owned by tribes, NHOs and CDCs.	As part of its annual review submission, Participants owned by ANCs, Tribes, NHOs and CDCs all will be required to report how the ANC, Tribe, NHO or CDC has provided benefits to the Tribal or native members or other community due to participation in the 8(a) program. 13 C.F.R § 124.604 ** The SBA has agreed to delay implementation of this particular rule for six months to allow further discussions with the tribal/ANC/NHO community. Thus, the effective date for this rule is September 9, 2011, unless SBA further delays implementation through a Notice in the Federal Register.
SBA's Anchorage, Alaska District Office initially reviews all applications from ANC-owned firms.	ANC 8(a) applicants will be reviewed out of San Francisco DPCE, not Anchorage, and SBA may send some cases to Philadelphia.	The final rule does not specifically state that applications from ANC-owned firms will be processed by the San Francisco DPCE, but the preamble to the rule provides that it is the SBA's intent to implement this policy.
ANC and tribally-owned concerns are exempt from limitations on the amount of contract dollars that a firm may receive on a sole source basis.	SBA proposed to extend the sole source exemption to NHO firms as well.	Finalized as proposed. 13 C.F.R § 124.519(a)
NHO 8(a) applicants are currently not required to provide any explanation as to how they are benefiting Native Hawaiians.	The SBA did not propose any changes to this rule.	As part of its 8(a) application, NHOs must now describe activities that it has done to benefit Native Hawaiians, must include statements in its bylaws or operating agreement identifying the benefits that Native Hawaiians will receive, and must have a detailed plan to show how revenue earned by the NHO will principally benefit Native Hawaiians. 13 C.F.R § 124.110(c)(2)

Key Terms

AGI = Adjusted Gross Income
ANC = Alaska Native Corporation
CDC = Community Development Corporation
HUBZone = Historically Underutilized Business Zone
IG = Inspector General
JV = Joint Venture
MP = Mentor/Protégé
NHO = Native Hawaiian Organization
OHA = SBA's Office of Hearings and Appeals
SBA = Small Business Administration
SDVO = Service-Disabled Veteran-Owned
SOP = Standard Operating Procedure