

SBA Ends Race-Based Presumption in 8(a) Program for Individually Owned Firms

The U.S. Small Business Administration has finalized a rule amending 13 CFR 124.103 to remove the longstanding rebuttable presumption of social disadvantage from its 8(a) Business Development Program. Published August 11, 2026, the rule takes effect September 10, 2026, and applies to all pending applications from individually owned firms as of that date.

Since 1986, the program automatically presumed that members of certain groups, including Black, Hispanic, Native, Asian Pacific, and Subcontinent Asian Americans, were socially disadvantaged. A 2023 federal court decision, *Ultima Services Corp. v. USDA*, found that presumption unconstitutional under equal protection principles, and the Department of Justice announced in November 2025 that it would no longer defend it. SBA has not applied the presumption for three years but is now formally striking it from the regulations.

In its place, the rule establishes a race-neutral test. Any U.S. citizen can establish social disadvantage by demonstrating that an identifiable racial, ethnic, or cultural group they belong to faced discrimination or bias from a government or private entity, then self-certifying that they suffered material harm, defined as lost or diminished economic opportunity, as a result. Evidence can include public records, court decisions, corporate policies, or congressional findings.

Importantly, the change affects only individually owned applicants. Entity-owned firms owned by tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations are unaffected, since social disadvantage was never an eligibility element for them. Current 8(a) participants keep their status and need not requalify. SBA estimates roughly 4,190 applicants annually will be affected, with what it calls a de minimis burden increase.