8(a) Social Disadvantage Regulation
Frequently Asked Questions

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- For admittance into the 8(a) program, statute requires individuals to establish social and economic disadvantage.
- The final rule revising the social-disadvantage requirements for the 8(a) Business Development program takes effect **September 10, 2026**.
- The final rule replaces the prior subjective personal-narrative test for individually owned applicants with the new objective, fact-based standard found in 13 CFR 124.103.
- The new standard will be applied to all individual applicants that are not currently in the 8(a) program. Statutorily, social disadvantage is not an element of eligibility for any firm owned by a tribe, ANC, NHO, or CDC. As such, no firm owned by an entity must establish social disadvantage and any rule changes detailing what is social disadvantage and how it can be demonstrated do not apply to entity-owned firms.

Individually-Owned 8(a) applicants

Does the new regulation apply to my pending 8(a) Business Development Program application?

- Yes, if you are an individually owned 8(a) applicant.
- The new regulation applies to all individually owned 8(a) Business Development Program applicants, including current applicants not yet admitted into the 8(a) program.

What happens with my existing 8(a) application?

- Regulations require the SBA to ensure that 8(a) applicants are eligible at the time of SBA's eligibility determination.
- Starting no earlier than September 10, 2026, the SBA will return all individual 8(a) applications to the applicant.
- This will allow firms to establish social disadvantage status through the new test and update all financial and other documents required for SBA review.

Can my application be returned prior to September 10th?

- No. The SBA is currently updating the 8(a) application and systems to comply with the new regulation by its effective date of September 10^{th}.

Does this impact currently active 8(a) participants?

- No. Current 8(a) firms will not need to reestablish social disadvantage status at this time, or in the future as part of the annual review process.

Can SBA approve my previous application?

- No. The previous standard is no longer applicable to SBA's eligibility determination.

Will my previous social disadvantage narrative satisfy the new requirement?

- The prior social disadvantage narrative test does not comply with current program eligibility requirements.

What is the new test?

1. An individual claiming social disadvantage ("applicant") must demonstrate that an identifiable group suffered discrimination or bias; and
2. Attest that he or she was a member of such a group at the time of the governmental or private entity's action or during the effective period of the relevant action, policy, rule, regulation, or other practice; and
3. Attest that he or she suffered material harm because of that action, policy, rule, regulation, or other practice.

How do I meet the new social-disadvantage standard?

- Under the new standard, an applicant must provide evidence that a governmental or private entity in the United States discriminated against, was biased against, or favored another group over a clearly definable racial, ethnic, or cultural group of which the applicant was a member.
- The applicant must also self-certify that he or she was a member of that group when the relevant action, policy, rule, regulation, or practice was in effect and that it caused them material harm.
- Material harm means a loss of access to, or diminished opportunities related to, economic advancement.
- Applicants must have been a member of such a group at the time of the discriminatory action. In other words, the group must have faced such discriminatory action after the applicant was born.

What types of evidence of group discrimination is acceptable?

- Fact-based evidence such as:
  - Court rulings;
  - Explicit corporate policies (e.g. company-wide DEI policies);
  - Congressional or other governmental findings;
  - Other official policies

What evidence of group discrimination is not acceptable?

- Unsubstantiated claims of discrimination
- Discrimination that occurred prior to the applicant's lifetime
- Prior social disadvantage narratives

What evidence of identifiable group discrimination or bias may I submit?

- Examples of discriminatory conduct that could support a claim of social disadvantage include, but are not limited to: unlawful DEI programs or policies; unlawful affirmative action programs or policies; race-based quotas, set-asides, or hiring targets; or, any government or private entity policies or programs that favored some groups over others on the basis of race, ethnicity, or sex.
- Provide evidence that his or her group experienced a barrier to accessing a federal program or contract that other designated groups did not; or that the citizen's identifiable group was disadvantaged in college or university admissions decisions or otherwise discriminated against by a private entity in an unlawful manner as contemplated in *Students for Fair Admissions, Inc.* v. *President and Fellows of Harvard College,* 600 U.S. 181 (2023), *Ames* v. *Ohio Department of Youth Services,* 605 U.S. 303 (2025) or similar cases.

Example #1:

- *Ultima Servs. Corp.* v. *USDA* (E.D.Tenn. 2023)
- In 2023, a white women-owned small business owner challenged the SBA's use of the rebuttable presumption then in effect in 8(a).
- The 8(a) rebuttable presumption provided that black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Subcontinent Asians are presumed to be socially disadvantaged individuals, allowing unequal access to 8(a).
- The United States District Court of the Eastern District of Tennessee found that the 8(a) rebuttable presumption violated the United States Constitution.

- Thus, members of groups who did not have access to the rebuttable presumption could provide this case as evidence of group discrimination. To be able to properly attest material harm, an applicant under this example who is a member of such group does not need to have applied for, or been rejected from, the 8(a) program if such applicant was dissuaded from applying due to the prior discrimination in the 8(a) program.

Example #2:

- On August 25, 2026, the U.S. Department of Justice announced that a Contractor agreed to pay $21.5m to resolve alleged employment discrimination violations.
- As a condition to being a federal contractor, companies must certify that it will not discriminate against an employee or applicants because of race or sex. However, the DOJ contended that the Contractor engaged in discriminatory hiring, in part through race-based quotas.
- For two years, the contractor allegedly enacted policies where senior compensation could be impacted if they did not meet demographic goals. The contractor allegedly set demographic goals and identified employees for opportunities based on race and sex.
- While the contractor did not admit wrongdoing, DOJ and the Contractor reached a false claims settlement.
- Considering the false claims settlement was reached with the DOJ, the DOJ findings in the false claims settlement may be used as evidence of group-based discrimination for 8(a) social disadvantage status.

Example #3:

- In passing the Americans with Disabilities Act of 1990 (ADA), Congress recognized that discrimination against people with disabilities was a serious and pervasive social problem that had to be redressed through statute. This Congressional finding would be sufficient evidence to demonstrate that people with disabilities were subject to discrimination in a manner that diminished their opportunity for economic advancement.
- An applicant under this example would be socially disadvantaged if he or she could attest that (1) he or she has an identifiable disability covered under the ADA and was alive prior to the passage of the ADA, and (2) experienced material harm as a result of discrimination against people with disabilities.

Example #4:

- Signed affidavits with evidence that a governmental or private entity in the United States discriminated against, was biased against, or favored another group over a clearly definable racial, ethnic, or cultural group of which the applicant was a member may suffice.
- Evidence must clearly show that such entity's policies or practices were discriminatory or biased in a way that could support a claim of social disadvantage; for example, unlawful DEI programs or policies; unlawful affirmative action programs or policies; race-based quotas, set-asides, or hiring targets; or any government or private entity policies or programs that favored some groups over others on the basis of race.

Tribal Entity-Owned Applications Are Unaffected by Social Disadvantage Regulation

I have a pending entity-owned 8(a) application. Does the new social-disadvantage regulation affect my application?

- No. The new social-disadvantage regulation does not affect entity-owned 8(a) Business Development Program applicants.

What action do I need to take for my pending entity-owned application?

- Regulation requires that firms be eligible for 8(a) at the time of SBA decision.
- Prior to final determination, pending entity-owned applicants will receive a Request for Information through SBA Certifications to provide an opportunity to update any information that may impact the application. Once the entity applicant affirms no changes, or provides updated documentation of any changes, the SBA will review and make an eligibility determination.