

# SBA's 8(a) Annual Reporting Requirements



October 5, 2016



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# About PilieroMazza

PilieroMazza PLLC is a full-service law firm located in Washington, D.C. We are most well known as a government contracting firm and for more than 25 years we have helped our clients navigate the complexities of doing business with the federal government. We also provide a full range of legal services including advice on business, corporate, labor and employment, SBA procurement programs, and litigation matters. Our clients value the diverse array of legal guidance they receive from us and our responsiveness as we guide their growth and secure their success.

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***PM Legal Minute*** – our blog, written by all of PilieroMazza’s attorneys, provides trending insight to small and mid-sized businesses.

***Legal Advisor Newsletter*** – our quarterly publication which addresses current issues that are of concern to federal government contractors and commercial businesses nationwide. The Legal Advisor articles focus on recent legal trends, court decisions, legislative and regulatory rule-making, as well as other newsworthy events.

***Weekly Update*** – an email sent every Friday that provides an up-to-the-minute recap of legislative and regulatory issues affecting small businesses.

***Webinars on YouTube*** – all of our past webinars can be found on the PilieroMazza YouTube channel.

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# Overview

- Why the Annual Report Matters for Concerns Owned by Individuals
- Why the Annual Report Matters for Concerns Owned by Tribes, ANCs, & NHOs
- Consequences of Misreporting
- Form 1450 Areas of Concern
- Form 1790: Consultants
- Best Practices
- Q&A



# Why the Annual Report Matters for Concerns Owned by Individuals

- Eligibility
- Majority-owned and controlled/managed by socially and economically disadvantaged individual(s)
- Economic disadvantage
  - Assets < \$6 million
  - Income < \$350,000
  - Net worth < \$750,000
- Compliance with applicable regulations
- Business Activity Target (BAT)



# Why the Annual Report Matters for Concerns Owned by Tribes, ANCs, & NHOs

- Majority-owned and controlled/managed by the tribe, ANC, or NHO
- Changes in Management
- Improper payments
- Compliance with applicable regulations
- Business Activity Target (BAT)



# Consequences of Misreporting

- Early graduation or termination from 8(a) program
- Suspension or debarment
- Civil or criminal fraud
  - False Claims Act (FCA)







### 8(a) ANNUAL UPDATE

Under 15 United States Code (U.S.C.) § 636(j)(10), each Program Participant is required to submit a business plan to SBA as condition of participation and to review that plan with the Agency annually. As a part of this effort, SBA collects information on the "8(a) Annual Update" to ensure eligibility for participation in the 8(a) Business Development Program according to the requirements listed in 13 Code of Federal Regulations (C.F.R.) § 124.112.

Form 1450 with Attachments A and B can be accessed electronically for completion, modification and submission. The form can be found by accessing the following: [http://www.sba.gov/sites/default/files/forms\\_1450.pdf](http://www.sba.gov/sites/default/files/forms_1450.pdf). In addition, a hard copy of the certification page within Form 1450 containing a "wet signature" of the President, Partner or proprietor must be submitted to SBA. This document should be sent to the assigned Business Opportunity Specialist located in the serving District office.

**REVIEW YOUR RESPONSES CAREFULLY. YOUR SIGNATURE ON PAGE 5 BELOW, YOU ARE CERTIFYING TO THE ACCURACY AND TRUTHFULNESS OF THIS INFORMATION. FALSE STATEMENTS ARE SUBJECT TO CRIMINAL AND/OR CIVIL PROSECUTION.**

All information collected will be protected to the extent permitted by law, including the Freedom of Information Act, (5 U.S.C. 522), Privacy Act (5 U.S.C. 552a) and the Right to Financial Privacy Act of 1978 (12 U.S.C. 3406).

**1. Business Information**

The following fields have been filled with information from SBA records. Please review and correct the pre-filled data and enter missing data as appropriate.

Case no.: \_\_\_\_\_ CCR/DSBS/SAM Last Updated: \_\_\_\_\_

8(a) Approval Date: \_\_\_\_\_ Transition Stage Date: \_\_\_\_\_ 8(a) End Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Email Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

**2. Personal Financial Information:** A Personal Financial Statement, SBA Form 413, must be completed and submitted for each disadvantaged owner upon whom 8(a) certification was based. A separate form should be completed for the spouse of such owner. For jointly held assets and liabilities in which the owner and spouse own equally by both spouses, one-half of the value should be listed on each form. Property that is legally in the name of one spouse would be considered wholly-owned by that spouse regardless of whether or not the couple lives in a community property state. For other

# Form 1450 Areas of Concern



# Changes in Management

*Q6: Have there been any changes in the Partnership Agreement, Articles of Incorporation, By-Laws or stock issues since the Participant firm was certified for the 8(a) Business Development program and which have not been previously reported to SBA?*

- Changes to corporate documents
- Resignation or addition of directors and officers
- Changes in stock ownership
- Was SBA approval obtained for changes in ownership or management?

Who owns, manages, and controls the company?



# Joint Venture Reporting

15. Joint Venture: For the program or fiscal year being reviewed, were you a participant in a joint venture (JV) agreement? (C.F.R. § 124.513)

Yes  No

For each joint venture agreement, indicate the following: (Use separate sheet if needed.)

JV Partner	JV Name	Award Date	Prime Contract #

- Must list all JV agreements for the fiscal year
- On Attachment C, must provide information for all contracts performed as a JV

Contract Number	Name of Joint Venture	Name of Other Firm(s) Partnering in the Joint Venture. If any of these firms are 8(a) firms, indicate this by adding “[8(a)]” after the firm’s name	Percentage of Contract Work Performed by Joint Venture	Percentage of Contract Work Performed by Non 8(a) Partner in Joint Venture



# Joint Venture Reporting

- For all of the above 8(a) contracts performed as a joint venture, were all of the above 8(a) contracts performed under a Joint Venture Agreement Approved by SBA?

If no, identify all relevant 8(a) contracts \_\_\_\_\_

- For all of the above 8(a) contracts performed as a joint venture, were all of the above contracts performed under a Mentor Protégé Agreement Approved by SBA?

If no, identify all relevant 8(a) contracts \_\_\_\_\_

- For all of the above 8(a) contracts performed as a joint venture, did the joint venture subcontract any contract work to the non-8(a) partner in the joint venture or any company that is affiliated with the non-8(a) partner?

If yes, identify all relevant 8(a) contracts \_\_\_\_\_

- For all of the above 8(a) contracts performed as a joint venture, provide a narrative description below of how the percentage of work requirement was met:

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# Joint Venture Reporting

- SBA is looking for...
  - Undue reliance on another concern
    - 3 in 2 rule
  - Compliance with the performance of work requirements
  - Prior approval of JV agreements



# Performance of Work

*New provisions may not govern a contract issued before May 2016*

- In the case of a contract for services, the 8(a) concern must not pay more than 50% of the amount paid by the government to it to firms that are not similarly situated.
  - For construction, the limit is 85% (cost of materials excluded)
- If an 8(a) uses a similarly situated 8(a) subcontractor, it all counts toward the prime's 8(a) work.
- Similarly-situated subcontractors must meet the size standard associated with the NAICS code the prime assigned to the subcontract; similarly-situated subcontractors do not have to meet the size standard assigned to the prime contract if the work they are doing falls under another code for which they qualify as small.



# Performance of Work

*Q 12: Include a report on attachment C for each 8(a) contract performed during the year explaining how the performance of work requirements are being met (or were met) for the contract. (13 C.F.R. § 124.112(b)(8).*

And in Attachment C:

Contract Number and date contract was signed	Contracting Agency	NAICS Code Assigned to Contract	Total Contract Amount	Percentage of Contract Work Performed By 8(a) Participant (Exclude Work Performed by non-8(a) Joint Venture Partners)	Percentage of Contract Work Performed by Subcontractors	Name of any Subcontractor Performing More than 10% of the Contract Work (indicate percentage performed)

Was the subcontract approved by SBA?



# Performance of Work

- SBA is looking for...
  - Compliance with the performance of work requirements
  - Reliance on other concerns
  - Prior SBA approval of subcontractors





# Transfer of Assets

- A potential issue for concerns owned by individuals
- *Q4: A record must be completed from each individual claiming disadvantaged status regarding the transfer of assets for less than fair market value to any immediate family member or to any trust where the beneficiary is an immediate family member, within two years of the date of the this annual review. The record must provide the name of the recipient(s) and family relationship, and the difference between the fair market value of the asset transferred and the value received by the disadvantaged individual.*
- Relates to assets and personal net worth
- Financial statements may raise questions



# Officer & Director Compensation

*Q3: A record of all payments, compensation and distributions (including loans, advances, salaries and dividends) should be made by the Participant to each of its owners, officers or directors, or to any person or entity affiliated with such individuals. Please complete Attachment A, "Individual/Entity Compensation Worksheet."*

Annual Compensation Data: For the previous annual year, describe below all payments, compensation and distributions (including loans, advances, salaries and dividends) made by the Participant (1) to each of its owners, officers directors, and stock holders owning 10% or more of the Participant Firm's stock or (2) to any person or entity affiliated with such individuals. The term "entity affiliated with such individuals" includes, without limitation, all companies or organizations of which an owner, officer or director of the Participant Firm is a officer, partner or director or holds a 10 percent or greater ownership interest. Compensation includes, without limitation, all payments and distributions, including loans, advances, salaries and dividends. Each individual reporting must include a signed and dated copy of their most recent tax return, including all schedules and attachments. In addition, all supporting 1099 forms must be provided. If a filing extension has been requested, provide a copy of IRS Form 4868, Individual Extension Request and a copy of most recently signed and dated tax return. Tax information provided may be verified with IRS. (13 C.F.R. § 124.112(3)(b)(5))

- The SBA is looking to see if the excessive withdrawal rule has been violated
- Distributions to the tribe, ANC, or NHO should not be a problem



# Officer & Director Compensation

Name of person receiving payment/compensation/distribution:  Title:

Ownership %: of Participant firm

Nature of Payments:

Salary: \$

Bonus: \$

Advances: \$

Dividends: \$

Distributions: \$

Other compensation (please specify): \$

Total Payments/Compensation/Distributions for period of  through  \$

Month/ Date / Year  Month/Date/ Year



# Officer & Director Compensation

- For concerns owned by individuals, SBA is looking for...
  - Compensation over \$350,000 for the individual(s) claiming disadvantaged status
  - Compensation of others exceeding the compensation of the individual(s) claiming disadvantaged status
  - The individual holding the business concern's highest position devoting less than full-time to the operation of the applicant business concern
  - Excessive withdrawals



# Officer & Director Compensation

- For concerns owned by tribes, ANCs, and NHOs, SBA is looking for...
  - Excessive withdrawals
  - The individual holding the business concern's highest position devoting less than full-time to the operation of the applicant business concern
    - A tribe, ANC, or NHO may designate one employee to be responsible for the management/daily operations of two 8(a) concerns



# Form 1790 – Consultants

*As required by 15 USC 637(a)(20) (a) and 13 CFR Part 124.601, all 8(a) Participants are required to semiannually report to SBA information on compensation provided to any Agents or Representatives (hereafter referred to as “Representatives”), including attorneys, accountants, and consultants, for assisting the Participants to obtain a Federal contract.*

Representative’s Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

**Fees, Commissions or Compensation:**

Amount Paid (If any)	\$	_____
Amount Due (If any)	\$	_____
Total Amount of Compensation	\$	_____

Description of Services Provided: \_\_\_\_\_



# Consultants

- SBA is looking for...
  - Compliance with regulations
    - Compensation
    - Contingent fees
  - Potential for success
  - For concerns owned by individuals, lack of control/management on the part of the individual(s) claiming disadvantaged status



# Best Practices

- Accurate record keeping
- Timely disclosure
- Communicate with your Business Opportunity Specialist (BOS)
- Start your annual report early
- When in doubt, get help





# *Questions?*

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