



# SBA Guidance

---

**TO: Office of Government Contracting and Business Development and Office of Field Operations**

**SUBJECT: 8(a) Program Mandate**

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (the “8(a) Program”), authorizes a business development program for small businesses owned and controlled by one or more socially and economically disadvantaged individuals. In 2023, a federal court found that the presumption of social disadvantage based on race in the Small Business Administration’s (SBA) regulations implementing the 8(a) Program is unconstitutional. *See Ultima Servs. Corp. v. U.S. Dep’t of Agric.*, 683 F. Supp. 3d 745, 774 (E.D.T.N. 2023). Consistent with this case and other recent Supreme Court caselaw, the Trump Administration has taken a strong stance against unconstitutional discrimination and unlawful diversity, equity, and inclusion (DEI) policies, including through executive orders in the Administration’s first week. *See, e.g.*, E.O. 14151, E.O. 14173.

The Department of Justice’s November 25, 2025, letter to the Speaker of the House of Representatives affirmed these basic Constitutional principles, advising that SBA’s regulations implementing the 8(a) Program are unconstitutional in that they presume an individual is “socially disadvantaged” based solely on his or her membership in certain racial groups. On that basis, the Department of Justice advised that it would not defend the constitutionality of the regulations’ race-based presumption.

SBA fully agrees that the presumption of social disadvantage based on enumerated races in its regulations is unconstitutional. Under SBA’s regulations, large segments of American society were excluded from the presumption and, in practicality, from the program—particularly white Americans. This was and is unlawful. No American, including white Americans, shall be excluded or treated differently with respect to government programs based on race.

SBA is finalizing regulations to eliminate the unconstitutional presumption and related program guides—which SBA has not used since the beginning of the Trump Administration—and ensure the program complies with applicable law. To the extent unclear, this guidance clarifies the following current practices with respect to administration of the 8(a) Program:

1. No applicant to the 8(a) Program shall be denied, nor given any presumptive preference, based solely on his or her race. The 8(a) Program should be administered race neutrally.
2. SBA will not approve admissions to the program based on the Biden-era “social disadvantage narratives”, nor will SBA utilize in any way or refer applicants to the

related "Guide for Demonstrating Social Disadvantage". Consistent with the SBA's practice since January 2025, employees in the Office of Government Contracting and Business Development and the Office of Field Operations should not request or consider such "social disadvantage narratives," nor utilize or encourage applicants to utilize the "Guide for Demonstrating Social Disadvantage."

3. All employees in the office of Government Contracting and Business Development and the Office of Field Operations shall treat all Americans fairly and equally in compliance with President Trump's Executive Orders 14151 and 14173.
4. When considering whether an individual has suffered social disadvantage, the Office of Government Contracting and Business Development and the Office of Field Operations shall consider, for example, such factors as whether such individual has been the victim of illegal or radical DEI policies or illegal affirmative action policies or has otherwise been the victim of discriminatory practices such as race-based quotas, set asides, or hiring targets, in each case, whether by governmental or non-governmental actors. The Office of Government Contracting and Business Development and the Office of Field Operations shall further consider, for example, whether an individual was formally, or in practice, excluded from SBA's 8(a) Program while these unconstitutional laws, practices, and policies were in effect.

**Effective Date:** January 22, 2026

If you have any questions regarding this guidance, please contact Richard Kingan, Acting Associate Administrator of the Office of Government Contracting and Business Development or Lisa Shimkat, Associate Administrator of the Office of Field Operations.