

## § 124.302

- (b) Voluntary withdrawal or voluntary early graduation;
- (c) Graduation pursuant to § 124.302;
- (d) Early graduation pursuant to the provisions of §§ 124.302 and 124.304; or
- (e) Termination pursuant to the provisions of §§ 124.303 and 124.304.

[76 FR 8258, Feb. 11, 2011]

### § 124.302 What is graduation and what is early graduation?

(a) *General.* SBA may graduate a firm from the 8(a) BD program at the expiration of its program term (graduation) or prior to the expiration of its program term (early graduation) 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, 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) *Exceeding the size standard corresponding to the primary NAICS code.* SBA may graduate a Participant prior

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to the expiration of its program term where the firm exceeds the size standard corresponding to its primary NAICS code, as adjusted during the program, for three successive program years unless the firm is able to demonstrate that it has taken steps to change its industry focus to another NAICS code that is contained in the goals, targets and objectives of its business plan.

(d) *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.

[63 FR 35739, 35772, June 30, 1998, as amended at 76 FR 8258, Feb. 11, 2011]

### § 124.303 What is termination?

(a) SBA may terminate the participation of a concern in the 8(a) BD program prior to the expiration of the concern's Program Term for good cause. Examples of good cause include, but are not limited to, the following:

(1) Submission of false information in the concern's 8(a) BD application, regardless of whether correct information would have caused the concern to be denied admission to the program, and regardless of whether correct information was given to SBA in accompanying documents or by other means.

(2) Failure by the concern to maintain its eligibility for program participation, including failure by an individual owner or manager to continue to meet the requirements for economic disadvantage set forth in § 124.104 where such status is needed for eligibility.

(3) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by disadvantaged individuals.

(4) Failure by the concern to obtain prior written approval from SBA for any changes in ownership or business structure, management or control pursuant to §§ 124.105 and 124.106.