8(a) Firms Face New Risks From Pass-Through Arrangements

By **William Hart and Gregory Rosen** (September 4, 2026, 6:41 PM EDT)

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As part of its broader effort to root out diversity, equity and inclusion programs in the federal government writ large, the Trump administration has recently taken aim at the Small Business Administration's 8(a) small business development program, which, broadly speaking, reserves exclusive federal contracting opportunities like sole-source awards and set-asides for small businesses owned by members of socially and economically disadvantaged groups.[1]

Several reviews of 8(a) small businesses initiated last year have already produced or solidified suspensions, terminations, referrals and settlements. What happens next and how significant this initiative becomes is all about volume, coordination and data.

A Policy With Teeth

Efforts began in June of last year when SBA Administrator Kelly Loeffler announced there would be a full-scale audit of the program to address "increasingly egregious instances of abuse."[2] Piggybacking on Loeffler's audit, Treasury Secretary Scott Bessent in November 2025 and Defense Secretary Pete Hegseth in January 2026 announced audits of their own agencies' sole-source, set-aside contracts with 8(a) small businesses.

Hegseth, referring to the 8(a) program, said he would be taking a "sledgehammer to the oldest DEI program in the federal government" to determine whether the prime 8(a) contractor is "the one actually doing the work, and not just some shell company funneling [taxpayer] money to a giant consulting firm."[3]

The central target of this multi-agency effort is pass-through fraud, in which an 8(a) firm wins a set-aside or sole-source contract on the strength of its status, then does little or no work, passing performance to an ineligible subcontractor. The 8(a) firm collects a management fee and the subcontractor gets an award it never had to compete for.

Of course, pass-through arrangements are not freestanding offenses. The Code of Federal Regulations, the Federal Acquisition Regulation and other subcontracting rules offer a litany of examples regulating this conduct.[4] But myriad laws create exposure in a more dramatic way, because the regulations help convert a business arrangement into a false certification.

Every invoice on a set-aside contract carries with it a representation of continued eligibility and compliance. And when the prime contractor simply serves as a conduit and does little to no actual work, the False Claims Act liability amplifies, for both the 8(a) contractor and the non-8(a) subcontractor.

Businesses acting as mere conduits or pass-throughs could be subject to FCA exposure under any number of theories of liability, as can the non-8(a) subcontractors with which they work. The civil statute, in the simplest terms, imposes liability on anyone who knowingly presents the government with a false claim for payment or approval, or knowingly makes or uses a false record or statement material to the false claim, or knowingly causes or conspires to do either.

Contractors could also be pursued under a theory of implied certification. For example, a request for payment on a set-aside contract made by pass through 8(a) contractor impliedly certifies compliance with the 8(a) program; where the request is made on behalf of an undisclosed non-8(a) contractor, it could be asserted that it caused the government to pay out in the mistaken belief that it was furthering the 8(a) program.[5]

Or, as the U.S. District Court for the District of Columbia upheld in 2024 in U.S. ex rel. Tran v. Computer Sciences Corp, the government can pursue the 8(a) contractor on a theory of fraudulent inducement, under which the government claims it was fraudulently induced to provide the contract to the 8(a) entity under the impression that it will comply with the relevant subcontracting provisions.[6] Finally, in such cases, the government will likely be able to make out a case of false statements against the 8(a) contractor, including certifications of compliance with 8(a) program.

The damages associated with FCA liability are a very substantial risk. Under the presumed loss rule — Title 15 of the U.S. Code, Section 632(w) — when a contractor willfully misrepresents its small business or 8(a) status to obtain an award, the loss to the government is presumed to be the full value of the contract, which is then trebled under Title 31 of the U.S. Code, Section 3729(a)(1), plus per-claim penalties on every invoice. In other words, an 8(a) small business that skimmed 6% off $16 million can face a judgment that existentially cripples the company.

The criminal analogues are obvious too. Section 1001 covers false statements. Section

1031 covers procurement frauds against the U.S. The SBA itself supplies its own criminal provision, Title 15 of the U.S. Code, Section 645(a). Not to mention, of course, that the FCA itself has a criminal component in Title 18 of the U.S. Code, Section 287.

The Cases Have Started

Evidence that the 8(a) contractor focus is real is plain to see, with a number of recent prosecutions putting fraud among 8(a) small businesses and the subcontractors that work for them squarely in the spotlight.

Within a week in June 2026, two separate U.S. Attorneys' Offices announced settlements in civil FCA cases concerning pass-through fraud in the context of the service-disabled, veteran-owned small business program. While SDVOSB is a different certification, the program functions similarly to the 8(a) program.

First, on June 6, the government reached a $3.6 million settlement with Officium Global LLC and Loyal Source Government Services LLC to resolve FCA claims first levied by a qui tam relator. Officium obtained seven separate set-aside contracts for service-disabled, veteran-owned small businesses. As alleged in the complaint, Officium was not entitled to the contracts because its management and daily business operations were not controlled by a service-disabled veteran; Loyal Source Government Services, an ineligible company, was controlling matters behind the scenes and was simply using Officium Global as a shell company.

On June 9, Broadway Electric Inc., its subsidiary Cornerstone Contracting Inc., and their executives, CEO John Oehler and president Christian Blake, agreed to pay $21.3 million to resolve FCA allegations very similar to those made against Officium Global and Loyal Source Government Services. That resolution addressed claims that over eight years Broadway and Cornerstone, which were ineligible for set-aside and sole-source contracts, created purported SDVOSBs that successfully bid on these contracting opportunities.

In reality, however, the ineligible subcontractors received nearly all the contract funds, leaving 1%-3% for the SDVOSBs. In addition, their representatives communicated with the federal government about the contracts using the SDVOSB email domains.

Many practitioners can appreciate that this case involved not just the government, but two outside relators — a U.S. Air Force veteran and an executive — who identified the misconduct as worthy of investigation. They walked away with roughly $3.7 million in settlement funds as a result of their qui tam action.

Takeaways From SDVOSB Action

This case offers several takeaways applicable to 8(a) businesses.

First, the relators sued both the small pass-throughs and the larger businesses. The government only intervened with respect to the larger entities.

Second, the settlement also involved individual liability; corporate officers paid penalties.

Finally, the use of relators dramatically increased the exposure of all parties. A whistleblower at one company, or a subcontracting competitor, could jeopardize an entire enterprise.

And this case did not even involve data miners, who separately increase risks for 8(a) contractors and non-8(a) contractors alike. The U.S. Department of Justice recently reported that, since fiscal year 2024, data miners using public datasets for statistical anomalies filed more than 45% of all qui tam complaints. This is enough of a shift that on April 30 the DOJ launched an initiative to help triage them.[7]

Subcontracting data, government contract awards and 8(a) status are all public. And the statute of limitations is long. All in all, a contractor does not need to have a disgruntled employee or scared contracting officer to end up as a defendant.

Even though the aforementioned settlements involved FCA claims involving a different small business program, it is apparent that the DOJ and Offices of Inspectors General are circling 8(a) contractors and their subcontractors as well.

In June 2025, the DOJ announced individual pleas and corporate resolutions involving $1 million in bribes alleged to have been made across nearly a decade by a contracting officer who steered a dozen prime contracts worth half a billion dollars to two 8(a) government contractors, Vistant and Apprio Inc. Two company officers and the president of a subcontractor pled guilty. Vistant and Apprio entered deferred prosecution agreements.[8]

In the scheme, Apprio was the original prime 8(a) contractor, while Vistant was the subcontractor. When Apprio graduated out of 8(a) program eligibility in 2018, the parties simply flipped the organizational chart: Vistant became the prime contractor, Apprio the sub. Ultimately, this was just one among many issues raised in this prosecution.

However, the fact that, as 8(a) small businesses, they were entitled to exclusive contracting opportunities without competitive bidding made the program the ideal vehicle in which to carry out this scheme. It is this case that triggered the SBA and the U.S. Department of the Treasury audits later in the year.

The 8(a)-related prosecutions have continued. In January, Intellipeak Solutions' president, Phillip Flores, pled guilty and was sentenced to four years imprisonment after marketing his company's 8(a) status to non-8(a) defense contractors, as a route into sole-source awards.[9] Roughly $16 million had flowed across over 25 contracts and task orders, even though James Soriano, a contracting officer for the Naval Information Warfare Center, knew that Intellipeak wasn't actually performing the work.

The Flores case delved into the 8(a) contractor world, but the prosecution was about federal bribery. Nevertheless, this appears to by the type of prosecution envisioned by Hegseth's exhortations.

These examples illustrate the criminal and civil ramifications of such heightened scrutiny. But the collateral effects are also administrative. For example, in December 2025, the SBA's Office of General Counsel sent letters to 4,300 current and former 8(a) participants demanding three fiscal years of bank statements, financial statements, ledgers, payroll registers and employment records, due one month later.

Firms that failed to produce the records were suspended, and the SBA opened termination proceedings against nearly 800 firms. This affected almost 20% of the program's participants.

Unlike FCA litigation, which can slog on for years, this latter pathway is fast. Coupled with new powers the SBA acquired in May following an amendment to the Program Fraud Civil Remedies Act — including reverse False Claims Act authority — a firm might lose the 8(a) program, lose a contract and incur serious penalties, without the DOJ ever opening a file.

The Path Forward

With this new scrutiny comes more difficult terrain. A company that attempts to comply with SBA audits may be walking themselves into an FCA snare for the unsuspecting.

Every document produced for the SBA, for example, is a statement to the federal government. Every narrative drafted for a contracting officer that inaccurately states the subcontractor's role is an opportunity for policing agencies. Every contractual arrangement between primers and subs in the program is another exercise risks stepping onto landmines.

This is not to suggest that the 8(a) program should be avoided by eligible prime contractors and noneligible subcontractors.

The program is in a state of flux. As recently as Aug. 11, the SBA issued a final rule removing the rebuttable presumption that individuals belonging to certain designated groups are socially disadvantaged, setting forth revised standards for individuals seeking to establish social disadvantage, including claims to have been subject to unlawful DEI policies.

Under this heightened scrutiny, the 8(a) program and others like it will continue to exist in some form — and continue to provide lucrative contracting opportunities to businesses that wouldn't otherwise get them. Furthermore, it is still permissible for 8(a) prime contractors to work with non-8(a) subcontractors that may be larger and more experienced in federal contracting.

Nevertheless, companies will need to be far more cautious, establishing or strengthening compliance programs with increased documentation that potentially specifies the roles of 8(a) and non-8(a) employees and additional training and awareness of FCA compliance risks, and proper insurance policies for directors and officers.

Conclusion

Whether the federal government's renewed focus on the 8(a) small business program will truly root out fraud is irrelevant — participants have a target on their backs. Firms that may have done nothing wrong are absorbing suspension and audit costs. And remaining participants are being investigated for having used the program in the first place.

Two things can be true simultaneously: The pass-through problem is real, but the enforcement response is indiscriminate. Contractors do not necessarily get to litigate that policy tension, but they must prepare for it.

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[1] Also allowed to participate in the SBA's 8(a) small business program are small businesses owned by Alaska Native corporations, Community Development Corporations, Indian tribes, and Native Hawaiian organizations. In addition, there are separate programs authorized by statute that reserve contracting opportunities for Women-Owned Small Businesses and Service-Disabled Veteran-Owned Small Businesses as well small businesses in Historically Underutilized Business ("HUB") Zones.

[2] https://legacy.sba.gov/article/2025/06/27/administrator-loeffler-orders-full-scale-audit-8a-contracting-program].

[3] https://www.youtube.com/watch?v=sv-POe5goAM].

[4] See, e.g., 13 C.F.R. § 125.6(a)(1). (specifying that the prime 8(a) contractor may "not pay more than 50% of the amount paid by the government to it to firms that are not similarly situated" in connection with services contracts).

[5] See AB-Tech Const., Inc. v. U.S., No 31 Fed. Cl. 429, 434 (1994).

[6] U.S. ex rel. Tran v. Computer Scis. Corp., 53 F. Supp. 3d 104, 132 (D.D.C. 2014).

[7] https://www.justice.gov/opa/pr/civil-division-announces-focus-initiative-data-miners-filing-qui-tam-complaints; see also https://www.justice.gov/opa/media/1438871/dl.

[8] https://www.justice.gov/usao-md/pr/usaid-officer-and-company-owners-and-three-corporate-executives-plead-guilty-decade-long.

[9] https://www.justice.gov/usao-sdca/pr/defense-contractor-president-sentenced-48-months-bribery-scheme.