

§ 124.207

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social disadvantage, economic disadvantage, ownership, control, or any combination of these four criteria. A denial decision that is based at least in part on the failure to meet any other eligibility criterion is not appealable and is the final decision of SBA.

(b) The applicant may appeal an initial decision of the AA/8(a)BD without requesting reconsideration, or may appeal the decision of the AA/8(a)BD on reconsideration.

(c) The applicant may initiate an appeal by filing a petition in accordance with part 134 of this title with OHA within 45 days of the date of service (as defined in §134.204) of the Agency decision.

(d) If an appeal is filed with OHA, the written decision of the Administrative Law Judge is the final Agency decision. If an appealable decision is not appealed, the decision of the AA/8(a)BD is the final Agency decision.

§ 124.207 Can an applicant reapply for admission to the 8(a) BD program?

A concern which has been declined for 8(a) BD program admission may submit a new application for admission to the program 12 months after the date of the final Agency decision to decline.

EXITING THE 8(a) BD PROGRAM

§ 124.301 What are the ways a business may leave the 8(a) BD program?

A concern participating in the 8(a) BD program may leave the program by any of the following means:

(a) Graduation upon the expiration of the program term established pursuant to §124.2;

(b) Voluntary early graduation;

(c) Early graduation pursuant to the provisions of §§124.302 and 124.304; or

(d) Termination pursuant to the provisions of §§124.303 and 124.304.

§ 124.302 What is early graduation?

(a) *General.* SBA may graduate a firm from the 8(a) BD program prior to the expiration of its Program Term where SBA determines that:

(1) The concern has successfully completed the 8(a) BD program by substantially achieving the targets, objectives,

and goals set forth in its business plan prior to the expiration of its program term, and has demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD program; or

(2) One or more of the disadvantaged owners upon whom the Participant's eligibility is based are no longer economically disadvantaged.

(b) *Criteria for determining whether a Participant has met its goals and objectives.* In determining whether a Participant has substantially achieved the targets, objectives and goals of its business plan and in assessing the overall competitive strength and viability of a Participant, SBA considers the totality of circumstances, including the following factors:

(1) Degree of sustained profitability;

(2) Sales trends, including improved ratio of non-8(a) sales to 8(a) sales since program entry;

(3) Business net worth, financial ratios, working capital, capitalization, and access to credit and capital;

(4) Current ability to obtain bonding;

(5) A comparison of the Participant's business and financial profiles with profiles of non-8(a) BD businesses having the same primary four-digit SIC code as the Participant;

(6) Strength of management experience, capability, and expertise; and

(7) Ability to operate successfully without 8(a) contracts.

(c) *Excessive withdrawals.* SBA may graduate a Participant prior to the expiration of its program term where excessive funds or other assets have been withdrawn from the Participant (see §124.112(d)(3)), causing SBA to determine that the Participant has demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD program.

(d) *Benchmark achievement.* SBA may graduate a Participant prior to the expiration of its program term where the Participant has substantially achieved the targets, objectives and goals of its business plan as adjusted under §124.403(d) and its primary industry classification falls within a SIC Major Group in which the benchmarks described in §124.403(d) have been achieved.

[63 FR 35739, 35772, June 30, 1998]