

Testimony For the Record of

JESSICA TILLIPMAN
ASSOCIATE DEAN FOR GOVERNMENT PROCUREMENT LAW STUDIES
THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

**Submitted to the United States Senate Committee on Small Business and
Entrepreneurship**

Running Government Like a Small Business: Cut Waste, Crush Fraud

December 10, 2025

Chair Ernst, Ranking Member Markey, and Members of the Committee:

Thank you for inviting me to submit written testimony for the record following the Committee’s hearing, “Running Government Like a Small Business: Cut Waste, Crush Fraud,” held on December 10, 2025.

I am Jessica Tillipman, the Associate Dean for Government Procurement Law Studies at the George Washington University Law School. In addition to leading the law school’s Government Procurement Law Program, I teach our foundational course on integrity, ethics, and compliance in government procurement law. My testimony reflects my own views and does not represent those of the George Washington University.

On December 5, 2025, the Small Business Administration (SBA) issued letters to all 4,300 participants in the 8(a) Business Development program—a federal contracting program for small business owners who are socially and economically disadvantaged—directing them to submit three years of financial records.¹ The initiative followed SBA Administrator Kelly Loeffler’s June 2025 announcement of a “full-scale audit” of the program.² The SBA set an initial deadline of January 5, 2026, later extended to January 19, 2026, and warned that noncompliance could result in loss of program eligibility and further investigative or remedial action.³ SBA justified the initiative in categorical terms, describing the program as a “pass-through vehicle for rampant abuse and fraud.”⁴

¹ U.S. SMALL BUS. ADMIN., News Release No. 26-12, *SBA Orders All 8(a) Participants to Provide Financial Records* (Dec. 5, 2025), <https://www.sba.gov/article/2025/12/05/sba-orders-all-8a-participants-provide-financial-records> [hereinafter SBA News Release 26-12]; U.S. SMALL BUS. ADMIN., News Release No. 25-26, *Administrator Loeffler Orders Full-Scale Audit of 8(a) Contracting Program* (June 27, 2025), <https://www.sba.gov/article/2025/06/27/administrator-loeffler-orders-full-scale-audit-8a-contracting-program> [hereinafter SBA News Release 25-26]; U.S. SMALL BUS. ADMIN., *8(a) Business Development Program*, <https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program> (last visited Dec. 21, 2025).

² SBA News Release No. 25-26, *supra* note 1.

³ *See id.*; Bryan Tanifum, *SBA 8(a) Data Call – FAQs*, MYSBA CERTIFICATIONS KNOWLEDGE BASE (last updated Dec. 18, 2025), <https://sbaone.atlassian.net/wiki/spaces/UCPUKB/pages/4134469635/SBA+8+A+Data+Call+-+FAQs> (noting the extension to the submission deadline).

⁴ SBA News Release No. 26-12, *supra* note 1 (quoting a statement from SBA Administrator Loeffler).

That public framing makes the methodology of this audit consequential. A program-wide document request can surface anomalies and prioritize follow-up, but, standing alone, it does not establish intent or prove fraud.

The Government Accountability Office (GAO) and the SBA Office of Inspector General (SBA OIG) have documented integrity problems in SBA certification programs, including the 8(a) program.⁵ Those findings are significant, but they also highlight why methodology matters: the government should be able to distinguish, in a disciplined way, between evidence of misrepresentation and administrative noncompliance when it describes what this initiative reveals.

My testimony addresses four issues:

1. Federal procurement already relies on overlapping accountability mechanisms, and the credibility of oversight findings depends on independence and transparency.
2. “Fraud” is a legal conclusion with distinct evidentiary requirements and should not be treated as a synonym for error, missing documentation, or ineligibility.
3. GAO and SBA OIG audit findings document control failures across all SBA certification programs. They do not, however, establish that the 8(a) program is uniquely vulnerable or support claims of program-wide fraud.
4. The SBA has 25 unimplemented GAO recommendations addressing certification controls and monitoring processes, yet has initiated a population-wide audit of the 8(a) program before closing known control gaps or establishing transparent classification standards.

I. The Federal Procurement Integrity Architecture and Oversight Institutions

The United States has built a robust institutional architecture to prevent, detect, and punish procurement fraud: independent Inspectors General (IGs), Department of Justice (DOJ) enforcement, GAO oversight, and several different disclosure mechanisms.⁶ The system recognizes fraud risk as a persistent feature of large spending programs and addresses this risk through oversight and enforcement mechanisms tailored to different categories of misconduct: criminal prosecution for intentional fraud, civil penalties for recklessness, and administrative remedies for noncompliance.

⁵ See, e.g., U.S. GOV’T ACCOUNTABILITY OFF., GAO-14-706, 8(A) SUBCONTRACTING LIMITATIONS: CONTINUED NONCOMPLIANCE WITH MONITORING REQUIREMENTS SIGNALS NEED FOR REGULATORY CHANGE (2014), available at <https://www.gao.gov/products/gao-14-706>; U.S. GOV’T ACCOUNTABILITY OFF., GAO-10-425, 8(A) PROGRAM: FOURTEEN INELIGIBLE FIRMS RECEIVED \$325 MILLION IN SOLE-SOURCE AND SET-ASIDE CONTRACTS (2010), available at <https://www.gao.gov/products/gao-10-425> (report to the Chairwoman, H. Comm. on Small Bus.); U.S. SMALL BUS. ADMIN., REP. NO. 18-22, OFF. OF INSPECTOR GEN., IMPROVEMENTS NEEDED IN SBA’S OVERSIGHT OF 8(A) CONTINUING ELIGIBILITY PROCESSES (Sep. 7, 2018), <https://www.sba.gov/document/report-18-22-improvements-needed-sbas-oversight-8a-continuing-eligibility-processes>.

⁶ See generally Jessica Tillipman, *U.S. Federal Government Contracts: Anti-Corruption 101*, GW: BEYOND THE FAR, <https://blogs.gwu.edu/law-govpro/u-s-federal-government-contracts-anti-corruption-101/> [perma.cc/DL98-AK57] (citing Jessica Tillipman, *United States*, in ROUTLEDGE HANDBOOK OF PUBLIC PROCUREMENT CORRUPTION 519–20 (Sope Williams & Jessica Tillipman eds., 2024)).

A. Oversight Infrastructure

This architecture relies on multiple overlapping institutions—an intentional redundancy designed to avoid a single point of failure. The system’s credibility depends on independent institutions, each with distinct authorities and reporting requirements, including:

- **Inspectors General.** The Inspector General Act of 1978 created independent officers within federal agencies to combat waste, fraud, and abuse.⁷ IGs conduct audits and investigations, and, when appropriate, they refer suspected criminal violations to DOJ and may refer contractor responsibility matters to agency suspension and debarment officials (SDOs). IGs report to both their agency heads and to Congress.⁸ Although housed within agencies, they are designed to operate independently and are insulated by statute and reporting requirements.⁹ The Council of the Inspectors General on Integrity and Efficiency (CIGIE) coordinates IG activities across the government and maintains Oversight.gov, a public repository of IG reports.¹⁰ In FY 2024, the IG community returned \$18 for every dollar spent.¹¹
- **Government Accountability Office.** GAO is an independent, nonpartisan agency that works for Congress and is often described as the “congressional watchdog.”¹² GAO conducts performance and financial audits, evaluations, and other reviews of federal operations, including procurement programs.¹³ GAO’s audit work is performed in accordance with generally accepted government auditing standards (GAGAS), known as the “Yellow Book.”¹⁴ GAO also provides an independent forum

⁷ Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101 (codified as amended at 5 U.S.C. §§ 401–424); see also 5 U.S.C. § 402(2)(B) (establishing the purpose “to prevent and detect fraud and abuse” in agency programs and operations).

⁸ 5 U.S.C. § 402(b)(3) (purpose includes keeping the head of the establishment and Congress “fully and currently informed”); BEN WILHELM, CONG. RSCH. SERV., R45450, STATUTORY INSPECTORS GENERAL IN THE FEDERAL GOVERNMENT: A PRIMER 1 (2023).

⁹ 5 U.S.C. § 403(a) (prohibiting the agency head or deputy from preventing or prohibiting an IG from initiating or completing audits/investigations); BEN WILHELM, R45450, *supra* note 8, at 1 (describing IGs as intended to be independent and able to report directly to Congress). For SBA specifically, OIG Semiannual Reports to Congress provide a recurring, publicly accessible record of investigations, audits, recommendations, and dollar accomplishments across SBA’s major program areas, including contracting and certification. *See, e.g.*, U.S. SMALL BUS. ADMIN., OFF. OF INSPECTOR GEN., SEMIANNUAL REPORT TO CONGRESS (Nov. 25, 2025), available at <https://www.sba.gov/document/report-semiannual-report-congress>.

¹⁰ 5 U.S.C. § 424(a)(2) (CIGIE mission includes addressing integrity, economy, and effectiveness issues transcending individual agencies); COUNCIL OF THE INSPECTORS GEN. ON INTEGRITY & EFFICIENCY, ANNUAL REPORT TO THE PRESIDENT AND CONGRESS: FISCAL YEAR 2024 7 (2025), available at https://www.ignet.gov/sites/default/files/files/CIGIE%20Annual%20Report%20to%20the%20President%20FY2024_FINAL.pdf [hereinafter FY24 CIGIE Report] (noting CIGIE’s administration of Oversight.gov).

¹¹ FY24 CIGIE Report, *supra* note 10, at 3 (reporting an “approximate \$18 return on every dollar invested in OIGs.”).

¹² *About*, U.S. GOV’T ACCOUNTABILITY OFF., <https://www.gao.gov/about> (last visited Dec. 21, 2025).

¹³ *See What GAO Does*, U.S. GOV’T ACCOUNTABILITY OFF., <https://www.gao.gov/about/what-gao-does> (last visited Dec. 21, 2025); *Federal Contracting*, U.S. GOV’T ACCOUNTABILITY OFF., <https://www.gao.gov/federal-contracting> (last visited Dec. 21, 2025).

¹⁴ U.S. GOV’T ACCOUNTABILITY OFF., GAO-24-106786, GOVERNMENT AUDITING STANDARDS: 2024 REVISION (Feb. 1, 2024), <https://www.gao.gov/products/gao-24-106786>; *Yellow Book: Government Auditing Standards*, U.S. GOV’T ACCOUNTABILITY OFF., <https://www.gao.gov/yellowbook> (last visited Dec. 21, 2025).

for resolving federal procurement bid protests.¹⁵ In FY 2024, GAO reported \$67.5 billion in financial benefits, about a \$76 return for every dollar invested in the agency.¹⁶

- **Bid Protests and Eligibility Challenges.** The bid protest system enables contractors to challenge solicitation terms or contract awards to ensure agency actions comply with federal procurement law.¹⁷ Protests may be filed with GAO, the U.S. Court of Federal Claims, or the procuring agency.¹⁸ Separately, SBA eligibility disputes, including appeals to SBA’s Office of Hearings and Appeals (OHA), allow competitors to contest whether an awardee qualifies for small-business programs.¹⁹ Because standing to bring these challenges is generally limited to firms with a direct economic stake, bid protests and SBA eligibility challenges create a practical incentive for competitors to identify and challenge legal violations and eligibility defects.
- **Disclosures and Whistleblower Protections.** Fraud is notoriously difficult to detect, even with robust oversight institutions.²⁰ To enhance detection, the government incentivizes reporting through mandatory disclosure requirements, voluntary disclosure incentives, whistleblower protections, and financial rewards.²¹ These mechanisms feed the oversight infrastructure, enabling IGs and DOJ to investigate wrongdoing that might otherwise go undetected.

B. Recent Developments Affecting Oversight Capacity

The U.S. procurement integrity architecture is only as effective as its independence, staffing, and transparency. Recent events have tested these foundations.

¹⁵ U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-510SP, BID PROTESTS AT GAO: A DESCRIPTIVE GUIDE 4 (10th ed. May 2018), <https://www.gao.gov/assets/gao-18-510sp.pdf>.

¹⁶ U.S. GOV’T ACCOUNTABILITY OFF., GAO-25-900570, PERFORMANCE AND ACCOUNTABILITY REPORT, FISCAL YEAR 2024, at iii (Nov. 15, 2024), <https://www.gao.gov/products/gao-25-900570>.

¹⁷ See 31 U.S.C. § 3551(1) (defining “protest”); 28 U.S.C. § 1491(b)(1) (vesting protest authority in the U.S. Court of Federal Claims); FAR 33.1 (regulation governing protests).

¹⁸ FAR 33.101(2)(ii)(4) (“Protest venue means protests filed with the agency, the Government Accountability Office, or the U.S. Court of Federal Claims. U.S. District Courts do not have any bid protest jurisdiction.”); 31 U.S.C. § 3556.

¹⁹ See *About SBA, Office of Hearings and Appeals*, U.S. SMALL BUS. ADMIN., <https://www.sba.gov/about-sba/oversight-advocacy/office-hearings-appeals> (last visited Dec. 21, 2025).

²⁰ See U.S. GOV’T ACCOUNTABILITY OFF., GAO-25-107721, STANDARDS FOR INTERNAL CONTROL IN THE FEDERAL GOVERNMENT 63–68 (May 15, 2025), <https://www.gao.gov/products/gao-25-107721> (explaining that because fraud is committed and concealed through misrepresentation, detection can be difficult).

²¹ See, e.g., FAR 52.203-13(b)(3)(i) (requiring timely written disclosure to the agency OIG, with copy to the contracting officer, upon “credible evidence” of specified criminal law violations or FCA violations in connection with a federal contract); FAR 3.1003(a) (addressing consequences for knowing failure to timely disclose credible evidence of a significant overpayment); U.S. DEP’T OF JUST., CRIM. DIV., 9-47.120 - CRIMINAL DIVISION CORPORATE ENFORCEMENT AND VOLUNTARY SELF-DISCLOSURE POLICY 1–8 (last updated May 12, 2025), available at <https://www.justice.gov/criminal/media/1400031/dl?inline> (describing declination and other resolution benefits tied to voluntary self-disclosure, cooperation, and remediation); 5 U.S.C. § 2302(b)(8)(B) (establishing federal employee whistleblower retaliation as a prohibited personnel practice); 41 U.S.C. § 4712(a) (protecting employees of contractors, subcontractors, and grantees from reprisal for certain disclosures); 31 U.S.C. § 3730(d)(1)–(2) (*qui tam* plaintiff share of proceeds, creating a financial incentive).

On January 24, 2025, President Trump removed at least a dozen (and reportedly up to 17) agency inspectors general in a single action, prompting congressional scrutiny over the Inspector General Act’s notice requirements and subsequent legal challenges that focused on IG independence and statutory compliance.²²

CIGIE faced a funding cutoff after the Office of Management and Budget (OMB) withheld apportionment, resulting in staff furloughs and disruptions to shared oversight functions, including public access to Oversight.gov—a critical transparency resource.²³ Funding was later released after congressional inquiries and pressure.²⁴

These developments are directly relevant to the current 8(a) review because perceived independence and transparency affect how the public and program participants assess oversight findings. In June 2025, SBA announced a “full-scale audit” of the 8(a) program to be led by the SBA Office of General Contracting and Business Development—an internal program office, not an independent oversight body—with findings referred to the SBA OIG and DOJ as appropriate.²⁵ By December, as the Committee is aware, SBA had initiated a program-wide records demand citing “mounting evidence” of fraud and “institutionalized abuse.”²⁶

On December 8, 2025, the Chair of this Committee sent letters to twenty-two federal agencies directing them to examine “all sole-source 8(a) contracts awarded” and “all 8(a) set-aside contracts awarded” since FY 2020 “for any violation of laws and regulations pertaining to 8(a) program eligibility” and “any other fraudulent or improper activity,” with reports due

²² See Sean Michael Newhouse, *Trump Fires Multiple Agency Inspectors General*, GOV’T EXEC. (Jan. 25, 2025), <https://www.govexec.com/oversight/2025/01/trump-fires-multiple-agency-inspectors-general/402504/>; BEN WILHELM, CONG. RSCH. SERV., IF11546, REMOVAL OF INSPECTORS GENERAL: RULES, PRACTICE, AND CONSIDERATIONS FOR CONGRESS 2 (2025), <https://www.congress.gov/crs-product/IF11546>; Heckman, *Judge Finds Trump Unlawfully Fired Agency IGs, but Won’t Reinstate Them*, FED. NEWS NETWORK (Sept. 24, 2025, at 18:23 ET), <https://federalnewsnetwork.com/agency-oversight/2025/09/trump-unlawfully-fired-17-agency-igs-judge-finds-but-wont-reinstate-them/>.

²³ See Meryl Kornfield, *Trump Administration Moves to Defund Inspector General Watchdog Group*, WASH. POST (Sep. 30, 2025), <https://www.washingtonpost.com/politics/2025/09/30/inspector-general-watchdog-cuts-trump/>; Natalie Alms, *Judiciary Democrats Launch Watchdog Website Amid Withheld Funding from Inspector General Group*, NEXTGOV/FCW (Oct. 16, 2025), <https://www.nextgov.com/digital-government/2025/10/judiciary-democrats-launch-watchdog-website-amid-withheld-funding-inspector-general-group/408861/>.

²⁴ See Sean Michael Newhouse & Natalie Alms, *Trump Administration Resumes Funding for Inspectors General Hub After Previously Blocking It*, GOV’T EXEC. (Nov. 18, 2025), <https://www.govexec.com/oversight/2025/11/trump-administration-resumes-funding-inspectors-general-hub-after-previously-blocking-it/409615/>; Meryl Kornfield & Hannah Natanson, *Trump Administration Revives Some Funding for IG Group*, WASH. POST (Nov. 18, 2025), <https://www.washingtonpost.com/politics/2025/11/18/trump-administration-revives-some-funding-ig-group/>; Press Release, U.S. S. Comm. Judiciary, Grassley, Collins Urge OMB to Release Appropriated Inspector General Funds (Sept. 30, 2025), <https://www.judiciary.senate.gov/press/rep/releases/grassley-collins-urge-omb-to-release-appropriated-inspector-general-funds>; Press Release, U.S. S. Comm. on Judiciary, OMB Releases Nearly \$4.3 Million for CIGIE Following Push by Grassley, Collins (Nov. 18, 2025), <https://www.judiciary.senate.gov/press/rep/releases/omb-releases-nearly-43-million-for-cigie-following-push-by-grassley-collins>.

²⁵ SBA News Release 25-26, *supra* note 1.

²⁶ SBA News Release 26-12, *supra* note 1.

December 22, 2025.²⁷ The Chair’s correspondence and accompanying press release described the 8(a) program’s “no-bid, unlimited sole-source” authority as a “fraud magnet” and called it a “fraud-filled” program.²⁸

Because both the SBA and this Committee have publicly characterized the program in categorical terms before establishing transparent classification rules, any public reporting must clearly distinguish among documentation deficiencies, administrative ineligibility, and matters referred for investigation. Without those distinctions, findings risk conflating administrative gaps with fraud.

II. Words Matter: “Fraud” Is Not a Synonym for “Administrative Error”

In procurement oversight, proper labels drive remedies. Using “fraud” as a catchall collapses distinct categories, producing misleading conclusions, confusing the public, and undermining faith in public institutions.

A. Defining “Fraud” Under Federal Law

Integrity failures operate on a spectrum. Federal law uses distinct legal regimes that turn on different scienter requirements and decision-making forums, ranging from criminal prosecution to administrative remedies.²⁹ Oversight reporting should use terms that reflect those legal distinctions, because the label attached to an issue can shape the enforcement pathway, the consequences that follow, and the resulting public impression of any action taken.

- **Criminal Fraud.** Federal criminal fraud and false-statement offenses are punitive and require proof beyond a reasonable doubt that the defendant acted with a culpable mental state, not merely that information was inaccurate.³⁰ Some fraud statutes, including mail fraud, wire fraud, and major fraud against the United States (18 U.S.C. §§ 1341, 1343, 1031), generally require the government to prove an intent to defraud.³¹ Related Title 18 offenses often charged in government contracting matters

²⁷ Letters from Joni K. Ernst, Chair, S. Comm. on Small Bus. & Entrepreneurship, to Twenty-Two Federal Agency Heads (Dec. 8, 2025), available at <https://www.ernst.senate.gov/imo/media/doc/12082025sba8aprogramfinalletters.pdf> (collection of all twenty-two letters).

²⁸ *Id.*; Press Release, Joni K. Ernst, Chair, S. Comm. on Small Bus. & Entrepreneurship, Ernst Calls for Complete Halt and Full Audit of Fraud-Filled Contracting Program (Dec. 8, 2025), <https://www.ernst.senate.gov/news/press-releases/ernst-calls-for-complete-halt-and-full-audit-of-fraud-filled-contracting-program>.

²⁹ Compare 18 U.S.C. §§ 1341, 1343, 1031 with 31 U.S.C. §§ 3729–3733 and 31 U.S.C. § 3729(b)(1)(A)(i)–(iii). These statutory schemes are detailed further below.

³⁰ See MICHAEL A. FOSTER, CONG. RSCH. SERV., R46836, MENS REA: AN OVERVIEW OF STATE-OF-MIND REQUIREMENTS FOR FEDERAL CRIMINAL OFFENSES (2021), available at <https://www.congress.gov/crs-product/R46836>.

³¹ See, e.g., U.S. DEP’T OF JUST., CRIM. RES. MANUAL § 940, 18 U.S.C. SECTION 1341, ELEMENTS OF MAIL FRAUD (ARCHIVED), <https://www.justice.gov/archives/jm/criminal-resource-manual-940-18-usc-section-1341-elements-mail-fraud> (last visited Dec. 21, 2025); U.S. DEP’T OF JUST., CRIM. RES. MANUAL § 941, 18 U.S.C. § 1343, ELEMENTS OF WIRE FRAUD (archived), available at <https://www.justice.gov/archives/jm/criminal-resource-manual-941-18-usc-1343-elements-wire-fraud> (last visited Dec. 20, 2025); U.S. DEP’T OF JUST., CRIM. RES. MANUAL § 930, MAJOR FRAUD AGAINST THE U.S. (18 U.S.C. § 1031) (archived), available at

also require knowing and willful misconduct, including knowingly presenting a false claim (§ 287), making a materially false statement knowingly and willfully with intent to mislead (§ 1001), or conspiring to commit an offense or to impair lawful government functions through deceit (§ 371).³² Consistent with that criminal focus on willfulness and intent, GAO describes fraud as obtaining a thing of value through willful misrepresentation and emphasizes that whether conduct is “fraud” can only be determined through the judicial or other adjudicative system.³³ These offenses are typically felonies punishable by significant fines and imprisonment.³⁴

- False Claims Act Liability.** The False Claims Act (FCA)³⁵ is a civil statute that imposes liability when a person acts “knowingly,” a standard that includes reckless disregard and does not require proof of specific intent to defraud.³⁶ The FCA creates civil liability for, among other things, knowingly presenting (or causing to be presented) false claims, using false records or statements material to false claims, conspiring to violate the Act, and knowingly concealing or improperly avoiding obligations to pay the government.³⁷ The statute defines “knowingly” to include actual knowledge, deliberate ignorance, and reckless disregard.³⁸ The FCA is not aimed at “honest mistakes or incorrect claims submitted through mere negligence.”³⁹ A defendant found liable under the FCA faces treble damages plus per-claim civil penalties.⁴⁰ The FCA’s qui tam provisions allow private citizens to file suit on the government’s behalf and receive 15–30 percent of any recovery.⁴¹

<https://www.justice.gov/archives/jm/criminal-resource-manual-930-major-fraud-against-us> (last visited Dec. 21, 2025).

³² U.S. DEP’T OF JUST., CRIM. RES. MANUAL § 922, ELEMENTS OF 18 U.S.C. § 287 (archived), available at <https://www.justice.gov/archives/jm/criminal-resource-manual-922-elements-18-usc-287> (last visited Dec. 21, 2025); U.S. DEP’T OF JUST., CRIM. RES. MANUAL § 910, KNOWINGLY AND WILLFULLY (archived), <https://www.justice.gov/archives/jm/criminal-resource-manual-910-knowingly-and-willfully> (last visited Dec. 21, 2025) available at (explaining the term used in 18 U.S.C. § 1001); U.S. DEP’T OF JUST., CRIM. RES. MANUAL § 923, 18 U.S.C. § 371—CONSPIRACY TO DEFRAUD THE UNITED STATES (archived), <https://www.justice.gov/archives/jm/criminal-resource-manual-923-18-usc-371-conspiracy-defraud-us> (last visited Dec. 21, 2025); *see also* *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924) (“To conspire to defraud the United States means primarily to cheat the government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest.”).

³³ U.S. GOV’T ACCOUNTABILITY OFF., GAO-24-106608, IMPROPER PAYMENTS AND FRAUD: HOW THEY ARE RELATED BUT DIFFERENT 1, 3 (Dec. 7, 2023), <https://www.gao.gov/assets/d24106608.pdf>.

³⁴ 18 U.S.C. §§ 287, 371, 1001, 1341, 1343, 1031.

³⁵ *See* False Claims Act, 31 U.S.C. §§ 3729–3733.

³⁶ 31 U.S.C. §§ 3729(a)(1), (b)(1).

³⁷ *Id.*

³⁸ 31 U.S.C. § 3729(b)(1)(A)(i)–(iii). DOJ’s annual Civil Division statistics provide a public benchmark for FCA enforcement volume and recoveries. In fiscal year 2024, DOJ reported more than 550 FCA settlements and judgments totaling more than \$2.9 billion. Press Release, Off. of Pub. Affs., U.S. Dep’t of Just., False Claims Act Settlements and Judgments Exceed \$2.9B in Fiscal Year 2024 (Jan. 15, 2025), <https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024>.

³⁹ S. REP. NO. 99-345, at 7, 22 (1986), available at <https://www.justice.gov/sites/default/files/jmd/legacy/2013/10/31/senaterept-99-345-1986.pdf>.

⁴⁰ 31 U.S.C. § 3729(a)(1); *see also* *The False Claims Act*, U.S. DEP’T OF JUST., CIVIL DIV. (last updated Jan. 15, 2025), <https://www.justice.gov/civil/false-claims-act>.

⁴¹ 31 U.S.C. § 3730(d)(1)–(2) (2022); U.S. DEP’T OF JUST., THE FALSE CLAIMS ACT: A PRIMER 2 (Apr. 22, 2011), available at https://www.justice.gov/d9/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf.

- **Administrative False Claims Act.** Formerly the Program Fraud Civil Remedies Act (PFCRA), the Administrative False Claims Act⁴² authorizes agencies to adjudicate certain false-claim and false-statement matters through administrative proceedings, generally limited to claims not exceeding \$1,000,000 (inflation-adjusted), subject to judicial review and judicial enforcement in federal court.⁴³

B. Administrative & Oversight Failures

Conduct that does not meet the legal definition of fraud can still trigger serious consequences. Federal law authorizes agencies to terminate contracts, suspend and debar contractors from future awards, recover improper payments, impose civil penalties, and take adverse action against personnel responsible for waste, mismanagement, or abuse. These administrative enforcement mechanisms often yield faster, more certain accountability than criminal prosecution.

- **Improper Payments.** Improper payments are a statutory category that is broader than fraud.⁴⁴ Under the Payment Integrity Information Act framework, an “improper payment” includes payments that should not have been made or were made in an incorrect amount, including overpayments, underpayments, payments to ineligible recipients, duplicate payments, and other statutorily identified payment errors.⁴⁵ Agencies also treat payments as improper when the payment’s propriety cannot be determined because supporting documentation is lacking or insufficient.⁴⁶ GAO explains that “while all fraudulent payments are considered improper, not all improper payments are due to fraud.”⁴⁷ Non-fraud improper payments can result from unintentional administrative errors, payments made in the correct amount but without following applicable legal requirements, or documentation deficiencies.⁴⁸ Since fiscal year 2003, cumulative executive-branch improper payment estimates have totaled about \$2.8 trillion, reflecting the full range of payment errors and unverified payments rather than fraud losses.⁴⁹

⁴² 31 U.S.C. §§ 3801–3812.

⁴³ 31 U.S.C. §§ 3803(c)(1)(A)–(B), (c)(3), 3805–3806; *see also* U.S. GOV’T ACCOUNTABILITY OFF., GAO-12-275R, PROGRAM FRAUD CIVIL REMEDIES ACT: OBSERVATIONS ON IMPLEMENTATION (2012), available at <https://www.gao.gov/products/gao-12-275r>.

⁴⁴ *See* GAO-24-106608, *supra* note 33, at 1–3.

⁴⁵ 31 U.S.C. § 3351(4); *see also* U.S. GOV’T ACCOUNTABILITY OFF., GAO-24-107482, IMPROPER PAYMENTS: KEY CONCEPTS AND INFORMATION ON PROGRAMS WITH HIGH RATES OR LACKING ESTIMATES 1 (2024), available at <https://www.gao.gov/assets/gao-24-107482.pdf>.

⁴⁶ GAO-24-107482, *supra* note 45, at 2.

⁴⁷ GAO-24-106608, *supra* note 33, at 2.

⁴⁸ *Id.*

⁴⁹ U.S. GOV’T ACCOUNTABILITY OFF., GAO-25-107753, IMPROPER PAYMENTS: INFORMATION ON AGENCIES’ FISCAL YEAR 2024 ESTIMATES 1 (2025), available at <https://www.gao.gov/assets/gao-25-107753.pdf>; *see also* U. GAO-24-107482, *supra* note 45, at 6 (explaining improper payment estimates are not intended to reflect the extent of fraud in a program).

- **Waste.** GAO defines waste as “squandering money or resources, even if not explicitly illegal.”⁵⁰ Examples include buying overpriced equipment, buying unnecessary equipment, or paying for goods or services that go unused.⁵¹ Waste often reflects inefficiency or poor stewardship and, unlike fraud, does not necessarily involve a legal violation.⁵²
- **Mismanagement.** Mismanagement involves “creating a substantial risk to an agency’s ability to accomplish its mission.”⁵³ Examples GAO uses include continuing to pay utility bills for formerly leased office space, stockpiling equipment beyond its shelf-life, or renewing technical support for software an agency no longer uses.⁵⁴ Mismanagement concerns deficient management practices that can occur without the willful misrepresentation characteristic of fraud.
- **Abuse.** GAO distinguishes between abuse, fraud, and improper payments.⁵⁵ Abuse occurs when someone “behaves improperly or unreasonably, or misuses a position or authority.”⁵⁶ Abuse can be serious and may signal fraud risk, but GAO defines fraud as obtaining something of value through willful misrepresentation, so conduct characterized as abuse is not necessarily fraud absent willful misrepresentation.⁵⁷

C. Why the Distinctions Matter

These categories require different responses. Criminal fraud warrants prosecution. False Claims Act violations warrant civil enforcement and treble damages. Improper payments require corrective action and improved controls. Abuse warrants corrective action. Waste and mismanagement require management reform.

When oversight findings conflate these categories, such as labeling documentation gaps as “fraud” or treating all improper payments as criminal conduct, the result distorts reality, misallocates enforcement resources, unfairly stigmatizes program participants, and hinders the actual reforms needed to improve program integrity.

GAO has been explicit: “improper payment determinations are made by agency officials while fraud determinations can only be made through the judicial or other adjudicative system.”⁵⁸ In practice, that means administrative reviews can surface documentation

⁵⁰ U.S. GOV’T ACCOUNTABILITY OFF., FRAUD, WASTE, ABUSE, AND MISMANAGEMENT (Apr. 2020), https://www.gao.gov/assets/2020-04/FraudNet_Infographic_0420-update.pdf [hereinafter GAO FraudNet Infographic].

⁵¹ *Id.*

⁵² U.S. GOV’T ACCOUNTABILITY OFF., GAO-24-107198, GAO OVERVIEW: UNDERSTANDING WASTE IN FEDERAL PROGRAMS (2024), available at <https://www.gao.gov/products/gao-24-107198>; *Fraud & Improper Payments*, U.S. GOV’T ACCOUNTABILITY OFF., <https://www.gao.gov/fraud-improper-payments> (last visited Dec. 21, 2025).

⁵³ GAO FraudNet Infographic, *supra* note 50.

⁵⁴ *Id.*

⁵⁵ *Fraud & Improper Payments*, U.S. GOV’T ACCOUNTABILITY OFF., <https://www.gao.gov/fraud-improper-payments> (last visited Dec. 20, 2025).

⁵⁶ U.S. GOV’T ACCOUNTABILITY OFF., GAO-24-106458, UNDERSTANDING ABUSE OF FEDERAL RESOURCES 1 (2023), available at <https://www.gao.gov/assets/d24106458.pdf>.

⁵⁷ See *id.* at 1 (noting abuse can be an indicator of further malfeasance); GAO-24-106608, *supra* note 33 at 1 (defining fraud as obtaining a thing of value through willful misrepresentation).

⁵⁸ GAO-24-106608, *supra* note 33 at 1, 3.

problems, eligibility concerns, and leads that warrant follow-up or referral, but public characterizations should not collapse those categories into “fraud” absent an adjudicative finding.

III. Historic Oversight Findings Across SBA Contracting Programs

GAO and SBA OIG have repeatedly examined integrity risks across the SBA’s small-business certification programs, resulting in a substantial oversight record.⁵⁹ Their work identifies recurring patterns, including weak front-end verification, inconsistent monitoring of continued eligibility, ineligible firms admitted or retained in programs, and systems that did not reliably detect or resolve eligibility problems.⁶⁰ Across multiple programs, these reviews document substantial contract dollars awarded to ineligible firms and, in investigative matters, specific instances of apparent misrepresentation.⁶¹

The question is what these findings establish about the current 8(a) program and what inferences they support.

First, integrity vulnerabilities exist across SBA certification programs and are not unique to 8(a). In at least one cross-program comparison, GAO observed that some programs lacked front-end documentation controls, “unlike . . . the HUBZone and 8(a) programs,” suggesting that 8(a) is not uniquely vulnerable with respect to initial documentation-based eligibility controls.⁶²

Second, audit findings primarily measure eligibility status and control effectiveness, not intent. A finding that a firm was ineligible does not, by itself, establish fraud. As previously noted, GAO has emphasized that fraud determinations “can only be made through the judicial or other adjudicative system.”⁶³

⁵⁹ See, e.g., GAO-10-425, *supra* note 5; U.S. GOV’T ACCOUNTABILITY OFF., GAO-08-964T, HUBZONE PROGRAM: SBA’S CONTROL WEAKNESSES EXPOSED THE GOVERNMENT TO FRAUD AND ABUSE (2008), available at <https://www.gao.gov/assets/gao-08-964t.pdf>; U.S. GOV’T ACCOUNTABILITY OFF., GAO-10-108, SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS PROGRAM: CASE STUDIES SHOW FRAUD AND ABUSE ALLOWED INELIGIBLE FIRMS TO OBTAIN MILLIONS OF DOLLARS IN CONTRACTS (2009), available at <https://www.gao.gov/assets/gao-10-108.pdf>; U.S. SMALL BUS. ADMIN. OFF. OF INSPECTOR GEN., REP. NO. 18-22, IMPROVEMENTS NEEDED IN SBA’S OVERSIGHT OF 8(A) CONTINUING ELIGIBILITY PROCESSES (Sept. 7, 2018), available at <https://www.oversight.gov/sites/default/files/documents/reports/2018-09/SBA-OIG-Report%2018-22.pdf> [hereinafter SBA OIG REP. NO. 18-22]

⁶⁰ See, e.g., GAO-08-964T, *supra* note 59, at 1–4, 7–10 (undercover approvals; investigation of 17 firms and eligibility failures); U.S. GOV’T ACCOUNTABILITY OFF., GAO-19-168, WOMEN-OWNED SMALL BUSINESS PROGRAM: ACTIONS NEEDED TO ADDRESS ONGOING OVERSIGHT ISSUES 11–17 (2019), available at <https://www.gao.gov/assets/gao-19-168.pdf> (ongoing oversight deficiencies; continued self-certification risks); SBA OIG REP. NO. 18-22, *supra* note 59, at 1 (inconsistent identification and removal of ineligible 8(a) firms).

⁶¹ See, e.g., GAO-10-425, *supra* note 5, at 7 (14 ineligible firms; \$325 million; evidence of misrepresentation by officials at 13 firms); GAO-08-964T, *supra* note 59, at 10 (more than \$105 million obligated to 10 ineligible HUBZone firms); GAO-10-108, *supra* note 59, at 1 (10 SDVOSB case-study firms; approximately \$100 million).

⁶² GAO-10-108, *supra* note 59, at 14 (stating that, “[u]nlike other small business contracting programs, such as the HUBZone and 8(a) programs, there also are no documentation submissions to substantiate eligibility” for the SDVOSB program).

⁶³ GAO-24-106608, *supra* note 33, at 3.

Third, investigative audits identify vulnerabilities but generally do not measure pervasiveness. GAO’s investigations explicitly caution that they “did not attempt to project the extent of fraud and abuse” in the programs examined.⁶⁴ Those findings show that control weaknesses can be exploited; they do not, standing alone, establish how often exploitation occurs across the entire program participant population.

IV. Recent Enforcement Actions and the Path to a Population-Wide Audit

SBA has cited recent enforcement actions as justification for its December 5 population-wide records demand. Understanding the timeline clarifies what these cases do—and do not—demonstrate about the need for such a review.

- **The USAID Bribery Scheme (June 2025).** On June 12, 2025, the DOJ announced guilty pleas by a U.S. Agency for International Development (USAID) contracting officer and three company principals arising from a decade-long bribery scheme involving at least fourteen prime contracts worth over \$550 million.⁶⁵ DOJ alleged that the contracting officer received bribes valued at more than approximately \$1 million in exchange for steering procurement actions benefiting two SBA 8(a) contractors.⁶⁶ Following those disclosures, SBA ordered a full-scale audit of the 8(a) program, beginning with high-dollar and limited-competition awards and extending back fifteen years.⁶⁷
- **The ATI Suspension (October 2025).** SBA suspended ATI Government Solutions in October 2025 amid allegations that the firm operated as a pass-through entity⁶⁸ in connection with 8(a) contracting.⁶⁹ Treasury subsequently stated that it suspended and terminated all contracts and task orders with ATI following allegations involving more than \$253 million in previously issued contract awards.⁷⁰

Both cases show that existing oversight mechanisms can detect and punish wrongdoing. Neither case establishes that the 4,300 8(a) participants are engaged in fraud or that the program is systematically a “pass-through vehicle.” In the USAID matter, DOJ reported guilty pleas arising from a decade-long bribery scheme involving a contracting officer. Those

⁶⁴ GAO-10-108, *supra* note 59, at Highlights; GAO-10-425, *supra* note 5, at Highlights (same caveat).

⁶⁵ Press Release, U.S. Dep’t of Justice., USAID Official and Three Corporate Executives Plead Guilty to Decade-Long Bribery Scheme Involving Over \$550 Million in Contracts; Two Companies Admit Criminal Liability for Bribery Scheme and Securities Fraud (June 12, 2025), <https://www.justice.gov/opa/pr/usaaid-official-and-three-corporate-executives-plead-guilty-decade-long-bribery-scheme>.

⁶⁶ *Id.*

⁶⁷ SBA News Release 25-26, *supra* note 1.

⁶⁸ “Pass-through” arrangements involve a small business prime serving as a conduit for a large ineligible firm that actually controls and performs the work. *See* 15 U.S.C. § 657s; 13 C.F.R. § 125.6; FAR 52.219-14.

⁶⁹ Jason Miller, *SBA Sends Another Shot Across 8(a) Program Bow*, FED. NEWS NETWORK (Oct. 30, 2025), <https://federalnewsnetwork.com/acquisition-policy/2025/10/sba-sends-another-shot-across-8a-program-bow/>; *see also* Brian Edwards, *SBA Suspends Tribal Contractor Amid Fraud Investigation into 8(a) Program*, TRIBAL BUS. NEWS (Oct. 26, 2025) (describing effective date and “pass-through” allegations), <https://tribalbusinessnews.com/sections/federal-8-a-contracting/15347-sba-suspends-tribal-contractor>.

⁷⁰ Press Release SB-0309, U.S. Dep’t of the Treasury, Treasury Orders Department-Wide Investigation into Potential Fraud Across Contracting Programs (Nov. 6, 2025), <https://home.treasury.gov/news/press-releases/sb0309>.

prosecutions involved 8(a) firms, but they did not establish program-wide participant fraud.⁷¹ The ATI matter involved allegations concerning a single firm and related entities/individuals, not a representative sample.⁷²

A response calibrated to those findings would focus on contracting officer oversight, affiliation analysis, and companies with unusual subcontracting patterns—not a compressed document demand covering every participant regardless of risk indicators. Screening can be helpful for triage and generating leads, but characterizing it as a response to “rampant abuse and fraud” assumes what the screening is supposed to examine.

V. The Mismatch Between Diagnosed Problems and the Tool Chosen

GAO and SBA OIG have documented recurring risk concentrations in SBA certification and contracting programs, including weak controls, inconsistent verification, monitoring breakdowns, and weaknesses in data and systems governance.⁷³ Since June 2020, GAO has made 42 recommendations to SBA; SBA has implemented 17, leaving 25 unimplemented.⁷⁴ These include recommendations addressing “critical” risk-management and cybersecurity issues in SBA’s certification platform.⁷⁵ SBA OIG’s 8(a) oversight work reflects a similar pattern of recurring findings and partial corrective actions, including repeated attention to continuing eligibility monitoring and complaint-handling controls.⁷⁶

A. Methodological Limitations of the Present SBA Initiative

SBA has publicly announced a “full-scale audit” of the 8(a) program, requiring all participants to submit extensive financial documentation on a compressed timeline. SBA initially set a 30-day deadline running through the Christmas and New Year holidays, later extended to January 19, 2026. The document request is organized into thirteen categories and includes, among other items, general ledgers and trial balances (in CSV), year-end bank statements and reconciliations, monthly payroll registers/reconciliations, employee-by-

⁷¹ See Deferred Prosecution Agreement Attachment A, at A1–A10, *United States v. Watson*, No. 8:25-cr-00174-PX, Statement of Facts (D. Md. June 12, 2025) Dkt. No. 3-1, available at <https://www.justice.gov/criminal/media/1413956>.

⁷² See *supra* notes 68–70 and accompanying text.

⁷³ U.S. GOV’T ACCOUNTABILITY OFF., GAO-25-106963, IT MODERNIZATION: SBA URGENTLY NEEDS TO ADDRESS RISKS ON NEWLY DEPLOYED SYSTEM 1–4, 35–35 (2024), available at <https://www.gao.gov/assets/gao-25-106963.pdf> (finding SBA had not fully implemented leading practices for risk management and cybersecurity for the Unified Certification Platform); SBA OIG Rep. No. 18-22, *supra* note 5, at 1 (finding failures in required continuing-eligibility reviews and complaint logging).

⁷⁴ U.S. GOV’T ACCOUNTABILITY OFF., GAO-26-108820, SMALL BUSINESS ADMINISTRATION: OPPORTUNITIES TO BETTER MANAGE FRAUD RISKS, IMPROPER PAYMENTS, AND CONTRACTING PROGRAMS 2 (2025), available at <https://www.gao.gov/assets/gao-26-108820.pdf> (testimony) (stating GAO discussed SBA’s efforts to address 42 recommendations since June 2020 and that SBA had implemented 17).

⁷⁵ GAO-26-108820, *supra* note 74, at 2 (“SBA has not addressed 14 recommendations intended to address critical risk management and cybersecurity issues associated with its small business certification platform.”); GAO-25-106963, *supra* note 73, at 1 (stating GAO recommended SBA “expeditiously address[] critical risk management issues” and “critical cybersecurity issues”).

⁷⁶ See SBA OIG Rep. No. 18-22, *supra* note 5, at 1 (identifying monitoring and complaint-handling gaps); U.S. SMALL BUS. ADMIN. OFF. OF INSPECTOR GEN., REP. NO. 20-19, SBA’S CORRECTIVE ACTIONS TO REDUCE 8(A) FIRM ELIGIBILITY RISKS 2–4 (Sept. 15, 2020), available at <https://www.sba.gov/sites/default/files/2020-09/Final%20Report%20-%208%28a%29%20BD%20Program%20follow%20up-508.pdf> (follow-up inspection verifying corrective actions implemented and effective for selected weaknesses).

contract listings, 8(a) contract files, subcontracting agreements, and sub-ledger schedules tying to year-end trial balance accounts.⁷⁷ Even with the extension, the initiative is a population-wide production demand, and SBA has warned that failure to comply may result in loss of eligibility for continued participation and other investigative or remedial actions.

Three methodological issues affect how any resulting findings should be interpreted.

First, a compressed, standardized document demand is likely to measure recordkeeping capacity and responsiveness at least as much as misconduct. Late, incomplete, or nonconforming submissions may reflect an 8(a) participant's administrative constraints rather than intentional deception. SBA may use broad document requests to surface issues for follow-up, but nonproduction or noncompliance with format requirements, by itself, does not establish intent to defraud. SBA regulations identify as "good cause" for termination a pattern of failure to make required submissions or responses in a timely manner, including failure to provide "other requested information or data within 30 days of the date of request."⁷⁸ Thus, the request's design can have direct consequences for program participation independent of any finding of fraud or intent to deceive.

Second, document production does not establish intent. Missing records and eligibility questions may warrant further review and, in appropriate cases, referral to the SBA OIG or DOJ, but intent is a separate evidentiary question resolved through adjudicative or enforcement processes.⁷⁹

Third, SBA is not required to show that 8(a) is "worse than" other programs to pursue an integrity intervention. But if SBA or others use this initiative to make comparative claims about fraud across programs, those claims would require comparable measurement and a methodology designed for that purpose.

A program-wide records request can be a legitimate integrity tool when used to identify issues for follow-up and to enforce eligibility requirements. It should not, without corroborating facts, be characterized as establishing program-wide fraud. Any public accounting of results should distinguish documentation deficiencies, administrative ineligibility, and matters referred for investigation or enforcement—consistent with GAO's framework, which separates fraud from improper payments and recognizes that adjudicative systems determine whether conduct is fraud.

B. The Compliance Capacity Gap in Small Business

Understanding why compressed timelines yield misleading results requires examining factors that drive noncompliance in small firms. Capacity limitations, such as inadequate staffing, insufficient compliance infrastructure, and limited administrative resources, are common in

⁷⁷ SMALL BUS. ADMIN., OFF. OF GEN. COUNS., DATA CALL LETTER: AUDIT OF PARTICIPANTS IN THE 8(A) PROGRAM, <https://www.reginfo.gov/public/do/DownloadDocument?objectID=163748401> (review Exhibit A: Data Requested).

⁷⁸ 13 C.F.R. § 124.303(a)(7); *see also* 13 C.F.R. § 124.304(b)(1) (2025) (Letter of Intent to Terminate must state facts/reasons and provide 30 days to respond); *id.* § 124.304(d)–(f) (notice, appeal rights, and effect of termination).

⁷⁹ GAO-24-106608, *supra* note 33, at 1–3 (noting that only the judicial system can determine whether an act constitutes fraud).

small businesses and can produce the same observable outcome (late or incomplete submission) as intentional misconduct.⁸⁰ Capacity constraints do not excuse noncompliance or integrity failures, but they do affect what can be inferred from nonproduction alone.

Small firms face disproportionately high per-employee regulatory compliance costs because many compliance activities don't scale with firm size. In 2010, an SBA Office of Advocacy-sponsored estimate of 2008 costs (reported in 2009 dollars), firms with fewer than 20 employees incurred about \$10,585 per employee in annual regulatory costs, compared with \$7,454 for firms with 20–499 employees and \$7,755 for firms with 500 or more employees (roughly 42% higher than mid-sized firms and 36% higher than large firms).⁸¹ More recent estimates still show a size penalty: a 2023 Crain & Crain update commissioned by the National Association of Manufacturers estimates that, in 2022 (reported in 2023 dollars), firms with fewer than 50 employees faced average regulatory costs of \$14,700 per employee versus \$12,200 for firms with 100 or more employees, and attributes the differential to economies-of-scale dynamics in regulatory compliance.⁸²

Those same capacity constraints show up in internal controls. An Association of Certified Fraud Examiners (ACFE) survey summarized by the *Journal of Accountancy* found that only 56% of organizations with fewer than 100 employees reported external financial statement audits, and only 50% reported formal codes of conduct, compared with 91% and 90% among larger organizations.⁸³ Consistent with that pattern, ACFE's 2024 data emphasize that smaller organizations tend to have fewer anti-fraud controls in place and are therefore more vulnerable.⁸⁴

Unclear requirements and monitoring gaps often compound small business compliance challenges. GAO's 2014 review of 8(a) subcontracting limitations found that contracting officers were generally not monitoring contractor compliance—a finding GAO had previously reported in 2006 and 2012.⁸⁵ The issue was not contractor refusal to comply; all

⁸⁰ See Jessica Tillipman & Vijaya Surampudi, *The Compliance Mentorship Program: Improving Ethics and Compliance in Small Government Contractors*, 49 PUB. CONT. L.J. 217, 231–36 (2020), available at https://scholarship.law.gwu.edu/faculty_publications/1483/; ORG. FOR ECON. COOP. & DEV., TOOLKIT FOR RAISING AWARENESS AND PREVENTING CORRUPTION IN SMES, OECD BUS. & FIN. POL'Y PAPERS 16–17 (2022), available at <https://doi.org/10.1787/19e99855-en>.

⁸¹ NICOLE V. CRAIN & W. MARK CRAIN, U.S. SMALL BUS. ADMIN., OFF. OF ADVOC., THE IMPACT OF REGULATORY COSTS ON SMALL FIRMS 7 tbl.1, 54–55 (2010), available at <https://dair.nps.edu/bitstream/123456789/3664/1/SEC809-MKT-10-0055.pdf>.

⁸² NICOLE V. CRAIN & W. MARK CRAIN, NAT'L ASS'N OF MFRS., THE COST OF FEDERAL REGULATION TO THE U.S. ECONOMY, MANUFACTURING AND SMALL BUSINESS 4–5 (2023), available at <https://www.nam.org/wp-content/uploads/2023/11/NAM-3731-Crains-Study-R3-V2-FIN.pdf> (Chart 1 reporting per-employee costs by firm size; explaining economies-of-scale/fixed-cost dynamics).

⁸³ Ken Tysiac, *Small Business, Big Risk*, J. Acct. 38–43 (2012), available at <https://www.journalofaccountancy.com/issues/2012/aug/20125707/> (summarizing ACFE survey results on audits and codes of conduct by organization size).

⁸⁴ ASS'N OF CERTIFIED FRAUD EXAMINERS, OCCUPATIONAL FRAUD 2024: A REPORT TO THE NATIONS 5–7 (2024), available at <https://www.anchin.com/wp-content/uploads/2024/08/2024-ACFE-Occupational-Fraud-Report.pdf>.

⁸⁵ GAO-14-706, *supra* note 5, at 7. The National Defense Authorization Act for Fiscal Year 2013 amended the Small Business Act to change how subcontracted work is calculated for small-business set-aside contracts and to impose monetary penalties for violations, including a minimum fine of \$500,000 (or the amount expended above the permitted subcontracting level, whichever is greater). See National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, §§ 1651–1652, 126 Stat. 1632, 2079–82 (2013) (codified as amended at

ten contractors GAO interviewed maintained compliance records and were willing to provide them when asked.⁸⁶ The problem was that contracting officers either did not know monitoring was required or lacked guidance on how to do it.⁸⁷ This pattern of persistent monitoring failures, rather than contractor fraud, is consistent across multiple SBA program audits.

The Federal Acquisition Regulation (FAR) reflects the compliance-capacity challenges facing small entities. FAR 52.203-13 makes its formal business ethics awareness and compliance program and internal control system requirements in paragraph (c) inapplicable to contractors that have represented themselves as small businesses.⁸⁸ The FAR Council has explained that this structure was intended to minimize the rule’s economic impact on small firms, noting that small businesses often have fewer resources and that the final rule therefore eliminated the internal control system and formal training requirements for small business concerns.⁸⁹

The current audit demands documentation within a compressed timeline and in specified formats, presupposing compliance systems that small businesses are not required to build and many do not have. Under these conditions, nonproduction or incomplete submission is as likely to reflect administrative capacity as fraudulent intent. The SBA may use the results to identify firms warranting closer review, but absent additional evidence distinguishing capacity from intent, the results do not establish fraud.

C. What Credible Oversight Requires

If Congress seeks findings that can be defended as credible, the process matters as much as the results. Credible oversight distinguishes among categories with different legal consequences: documentation gaps warranting follow-up, administrative ineligibility supporting termination under program regulations, and suspected fraud warranting referral for investigation and potential prosecution. Without transparent classification rules applied

15 U.S.C. §§ 657s, 645(g)(1)) (revising limitations on subcontracting and providing that, for an entity exceeding the limitation, the fine is treated as the greater of \$500,000 or the amount expended above permitted levels). GAO reported in 2014 that these statutory changes had not yet been implemented in the FAR and that contractor representatives viewed the new penalty as potentially business-ending and were “particularly concerned” because they might be unable to meet performance requirements for reasons “outside of their control.” GAO-14-706, *supra* note 5, at 15–21 (noting the FY2013 statutory changes were “not yet implemented in the FAR” and reporting contractors viewed the penalty as potentially business-ending and were concerned about noncompliance for “reasons outside of their control”).

⁸⁶ See GAO-14-706, *supra* note 5, at 12, 20.

⁸⁷ See *id.* at 7–12, 19–21.

⁸⁸ FAR 52.203-13(c) (“Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial product or commercial service as defined at FAR 2.101.”).

⁸⁹ FAR Case 2007-006, Contractor Business Ethics Compliance Program and Disclosure Requirements, 73 Fed. Reg. 67,064, 67,085 (Nov. 12, 2008), available at <https://www.govinfo.gov/content/pkg/FR-2008-11-12/pdf/E8-26953.pdf> (“[T]he rule is structured to minimize its impact on small business concerns by making the requirement for formal training programs and internal control systems inapplicable to small businesses”); *id.* at 67,087 (stating “small businesses often have fewer resources” and explaining the Councils eliminated the internal control system requirement for small businesses); *id.* at 67,090 (listing steps adopted to minimize impact on small business concerns, including making formal training programs and internal control systems inapplicable).

consistently, any resulting findings risk conflating these categories and mischaracterizing what the evidence actually establishes.

Government auditing standards (including GAO’s recently revised standards, which emphasize quality management) already reflect these principles.⁹⁰ They require independence, stated objectives, defensible methodology, and transparent reporting. If the SBA’s objective is screening and triage rather than fraud determination, the SBA should adopt classification rules consistent with those standards: documented procedures, quality controls, a transparent scheme distinguishing capacity constraints from administrative violations from suspected misrepresentation, and clear thresholds for referral based on corroborating evidence. These process safeguards matter because they reduce the risk of category error—the misclassification that occurs when nonproduction or documentation gaps are publicly characterized as fraud without additional evidence of intent.

Congress should require that any public reporting from this initiative maintain these distinctions. Congress should also confirm that the SBA will observe the procedural protections required by its own regulations (including the Letter of Intent, response period, written findings, and appeal rights prescribed in 13 C.F.R. § 124.304) before taking adverse action against any participant based on this review.⁹¹

VI. Conclusion: Rebuild and Use the Oversight Infrastructure Congress Has Already Designed

The United States has built a multi-layered oversight and enforcement architecture intended to prevent, detect, punish, and remediate procurement fraud—a structure reflecting decades of bipartisan effort. The recent high-profile contracting scandals cited in SBA and Congressional press releases about the 8(a) program underscore that existing tools can identify wrongdoing and drive prosecutions. Those cases illustrate how independent oversight and law enforcement deliver accountability when evidence is developed.

The policy choice before Congress is whether to strengthen that system or to bypass it. If Congress’s objective is durable fraud deterrence and detection in SBA programs, the pathway is clear:

First, finish the work already prescribed by professional auditors. GAO reports 25 SBA-related recommendations remain unimplemented, including recommendations tied to “critical” risk-management and cybersecurity issues in SBA’s certification platform. SBA OIG has documented unresolved weaknesses in 8(a) monitoring and business development processes.

Second, stabilize and protect independent oversight capacity. The oversight system cannot function if IG independence is treated as optional, if continuity is disrupted, or if coordinating capacity and transparency tools are unstable.

A population-wide document sweep may produce headlines and some actionable leads. It is not, however, a substitute for closing known control gaps, upgrading systems governance, or

⁹⁰ See *supra* notes 12–16 and accompanying text.

⁹¹ See *supra* note 78.

resourcing independent oversight. The credibility of any fraud findings depends on the independence, standards, and transparency of the process that produces them. Without clear objectives, quality controls, and transparent classification rules, such initiatives risk producing findings that are difficult to defend and easy to misinterpret—undermining the very integrity they seek to restore.

Thank you for the opportunity to share these thoughts.