

SBA's 8(a) Business Development Program: Legislative and Program History

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Introduction

Congress has sought to help small “socially and economically disadvantaged” business owners overcome barriers to participating in federal contracting and compete in the national economy through the Small Business Administration’s (SBA’s) 8(a) Business Development Program, commonly known as the “8(a) program.”

For eligible businesses, program participation offers federal contracting preferences such as federal contract set-asides and sole-source contracts.¹ Program participants also receive dedicated business development support, including mentorship, training, and counseling designed to enhance the competitiveness of participant businesses and their long-term viability. Contracting preferences and business development support services are both available for a nine-year period. However, the SBA notes that “8(a) certification does not guarantee contract awards.”²

Agency purchasing officials choose to award contracts through the program in order to reach annual goals for contracting with small disadvantaged businesses.³ Under its program authority, SBA accepts procurements from other federal agencies and awards contracts to 8(a) program participants on behalf of the procuring agency. Through this agency-to-agency contracting process, the SBA essentially subcontracts an agency’s requirement to an 8(a) program participant.

Amendments to Section 8(a) of the Small Business Act in 1978 gave the SBA explicit statutory authority for program activities previously implemented through regulations.⁴ Since its authorization, the 8(a) program has become an essential part of federal small business procurement policy. The Small Business Act indicates “that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy.”⁵ To help achieve these goals, the 8(a) program’s stated statutory purposes are to

(A) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete on an equal basis in the American economy;

(B) promote the competitive viability of such concerns in the marketplace by providing such available contract, financial, technical, and management assistance as may be necessary; and

(C) clarify and expand the program for the procurement by the United States of articles, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.⁶

Program eligibility is generally limited to small businesses that are “unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of and residing in the United States” and demonstrate “potential for

¹ Set-asides limit contract competition to businesses in the 8(a) program. Sole-source awards are made to selected 8(a) program participants without competition.

² <https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program>

³ For more information on the government’s annual contracting goals, see CRS Insight IN12018, *Federal Small Business Contracting Goals*, by R. Corinne Blackford.

⁴ Statutory authority for the program is contained in Sections 7(j), 8(a), and 8(d) of the Small Business Act.

⁵ P.L. 85-536, §2(f)(1)(a), 72 Stat. 384 (July 18, 1958) (codified at 15 U.S.C. §631(f)(1)(a)).

⁶ P.L. 85-536, §2(f)(2)(A-C), 72 Stat. 384 (July 18, 1958) (codified at 15 U.S.C. §631(f)(2)(A-C)).

success.”⁷ Small businesses owned by certain groups, including Alaska Native Corporations (ANCs), Community Development Corporations (CDCs), Indian tribes, and Native Hawaiian Organizations (NHOs) are also eligible for the program under different terms.

This report reviews the origins and evolution of the 8(a) program, including its creation, eligibility requirements,⁸ and administration. It explores changes in program eligibility over time, including the presumption of social disadvantage for business owners who were members of minority racial and ethnic groups.

Program Origins

The 8(a) program for “disadvantaged” small business contractors is the result of the merger of federal contracting policies with distinct objectives: those promoting small business contractors in federal procurement and those focused on preventing discrimination against racial and ethnic minorities in federal contracting markets. Executive orders in the 1940s sought to end employment discrimination against African American workers by federal contractors.⁹ Decades later, antidiscrimination efforts that were focused on contractors’ employees evolved into antidiscrimination efforts focused on business owners. Following civic unrest in the late 1960s, SBA programming sought to support business ownership by African Americans and other minorities. In 1967, executive action directed federal procurement to contractors willing to hire workers in areas with high rates of African American unemployment and underemployment.¹⁰ That initiative was a precursor to executive branch efforts to promote minority business ownership during the Nixon Administration and to explicit Congressional authorization of the 8(a) program in 1978.¹¹

Early Programs Promoting Small Business Contractors

In 1942, Congress first authorized a federal agency, the Smaller War Plants Corporation (SWPC), to enter into prime contracts with other federal agencies in order to subcontract with small businesses for the performance of these contracts. This arrangement was similar to how SBA would later enter into prime contracts with other federal agencies for the 8(a) program. The SWPC was partly created for a contracting purpose, in order to ameliorate small businesses’ financial difficulties. The SWPC was also used as a means of “mobiliz[ing] the productive facilities of small business in the interest of successful prosecution of the war.”¹²

The SWPC was abolished at the end of World War II.¹³ In 1951, at the start of the Korean War, Congress created the Small Defense Plants Administration (SDPA), with authorities similar to

⁷ Requirements for program admission are contained in regulations at 13 C.F.R. §124.101.

⁸ For a summary of program participant requirements, see the **Appendix**.

⁹ See **Table 1** for summaries of these executive orders.

¹⁰ President Lyndon B. Johnson created the President’s Test Cities Program (PTCP) in 1967, wherein the SBA first used the Small Business Act’s Section 8(a) authority to award direct contracts to firms “agreeing to locate in or near ghetto areas and to provide jobs for the unemployed and underemployed.” U.S. Government Accountability Office, Questionable Effectiveness of the 8(a) Procurement Program, GGD-75-57, April 16, 1975, pp. 1-2, at <https://www.gao.gov/products/ggd-75-57>.

¹¹ P.L. 95-507, To amend the Small Business Act and the Small Business Investment Act of 1958, 92 Stat. 1757 (October 24, 1978).

¹² P.L. 77-603, Small Business Mobilization Act, §4(f), 56 Stat. 351 (June 11, 1942).

¹³ Executive Order 9665, in 1945, abolished SWPC. Some functions were transferred to successor agencies, including the now obsolete Reconstruction Finance Corporation. Executive Order 9665, “Transfer of the Functions of the Smaller (continued...) ”

those provided to the SWPC.¹⁴ Two years later, in 1953, Congress transferred the SDPA's authorities, among others, to the newly created SBA¹⁵ in order for the SBA to exercise these powers in times of peace as well as in future times of war.¹⁶ When the Small Business Act of 1958 transformed the SBA into a permanent agency, agency-to-agency contracting authority was included in Section 8(a) of the act.¹⁷ At this time, the SBA's subcontracting authority was not limited to certain types of small businesses; under the original Section 8(a), the SBA could contract with any "small-business concerns or others,"¹⁸ but it reportedly did not employ this subcontracting authority, focusing instead upon loan and other programs.¹⁹

Policy Addressing Racial and Ethnic Minority Contractors

Executive Orders Related to Employment Discrimination in Federal Contracting

Federal policy addressing racial and ethnic minorities in contracting first focused on employment discrimination by federal contractors, around the same time that the SWPC was created. Executive orders created the earliest of these policies, beginning with an order issued by President Franklin Roosevelt in June 1941, which required defense-related contracts to contain a provision prohibiting contractors from "discriminat[ing] against any worker because of race, creed, color, or national origin."²⁰ In 1943, similar requirements were imposed on non-defense contractors as well as their subcontractors.²¹ Subsequent Presidents, from Truman to Nixon,

War Plants Corporation to the Reconstruction Finance Corporation and the Department of Commerce," 10 *Federal Register* 15365, December 28, 1945.

¹⁴ P.L. 82-96, An Act to amend and extend the Defense Production Act of 1950 and the Housing and Rent Act of 1947, as amended, §110, 65 Stat. 131 (July 31, 1951).

¹⁵ P.L. 83-163, Reconstruction Finance Corporation Liquidation Act, §207(c)-(d), 67 Stat. 230 (July 30, 1953).

¹⁶ See U.S. Congress, House Committee on Banking and Currency, *Small Business Act of 1953*, report to accompany H.R. 5141, 83rd Cong., 1st sess., May 28, 1953, H.Rept. 83-494 (Washington: GPO, 1953), p. 2 (stating that the SBA would "continue many of the functions of the [SDPA] in the present mobilization period and in addition would be given powers and duties to encourage and assist small-business enterprises in peacetime as well as in any future war or mobilization period"); and U.S. Congress, Senate Committee on Banking and Currency, *Small Business Act*, report to accompany H.R. 7963, 85th Cong., 2nd sess., June 16, 1958, pp. 9, 10 (stating that the act would "put the procurement assistance program on a peacetime basis").

¹⁷ P.L. 85-536, as amended, §8(a)(1)-(2), 72 Stat. 384 (July 18, 1958).

¹⁸ P.L. 85-536, as amended, §8(a)(1)-(2), 72 Stat. 384 (July 18, 1958).

¹⁹ Thomas Jefferson Hasty, III, "Minority Business Enterprise Development and the Small Business Administration's 8(a) Program: Past, Present, and (Is There a) Future?" 145 *Military Law Review* pp. 1, 8 (Summer 1994). ("[B]ecause the SBA believed that the efforts to start and operate an 8(a) program would not be worthwhile in terms of developing small business, the SBA's power to contract with other government agencies essentially went unused. The program actually lay dormant for about fifteen years until the racial atmosphere of the 1960s provided the impetus to wrestle the SBA's 8(a) authority from its dormant state.")

²⁰ This order also created a Committee on Fair Employment Practice, to investigate complaints of discrimination in violation of the order's provisions. Executive Order No. 8802, "Reaffirming Policy of Full Participation in the Defense Program by All Persons, Regardless of Race, Creed, Color, or National Origin, and Directing Certain Action in Furtherance of Said Policy," 6 *Federal Register* 3109, June 25, 1941.

The order was a response to grievances, including job discrimination in the defense industry, expressed by A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters, and other Black leaders, who met with members of the President's cabinet; Randolph raised the prospect of protestors marching on Washington DC if executive action was not taken. "Executive Order 8802: Prohibition of Discrimination in the Defense Industry (1941)," U.S. National Archives and Records Administration, June 25, 1941, <https://www.archives.gov/milestone-documents/executive-order-8802#transcript>.

²¹ The order required, "All contracting agencies of the Government of the United States shall include in all contracts hereafter negotiated or renegotiated by them a provision obligating the contractor not to discriminate against any (continued...)"

issued executive orders seeking to improve access to federal contracting opportunities for minority racial and ethnic groups, albeit through fair employment with federal contractors rather than through opportunities to win federal contracts. See **Table 1** summarizing these orders.

Table 1. Executive Actions to Improve Access to Federal Procurement Opportunities for Racial and Ethnic Minorities

Year	President	Executive Order	Order Requirements
1941	Franklin Roosevelt	No. 8802	Prohibited racial discrimination against workers by defense industry contractors (and their subcontractors).
1943	Franklin Roosevelt	No. 9346	Prohibited racial discrimination against workers by contractors in any industry (and their subcontractors).
1951	Truman	No. 10308	Addressed compliance with nondiscrimination requirements for contractors and established the Committee on Government Contract Compliance.
1954	Eisenhower	No. 10557	Revised the nondiscrimination provision required in federal contracts based on Committee on Government Contract recommendations.
1961	Kennedy	No. 10925	Established the President's Committee on Equal Employment Opportunity, required contractors to take "affirmative action" to ensure employment and equal treatment of employees regardless of race, and required contractors (and their subcontractors) to file compliance reports with contracting agencies.
1965	Lyndon Johnson	No. 11246	Required non-discrimination and "equal opportunity" policies, including by federal contractors and subcontractors.
1969	Nixon	No. 11458	Called on the Department of Commerce, with other agencies, to promote the establishment and successful operation of minority business enterprises.

Sources: Executive Order No. 10308, "Improving the Means for Obtaining Compliance with the Nondiscrimination Provisions of Federal Contracts," 16 *Federal Register* 12303, December 3, 1951 (Truman); Executive Order No. 10557, "Approving the Revised Provision in Government Contracts Relating to Nondiscrimination in Employment," 19 *Federal Register* 5655, September 3, 1954 (Eisenhower); Executive Order No. 10925, "Establishing the President's Committee on Equal Employment Opportunity," 26 *Federal Register* 1977, March 6, 1961 (Kennedy); Executive Order No. 11246, "Equal Employment Opportunity," 30 *Federal Register* 12319, September 28, 1965 (Johnson); and Executive Order No. 11458, "Prescribing Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise," 34 *Federal Register* 4937, March 7, 1969 (Nixon).

Use of Section 8(a) Authority to Aid Minority-Owned Contractors

SBA activities under the Johnson and Nixon Administrations laid the foundations for the present-day 8(a) program. According to some histories of the program, Section 8(a) of the Small Business Act was "pressed into service as one policy attempt to alter the opportunity structure available to

employee or applicant for employment because of race, creed, color, or national origin and requiring him to include a similar provision in all subcontracts." Executive Order No. 9346, "Further Amending Executive Order No. 8802 by Establishing a New Committee on Fair Employment Practice and Defining Its Powers and Duties," 8 *Federal Register* 7183, May 29, 1943 (Roosevelt).

minority group members” because of the “racial unrest and social upheaval” during the mid-1960s.²²

President's Test Cities Program

In FY1968, the SBA first used its 8(a) authority²³ implementing the President's Test Cities Program (PTCP), created by President Lyndon Johnson in 1967. PTCP was designed to create workforce training and job opportunities under the direction of the Departments of Commerce and Labor, but included use of Section 8(a) authority to award contracts to firms “agreeing to locate in or near ghetto areas and to provide jobs for the unemployed and underemployed.”²⁴ PTCP program contracts were offered “on a noncompetitive basis” in certain metropolitan areas, but were not restricted to minority-owned firms.²⁵ The PTCP “did not result in the desired plant relocations, hiring, and training,” and was phased out in 1968 before Johnson left office.²⁶

Minority Business Enterprise Policies

President Nixon initiated the policy of directing federal contracts to minority-owned firms. In March 1969, he issued an executive order (No. 11458) that directed a new federal effort to grow “minority business enterprises.”²⁷ Later that year in a December memorandum to the heads of federal agencies and departments, Nixon requested certain support for the development of “a program which will increase the involvement of minority group contractors in the multibillion dollar Federal procurement program.”²⁸ Nixon also created a Federal Task Force on Procurement, whose chair helped lead efforts to increase minority business contracting.²⁹

²² Charles E. White, “An Assessment of Public Law 95-507,” (M.S. thesis, Naval Postgraduate School, 1980), p. 21.

²³ U.S. Government Accountability Office, *Questionable Effectiveness of the 8(a) Procurement Program*, GGD-75-57, April 16, 1975, pp. 1-2, <https://www.gao.gov/products/ggd-75-57>.

²⁴ U.S. Government Accountability Office (GAO), *Questionable Effectiveness of the 8(a) Procurement Program*, GGD-75-57, April 16, 1975, pp. 1-2, <https://www.gao.gov/products/ggd-75-57>.

²⁵ Thomas Jefferson Hasty, III, “Minority Business Enterprise Development and the Small Business Administration's 8(a) Program: Past, Present, and (Is There a) Future?” 145 *Military Law Review*, pp. 11-12. The program was initiated after civil disturbances in various cities in the summer of 1967 as well as Johnson's creation of the National Advisory Commission on Civil Disorders in 1967 (known informally as the “Kerner Commission,” after the Commission's chair, Otto Kerner). The Commission produced a report documenting its investigation into the “disorders,” finding that “segregation and poverty” had created “a destructive environment totally unknown to most White Americans.” Report of the National Advisory Commission on Civil Disorders (March 1968), p. 1.

²⁶ Thomas Jefferson Hasty, III, “Minority Business Enterprise Development and the Small Business Administration's 8(a) Program: Past, Present, and (Is There a) Future?,” 145 *Military Law Review*, p. 12-13.

²⁷ Executive Order No. 11458, “Prescribing Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise,” 34 *Federal Register* 4937, March 7, 1969 (Nixon). This order also established the Office of Minority Business Enterprise, which later became the Minority Business Development Agency. In 1971, Nixon issued another executive order to coordinate a government-wide effort in support of minority-owned small businesses (Executive Order No. 11625, “Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise,” 36 *Federal Register* 19967, October 13, 1971). The order broadly sought “[t]he opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons,” and directed the Secretary of Commerce to “implement Federal policy in support of the minority business enterprise program” and “coordinate the participation of all Federal departments and agencies in an increased minority enterprise effort.”

²⁸ U.S. President (Nixon), “Memorandum Requesting Support for the Minority Business Enterprise Program,” *Public Papers of the Presidents of the United States* (Washington: GPO, 1969), p. 994.

²⁹ The Task Force was chaired by the Administrator of the General Services Administration, Robert L. Kunzig. In June 1970, Mr. Kunzig reported that 90 contracts, without bidding, were “preferentially” awarded to minority businesses, totaling more than \$14 million in fiscal year 1970. Robert A. Wright, “U.S. Tries to Spur Aid to Businesses Run by Minorities,” *New York Times*, June 16, 1970.

SBA regulations in 1970 articulated a policy of using Section 8(a) to “assist small concerns owned by disadvantaged persons to become self-sufficient, viable businesses capable of competing effectively in the market place.”³⁰ The regulations at that time also used SBA’s authority under Section 7(j) of the Small Business Act to provide management and technical assistance to specify that “the SBA may provide technical and management assistance to assist in the performance of the subcontracts.”³¹

During the 1970s, agencies began implementing “minority business enterprise” policy. A 1971 *Federal Register* notice by the Veterans Administration indicated that agencies were channeling procurement requirements to SBA for subcontracting via Section 8(a) authority.³² That notice defined a “minority” individual as “(1) Negro or Black, (2) American Indian, (3) Oriental, (4) Aleut, (5) Eskimo, (6) Mexican American, (7) Puerto Rican, (8) Cuban, or (9) of Central or South American origin.”³³

Later, in 1973, SBA regulations, defined *disadvantaged persons* as including, but not limited to, “Black Americans, Spanish Americans, Oriental Americans, Eskimos, and Aleuts.”³⁴ However, the SBA lacked explicit statutory authority for focusing its 8(a) program on minority-owned businesses until the Small Business Act was amended in 1978.³⁵

1978 Amendments to the Small Business Act

In 1978, Congress amended the Small Business Act to give the SBA express statutory authority for its 8(a)-based program, which was referred to the “Minority Small Business and Capital Ownership Development” program.³⁶ The 1978 amendments permitted the SBA to subcontract under Section 8(a) authority with “socially and economically disadvantaged small business concerns,”³⁷ or small businesses that are least 51% owned by one or more socially and economically disadvantaged individuals and whose management and daily operations are controlled by such individual(s).³⁸ The amendments also provided the SBA explicit statutory authority to extend financial, management, technical, and other services to socially and economically disadvantaged small businesses.³⁹

³⁰ 13 C.F.R. §124.8-1(b) (1970).

³¹ 13 C.F.R. §124.8-1(d) (1970).

³² Veterans Administration, “Public Contracts and Property Management,” 36 *Federal Register* 25099-25100, December 29, 1971.

³³ Veterans Administration, “Public Contracts and Property Management,” 36 *Federal Register* 25099, December 29, 1971.

³⁴ 13 C.F.R. §124.8(c) (1973).

³⁵ U.S. Congress, House Committee on Small Business, *Amending the Small Business Act and the Small Business Investment Act of 1958*, report to accompany H.R. 11318, 95th Cong., 2nd sess., March 13, 1978, H.Rept. 95-949 (Washington: GPO, 1978), p. 4 (“Congress has never extended legislative control over the activities of the 8(a) program, save through indirect appropriations, thereby permitting program operations.... [The] program is not as successful as it could be.”).

³⁶ P.L. 95-507, To amend the Small Business Act and the Small Business Investment Act of 1958, 92 Stat. 1757 (October 24, 1978).

³⁷ P.L. 95-507, To amend the Small Business Act and the Small Business Investment Act of 1958, §202.

³⁸ P.L. 95-507, To amend the Small Business Act and the Small Business Investment Act of 1958, §202 (codified at 15 U.S.C. §637(a)(4)(A)-(B)). Firms that are owned and controlled by groups such as Indian tribes were later included within the definition of a “socially and economically disadvantaged small business concern.”

³⁹ P.L. 95-507.

The 1978 amendments were also a key legislative development because they set eligibility criteria that continues to be scrutinized and contested—namely, which business owners may be considered “socially and economically disadvantaged.”

Program Eligibility Provisions

Statutory Definition of Social Disadvantage

The definition of *socially disadvantaged individuals* in the 1978 amendments included those who have been “subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.”⁴⁰ The 1978 amendments also included congressional findings that “Black Americans, Hispanic Americans, Native Americans, and other minorities” are socially disadvantaged.⁴¹ Thus, if an individual was a member of one of these groups, SBA presumed he or she was socially disadvantaged. Still, Congress indicated that the amendments were intended to grant the SBA discretion to recognize additional groups or individuals as socially disadvantaged.⁴² SBA regulations established a three-part test for

⁴⁰ P.L. 95-507, To amend the Small Business Act and the Small Business Investment Act of 1958, §202 (codified at 15 U.S.C. §637(a)(5)).

⁴¹ P.L. 95-507, To amend the Small Business Act and the Small Business Investment Act of 1958, §202 (codified, as amended, at 15 U.S.C. §631(f)(1)(C)).

The meaning of *socially disadvantaged individuals* was the subject of much debate at that time. Some Members of Congress viewed the 8(a) program as a program for African Americans and would have defined *social disadvantage* accordingly. (See Parren J. Mitchell, “Federal Affirmative Action for MBE’s: An Historical Analysis,” *National Bar Association Magazine* 46 (1983). Mitchell was a Member of the U.S. House of Representatives and leader of the Congressional Black Caucus at that time.) Others favored including both African Americans and Native Americans, arguing that only those who did not come to the United States seeking the “American dream” should be deemed socially disadvantaged. See U.S. Congress, House Committee on Small Business, Minority Enterprise and General Oversight, *General Review of Major SBA Programs and Activities*, 95th Cong., 2nd sess., June 20, 1978, H721-H741 (Washington: GPO, 1978), p. 21. Yet others suggested that groups that are not racial or ethnic minorities, such as women, should be able to qualify as “socially disadvantaged,” or that individuals ought to be able to prove they are personally socially disadvantaged even if they are not racial or ethnic minorities. See U.S. Congress, House Committee on Small Business, *Amending the Small Business Act and the Small Business Investment Act of 1958*, report to accompany H.R. 11318, 95th Cong., 2nd sess., March 13, 1978, H.Rept. 95-949 (Washington: GPO, 1978), p. 9.

The House-passed version of the bill defined socially disadvantaged individuals, in part, by establishing a rebuttable presumption that African Americans and Hispanic Americans are socially disadvantaged, but the Senate-passed bill did not reference any racial or ethnic groups in defining social disadvantage. See U.S. Congress, House Committee of Conference, *Amending the Small Business Act and the Small Business Investment Act of 1958*, report to accompany H.R. 11318, 95th Cong., 2nd sess., October 4, 1978, H. Rept. 95-1714 (Washington: GPO, 1978), p. 20; and U.S. Congress, Senate Select Committee on Small Business, *Amending the Small Business Act and the Small Business Investment Act of 1958*, 95th Cong., 2nd sess., August 8, 1978, S.Rept. 95-1070 (Washington: GPO, 1978), pp. 13-16.

The conference committee reconciling the House and Senate versions ultimately arrived at a definition of socially disadvantaged individuals that included “those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group.” See P.L. 95-507, at §202. The conference committee also included congressional findings that “Black Americans, Hispanic Americans, Native Americans, and other minorities” are socially disadvantaged. See P.L. 95-507, at §201.

Congress later added “Asian Pacific Americans” (P.L. 96-302, An original bill to provide authorizations for the Small Business Administration, and for other purposes), “Indian tribes” (P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (Title XVIII—Small Business Programs)), and “Native Hawaiian Organizations” (P.L. 100-656, the Business Opportunity Development Reform Act of 1988) to the groups whom it finds to be socially disadvantaged. See 15 U.S.C. §631(f)(1)(C)).

⁴² P.L. 95-507, at §201 (stating that the groups Congress finds to be socially disadvantaged include, but are not limited to, those specified here); P.L. 95-507, at §202 (authorizing the award of contracts to socially disadvantaged individuals); and U.S. Congress, House Committee on Small Business, *Amending the Small Business Act and the Small* (continued...)

determining whether groups were disadvantaged.⁴³ These standards were designed for the SBA to evaluate petitions from representatives of groups seeking inclusion on the list of presumptively disadvantaged individuals.⁴⁴

The SBA eventually recognized five racial or ethnic categories as socially disadvantaged for 8(a) program purposes, including the three identified in the 1978 amendments and two that were added later and reference countries of origin.⁴⁵ **Table 2** lists these broad categories, along with the means by which they were added.

Table 2. Groups Presumed to Be Socially Disadvantaged

Group	Countries of Origin Included Within Group	Means of Inclusion
Black Americans	N/A	1973 SBA regulations; 1978 Small Business Act amendments (P.L. 95-507).
Hispanic Americans	N/A	1973 SBA regulations; 1978 Small Business Act amendments (P.L. 95-507).
Native Americans (including American Indians, Eskimos, Aleuts, Native Hawaiians)	N/A	1973 SBA regulations; 1978 Small Business Act amendments (P.L. 95-507).
Asian Pacific Americans	Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia, Vietnam, Korea, the Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, and Nauru	1973 SBA regulations; 1979 SBA regulations; P.L. 96-302; 1989 SBA regulations; 1989 petition decision.
Subcontinent Asian Americans	India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, and Nepal	1982 petition decision; 1982 SBA regulations; 1988 petition decision; 1989 SBA regulations.

Source: CRS, based on 13 C.F.R. §124.103(b); George R. La Noue and John C. Sullivan, "Presumptions for Preferences: The Small Business Administration's Decisions on Groups Entitled to Affirmative Action," *Journal of Policy History*, vol. 6, no. 4 (1994), pp. 439-467.

Business Investment Act of 1958, report to accompany H.R. 11318, 95th Cong., 2nd sess., March 13, 1978, H.Rept. 95-949 (Washington: GPO, 1978), p. 9 (expressing the view that §201 and §202 of the bill provide "sufficient discretion ... to allow SBA to designate any other additional minority group or persons it believes should be afforded the presumption of social ... disadvantage").

⁴³ 13 C.F.R. §124.103(d)(2)(i)-(iii).

⁴⁴ 13 C.F.R. §124.103(d)(2).

⁴⁵ 13 C.F.R. §124.103(b). Per 13 C.F.R. §124.103(b)(1), "[t]here is a rebuttable presumption" of social disadvantage for the groups in **Table 2**, but "[b]eing born in a country does not, by itself, suffice to make the birth country an individual's country of origin for purposes of being included within a designated group."

Evolution of the Definition of Social Disadvantage

As described below, socially disadvantaged racial and ethnic groups came to be recognized between 1973 and 1989. Some groups were included in the 1973 regulations as well as the 1978 statutory authorization of the 8(a) program. Others were added by the 1978 amendments or by legislation in 1980, and still others were added through petitions to the SBA and SBA regulations.

Asian Americans, although included in the 1973 regulations under the description “Oriental Americans,” were omitted from 1978 amendments. Following this exclusion and lobbying by Asian American interest groups, the SBA recognized “Asian Pacific Americans” as socially disadvantaged. Asian Pacific Americans consisted of individuals from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific, the Northern Marianas, Laos, Cambodia, and Taiwan.⁴⁶ Legislation in 1980 added Asian Pacific Americans to the Small Business Act’s list of socially disadvantaged persons.⁴⁷

In the 1980s, the SBA rejected petitions from some groups, including those from Hasidic Jews, women, disabled veterans, and Iranian-Americans, and accepted petitions from those representing Asian Indians,⁴⁸ Sri Lankans,⁴⁹ and Indonesians.⁵⁰ SBA also rejected a petition from Tongan business leaders in 1986, although Tongans were later added to the category of Asian Pacific Americans, along with some other Asian Pacific groups, in 1989.⁵¹

SBA regulations further established standards of evidence to be met by individuals demonstrating personal social disadvantage, as well as procedures for rebutting the presumption of social disadvantage accorded to members of recognized minority groups.⁵²

Today, personal circumstances causing social disadvantage, documented through a personal narrative to SBA, are the foundation for an individual’s 8(a) program eligibility, as SBA is no longer permitted to presume a program applicant’s social disadvantage based on membership in a disadvantaged social group (see “Response to Federal District Court Ruling in 2023” for further information).

Definition of Economic Disadvantage

The 1978 amendments also defined *economically disadvantaged individuals* as “those 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 business area who are not socially disadvantaged.”⁵³

In determining the degree of diminished credit and capital opportunities, Section 8(a)(6)(A) of the Small Business Act authorizes the SBA to “consider, but not be limited to, the assets and net worth of such socially disadvantaged individual.”

⁴⁶ George R. La Noue and John C. Sullivan, “Presumptions for Preferences: The Small Business Administration’s Decisions on Groups Entitled to Affirmative Action,” *Journal of Policy History*, vol. 6, no. 4 (1994), p. 444.

⁴⁷ Sec. 118 of P.L. 96-302.

⁴⁸ The first petition on behalf of Asian Indians was rejected in 1981, while the second was accepted in 1982. La Noue and Sullivan, pp. 451-452.

⁴⁹ La Noue and Sullivan, pp. 455-456.

⁵⁰ La Noue and Sullivan, p. 459.

⁵¹ La Noue and Sullivan, pp. 453-454.

⁵² 13 C.F.R. §124.103(c)(2) (standards of evidence for showing personal disadvantage); and 13 C.F.R. §124.103(b)(3) (mechanisms for overcoming the presumption of social disadvantage).

⁵³ P.L. 95-507, at §202.

Initially, the SBA determined economic disadvantage by examining:

- the applicant's personal financial condition (including their personal net worth, personal income for at least the past two years, and the total fair market value of their assets);
- the applicant's access to credit and capital;
- the business's financial condition; and
- the business's access to credit, capital, and markets.⁵⁴

In 1989, the SBA announced in the *Federal Register* that 8(a) program applicants needed a personal net worth of less than \$250,000 (excluding ownership in the 8(a) firm and equity in his or her primary residence) at the time of entry into the program, and less than \$750,000 for continuing eligibility to remain in the program.⁵⁵ Objective monetary thresholds for personal income and total assets appeared in regulations more than 20 years later. See "Additional Select Program Changes" for further discussion of economic disadvantage criteria.

Small businesses owned by certain 8(a)-eligible organizations are subject to slightly different standards for economic disadvantage. See "Program Expansion to Include Group-Owned Firms" for information on the program participation of firms owned by Community Development Corporations (CDCs), Indian tribes, Alaska Native Corporations (ANCs), and Native Hawaiian Organizations (NHOs).

Program Expansion to Include Group-Owned Firms

Although the 8(a) program was originally established for the benefit of small businesses owned by disadvantaged *individuals*, in the 1980s, Congress expanded the program to include entity-owned small businesses, owned by disadvantaged *groups*.

The first type of entity made eligible was a Community Development Corporation (CDC). A CDC is

a nonprofit organization responsible to residents of the area it serves which is receiving financial assistance under part A of this subchapter [42 U.S.C. §§9805 *et seq.*] and any organization more than 50 percent of which is owned by such an organization, or otherwise controlled by such an organization, or designated by such an organization for the purpose of this subchapter [42 U.S.C. §§9801 *et seq.*].⁵⁶

Congress created CDCs through the Community Economic Development Act of 1981 and instructed the SBA to issue regulations ensuring that CDCs could participate in the 8(a) program.⁵⁷

⁵⁴ SBA, "Minority Small Business and Capital Ownership Development Program: Final Rule," 54 *Federal Register* 34719, August 21, 1989.

⁵⁵ SBA, "Minority Small Business and Capital Ownership Development Program: Final Rule," 54 *Federal Register* 34696, August 21, 1989 (codified, as amended, at 13 C.F.R. §124.104(c)). Some commentators have estimated that 80% to 90% of Americans are economically disadvantaged under the SBA's net-worth requirements. See La Noue and Sullivan, "Gross Presumptions: Determining Group Eligibility for Federal Procurement Preferences," 41 *Santa Clara Law Review*, p. 108.

⁵⁶ 42 U.S.C. §9802.

⁵⁷ P.L. 97-35, Omnibus Budget Reconciliation Act of 1981, Ch. 8, Subchapter A, 95 Stat. 489 (August 13, 1981) (codified at 42 U.S.C. §§9801 *et seq.*); and P.L. 97-35, Omnibus Budget Reconciliation Act of 1981, at §626, 95 Stat. 496 (codified at 42 U.S.C. §9815(a)(2)). ("Not later than 90 days after August 13, 1981, the Administrator of the Small (continued...)")

In 1986, two additional owner-groups, Indian tribes and Alaska Native Corporations (ANCs), became eligible for the 8(a) program when Congress passed legislation providing that they were socially disadvantaged for 8(a) program purposes.⁵⁸ In 1992, Congress passed legislation that deemed ANCs “economically disadvantaged.”⁵⁹

The final owner-group, Native Hawaiian Organizations (NHOs), was made eligible for the program by legislation enacted in 1988.⁶⁰ An NHO is defined as

any community service organization serving Native Hawaiians in the State of Hawaii which (A) is a nonprofit corporation that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency, (B) is controlled by Native Hawaiians, and (C) whose business activities will principally benefit such Native Hawaiians.⁶¹

Small businesses owned by these four entities participate in the 8(a) program under somewhat different terms than small businesses owned by individuals. For example, these group-owned entities may receive sole-source contract awards beyond the sole-source award limit imposed on individually-owned 8(a) program participants (\$4.5 million and \$7 million for manufacturing contracts). The **Appendix** also provides a table summarizing program requirements for different types of 8(a) firms.

Additional Select Program Changes

Additional developments impacting the 8(a) program in the 1980s and beyond included the program’s name change, the introduction of objective monetary thresholds to assess economic disadvantage, and a consolidation of SBA business mentoring programs. Each of these developments is discussed below.

Also of note is a Reagan Administration proposal to abolish the SBA and transfer some of its programming, including “minority business support activities” involving “set-aside contracts for minority and disadvantaged small businesses,” into the Department of Commerce.⁶² Although the proposal was reported to be moving forward in 1985, a lack of congressional support for it led to the end of the White House’s “campaign” to eliminate SBA as an agency.⁶³

Program Name Change

The Clinton Administration changed the program’s name from the Minority Small Business and Capital Ownership Development Program to the 8(a) Business Development Program in 1998 “to

Business Administration, after consultation with the Secretary, shall promulgate regulations to ensure the availability to community development corporations of such programs as shall further the purposes of this subchapter, including programs under §637(a) of title 15.”)

⁵⁸ P.L. 99-272, Consolidated Omnibus Budget Reconciliation Act of 1985, §18015, 100 Stat. 370 (April 7, 1986) (codified at 15 U.S.C. §637(a)(13) and 15 U.S.C. §637(a)(4)).

⁵⁹ P.L. 102-415, Alaska Land Status Technical Corrections Act of 1992, §10, 106 Stat. 2115 (October 14, 1992) (codified at 43 U.S.C. §1626(e)). ANCs do not have to prove their economic disadvantage (13 C.F.R. §124.109(a)(4)).

⁶⁰ P.L. 100-656, Business Opportunity Development Reform Act of 1988, at §207, 102 Stat. 3861 (November 15, 1988) (codified at 15 U.S.C. §637(a)(4)).

⁶¹ P.L. 100-656, Business Opportunity Development Reform Act of 1988, at §207 (codified at 15 U.S.C. §637(a)(15)). A Native Hawaiian is “any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii” (codified at 13 C.F.R. §124.3).

⁶² Myron Struck, “Inside: the SBA,” *Washington Post*, January 9, 1985, p. A19.

⁶³ Nathaniel C. Nash, “Campaign to Kill S.B.A. Is Scrapped” *New York Times*, August 28, 1986, p. D1.

emphasize that individuals need not be members of minority groups and to stress the importance of assisting participating firms in their overall business development.”⁶⁴

Financial Thresholds for Economically Disadvantaged Status

The SBA has a three-part test for determining economic disadvantage, related to the applicant's net worth, personal income, and total assets. The agency began transitioning to the use of objective monetary thresholds to assess these three personal financial characteristics in 1989. At that time, SBA regulations required that the applicant's personal net worth had to be less than \$250,000 at the time of entry into the program and less than \$750,000 for continuing eligibility.⁶⁵ Objective monetary thresholds for personal income and total assets were not added until 2011.⁶⁶ SBA then adjusted the thresholds again in 2020 and 2022.⁶⁷ **Table 3** summarizes the threshold changes over time.

Table 3. Thresholds for Qualifying as Economically Disadvantaged
Financial Characteristics of Economic Disadvantage over Time

Financial Characteristic	1989 Threshold	2011 Threshold	2020 Threshold	2022 Threshold
Personal Net Worth	\$250,000 at time of program application; \$750,000 for continuing eligibility	No change	\$750,000 at time of program application and for continuing eligibility	\$850,000 at time of program application and for continuing eligibility
Average Personal Income (over a three-year period)	N/A	\$250,000 at time of program application; \$350,000 for continuing eligibility	\$350,000 at time of program application and for continuing eligibility	\$400,000 at time of program application and for continuing eligibility
Value of Total Assets	N/A	\$4 million at time of program application; \$6 million for continuing eligibility	\$6 million at time of program application and for continuing eligibility	\$6.5 million at time of program application and for continuing eligibility

Source: SBA, “Minority Small Business and Capital Ownership Development Program: Final Rule,” 54 *Federal Register* 34692, August 21, 1989; SBA, “Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations,” 76 *Federal Register* 8229-8231, February 11, 2011; SBA,

⁶⁴ SBA, “Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals,” 63 *Federal Register* 35727, June 30, 1998.

⁶⁵ SBA, “Minority Small Business and Capital Ownership Development Program: Final Rule,” 54 *Federal Register* 34692, August 21, 1989.

⁶⁶ SBA announced “objective standards by which an individual can qualify as economically disadvantaged based on his or her income and total assets.” See SBA, “Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations,” 76 *Federal Register* 8229-8231, February 11, 2011.

⁶⁷ SBA, “Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business Certification,” 85 *Federal Register* 27650-27665, May 11, 2020; and SBA “Small Business Size Standards: Adjustment of Monetary-Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation,” 87 *Federal Register* 69118-69154, November 17, 2022.

"Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business Certification," 85 *Federal Register* 27650-27665, May 11, 2020.

Notes: In 2011, SBA issued regulations that specified that the net worth and the fair market value of a program applicant's assets may exclude funds invested in an official retirement account that are unavailable to the applicant without a significant penalty. In 2020, SBA issued regulations that specified that total assets included an applicant's primary residence and the value of the applicant/program participant firm.

Mentor-Protégé Program

In 1998, the SBA established the 8(a) Mentor-Protégé Program to "enhance the capabilities" of 8(a) firms and "improve [their] ability to successfully compete for contracts."⁶⁸ The program, which merged with the SBA's All Small Mentor-Protégé Program in 2020, provided various forms of assistance, including technical or management training, subcontracts, financial assistance in the form of equity investments or loans, and assistance in performing prime contracts with the federal government through joint venture agreements.⁶⁹ The All Small Mentor-Protégé Program's requirements and benefits were essentially identical to those that were in place for the 8(a) Mentor-Protégé Program. The major difference was that the All Small Mentor-Protégé Program was available to all small businesses, whereas the 8(a) Mentor-Protégé Program was limited to firms participating in the 8(a) program. The SBA merged the programs in an effort to streamline program processes and functions.⁷⁰

SBA regulations govern various aspects of the Mentor-Protégé Program, including who may qualify as a mentor or protégé, the content of written agreements between mentors and protégés, and the SBA's evaluation of the mentor-protégé relationship. For example, a protégé must have industry experience and propose a mentor prior to applying for the program, while a mentor must demonstrate its capabilities for assisting the protégé and have no more than three protégés at a time.⁷¹

The SBA must determine that the mentor-provided assistance will promote real developmental gains for the protégé and not be merely a vehicle to receive federal small business set-asides and sole-source contracts.⁷² However, mentors may benefit from the program in that they may form joint ventures with their protégés that qualify for small business set-aside contracts for which a protégé small business is eligible, including contracts set aside for 8(a) program participants.⁷³

Response to Federal District Court Ruling in 2023

In a July 2023 district court case, *Ultima Servs. Corp. v. U.S. Department of Agriculture*, the U.S. District Court for the Eastern District of Tennessee enjoined SBA from presuming the social

⁶⁸ SBA, "Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals: Final Rule," 63 *Federal Register* 35739, June 30, 1998.

⁶⁹ 13 C.F.R. §124.520(a). See also GAO, *Small Business: SBA Could Better Focus Its 8(a) Program to Help Firms Obtain Contracts*, GAO/RCED-00-196, July 20, 2000, p. 14, at <http://www.gao.gov/new.items/rc00196.pdf>; and SBA, "Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments," 85 *Federal Register* 66146-66199, October 16, 2020.

⁷⁰ SBA, "Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments," 84 *Federal Register* 60846, November 8, 2019; and SBA, "Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments," 85 *Federal Register* 66146-66199, October 16, 2020.

⁷¹ 13 C.F.R. §125.9.

⁷² SBA, "SBA Mentor-Protégé Program," <https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protége-program>.

⁷³ 13 C.F.R. §125.9; and SBA, "SBA Mentor-Protégé Program."

disadvantage of program applicants.⁷⁴ The district court found the SBA 8(a) program's presumption of social disadvantage for certain program applicants to be unconstitutional. Prior to the ruling, the SBA applied a "presumption of social disadvantage" to individuals applying for its 8(a) program from the following groups, per legislation and agency regulations: Asian Pacific Americans, Black Americans, Hispanic Americans, Subcontinent Asian Americans, and Native Americans.⁷⁵ Applicants had been required to attest to membership in one of these groups or provide a personal narrative to the SBA if they did not belong to one of the groups.⁷⁶ All individuals were required to submit evidence documenting their economic disadvantage to the SBA.⁷⁷ Unchanged since the ruling is that although program participants recertify their economic disadvantage annually, they establish their social disadvantage once.⁷⁸

In response to the ruling, the SBA temporarily suspended new 8(a) program applications, issued guidance for program participants, and reopened the program to applicants on September 29, 2023.⁷⁹ In addition, program participants who previously relied on the presumption of social disadvantage for program eligibility were required to submit a personal narrative about their social disadvantage to SBA.⁸⁰ Before the ruling, this procedure was required for individuals who were not members of one of the racial groups identified in SBA regulations as socially disadvantaged.⁸¹ Program participants were also advised to continue to submit their annual review and continuing eligibility materials to SBA.

To assist program participants and applicants, the SBA provided resources, including a webinar and a writing guide on how to prepare a "social disadvantage narrative" for submission to the SBA.⁸² According to SBA guidelines, the "key elements" of a narrative include (1) a description of a program participant's identity or characteristics and "how [they] have been subject to discrimination," and (2) descriptions of two "incidents of bias" that demonstrate "chronic and substantial social disadvantage." SBA notes that these incidents "should be related to education, employment, and business history."⁸³

Concluding Remarks

While earlier federal efforts addressing discrimination against minorities in federal contracting can be found in executive orders focused on the employment policies of federal contractors, it

⁷⁴ *Ultima Servs. Corp. v. U.S. Dept of Agric., et al.* (United States District Court, E.D. Tennessee, Greeneville Division 2023).

⁷⁵ 13 C.F.R. §124.103(b). See "Statutory Definition of Social Disadvantage" and "Evolution of the Definition of Social Disadvantage" for discussion of the origins of this presumption.

⁷⁶ 13 C.F.R. §124.103(b)-(c).

⁷⁷ 13 C.F.R. §124.104.

⁷⁸ 13 C.F.R. §124.112(b).

⁷⁹ SBA, "Updates on the 8(a) Business Development Program," September 18, 2023, <https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program/updates-8a-business-development-program#id-guidance-and-faqs-for-current-a-participants>.

⁸⁰ These participants received a direct communication from SBA in August 2023 that detailed the process for establishing social disadvantage through a social disadvantage narrative. Program participants who did not submit a social disadvantage narrative to reestablish eligibility were to be suspended from the 8(a) program on November 15, 2023. *Ibid.* CRS did not assess such SBA action, post-November 15, 2023.

⁸¹ *Ibid.*

⁸² *Ibid.* The writing guide remains available, at <https://sbaone.atlassian.net/wiki/spaces/CKB/pages/2768076819/Guide+for+Demonstrating+Social+Disadvantage>.

⁸³ SBA, *Guide for Demonstrating Social Disadvantage*, at <https://sbaone.atlassian.net/wiki/spaces/CKB/pages/2768076819/Guide+for+Demonstrating+Social+Disadvantage>.

was not until the end of the Lyndon Johnson Administration in 1968 that Section 8(a) of the Small Business Act was used and it was not until the Nixon Administration in the 1970s that it was used to support minority-owned federal contractors. The policy of encouraging contracts with minority-owned small businesses initiated through executive programming was congressionally authorized in 1978, after which SBA regulatory actions created detailed criteria for determining when individuals may be considered *socially and economically disadvantaged*.

The 2023 federal district court decision that enjoined SBA from presuming an individual's social disadvantage based on membership in a disadvantaged social group upended almost 30 years of agency practices. Nevertheless, the SBA adapted its program application procedures and has continued to administer 8(a) functions, including recertifying existing program participants to comply with the district court ruling.

The SBA's "408 Report" provides Congress with an annual update on the 8(a) program's impacts on disadvantaged business owners and the national economy.⁸⁴ The report includes data on program participants as well as an estimate of the costs and benefits of the program for the government and economy.⁸⁵ The most recent report, for FY2023, indicates that "5,273 firms participated in the 8(a) BD Program and provided employment for more than 171,600 people." It further notes that 8(a) contracts may have added approximately \$35-\$40 billion to the national gross domestic product (GDP).⁸⁶

Academic literature provides additional assessments of the effectiveness of the 8(a) program. One investigation of "preferential procurement programs," including federal initiatives, concluded that they "have been highly successful" with respect to removing barriers to Black entrepreneurship.⁸⁷ Still, the author argued that federal efforts such as the Department of Transportation's Disadvantaged Business Enterprise Program⁸⁸ have been "[m]ore important than 8(a)."⁸⁹ Also of significance in the literature are the numerous state and local government procurement programs, to some extent spurred by and modeled after federal policies, and which find both supporters and detractors among researchers.⁹⁰

⁸⁴ The report was required by the Business Opportunity Development Reform Act of 1988 (P.L. 100-656), codified at 15 U.S.C. §636(j)(16). It was first required for FY1990. The aim of the report is to "determine and quantify" program impacts.

⁸⁵ SBA, "Report to the U.S. Congress on Minority Small Business and Capital Ownership Development," <https://www.sba.gov/document/report-408-report-us-congress-minority-small-business-capital-ownership-development>; and SBA Office of Government Contracting and Business Development, *8(a) Business Development Program FY2023 408 Report to the Congress*.

⁸⁶ SBA Office of Government Contracting and Business Development, *8(a) Business Development Program FY2023 408 Report to the Congress*, pp. 16-20. The estimate used "a fiscal multiplier approach ... to determine how much total spending occurs as a result of each additional dollar of Federal spending," and relies on multipliers specific to 8(a) set-aside contracting dollars, developed with FY2021 data.

⁸⁷ Timothy Bates, "Contested Terrain: The Role of Preferential Policies in Opening Government and Corporate Procurement Markets to Black-Owned Businesses," *Du Bois Review*, vol. 12, no. 1 (2015), p. 137.

⁸⁸ The Department of Transportation Disadvantaged Business Enterprise (DBE) program is designed to prevent discrimination against DBEs by providing them equal opportunity to compete for federally funded transportation contracts. For more information on the program, see CRS In Focus IF12055, *The U.S. DOT Disadvantaged Business Enterprise Program*, by R. Corinne Blackford.

⁸⁹ Bates, p. 139.

⁹⁰ For further discussion, see Timothy Bates, "Contested Terrain: The Role of Preferential Policies in Opening Government and Corporate Procurement Markets to Black-Owned Businesses," *Du Bois Review*, vol. 12, no. 1 (2015); and George R. La Noue and John Sullivan, "But for Discrimination: How Many Minority Owned-Businesses Would There Be?" *Columbia Human Rights Law Review*, vol. 24, no. 1 (Winter 1992-1993).

Congress has directly heard viewpoints on program benefits and challenges from the testimony of hearing witnesses. In a March 2022 hearing before the House Committee on Small Business Subcommittee on Contracting and Infrastructure, witnesses included business owners who had participated in the 8(a) program.⁹¹ These owners remarked on the importance of the program for the growth of their firms and offered suggestions for program improvements, including those related to program technical assistance and the oversight of joint-venture arrangements.⁹²

⁹¹ U.S. Congress, House Small Business, Subcommittee on Contracting and Infrastructure, *The 8(a) Program: Overview and Next Steps to Promote Small Business Success*, 117th Cong., 2nd sess., March 2, 2022.

⁹² Testimony of Arshdeep Khurana, President & CEO of AVOSYS Technology, in U.S. Congress, House Small Business, Subcommittee on Contracting and Infrastructure, *The 8(a) Program: Overview and Next Steps to Promote Small Business Success*, 117th Cong., 2nd sess., March 2, 2022; Testimony of Qin Li, President of Soliel LLC, in U.S. Congress, House Small Business, Subcommittee on Contracting and Infrastructure, *The 8(a) Program: Overview and Next Steps to Promote Small Business Success*, 117th Cong., 2nd sess., March 2, 2022.

Appendix. Summary of Program Participant Requirements

Table A-1. Requirements for Different Types of 8(a) Firms

Category	8(a) Firms Generally	Tribally Owned	ANC-Owned	NHO-Owned	CDC-Owned
"Small"	Independently owned and operated; not dominant in field of operation; meets size standards (15 U.S.C. §631(a)). All affiliations count (13 C.F.R. §121.103).	Independently owned and operated; not dominant in field of operation; meets size standards (15 U.S.C. §631(a)). Affiliations based on the tribe or tribal ownership, among others, do not count (15 U.S.C. §636(j)(10)(j)(ii); 13 C.F.R. §124.109(c)(2)).	Independently owned and operated; not dominant in field of operation; meets size standards (15 U.S.C. §631(a)). Affiliations based on the ANC or ownership by the ANC, among others, do not count (15 U.S.C. §636(j)(10)(j)(ii); 13 C.F.R. §124.109(c)(2)).	Independently owned and operated; not dominant in field of operation; meets size standards (15 U.S.C. §631(a)). Affiliations based on the NHO or ownership by the NHO, among others, do not count (15 U.S.C. §636(j)(10)(j)(ii); 13 C.F.R. §124.110(c)).	Independently owned and operated; not dominant in field of operation; meets size standards (15 U.S.C. §631(a)). Affiliations based on the CDC or ownership by the CDC, among others, do not count (15 U.S.C. §636(j)(10)(j)(ii); 13 C.F.R. §124.111(c)).
"Business"	For-profit entity with its place of business in the United States; operates primarily within the United States or makes a significant contribution to the U.S. economy (13 C.F.R. §121.105(a)(1)).	For-profit entity with its place of business in the United States; operates primarily within the United States or makes a significant contribution to the U.S. economy (13 C.F.R. §121.105(a)(1)).	For-profit entity with its place of business in the United States; operates primarily within the United States or makes a significant contribution to the U.S. economy (13 C.F.R. §121.105(a)(1)). Although an ANC may be nonprofit, ANC-owned firms must be for-profit to be eligible for 8(a) Program (13 C.F.R. §124.109(a)(3)).	For-profit entity with its place of business in the United States; operates primarily within the United States or makes a significant contribution to the U.S. economy (13 C.F.R. §121.105(a)(1)).	For-profit entity with its place of business in the United States; operates primarily within the United States or makes a significant contribution to the U.S. economy (13 C.F.R. §121.105(a)(1)).
"Unconditionally owned and controlled"	At least 51% unconditionally and directly owned by one or more disadvantaged individuals who are U.S. citizens	At least 51% tribally owned (13 C.F.R. §124.109(b)). Management may be conducted by individuals who are not members	At least 51% ANC-owned (13 C.F.R. §124.109(a)(3)). Management may be conducted by individuals who are not Alaska	At least 51% NHO-owned (13 C.F.R. §124.110(a)). NHO must control the board of directors, but individuals who	At least 51% CDC-owned (13 C.F.R. §124.111(a)). Management and daily business operations to be conducted by

Category	8(a) Firms Generally	Tribally Owned	ANC-Owned	NHO-Owned	CDC-Owned
	(13 C.F.R. §124.105). Management and daily business operations must be conducted by one or more disadvantaged individuals (13 C.F.R. §124.106).	of the tribe, provided that the SBA determines that such management is necessary to assist the business's development, among other things (13 C.F.R. §124.109(c)(4)(B)).	Natives, provided that the SBA determines that such management is necessary to assist the business's development, among other things (13 C.F.R. §124.109(c)(4)(B)).	are responsible for day-to-day management need not establish personal social and economic disadvantage (13 C.F.R. §124.110(d)).	individuals having managerial experience of an extent and complexity needed to run the firm (13 C.F.R. §124.111(b)).
"Socially disadvantaged individual"	Individuals may prove personal social disadvantage by a preponderance of the evidence (13 C.F.R. §124.103).	Indian tribes presumed to be socially disadvantaged (43 U.S.C. §1626(e); 15 U.S.C. §637(a)(4)(A)-(B); 13 C.F.R. §124.109(b)(1)).	ANCs presumed to be socially disadvantaged (43 U.S.C. §1626(e); 15 U.S.C. §637(a)(4)(A)-(B); 13 C.F.R. §124.109(b)(1)).	NHOs presumed to be socially disadvantaged (43 U.S.C. §1626(e); 15 U.S.C. §637(a)(4)(A)-(B); 13 C.F.R. §124.109(b)(1)).	CDCs presumed to be socially disadvantaged (42 U.S.C. §9815(a)(2)).
"Economically disadvantaged individual"	Financial information (e.g., personal income, personal net worth, fair market value of assets) must show diminished financial capital and credit opportunities (13 C.F.R. §124.104).	Tribe must prove economic disadvantage the first time a tribally owned firm applies to the 8(a) Program; thereafter, a tribe need only prove economic disadvantage at the request of the SBA (13 C.F.R. §124.109(b)(2)).	Deemed to be economically disadvantaged (43 U.S.C. §1626(e); 13 C.F.R. §124.109(a)(2)).	NHO must prove economic disadvantage the first time an NHO-owned firm applies to the 8(a) Program; thereafter, an NHO need only prove economic disadvantage at the request of the SBA (13 C.F.R. §124.110(c)).	CDCs presumed to be economically disadvantaged (42 U.S.C. §9815(a)(2)).

Category	8(a) Firms Generally	Tribally Owned	ANC-Owned	NHO-Owned	CDC-Owned
"Good character"	Criminal conduct or violations of SBA regulations may result in denial of participation; cannot be debarred or suspended from government contracting (13 C.F.R. §124.108(a)).	Criminal conduct or violations of SBA regulations may result in denial of participation; cannot be debarred or suspended from government contracting (13 C.F.R. §124.108(a)). Requirement applies only to officers, directors, and shareholders owning more than a 20% interest in the business, not to all members of the tribe (13 C.F.R. §124.109(c)(7)(B)(ii)).	Criminal conduct or violations of SBA regulations may result in denial of participation; cannot be debarred or suspended from government contracting (13 C.F.R. §124.108(a)). Requirement applies only to officers, directors, and shareholders owning more than a 20% interest in the business, not to all ANC shareholders (13 C.F.R. §124.109(c)(7)(B)(ii)).	Criminal conduct or violations of SBA regulations may result in denial of participation; cannot be debarred or suspended from government contracting (13 C.F.R. §124.108(a)). Regulations do not address to whom requirements apply (13 C.F.R. §124.110). ^a	Criminal conduct or violations of SBA regulations may result in denial of participation; cannot be debarred or suspended from government contracting (13 C.F.R. §124.108(a)). Requirements apply to the firm and "all its principals" (13 C.F.R. §124.111(g)).
"Demonstrated potential for success"	Firm must generally have been in business in primary industry for at least two full years prior to date of application to 8(a) Program unless SBA grants a waiver; waiver is based on five conditions ^b (13 C.F.R. §124.107).	Firm must have been in business in primary industry for at least two full years prior to date of application to 8(a) Program; individuals who will manage the firm must have substantial experience, and firm must have had successful performance and adequate capital; or tribe must have made written commitment to support the firm and have the financial ability to do so (13 C.F.R. §124.109(c)(6)(i)-(iii)).	Firm must have been in business in primary industry for at least two full years prior to date of application to 8(a) Program; individuals who will manage the firm must have substantial experience, and firm must have had successful performance and adequate capital; or ANC must have made written commitment to support the firm and have the financial ability to do so (13 C.F.R. §124.109(c)(6)(i)-(iii)).	Firm must have been in business in primary industry for at least two full years prior to date of application to 8(a) Program; individuals who will manage the firm must have substantial experience, and firm must have had successful performance and adequate capital; or NHO must have made written commitment to support the firm and have the financial ability to do so (13 C.F.R. §124.110 (g)(1)-(3)).	Firm must have been in business in primary industry for at least two full years prior to date of application to 8(a) Program; individuals who will manage the firm must have substantial experience, and firm must have had successful performance and adequate capital; or CDC must have made written commitment to support the firm and have the financial ability to do so (13 C.F.R. §124.111 (f)(1)-(3)).

Category	8(a) Firms Generally	Tribally Owned	ANC-Owned	NHO-Owned	CDC-Owned
Sole-source awards	With contracts valued at over \$4.5 million (\$7 million for manufacturing contracts), sole-source awards permissible only if there is not a reasonable expectation that at least two eligible 8(a) firms will submit offers and the award can be made at a fair market price (48 C.F.R. §19.805-1(b)(1)-(2)).	Can be made with contracts valued at over \$4.5 million (\$7 million for manufacturing contracts), even if there is a reasonable expectation that at least two eligible 8(a) firms will submit offers and the award can be made at a fair market price (15 U.S.C. §637(a)(1)(D)(i)-(ii); 48 C.F.R. §19.805-1(b)(1)-(2)).	Can be made with contracts valued at over \$4.5 million (\$7 million for manufacturing contracts), even if there is a reasonable expectation that at least two eligible 8(a) firms will submit offers and the award can be made at a fair market price (15 U.S.C. §637(a)(1)(D)(i)-(ii); 48 C.F.R. §19.805-1(b)(1)-(2)).	Can be made with Department of Defense contracts valued at over \$4.5 million (\$7 million for manufacturing contracts), even if there is a reasonable expectation that at least two eligible 8(a) firms will submit offers and the award can be made at a fair market price (48 C.F.R. §219.805-1(b)(2)(A)-(B)). Otherwise, cannot be made unless there is not a reasonable expectation that at least two eligible 8(a) firms will submit offers and the award can be made at a fair market price (48 C.F.R. §19.805-1(b)(1)-(2)).	With contracts valued at over \$4.5 million (\$7 million for manufacturing contracts), sole-source awards permissible only if there is not a reasonable expectation that at least two eligible 8(a) firms will submit offers and the award can be made at a fair market price (48 C.F.R. §19.805-1(b)(1)-(2)).
Inability to protest eligibility for award	Firm's eligibility for award cannot be challenged or protested as part of the solicitation or proposed contract award (48 C.F.R. §19.805-2(d)).	Firm's eligibility for award cannot be challenged or protested as part of the solicitation or proposed contract award (48 C.F.R. §19.805-2(d)).	Firm's eligibility for award cannot be challenged or protested as part of the solicitation or proposed contract award (48 C.F.R. §19.805-2(d)).	Firm's eligibility for award cannot be challenged or protested as part of the solicitation or proposed contract award (48 C.F.R. §19.805-2(d)).	Firm's eligibility for award cannot be challenged or protested as part of the solicitation or proposed contract award (48 C.F.R. §19.805-2(d)).
Maximum of nine years in the 8(a) Program	Firm receives "a program term of nine years" but could be terminated or graduated early (13 C.F.R. §124.2). One year extension available for firms participating in	Firm receives "a program term of nine years" but could be terminated or graduated early (13 C.F.R. §124.2). One year extension available for firms participating in	Firm receives "a program term of nine years" but could be terminated or graduated early (13 C.F.R. §124.2). One year extension available for firms participating in	Firm receives "a program term of nine years" but could be terminated or graduated early (13 C.F.R. §124.2). One year extension available for firms participating in	Firm receives "a program term of nine years" but could be terminated or graduated early (13 C.F.R. §124.2). One year extension available for firms participating in

Category	8(a) Firms Generally	Tribally Owned	ANC-Owned	NHO-Owned	CDC-Owned
	the program from March 13, 2020, through September 9, 2020.	the program from March 13, 2020, through September 9, 2020.	the program from March 13, 2020, through September 9, 2020.	the program from March 13, 2020, through September 9, 2020.	the program from March 13, 2020, through September 9, 2020.
One-time eligibility for 8(a) Program	Applies to both disadvantaged owners and firms (13 C.F.R. §124.108(b)).	Applies only to tribally owned firms, not tribes (15 U.S.C. §636(j)(11)(B)-(C)).	Applies only to ANC-owned firms, not ANCs (15 U.S.C. §636(j)(11)(B)-(C)).	Applies only to NHO-owned firms, not NHOs (15 U.S.C. §636(j)(11)(B)-(C)).	Applies only to CDC-owned firms, not CDCs (15 U.S.C. §636(j)(11)(B)-(C)).
Limits on the amount of 8(a) contracts that a firm may receive	No sole-source awards possible once the firm has received a combined total of competitive and sole-source 8(a) contracts in excess of the dollar amount set forth in 13 C.F.R. §124.519 (13 C.F.R. §124.519(a)). Firms must receive an increasing percentage of revenue from non-8(a) sources throughout their participation in the 8(a) Program (13 C.F.R. §124.509(b)).	Can make sole-source awards even when a firm has received a combined total of competitive and sole-source 8(a) contracts in excess of the dollar amount set forth in 13 C.F.R. §124.519 (13 C.F.R. §124.519(a)). Firms must receive an increasing percentage of revenue from non-8(a) sources throughout their participation in the 8(a) Program (13 C.F.R. §124.509(b)).	Can make sole-source awards even when a firm has combined a total of competitive and sole-source 8(a) contracts in excess of the dollar amount set forth in 13 C.F.R. §124.519 (13 C.F.R. §124.519(a)). Firms must receive an increasing percentage of revenue from non-8(a) sources throughout their participation in the 8(a) Program (13 C.F.R. §124.509(b)).	Can make sole-source awards even when a firm has received a combined total of competitive and sole-source 8(a) contracts in excess of the dollar amount set forth in 13 C.F.R. §124.519 (13 C.F.R. §124.519(a)). Firms must receive an increasing percentage of revenue from non-8(a) sources throughout their participation in the 8(a) Program (13 C.F.R. §124.509(b)).	Combined total of competitive and sole-source 8(a) contracts in excess of the dollar amount set forth in 13 C.F.R. §124.519 not explicitly addressed in regulations. Firms must receive an increasing percentage of revenue from non-8(a) sources throughout their participation in the 8(a) Program (13 C.F.R. §124.509(b)).

Source: CRS, based on 8(a) Program statutory and regulatory requirements.

Notes: ANC: Alaska Native Corporations; NHO: Native Hawaiian Organizations; CDC: Community Development Corporations.

- a. The rules governing NHO-owned firms do not address this issue, and although the general rules apply where no “special rules” exist, it seems unlikely that NHO-owned firms are treated differently than tribally or ANC-owned firms in this regard.
- b. These criteria include (1) the management experience of the disadvantaged individual(s) upon whom eligibility is based; (2) the business’s technical experience; (3) the firm’s capital; (4) the firm’s performance record on prior federal or other contracts in its primary field of operations; and (5) whether the firm presently has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and other resources necessary to perform contracts under Section 8(a).

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