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IN FOCUS

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# The SBA's 8(a) Business Development Program

## Background

Through the 8(a) Business Development Program, Congress aims to help small "socially and economically disadvantaged" business owners overcome barriers to participating in federal contracting. The program, established under Section 8(a) of the Small Business Act in 1978, gives explicit statutory authority for program activities previously implemented through regulations. For eligible businesses, the 8(a) program creates federal contracting preferences such as contract set-asides and sole-source contracts. Set-asides limit contract competition to businesses in the 8(a) program. Sole-source awards are made to 8(a) firms without competition. This InFocus provides an overview of program features and congressional issues. For a more detailed discussion, see CRS Report R48190, *SBA's 8(a) Business Development Program: Structure and Current Issues*.

Agency purchasing officials may choose to award contracts under this program in order to reach annual goals for contracting with small, disadvantaged businesses (SDBs), inclusive of 8(a) firms (see CRS Insight IN12018, *Federal Small Business Contracting Goals*). Under the authority of the Small Business Act, the Small Business Administration (SBA) subcontracts to 8(a) program participants on behalf of other federal agencies and may award these contracts through either a set-aside or a sole-source award, typically depending on the value of the contract.

In addition to contracting preferences, the program provides participants with business development support, including mentorship, training, and counseling. These services are intended to enhance participants' competitiveness and their long-term viability as businesses. Statutory authority for the program is contained in Sections 7(j), 8(a), and 8(d) of the Small Business Act.

### Definition of Economically Disadvantaged

Economically disadvantaged individuals are defined in statute as those whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities (15 U.S.C. §637(a)(6)). SBA considers individuals with a net worth of less than $850,000, an adjusted gross income averaged over the three preceding years of $400,000 or less, and total assets of $6.5 million or less as economically disadvantaged. Funds invested in an Individual Retirement Account or other official retirement account, ownership interest in the applicant firm, and the equity in the individual's primary personal residence are excluded from net worth calculations. Total assets are the fair market value of all his or her assets, including his or her primary residence and the value of the applicant firm but excluding qualified retirement accounts.

### Definition of Socially Disadvantaged

Socially disadvantaged individuals 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" (15 U.S.C. §637(a)(5)). Prior to a July 2023 ruling in a federal district court case (*Ultima Servs. Corp. v. U.S. Department of Agriculture*), the SBA applied a "presumption of social disadvantage" to individuals applying for its 8(a) program from the following groups: Asian Pacific Americans, Black Americans, Hispanic Americans, Subcontinent Asian Americans, and Native Americans. Due to the district court ruling that the SBA cannot presume social disadvantage based on ethnic or racial group membership, the SBA stopped presuming social disadvantage and required program applicants to submit a personal narrative to the SBA that demonstrates their social disadvantage. SBA released a proposed rule on June 11, 2026, that would revise the criteria for individuals (but not entities) to establish social disadvantage, and it released a final rule on August 11, 2026. The rule created a new "test by which any individual American citizen can establish social disadvantage," by showing that

> during the citizem's lifetime, a governmental or private entity in the United States ... 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.

The applicant would also need to show that the "discrimination, bias, or favoritism conferred material harm on the citizen," by self-certifying "group membership and individual harm" and providing "evidence of government or private entity discrimination or bias." As one example, SBA cites a business owner's prior ineligibility for the 8(a) program's race-based rebuttable presumption (deemed unconstitutional in *Ultima Services*) as a circumstance an applicant could use to show discrimination.

For more information on the SBA's response to the legal challenge, see CRS Insight IN12245, *SBA's 8(a) Business Development Program Responds to District Court Ruling* and CRS Insight IN12698, *Proposed SBA Rule Would Establish New Test for Social Disadvantage Under 8(a) Program*.

## Program Details

### Eligibility Requirements

Businesses that meet eligibility criteria and obtain 8(a) program certification may participate in the program for nine years, at which point they are no longer eligible for contracting preferences. Eligible firms must meet all of the following criteria, described at 13 C.F.R. §124:

1. Are small, according to SBA size standards;
2. Have owners and principals of good character, and no history of violations of SBA regulations, suspension or debarment, or submission of false information to the SBA;
3. Demonstrate potential for success, which a firm can generally do by operating and receiving contracts in the private or public sectors, in its primary industry, for at least two full years immediately prior to applying for the program (although the SBA may waive this two-year requirement under certain conditions);
4. Are at least 51% unconditionally and directly owned by socially and economically disadvantaged individuals who are citizens of the United States (or owned by an Alaska Native Corporation [ANC], Native Hawaiian Organization [NHO], Community Development Corporation [CDC], or Indian tribe).

### Selected Program Features

The SBA also provides various forms of business assistance to program participants. To enhance their ability to manage federal contracts, firms may receive training, individual counseling, and management assistance and executive development—all provided through SBA District Office staff and SBA partners. The Small Business Act also authorizes the SBA to provide direct or guaranteed loans to program participants, on its own or with lenders.

Participants complete a developmental stage in the first four years and a transitional stage over the last five years. In the transitional stage, program participants must reach required annual targets for non-8(a) contract revenue. These targets increase over time, as described at 13 C.F.R. §124.509(b): 15% of their revenue from non-8(a) sources in the fifth year, 25% in the sixth year, 30% in the seventh year, 40% in the eighth year, and 50% in the ninth year. The goal is for firms to successfully compete for federal contracts without program assistance after completing the program by the ninth year. If the SBA determines that a participant did not make good faith efforts to meet these targets, the participant becomes ineligible for sole-source awards.

A participating business may "graduate" from the program by reaching its business development goals; it may exit the program after nine or fewer years. Once a participant has left the program, neither the firm nor the owner of that firm is eligible to participate in the program again. However, if ANCs, CDCs, NHOs, and Indian tribes own multiple businesses, these groups may participate more than once via a firm that has not previously participated in the program.

### 8(a) Contract Award Limitations

The SBA is barred from awarding an 8(a) contract, either via a set-aside or on a sole-source basis, if the cost to the contracting agency exceeds "a fair market price" (15 U.S.C. §637(a)(1)(A)). Additional prohibitions on the SBA accepting 8(a) contracts exist, although agencies can offer contracts to the SBA "in [their] discretion," and the SBA may accept them "whenever it determines such action is necessary or appropriate" (15 U.S.C. §637(a)(1)(A)).

When an 8(a) contract's anticipated value, including options, is less than $5.5 million (or $8.5 million for manufacturing contracts), the contract is typically awarded on a sole-source basis without competition. When the anticipated value exceeds these thresholds, it generally must be awarded via a set-aside.

Sole-source awards in excess of the above thresholds may be made only when (1) there is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price, or (2) the SBA accepts the contract on behalf of certain group-owned firms. Participant firms owned by ANCs and Indian tribes may receive sole-source awards in excess of the thresholds from any agency, and NHO-owned firms may receive such sole-source awards from the Department of Defense.

Once they have been awarded more than $168,500,000 in 8(a) contract awards, participant firms owned by individuals may not receive any additional 8(a) sole-source awards, though they can still receive set-asides. This amount is set forth at 13 C.F.R. §124.519. The SBA will not count awards less than $350,000 toward this limit. Firms owned by ANCs, CDCs, NHOs, and Indian tribes are not subject to this maximum total award amount and may continue to receive sole-source awards beyond it.

## Issues for Congress

Following recent program eligibility and application changes, Congress may be interested in program oversight and whether agency contracting with SDBs has been affected by 8(a) program application changes. Program participants include more than 3,000 individually-owned firms and according to SBA, it received roughly 4,000 applications for the program in FY2025.

Congress may reassess the purpose of the 8(a) program and the meaning of "social disadvantage" as it relates to racial discrimination. Some Members of Congress have asserted that the 8(a) program plays a role in remedying racial discrimination in the federal contracting. Meanwhile, others have introduced legislation (H.R. 8511 and S. 4390) that would end contracting preferences for disadvantaged business owners.

Another issue of recent congressional debate is the status of group-owned firms within the 8(a) program, although unaffected by the recent final rule. Some Members have raised questions about the policies permitting firms owned by ANCs, NHOs, and tribes to receive sole-source contracts. Joint venture agreements and mentor-protégé agreements that extend sole-source contract eligibility to non-8(a) participants may also be of interest.

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