

Evaluation of SBA's Eligibility Verification of 8(a) Firms Owned by Members of Federally or State- Recognized Indian Tribes

REPORT NUMBER 21-12 | March 31, 2021





EXECUTIVE SUMMARY

EVALUATION OF SBA'S ELIGIBILITY VERIFICATION OF 8(A) FIRMS OWNED BY MEMBERS OF FEDERALLY OR STATE-RECOGNIZED INDIAN TRIBES

Report No. 21-12

March 31, 2021

What OIG Reviewed

The Small Business Administration's 8(a) Business Development Program provides business development assistance and preferences in securing federal contracts to economically and socially disadvantaged small businesses.

In fiscal year (FY) 2019, federal agencies awarded \$50.8 billion in federal contracts to small, disadvantaged businesses, with \$18.1 billion of that amount awarded using 8(a) procedures to 8(a) program participants.

Our objective was to evaluate the effectiveness of SBA's process for verifying socially disadvantaged eligibility of 8(a) firms owned by enrolled members of a federally or state-recognized Indian tribe.

To meet our objective, we reviewed policies and procedures SBA used to evaluate whether applicants met the eligibility requirements to participate in the 8(a) program. We interviewed 8(a) program officials to discuss the processes and procedures for verifying whether applicants were members in a federally or state-recognized Indian tribe.

We also reviewed 110 applications of participants accepted in the 8(a) program from FYs 2015-18 who claimed socially disadvantaged eligibility through memberships in federally or state-recognized Indian tribes to assess the effectiveness of SBA's verification processes and procedures.

What OIG Found

We found that SBA adequately verified the socially disadvantaged eligibility of 8(a) firms owned by enrolled members of a federally or state-recognized Indian tribe for the majority of the applications we reviewed, despite SBA not having documented verification procedures.

However, we found two firms SBA admitted into the 8(a) program although owners were members of tribes not federally or state recognized. Program officials used subjective and inconsistent processes and unofficial information to determine whether Indian tribes were state recognized. These firms received \$10.9 million in 8(a) set-aside obligations from FY 2015 through FY 2020 at the expense of eligible disadvantaged firms in the 8(a) program.

These internal control weaknesses should be addressed to reduce the risk of fraud and ensure program integrity.

OIG Recommendations

We recommended SBA document the procedures for verifying that individual firm owners claiming socially disadvantaged eligibility are enrolled members in Indian tribes that are federally, or state recognized. The agency should train staff on the procedures.

We also recommended the agency review the eligibility of the two firms we identified as owned by individuals who were members of Indian tribes not federally or state recognized and determine whether they are eligible to continue in the program. The agency should take prompt action to remove firms found to be ineligible.

Agency Response

SBA management agreed with recommendation 1 and did not agree with recommendation 2. Management's planned actions to update its standard operating procedures for verifying that Indian tribes named by individually owned firms claiming socially disadvantaged status as enrolled members are federally or state recognized and to train staff on the verification procedures resolved recommendation 1.

Although management disagreed with recommendation 2, we closed it based on their review of the two firms we identified that were owned by individuals who were members of Indian tribes not federally or state recognized. SBA determined that the two firms were eligible because SBA regulations did not require only tribes recognized by the 13 states having formal recognition procedures should be deemed to have met the State recognition requirement. We believe managements proposed corrective actions to address recommendation 1 will resolve the issues identified and satisfy the intent of recommendations 1 and 2.



Office of Inspector General U.S. Small Business Administration

DATE: March 31, 2021

TO: Isabella Casillas Guzman
Administrator

FROM: Hannibal "Mike" Ware 
Inspector General

SUBJECT: Evaluation of SBA's Eligibility Verification of 8(a) Firms Owned by Members of Federally or State-Recognized Indian Tribes

This report presents the results of our evaluation report, *SBA's Eligibility Verification of 8(a) Firms Owned by Members of Federally or State-Recognized Indian Tribes* (Report 21-12). We considered management's comments on the draft when preparing the final report. Management agreed with recommendation 1 but did not agree with recommendation 2.

We appreciate the courtesies and cooperation extended to us during this evaluation. If you have any questions, please contact me or Andrea Deadwyler, Assistant Inspector General for Audits, at (202) 205-6586.

cc: Steve Kong, Acting Chief of Staff
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Introduction

The Small Business Administration (SBA) gives preferences to socially and economically disadvantaged small businesses through the 8(a) Business Development Program. The 8(a) program provides training and technical assistance to small businesses and limits competition for certain contracts through set-aside and sole-source awards.

A set-aside award is a proposed contract with competition limited to small businesses. Sole-source awards are contracts proposed for award without competition.

In fiscal year (FY) 2019, federal agencies awarded \$50.8 billion in federal contracts to small, disadvantaged businesses. Of that amount, \$18.1 billion was awarded using 8(a) procedures for program participants.

8(a) Business Development Program Eligibility for Individually Owned Firms

The 8(a) program has several eligibility requirements for individually owned firms, including that the business be at least 51 percent owned, controlled, and managed by U.S. citizens who are socially and economically disadvantaged.¹

Socially disadvantaged individuals include members of certain designated groups or any individuals who have been subjected to racial, ethnic, or cultural bias because of their identities as members of a group without regard to their individual qualities. Native Americans are one of the designated groups which includes Alaska Natives, Native Hawaiians, or enrolled members of a federally or state-recognized Indian tribe. Applicants who are not members of one of the designated groups must provide a narrative statement demonstrating by a preponderance of evidence they are socially disadvantaged.

Enrolled Members of a Federally or State-Recognized Indian Tribe

The U.S. Department of the Interior first established the regulatory process for recognizing federally recognized tribes in 1978 and later revised it in 1994 to clarify what evidence was needed to meet the requirements for recognition. Also, in 1994 Congress enacted the Federally Recognized Indian Tribe List Act, which formalized the ways an Indian tribe may be federally recognized.² The Act required the Secretary of the U.S. Department of the Interior to publish an annual list of federally recognized tribes in the *Federal Register*.

No federal agency maintains a list of state-recognized Indian tribes. The National Conference of State Legislatures identifies 13 states with established formal processes for Indian tribes to become state recognized within their borders.

The U.S. Census Bureau considers an Indian tribe to be state recognized if it is specifically recognized by a state government through treaty (for example, with one of the original 13 colonial assemblies), state legislation, or other formal process.³ Other agencies exclude entities not recognized under an official state process from their definitions of state-recognized tribes.

¹ SBA has separate eligibility requirements for businesses owned by Indian tribes, Alaska Native corporations, Native Hawaiian organizations, and community development corporations.

² Public Law 103-454.

³ United States Government Accountability Office, GAO-12-348, Indian Issues: Federal Funding for Non-Federally Recognized Tribes (April 12, 2012).

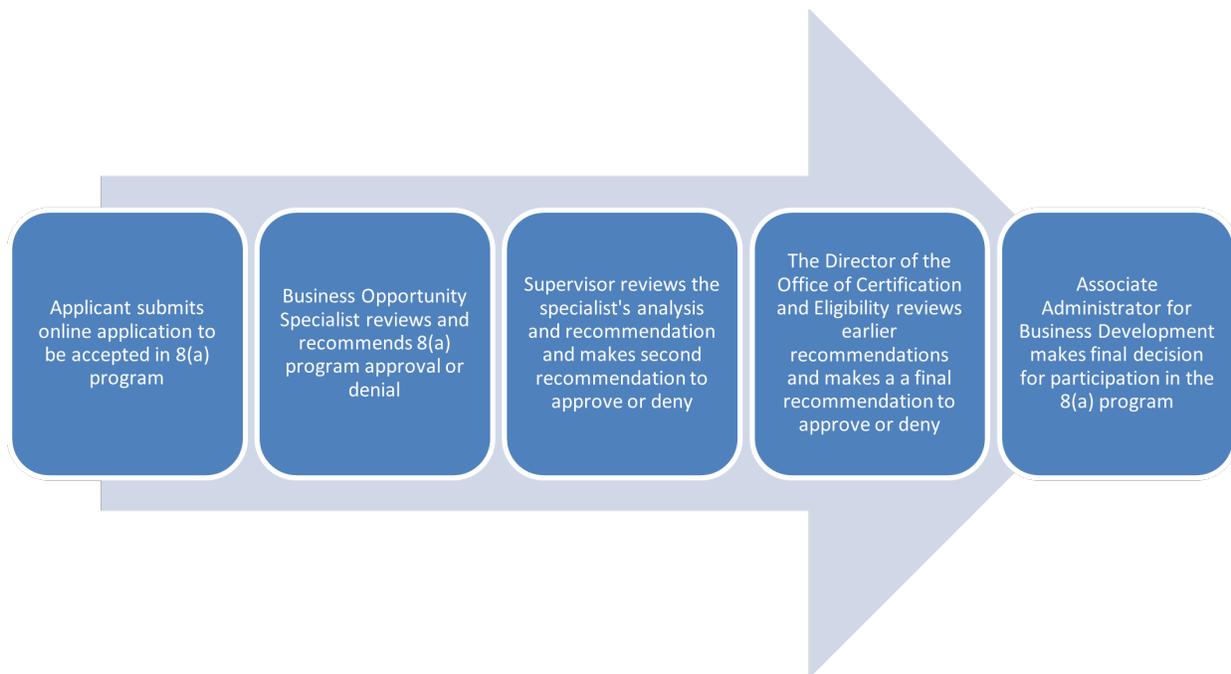
SBA does not distinguish between federally or state-recognized Indian tribal membership. Individual business owners who can show they are members of either a federally or state-recognized Indian tribe meet the socially disadvantaged eligibility requirement to apply to the 8(a) program. SBA staff are responsible for confirming and verifying tribal membership claims presented by applicants.

Application Review Process

Business Opportunity Specialists screen applications for the 8(a) program to ensure they are complete, all required documents are enclosed, and that they are ready for an eligibility review. If an application has any issues of eligibility or other discrepancies that require clarification, the specialists contact the applicants. After reviewing the application, the specialist submits the file and recommendation letter to a supervisor for review and a second recommendation to approve or decline the application.

The two recommendations are forwarded to the Director of Office of Certification and Eligibility, who reviews the file and recommends approving or denying the application. After the Director's review, the Associate Administrator for Business Development makes the final decision to approve or deny the application in writing. A denial must state the reasons why a firm was found ineligible and detail the applicant's rights for appeal (See Figure 1).

Figure 1. 8(a) Program Application Review and Certification Process



Source: OIG analysis of SBA's standard operating procedures

Prior Work

SBA's 8(a) Business Development Program Eligibility (SBA OIG 16-13, April 7, 2016). In 2016, we audited SBA's procedures to determine if they ensured only eligible participants were admitted into the 8(a) program. We found that the Associate Administrator for Business Development approved 30 of the 48 8(a) program applications we evaluated without fully documenting how all the concerns raised by lower-level reviewers had been resolved.

We continued to question the eligibility of 10 of the 30 businesses in a follow-up audit in 2017. The Associate Administrator had not sufficiently established that the 10 applicants met the eligibility requirements of the 8(a) program.⁴ Consequently, SBA had no assurance that only eligible firms benefitted from the 8(a) program.

To close the OIG recommendations, SBA made changes to its policies and procedures to document their justification for approving or denying applicants into the 8(a) program. SBA also completed continuing eligibility reviews of the 10 firms.

Objective

Our objective was to evaluate the effectiveness of SBA's process for verifying socially disadvantaged eligibility of 8(a) firms owned by enrolled members of a federally or state-recognized Indian tribe.

⁴ SBA OIG Report 17-15, Reassessment of Eligibility Requirements for 30 Firms in SBA's 8(a) Business Development Program (July 17, 2017).

Finding 1: Inconsistent Indian Tribe Verification Procedures Increase Risk of Ineligible Firms Participating in the 8(a) Program

We found that SBA adequately verified the socially disadvantaged eligibility of 8(a) firms owned by enrolled members of a federally or state-recognized Indian tribe for most of the applications we reviewed. Specifically, of the 110 individually owned firm's SBA admitted into the 8(a) program through membership in a federally or state-recognized Indian tribe between FY 2015 and FY 2018, we found 108 met the eligibility requirements despite SBA not having documented verification procedures.

We also found two firms SBA admitted into the 8(a) program although owners were members of tribes not federally or state recognized. This occurred because program officials used subjective, inconsistent, and undocumented processes and unofficial information to verify the socially disadvantaged eligibility. For the two firms in our sample that SBA incorrectly found to be eligible, we questioned \$10.9 million of 8(a) set-aside obligations that they received. (See Appendix II for a schedule of our questioned costs.)

8(a) Application Review Process for Verifying Indian Tribe Eligibility Were Not Documented

Federal standards for internal controls require managers to document control activities with policies that allow management to effectively monitor the control activity.⁵ Without documented processes, program officials risk ineligible firms participating in the 8(a) program and receiving benefits. However, program officials did not have documented review procedures for verifying an individual's membership in a federally or state-recognized Indian tribes. As a result, recognition decisions varied by which program staff employee reviewed an applicant's supporting information.

Verification Process Subjective and Inconsistent

Program officials did not adhere to the express provisions of the regulations, admitting two firms into the 8(a) program who claimed socially disadvantaged eligibility as enrolled members of Indian tribes that were not federally or state recognized. In FY 2018, only 13 states had established methods for Indian tribes to be state recognized, but SBA did not limit participation to those states. Program officials told us that they interpreted the regulations differently. For applicants that were not members of a federally recognized tribe and were from the 37 states that did not have a formal recognition process, program staff combed the Internet for corroborating evidence that the tribe had been acknowledged in some way in the state other than an official process, such as by historical commissions or advocacy organizations. Determinations of whether the Indian tribe was state recognized largely depended on which Business Opportunity Specialist reviewed an application and supporting documents.

To aid the Business Opportunity Specialist's verification review process and to prevent admitting ineligible firms in the program, program officials maintained an internal list of groups known to self-identify as Indian tribes but that have not been federally, or state recognized. Program officials characterized the list as a tool to confirm tribal membership status, but they did not ensure that the application reviewers consistently used this list. The two firms that program officials admitted into the program were enrolled members of Indian tribes that were on the agency's internal list of tribes

⁵ GAO-14-704G, Standards for Internal Control in the Federal Government (September 2014).

known not to be federally, or state recognized. These firms were admitted into the 8(a) program between FYs 2015-2016 and awarded 63 contracts as of FY 2020. Consequently, we question \$10.9 million in 8(a) set-aside obligations received by the two firms, (See Appendix II for a schedule of the questioned costs).

Without establishing criteria and consistent processes and procedures, program officials risk inconsistent treatment of applicants and ineligible firms participating in and receiving benefits from the 8(a) program.

SBA should follow the express provisions of its regulations, which specifically include the definition of presumed social disadvantage of individuals who are enrolled members of a federally or state-recognized Indian tribe.⁶ Entities that have been acknowledged but are not officially state recognized do not clearly meet the definition of presumed socially disadvantaged individuals.

Recommendations

We recommend that the Administrator require the Associate Administrator for the Office of Government Contracting and Business Development to:

1. Document the process and procedures for verifying that Indian tribes named by individually owned firms claiming socially disadvantaged status as enrolled members are federally or state recognized and train staff on the verification procedures.
2. Review the two firms we identified that were owned by individuals who were members of Indian tribes not federally or state recognized and determine whether they are eligible to participate in the 8(a) program. If not, take prompt action to remove firms found to be ineligible.

⁶ 13 CFR §124.103(b)

Analysis of Agency Response

SBA management provided formal comments to the draft report (see Appendix III). SBA management agreed with recommendation 1. Although the agency did not agree with recommendation 2, management took actions to address the recommendation.

Summary of Actions Necessary to Close the Report

The following sections detail the status of the recommendations and actions necessary to close them:

Recommendation 1

Resolved. SBA agreed with the recommendation and plans to update its standard operating procedures for verifying that Indian tribes named by individually owned firms claiming socially disadvantaged status as enrolled members are federally or state recognized and to train staff on the verification procedures. Management plans to complete the final action on this recommendation by August 30, 2021.

This recommendation can be closed once management updates application review procedures that outline steps application reviewers should take to ensure they follow the express provisions of its regulations when verifying whether the presumed social disadvantage of individuals who are enrolled members of a federally or state-recognized Indian tribe have been officially recognized and trains staff on the procedures.

Recommendation 2

Closed. SBA did not agree with the recommendation. However, as we recommended, management reviewed the two firms that we identified as owned by individuals who were members of Indian tribes not federally or state recognized.

Management determined the two firms were eligible to participate in the 8(a) program because SBA regulations did not require that the only tribes that could be deemed to have met the state recognition requirement were those recognized by the 13 states with formal recognition procedures. Under this interpretation of the regulations, SBA concluded the two firms were, in fact, state recognized and met the socially disadvantaged requirement when admitted into the program.

In response to recommendation 1, SBA management plans to update the standard operating procedures and train staff on new procedures to be used to verify that Indian tribes named by individually owned firms claiming socially disadvantaged status as enrolled members are federally or state recognized. We believe this should ensure consistent application of the criteria when staff verify Indian tribal recognition at the federal or state level. We consider management's actions responsive to resolve and close this recommendation.

Appendix I: Objective, Scope, and Methodology

Our objective was to evaluate the effectiveness of SBA's process for verifying socially disadvantaged eligibility of 8(a) firms owned by enrolled members of a federally or state-recognized Indian tribe.

To meet our objective, we reviewed the sections of the Small Business Act and Federal Regulations pertinent to the 8(a) program. We reviewed laws, regulations, and SBA policies and procedures regarding eligibility to participate in the 8(a) program. We also interviewed officials from the Office of Government Contracting and Business Development to discuss background, structure, how eligibility reviews are done, and ineligible participant removal procedures.

We reviewed and analyzed 8(a) participants applications, application review analysis by business opportunity specialists, and other supporting documentation used to make the socially disadvantaged eligibility decisions for all 110 individually owned firms admitted into the program between FY 2015 and FY 2018 based on membership in a federally or state recognized tribe. The 110 firms are comprised of 87 participants who claimed socially disadvantage eligibility through membership in federally recognized tribes 22 participants that claimed membership in state-recognized Indian tribes, and 1 participant that demonstrated socially disadvantaged eligibility through a preponderance of evidence.

We conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's quality standards for inspection and evaluation. These standards require that we adequately plan inspections; present all factual data accurately, fairly, and objectively; and present findings, conclusions, and recommendations in a persuasive manner. We believe that the evidence provides a reasonable basis for our findings and conclusions based on our evaluation objectives.

Use of Computer Processed Data

We relied on information obtained from the 8(a) program office, including Excel spreadsheets of data collected from Certify.SBA.gov; Federal Procurement Data System – Next Generation, Business Development Management Information System, and the Electronic 8(a) Review System. We cross-referenced the information from these sources with information from the Office of the Chief Information Officer to corroborate the number of 8(a) firms owned by enrolled members of a federally or state-recognized Indian tribe that SBA accepted into the program in FYs 2015-18. We removed several firms from SBA's list because the firm's owner met other eligibility requirements and were not enrolled members of a federally or state-recognized Indian tribe. Further, during our evaluation we reviewed the eligibility of every firm on this list by verifying to source documents and noted exceptions in this report.

Appendix II: Questioned Costs

Questioned costs are expenses not supported by adequate documentation at the time of the audit or which otherwise do not comply with legal, regulatory, or contractual requirements.⁷

Table 1. Schedule of Questioned Costs for the 8(a) Program

Description	Amount (dollars)	Explanation
Ineligible Costs	\$10,916,487	The Office of Certification and Eligibility admitted firms into the 8(a) program that did not meet the socially disadvantaged eligibility requirements.

Source: OIG analysis of 8(a) participants' 8(a) set-aside contract obligations from FYs 2015-20

⁷ [Pub. L. 95-452, §1, Oct. 12, 1978, 92 Stat. 1101.](#)

Appendix III: Management Comments

SBA Response to Evaluation Report



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

TO: Mike Ware, Inspector General,
Office of Inspector General (OIG)

FROM: Dr. Donna L. Peebles, Associate Administrator, *Donna L. Peebles*
Office of Business Development (OBD)

SUBJECT: OIG Project 20002, Evaluation of SBA's Eligibility Verification of 8(a) Firms
Owned by Members of Federally or State Recognized Indian Tribes

DATE: March 11, 2021

SBA appreciates the role OIG plays in working with management in ensuring that SBA's programs are administered effectively, and for the feedback provided in this draft report. We take each recommendation seriously, and understand the importance of the work you do to support risk mitigation for the agency.

This draft report presents the results of OIG's evaluation of the *SBA's Eligibility Verification of 8(a) Firms Owned by Members of Federally or State-Recognized Indian Tribes* (Project 20002), in which OIG reviewed the eligibility of all 110 active 8(a) firms owned by individual enrolled members of a Federally or State recognized Indian tribe and found that 108 of the 110 met your office's compliance. In your report, you questioned the eligibility of two firms based on the applicable tribe's status as a state recognized Indian tribe.

While SBA generally concurs with the spirit of OIG's recommendations, we would like to acknowledge the outstanding work of the Office of Business Development and the analysts at the Central Office Duty Stations (CODS) in San Francisco and Philadelphia. In our view, the results of the audit only validate the CODS' procedures and business processes to verify individual claims of social disadvantage based on enrolled membership in a federally or state recognized tribe and we believe that they fulfilled the required review of all 110 applications.

OIG made the following two recommendations and Management's responses to the recommendations in the draft report are noted as follows:

OIG Recommendation 1:

Document the process and procedures for verifying that Indian tribes named by individually owned firms claiming socially disadvantaged status as enrolled members are federally or state recognized and train staff on the verification procedures.

SBA's Response to Recommendation 1:

SBA concurs with the recommendation. As an initial matter, we thank OIG for acknowledging in the report that the SBA adequately verified the socially disadvantaged eligibility of 8(a) firms owned by enrolled members of a federally or state recognized tribe for the vast majority of the applications. SBA is proud of our due diligence. However, we agree with OIG that our process would benefit from an effort to document the verification procedures. SBA will update its SOP to document the process and procedures for verifying that Indian tribes named by individually owned firms claiming socially disadvantaged status as enrolled members are federally or state recognized and train staff on the verification procedures.

OIG Recommendation 2:

Review the two firms we identified that were owned by individuals who were members of Indian tribes not federally or state recognized and determine whether they are eligible to participate in the 8(a) program. If not, take prompt action to remove firms found to be ineligible.

SBA's Response to Recommendation 2:

SBA does not concur with the recommendation. As we have noted in our conversations leading up to the issuance of this draft report, in both of the two cases questioned by OIG SBA made a determination of state tribal recognition based on an interpretation of our regulations at the time of application approval. We understand that OIG believes that only tribes recognized by the 13 states having official recognition procedures should be deemed to have met the State recognition test. However, no such limitation appears in SBA's regulations and we believe that SBA acted entirely reasonably in seeking to determine whether the two tribes at issue were in fact somehow officially recognized by a state. That OIG disagrees with our interpretation now should not affect or call into question the tribal status determination we made for either application.

Additionally, we note that by statute the decision of the Associate Administrator for Office of Business Development (AA/BD) is the final Agency decision regarding the firm's eligibility for the 8(a) BD program. Once the AA/BD approves a firm's entrance into the 8(a) Business Development Program, the firm has met the eligibility requirements of the program. Therefore, SBA has determined that a qualifying owner for the two cited firms in the report is socially disadvantaged. This determination will apply for the entire duration of the firm's 8(a) BD program term.