Understanding the SBA's Proposed Changes to 8(a) Certification Requirements

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The current Administration is engaged in efforts to diminish or eliminate Diversity, Equity, and Inclusion (DEI) as it relates to historically protected or disadvantaged groups, such as gender, race, and national origin. Federal and State courts have also ruled that some programs which provide funds or special consideration to women, minority racial, or ethnic groups may violate the Fourteenth Amendment's Equal Protection Clause because they focus on a specific gender or selected races or national origin. The Small Business Administration's 8(a) Business Development Program provided federal contracting opportunities to certain minority-owned businesses, based on a presumption that some minority groups qualified as disadvantaged. That is now changing. Fewer minority owned businesses will qualify, but other businesses might.

On June 11, 2026, the U.S. Small Business Administration (SBA) issued a Proposed Rule titled *"Reforms to Remove SBA's 8(a) Rebuttable Presumption of Social Disadvantage for Individually Owned Firms Only"* that will significantly change how eligibility is determined for the 8(a) Business Development Program. The rule proposes

eliminating the long-standing assumption that certain groups are automatically considered socially disadvantaged.

OVERVIEW OF THE 8(A) PROGRAM

The 8(a) program was originally designed to expand federal contracting opportunities for small businesses that had been historically excluded from economic advancement. To accomplish this, the SBA incorporated a race-conscious framework that assumed certain groups had experienced systemic barriers. Under these regulations, individuals from designated racial groups, such as Black Americans, Hispanic Americans, Native Americans, and certain Asian Americans, were presumed to be socially disadvantaged. This "rebuttable presumption" simplified the certification process and provided a more direct path to accessing federal contracts, including set-aside and sole-source awards. To qualify for the program, an individual needed to show, among other things, that their business was 51% controlled by a U.S. Citizen who was socially and economically disadvantaged.

THE PREVIOUS STANDARDS FOR BEING SOCIALLY AND ECONOMICALLY DISADVANTAGED

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control.

- There *used* to be a rebuttable presumption that certain races were socially disadvantaged. It could be overcome with credible evidence to the contrary. This piece has been removed**. There is now no rebuttable presumption** that certain races/groups are socially disadvantaged. Instead, socially disadvantaged status is determined based on submitting verifiable, fact-based evidence.

- An American citizen can now establish social disadvantage by showing that within his or her lifetime, the federal, state or local government or a university or corporation, through any action, policy, rule, regulation, or other practice of any of its agencies, subsidiaries, or authorized agents, discriminated or was biased against a clearly definable racial, ethnic, or cultural group of which the citizen is a member, or favored in any way a racial, ethnic, or cultural group of which the citizen is not a member, and that the discrimination, bias, or harm materially harmed the citizen.
- To establish the American citizen was harmed by such discrimination, prejudice, or bias, the citizen may self-certify that he or she was a member of the relevant group at the time of the government's or private entity's action or during the effective period of the relevant action, policy, rule, regulation, or practice, and that such action, policy, rule, regulation, or practice materially harmed the citizen.

Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. This is determined by submitting personal financial information. The individual's net worth must be under $850,000, their income over the past three years cannot exceed $400,000, and the fair market value of all their assets must be under $6.5 million.

THE REBUTTABLE PRESUMPTION AND THE *ULTIMA* DECISION

Prior to the proposed changes, applicants who did not fall within a defined rebuttable presumption group were required to demonstrate disadvantage through a more detailed showing supported by evidence. While courts had historically upheld this overall framework

as serving a compelling governmental interest, it increasingly faced constitutional scrutiny.

In *Ultima Services Corp. v. U.S. Department of Agriculture* (2023), a federal court held that the SBA race-based presumption violated constitutional equal protection principles. In response, in January 2026, the SBA issued a memorandum reinforcing that the race-based presumption is unconstitutional. The SBA required all new applicants to provide individualized narratives describing their experiences with disadvantages, temporarily eliminating reliance on the presumption.

KEY CHANGES IN THE PROPOSED RULE

The 2026 Proposed Rule removes the presumption entirely and replaces it with a single, uniform standard for all applicants. Under the proposed approach, no one is automatically considered socially disadvantaged based on race or ethnicity, and no one is excluded for that reason. Instead, every applicant must establish eligibility through verifiable, fact-based evidence.

To be clear, access to the 8(a) program is still based on status within a racial group that has been discriminated against. The difference, however, is that now members of certain racial groups no longer automatically qualify but have to submit proof of discrimination. The individual applying has to self-certify that they were a member of a racial group, that their group was discriminated, prejudiced, or biased against by the government, and it materially harmed them. This showing can be made through any action, policy, rule, or regulation that discriminated against the racial group. It does not matter what racial group the individual is a part of, as long as they prove discrimination. For example, a white applicant can now qualify if they meet the standards. This matches the current administration's repeated assertions that DEI efforts have discriminated against many white men, limiting their opportunities.

Outline of the rules

To qualify for the 8(a) program, businesses must meet the following eligibility criteria:

- Be a small business;
- Not have previously participated in the 8(a) program;
- **Be at least 51% owned and controlled by U.S. citizens who are socially and economically disadvantaged;**
- Have a personal net worth of $850 thousand or less, adjusted gross income of $400 thousand or less, and assets totaling $6.5 million or less;
- Demonstrate good character;
- Demonstrate the potential for success, such as having been in business for two years.

POTENTIAL IMPACT

The proposed rule replaces presumptions with a case-by-case analysis focused on specific acts of discrimination. In theory, applicants could now claim disadvantage based on past policies that excluded them, for example, if they were harmed because they were not part of a group previously eligible for the presumption. While social disadvantage is only one requirement for 8(a) eligibility, this shift could significantly change who qualifies for the program.

For businesses, the proposed rule signals a shift toward a more documentation-based application process. Applicants will need to focus on collecting and presenting objective evidence that establishes both the existence of discrimination and its impact on economic opportunity. This may increase the level of preparation required, particularly for those who previously relied on presumptive eligibility.

While the ultimate effects will depend on how the rule is finalized, it is clear that the standards for demonstrating social disadvantage in the SBA 8(a) program are undergoing a fundamental change.

The proposed rule does not change the SBA's contract set-aside programs for women-owned businesses. Applications from women-owned businesses will continue to be governed by the current provisions of 13 C.F.R. part 127, the Women-Owned Small Business Federal Contract Program. If you have any questions regarding the proposed rule, please reach out to a member of the Boardman Clark Labor & Employment Law Practice Group.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

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